



# SMOKE AND MIRRORS: WHY PRESIDENT BIDEN'S EXECUTIVE ORDER WON'T CHANGE A THING AT THE BORDER

HOUSE COMMITTEE ON HOMELAND SECURITY

CHAIRMAN MARK E. GREEN, MD

## BACKGROUND:

Yesterday, President Biden announced [an executive order](#) that would ostensibly prohibit inadmissible aliens at the Southwest border from filing asylum claims if daily Customs and Border Protection (CBP) encounters exceed an average of 2,500 for a one-week period. This prohibition would then be lifted two weeks after daily encounters stayed at or below an average of 1,500 for a week. While the Biden administration is touting this as some silver bullet to the border crisis that Biden and Department of Homeland Security (DHS) Secretary Alejandro Mayorkas intentionally created, it won't change the game at the Southwest border.

It fails to end the perverse incentives created by the Biden administration's mass catch-and-release policies, and does nothing to ensure the mandatory detention of inadmissible aliens required by law. However, those are far from the only flaws.

## REASON 1: BIDEN'S EO LEGITIMIZES CRISIS LEVELS OF ILLEGAL IMMIGRATION.

- In 2019, former Obama administration DHS Secretary Jeh Johnson said that 1,000 Border Patrol apprehensions ["overwhelms the system."](#)
- This order would only permit CBP personnel to implement asylum restrictions when encounters exceed a daily average of 2,500 over a one-week period—and then scales back those efforts when encounters "drop" to a number still above crisis level.

## REASON 2: BIDEN'S EO DOES NOTHING TO PROHIBIT ILLEGAL ALIENS FROM BEING RELEASED WITH NOTICES TO APPEAR (NTAs).

- This is a huge problem with Biden's order. First, it is important to understand that most inadmissible aliens who present themselves to CBP personnel at the Southwest border are issued NTAs and released into the interior—whether or not they claim asylum.
- This has been especially true ever since federal courts, in the spring of 2023, prohibited the parole of those crossing illegally between ports of entry.
  - ◊ In fact, one report noted how inadmissible aliens [are not required to claim asylum](#) to present themselves for CBP One appointments.
- [Since February 2021](#), the Border Patrol has released roughly 1.9 million illegal aliens with NTAs, and the Office of Field Operations (OFO) has recorded another 798,000 NTAs. That does not count NTA releases by Immigration and Customs Enforcement (ICE).
- Biden's order does nothing to stop CBP and ICE personnel from simply issuing NTAs to anyone who arrives at the Southwest border. Even threats that those who do not claim credible fear will be subject to increased enforcement action ring hollow given the administration's failure to follow through on similar rhetoric with previous "restrictions."
- And because the fundamental incentives created by catch-and-release policies still exist, inadmissible aliens will still keep coming.

## REASON 3: THE CRIMINAL CARTELS WILL TAKE ADVANTAGE OF THIS EXECUTIVE ORDER.

- The cartels are incredibly sophisticated and informed. They are fully aware of U.S. law and policy, and know how to exploit them to their advantage.
- The House Committee on Homeland Security's thorough, five-phased investigation documented how [the cartels control the smuggling routes](#) through Mexico, who crosses, and when. They (and no doubt NGOs operating in Mexico and along the border) could simply coach illegal aliens not to



# SMOKE AND MIRRORS: WHY PRESIDENT BIDEN'S EXECUTIVE ORDER WON'T CHANGE A THING AT THE BORDER

HOUSE COMMITTEE ON HOMELAND SECURITY

CHAIRMAN MARK E. GREEN, MD

claim asylum when turning themselves in to agents.

- Those agents are still going to have to process those who continue to turn themselves in, and either release them into the interior, or detain and remove them. The latter simply won't happen under this administration—and the cartels know it.
- In fact, the exceptions listed as part of this rule are so broad as to render any promise of enforcement meaningless, as the Committee has pointed out.

## **REASON 4: UNACCOMPANIED ALIEN CHILDREN (UACs) WILL BE INCREASINGLY EXPLOITED.**

- The executive order will not apply to UACs—another devastating carveout that will further enrich and embolden the cartels, who will exploit more of these vulnerable minors.
- This will only make a devastating humanitarian problem even worse. Since Biden and Mayorkas took office, CBP has encountered nearly 500,000 UACs at the Southwest border.
- A September 2022 report by the Department of Health and Human Services Inspector General revealed that basic screening safeguards had been removed from the sponsor vetting process “in an effort to expedite children’s release from care.”
- According to one expert, “[G]irls have been placed with older men in what is clearly an exploitative situation. There are kids who have been turned over to labor traffickers. There are kids who get turned over to gang members. There are kids who get placed into domestic servitude and other forms of abuse. It’s really quite horrific.”
- The New York Times has reported on UACs caught in abusive working conditions across the country, saying the Biden administration “ignored or missed” warnings about the crisis.

## **REASON 5: GOTAWAYS COULD VERY WELL SKYROCKET.**

- Known gotaways have exploded under the Biden administration, with over 1.8 million on Biden and Mayorkas’ watch, outpacing total known gotaways from FY10-20 combined.
- Border Patrol agents have simply been overwhelmed along the border, with the cartels strategically running one group of illegal aliens across in one sector, then when agents respond, pushing another group across elsewhere.
- Even if Biden’s order functioned perfectly as a deterrent, it would only encourage the cartels to push more illegal aliens across as gotaways. Notably, even under this order, agents are still dealing with beyond-crisis-level numbers on their best day, meaning the cartels “still maintain control” of the border and can send gotaways across.

## **REASON 6: THERE WILL STILL BE A MAJOR PROBLEM WITH THE PORTS OF ENTRY.**

- First, it is critical to understand how Biden and Mayorkas have abused official ports of entry, which fall under the responsibility of OFO.
- Encounters of inadmissible aliens have exploded at the ports, largely due to the mass-parole programs implemented by Biden and Mayorkas, including the CBP One and Cubans, Haitians, Nicaraguans, and Venezuelans parole programs, resulting in more than one million people having arrived since January 2023.
  - ◊ For example, in April 2021, OFO recorded roughly 5,000 encounters at Southwest border ports of entry, and 22,277 at ports nationwide. By April 2024, those had skyrocketed to 50,841 and 116,771, respectively.
- This order effectively exempts tens of thousands of inadmissible aliens making use of these mass-parole programs at the ports of entry every month.