



**THE CONSEQUENCES OF THE BIDEN-HARRIS ADMINISTRATION'S
OPEN-BORDERS POLICIES: THE CASE OF AN ILLEGAL ALIEN GANG
MEMBER TERRORIZING NEW YORK CITY**

Interim Staff Report of the
Committee on the Judiciary
and
Subcommittee on Immigration Integrity, Security, and Enforcement
U.S. House of Representatives



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EXECUTIVE SUMMARY

In less than four years, the Biden-Harris Administration has released into the United States more than 5.4 million illegal aliens,¹ with another 1.9 million illegal alien “gotaways” escaping into the country during the same time.² That chaos at the southwest border, created and incentivized by the radical policies of President Joe Biden and “border czar” Vice President Kamala Harris, has led to insecurity in the interior of the country. Too many of the illegal aliens allowed into the country by the Biden-Harris Administration commit crimes against Americans and other U.S. residents. While the Administration misleadingly claims that illegal aliens are fully screened for criminality at the border,³ former U.S. Border Patrol Chief Rodney Scott has admitted that the “vetting” process is the equivalent of checking aliens “against a blank sheet of paper.”⁴

Every community in the country suffers from the consequences of the Biden-Harris border crisis and the Biden-Harris Administration’s lack of immigration enforcement. With illegal aliens released by the Biden-Harris Administration committing crimes across the country, every American community has become a border community. In a recent transcribed interview before the Committee, one senior Immigration and Customs Enforcement (ICE) official admitted that instead of arresting illegal aliens who pose public safety threats and national security threats at the border, some ICE officers have been reassigned to tasks that facilitate illegal alien releases into the United States.⁵

The Biden-Harris Administration’s radical policies ensure that criminal illegal aliens can remain in the United States indefinitely, even after they have committed a crime. As the Committee documented in an April 2024 report, ICE has instructed its officers to first consider irrelevant factors such as an illegal alien’s high blood pressure, diabetes, caregiver status, and

¹ See H. Comm. on the Judiciary, Rep. on The Biden Border Crisis: How the Biden Admin. Opened the Sw. Border and Abandoned Interior Immigr. Enf’t at App’x 1 (Oct. 9, 2023); U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2023*, U.S. DEP’T OF HOMELAND SEC. (last accessed Mar. 22, 2024); U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2024*, U.S. DEP’T OF HOMELAND SEC. (last accessed July 15, 2024); Camilo Montoya-Galvez, *Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting*, CBS NEWS (Jan. 22, 2024); *Latest UC Data, Total Monthly Discharges to Individual Sponsors Only*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (last accessed Mar. 22, 2024); Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (last accessed July 15, 2024); U.S. Customs and Border Prot., *CBP Releases June 2024 Monthly Update*, U.S. DEP’T OF HOMELAND SEC. (July 15, 2024); Immigr. and Customs Enf’t, *Daily SWB Placemat*, U.S. DEP’T OF HOMELAND SEC. (Apr. 2023–June 2024) (on file with Comm.); Off. of Homeland Sec. Statistics, *Immigr. Enf’t and Legal Processes Monthly Tables – Feb. 2024*, U.S. DEP’T OF HOMELAND SEC. (last accessed June 25, 2024).

² Casey Harper, *Border crisis creates national security threat for U.S., observers say*, WASH. EXAMINER (Aug. 7, 2023); Bill Melugin (@BillMelugin_), X (June 20, 2024, 10:22 AM).

³ *Oversight of the Dep’t of Homeland Security: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (2023) (statement of Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Security).

⁴ *The Biden Border Crisis: Part III: Hearing Before the Subcomm. on Immigr. Integrity, Security, and Enf’t, of the H. Comm. on the Judiciary*, 118th Cong. 62 (2023) (statement of Rodney Scott).

⁵ See H. Comm. on the Judiciary, Interim Staff Rep., *Chauffeur at the Border, Concierge in the Interior: How the Biden Administration Rewards Illegal Aliens on the Taxpayers’ Dime*, at 7-8 (July 3, 2024) [hereinafter July Interim Staff Rep.].

other “mitigating factors” before ever arresting a criminal alien.⁶ Consequently, the Biden-Harris Administration is removing from the country far fewer criminal aliens than the Trump Administration. For example, “in fiscal year 2023, ICE removed 41 percent fewer aliens with criminal convictions and criminal charges than in fiscal year 2020—and nearly 60 percent fewer than in fiscal year 2019.”⁷ As a result, the number of criminal aliens free in the United States totaled more than 617,000 by December 2023—and is likely growing daily because of the border crisis.⁸

Since February 2023, the Committee has requested information, including alien files (A-files)—DHS records that contain immigration case history about individual aliens—relating to illegal aliens who have committed serious and violent crimes in the United States during the Biden-Harris Administration. In some cases, due to the Administration’s refusal to disclose information about these criminal illegal aliens, the Committee has been forced to issue subpoenas. To date, DHS has provided the Committee with A-files relating to roughly 30 criminal aliens.

The information obtained by the Committee shows in stark terms the real-world consequences of the Biden-Harris Administration’s failure to secure the border and enforce immigration law. Taken as a whole, the Committee’s investigation into the criminal illegal aliens the Biden-Harris Administration has allowed to enter the United States exposes the widespread failure to adequately vet, apprehend, detain, and remove illegal aliens. In some cases, the illegal aliens had committed crimes in their home countries but were nevertheless released from DHS custody. In other cases, the illegal aliens had criminal records or were gang members and were still released into the United States. In all cases, the illegal aliens went on to commit crimes in American communities ranging from murder and robbery to brutal assault.

In 2017, then-Senator Kamala Harris asserted that “an undocumented immigrant is not a criminal”⁹ and mocked any plans to remove illegal aliens from the United States.¹⁰ Contrary to the border czar’s claims, many of the illegal aliens allowed to enter the United States under Vice President Harris’s watch are criminals who victimized Americans and terrorized U.S. communities. This interim staff report focuses on the case of just one criminal illegal alien, Daniel Hernandez-Martinez, and highlights how the open-borders policies of the Biden-Harris Administration ensured his release into the United States. According to new, nonpublic information uncovered by the Committee, in early 2023, the Biden-Harris Administration released Daniel Hernandez-Martinez into the United States without any legal justification.¹¹ Mere months after his release, Hernandez-Martinez began terrorizing New York City,

⁶ See H. Comm. on the Judiciary, Interim Staff Rep., *How the Biden Admin.’s Lax Immigr. Enf’t Allows Dangerous Criminal Aliens to Run Free in American Communities*, at 10-13 (Apr. 16, 2024).

⁷ See H. Comm. on the Judiciary, Interim Staff Rep., *New Data Reveal Worsening Magnitude of the Biden Border Crisis and Lack of Interior Immigr. Enf’t*, at 9 (Jan. 18, 2024).

⁸ *Id.* at 9.

⁹ Kamala Harris (@KamalaHarris), X (Apr. 21, 2017, 7:38 PM), <https://x.com/KamalaHarris/status/855566507526565888>.

¹⁰ Kamala Harris (@KamalaHarris), X (Apr. 21, 2017, 7:39 PM), <https://x.com/KamalaHarris/status/855566707729027072>.

¹¹ See *infra* note 24.

committing at least 22 criminal offenses within a span of just six months.¹² Although Hernandez-Martinez has had a prolific criminal career during his short time in the country and DHS records indicate he is a suspected member of the dangerous Tren de Aragua gang,¹³ there are no records in his A-file that indicate that ICE has removed him from the country.

¹² See *infra* note 36.

¹³ See *infra* note 31.

THE CASE OF CRIMINAL ILLEGAL ALIEN DANIEL HERNANDEZ-MARTINEZ

For more than three-and-a-half years, President Joe Biden and “border czar” Vice President Kamala Harris have orchestrated the largest mass release of illegal aliens into the country in American history. Well over 7 million illegal aliens are now in the United States because of the Biden-Harris Administration’s radical immigration policies.¹⁴ The results are all too predictable: cities overwhelmed, public services crushed, and communities shattered by the criminality of some illegal aliens.

Although the Biden-Harris Administration claims that illegal aliens are vetted before being released into the United States, the reality is much more disturbing. As one federal district court judge has observed, the checks that DHS currently performs on illegal aliens encountered at the southwest border should concern every American. As Judge Wetherell explained in 2023:

Although DHS says it is screening arriving aliens . . . to determine if they are a public safety threat, the more persuasive evidence establishes that DHS cannot reliably make that determination. Indeed, according to [the Administration’s] own witnesses, DHS has no way to determine if an alien has a criminal history in his home country unless that country reports the information to the U.S. government or the alien self-reports. Therefore, DHS is mainly only screening aliens at the border to determine if they have previously committed a crime in the United States, and because many of these aliens are coming to the United States for the first time, DHS has no idea whether they have criminal histories or not.¹⁵

Indeed, the biometric and biographic data of illegal aliens, including that of the millions of illegal aliens who have entered the U.S. during the Biden-Harris Administration, are only vetted against U.S. criminal databases, such as the National Crime Information Center (NCIC), and against INTERPOL information.¹⁶ Immigration authorities do not vet illegal aliens against databases in the aliens’ countries of origin.¹⁷ As a result, if there is derogatory information about an alien in that alien’s home country, the current checks are unlikely to reveal it. As former Border Patrol Chief Rodney Scott testified to the Subcommittee on Immigration Integrity, Security, and Enforcement in 2023, the U.S. government has “very, very minuscule data” available when an alien arrives at the southwest border because “[c]rimes committed by a foreign national outside the U.S. rarely appear in [U.S.] databases.”¹⁸

The consequences are dire, with illegal aliens committing crimes against Americans at an alarming rate. Since the beginning of the 118th Congress, Chairman Jim Jordan and

¹⁴ See *supra* notes 1-2.

¹⁵ *Florida v. United States*, 660 F.Supp.3d 1239, 1259 (N.D. Fla. 2023).

¹⁶ *The Biden Border Crisis: Part III: Hearing Before the Subcomm. on Immigr. Integrity, Security, and Enf’t, of the H. Comm. on the Judiciary*, 118th Cong. 62 (2023) (statement of Rodney Scott).

¹⁷ *Id.*

¹⁸ *Terrorist Entry Through the Sw. Border: Hearing Before the Subcomm. on Immigr. Integrity, Security, and Enf’t, of the H. Comm. on the Judiciary*, 118th Cong. 45 (2023) (statement of Rodney Scott).

Subcommittee Chairman Tom McClintock have requested files and information related to dozens of illegal aliens who have committed violent and serious crimes during the Biden-Harris Administration. This report focuses on just one of the millions of illegal aliens released by the Biden-Harris Administration: Daniel Hernandez-Martinez.

Illegal Alien Daniel Hernandez-Martinez is a Gang Member with a Lengthy Rap Sheet in the United States.

According to press reports, Daniel Hernandez-Martinez, a Venezuelan national, “randomly attacked at least three strangers and two cops, and [has been] arrested—and released—six times on 14 different charges” in the two months after he arrived in New York City.¹⁹ In addition to a string of petty thefts, including “using a large metal pipe to break locks to steal bicycles in Times Square,” Martinez is alleged to have threatened and assaulted multiple people, including hitting a man with a bike tire, kicking a woman and dragging her by her hair, threatening another person with a chain, and pulling “out a large knife and advanc[ing] toward an undercover officer.”²⁰

Following these reports, on October 30, 2023, the Committee on the Judiciary sent a letter to DHS requesting all case history information for the alien, including his alien file (A-file).²¹ DHS failed to produce the documents and, accordingly, on April 11, 2024, the Committee reiterated its outstanding request for Hernandez-Martinez’s A-file, among other outstanding requests for A-files.²² Pursuant to the Committee’s follow-up letter, on May 7, 2024, DHS produced Hernandez-Martinez’s A-file.²³ An entry contained in Hernandez-Martinez’s A-file lays bare DHS’s stonewalling of the Committee’s oversight: a summary in the alien’s records reveals that nearly six months before DHS finally produced the A-file, line ICE officials had completed compiling information about Hernandez-Martinez, pursuant to the Committee’s request.²⁴

Below: According to Hernandez-Martinez’s A-file, ICE compiled information pursuant to the Committee’s request six months before DHS finally produced the A-file.

On November 8, 2023, ERO New York City provided HQ ERO Domestic Operations with information pertaining to one Winder Jeovani HERNANDEZ-Martinez (a/k/a Daniel MARTINEZ. DPOB: _____, Venezuela; _____) relative to a written request from Congressmen Jim Jordan and Tom McClintock.

¹⁹ Tina Moore, *Migrant arrested 6 times for 14 crimes in first two months in NYC*, N. Y. POST (Sept. 2, 2023, 10:15 AM), https://nypost.com/2023/09/02/newly-arrived-immigrant-arrested-7-times-court-records-show/?utm_source=twitter&utm_medium=social&utm_campaign=nypost_metro.

²⁰ *Id.*

²¹ Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (Oct. 30, 2023).

²² Letter from Jim Jordan, Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (Apr. 11, 2024).

²³ Letter from Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. to Jim Jordan et al., Chairman, H. Comm. on the Judiciary (May 7, 2024).

²⁴ Alien File of Daniel Hernandez-Martinez at 32, provided to H. Comm. on the Judiciary Staff by U.S. Dep’t of Homeland Sec. (on file with Comm.) [hereinafter Hernandez-Martinez A-File].

The Biden-Harris Administration Released Daniel Hernandez-Martinez into the United States in 2023.

The Committee’s review of Daniel Hernandez-Martinez’s A-file reveals that Border Patrol first encountered him on January 23, 2023, “near Ysleta, Texas, and then released him.”²⁵ Apart from scant details contained in summaries produced by ICE, however, Hernandez-Martinez’s A-file conveys very little additional information about his encounter by Border Patrol, including whether he was vetted against any criminal databases upon entering the country. His A-file also does not include relevant details about his subsequent release, such as any legal justification for releasing him, whether he was paroled, or if he was placed into removal proceedings.²⁶ An ICE summary in his records simply notes that Hernandez-Martinez was “previously apprehended by U.S. Border Patrol on 1/23/23 at or near Ysleta, TX with unknown disposition,” and “subsequently entered the U.S. at an unknown date and at a place not designated as a port of entry . . . thus the subject was not admitted, inspected, or paroled into the United States . . . and was not in removal proceedings at the time of the arrest and has no applications pending.”²⁷

On an unknown date, at an unknown time, HERNANDEZ entered the United States at an unknown place. On January 23, 2023, the US Border Patrol encountered HERNANDEZ near Ysleta, Texas, and then released him.

Above: Hernandez-Martinez’s A-file reveals that Border Patrol released the alien into the United States quickly after apprehending him without any legal justification.

Mere months after his release into the country, Hernandez-Martinez began his New York City crime spree. Press reports indicate that the alien “randomly attacked at least three strangers and two cops and [was] arrested—and released—six times on 14 different charges” within just two months of his arrival in New York City.²⁸ Indeed, his rap sheet indicates he was charged with “Petit Larceny” on four separate occasions, “Criminal Possession [of] Stolen Property” on three occasions, “Criminal Possession [of a] Weapon” on three occasions, in addition to multiple charges for “Menacing,” “Assault,” “Attempted Assault,” “Criminal Mischief,” “Possession [of] Burglar Tools,” “Disorderly Conduct,” and more.²⁹ On multiple occasions, however, the New York City justice system did not take seriously the public safety threat that Hernandez-Martinez posed, with the criminal court judge dismissing, conditionally discharging, or adjourning the alien’s charges.³⁰ Troublingly, according to an entry reflecting a database query dated October 5, 2023, Hernandez-Martinez is a “suspected Tren de Aragua gang member.”³¹

²⁵ Hernandez-Martinez A-File, *supra* note 24, at 32.

²⁶ *Id.*

²⁷ *Id.* at 26.

²⁸ Moore, *supra* note 19.

²⁹ Hernandez-Martinez A-File, *supra* note 24, at 26, 32-33.

³⁰ *Id.* at 32-33.

³¹ *Id.* at 10.

Following Hernandez-Martinez’s seventh encounter with New York City law enforcement and after analyzing whether his case “falls within the parameters of the guidelines,” ICE lodged a detainer against the alien.³² By “guidelines,” ICE officers presumably were referencing Secretary Mayorkas’ September 30, 2021, memorandum, “Guidelines for the Enforcement of Civil Immigration Law,” also known as the Mayorkas memo.³³ The Mayorkas memo proscribes three categories under which an alien will be a priority for immigration enforcement: threats to national security; threats to public safety; and threats to border security.³⁴ In practical terms, the Mayorkas memo limits ICE officers’ ability to arrest criminal aliens. Indeed, ICE officials have testified to the Committee that the Mayorkas memo has led to fewer ICE arrests of criminal aliens.³⁵

Only after Hernandez-Martinez’s seventh law enforcement encounter—totaling nineteen offenses in New York City—did ICE officers undertake the analysis required by the Mayorkas memo to justify their enforcement of the immigration laws.³⁶ Although ICE lodged a detainer against Hernandez-Martinez with the New York City Department of Corrections on September 1, 2023, it was not honored.³⁷ Following his release from Rikers Corrections, Hernandez-Martinez was arrested at least two more times, as of November 2, 2023.³⁸ Despite his criminal history and suspected gang affiliation, it remains unclear whether ICE has removed Hernandez-Martinez from the United States.

Below: A snapshot into Daniel Hernandez-Martinez’s criminal activity in New York City following his release at the southwest border by the Biden-Harris

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CRIMINAL HISTORY:
11/3/23: Petit Larceny / PL 155.25 / NCIC 2399
11/3/23: Criminal Possession Stolen Property-5th Degree/ PL 165.40 / NCIC 2804
10/18/23: Obstruct Governmental Administration-2nd Degree/PL 195.05 / NCIC 5099
8/30/23: Assault-3rd Degree PL 120.00 NCIC 1399
8/30/23: Aggravated Harassment PL 240.30 NCIC 3899
8/30/23: Attempted Assault-3rd Degree PL 120.00 NCIC 1399
8/28/23: Criminal Mischief / PL 145.00 NCIC 2999
8/28/23: Possession Burglar Tools / PL 140.35 NCIC 2206
8/28/23: Petit Larceny / PL 155.25 NCIC 2399
8/28/23: Criminal Possession Stolen Property-5th Degree / PL 165.40 NCIC 2804
8/25/23: Menacing-2nd Degree / PL 120.14 NCIC 1316
8/25/23: Criminal Possession Weapon-4th Degree / PL 265.01 NCIC 5212
8/22/23: Assault-3rd Degree/ PL 120.00 NCIC 1399
8/22/23: Aggravated Harassment-2nd Degree / PL 240.30 NCIC 3899
8/22/23: Criminal Mischief / PL 145.00 NCIC 2999
8/22/23: Attempted Assault-3rd Degree / PL 120.00 NCIC 1399
7/11/23: Menacing-2nd Degree / PL 120.14 NCIC 1316
7/11/23: Criminal Possession Weapon-4th Degree / PL 265.01 NCIC 5212
7/11/23: Menacing-3rd Degree / PL 120.15 NCIC 1316
7/7/23: Petit Larceny / PL 155.25 NCIC 2399
7/7/23: Criminal Possession Stolen Property-5th Degree/ PL 165.40 NCIC 2804
6/28/23: Petit Larceny / PL 155.25 NCIC 2399

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³² Hernandez-Martinez A-File, *supra* note 24, at 27.

³³ See Memorandum from Alejandro Mayorkas, Sec’y, Dep’t of Homeland Sec., to Tae Johnson, Acting Dir., U.S. Immigr. and Customs Enf’t, et al., “Guidelines for the Enforcement of Civil Immigration Law” (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

³⁴ *Id.*

³⁵ Transcribed Interview of Immigr. and Customs Enf’t ██████████ Field Off. Director at 65 (Aug. 17, 2023) (on file with Comm.).

³⁶ Hernandez-Martinez A-File, *supra* note 24, at 27.

³⁷ *Id.* at 5, 32-33.

³⁸ *Id.*

Below: A document contained in Hernandez-Martinez's A-file summarizing his criminal activities and myriad interactions with New York City law enforcement.

On June 28, 2023, the New York City Police Department (NYPD) arrested HERNANEZ and charged him with Petit Larceny, a violation of New York State Penal Law (NYPL) Section 155.25. Those charges are currently pending.

On July 7, 2023, the NYPD arrested HERNANEZ and charged him with Petit Larceny, a violation of NYPL 155.25, and Criminal Possession Stolen Property-5th Degree, in violation of Section 165.40 of the NYPL. The presiding criminal court judge adjourned those charges in contemplation of dismissal.

On July 11, 2023, the NYPD arrested HERNANEZ and charged him with Menacing-2nd Degree, in violation of NYPL 120.14 and Petit Larceny, a violation of NYPL 155.25, Criminal Possession Weapon-4th Degree in violation of NYPL 265.01, and Menacing-3rd Degree in violation of NYPL 120.15. The presiding criminal court judge dismissed those charges.

On August 22, 2023, the NYPD arrested HERNANEZ and charged him with Assault-3rd Degree in violation of NYPL 120.00, Aggravated Harassment-2nd Degree in violation of NYPL 240.30, Criminal Mischief in violation of NYPL 145.00, and Attempted Assault-3rd Degree in violation of NYPL 120.00. The presiding criminal court judge dismissed those charges.

On August 25, 2023, the NYPD arrested HERNANEZ and charged him with Menacing-2nd Degree in violation of NYPL 120.14, and Criminal Possession Weapon-4th Degree in violation of NYPL 265.01. The presiding criminal court judge dismissed those charges.

On August 28, 2023, the NYPD arrested HERNANEZ and charged him with Criminal Mischief in violation of NYPL 145.00, Possession Burglar Tools in violation of NYPL 140.35, Petit Larceny in violation of NYPL 155.25, Criminal Possession Stolen Property-5th Degree in violation of NYPL 165.40, Menacing-2nd Degree in violation of NYPL 120.14, and Criminal Possession Weapon-4th Degree in violation of NYPL 265.01. No further information is available about those charges.

On August 30, 2023, the NYPD arrested HERNANEZ and charged him with Assault-3rd Degree in violation of NYPL 120.00, Aggravated Harassment in violation of NYPL 240.30, and Attempted Assault-3rd Degree in violation of NYPL 120.00. The presiding criminal court judge convicted HERNANDEZ upon plea of guilty of the Assault-3rd Degree, and granted him a conditional discharge on the other charges.

On September 1, 2023, ERO New York City lodged a detainer against HERNANDEZ's release with the New York City Department of Corrections (NYCDOC). The NYCDOC did not honor the detainer.

On October 17, 2023, the NYPD arrested HERNANEZ and charged him with Disorderly Conduct: Refusing To Move On, in violation of NYPL 240.20 and Obstruct Governmental Administration-2nd Degree, in violation of NYPL 195.05. Those charges are pending.

On November 2, 2023, the NYPD arrested HERNANEZ and charged him with Petit Larceny in violation of NYPL 155.25, and Criminal Possession Stolen Property-5th Degree in violation of NYPL 165.40. Those charges are currently pending.

CONCLUSION

The disastrous immigration policies of the Biden-Harris Administration have had real-world consequences for American citizens. The effects of those policies will be felt for years to come, with criminal aliens in American neighborhoods harming families and hurting public safety across the country. Hernandez-Martinez's victims will never be the same because the Biden-Harris Administration allowed him to enter the country. Tragically, Hernandez-Martinez's victims are not alone.

For 15 months, President Biden, Vice President Harris, and Senate Democrats have failed to consider the House-passed H.R. 2, the Secure the Border Act of 2023, despite rapidly deteriorating conditions both at the border and in the interior. To secure America, the Senate must pass, and President Biden must sign into law, H.R. 2. In the meantime, the Committee and Subcommittee will continue to conduct vigorous oversight to inform legislative reforms to address President Biden and Vice President Harris's dangerous immigration policies.