

THE BALANCING ACT: HUMAN RIGHTS AND THE DYNAMICS OF BORDER CONTROL POLICIES

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Abstract

The crisis in immigration and border control presents a significant challenge to the field of human rights law, urging a thorough exploration of the overlap between migration policies and essential human rights. Over the past three years under the Biden administration, Customs and Border Protection has come across approximately eight million undocumented immigrants. During this period, the federal government released over 2.3 million individuals who entered the country without legal authorization. On October 24, 2023, the state of Texas initiated legal action against the administration's Department of Homeland Security, alleging that federal agents were employing wire cutters to deliberately create openings in their border barrier and fencing, actively facilitating the entry of aliens.¹ These allegations raise significant concerns about federal agents' methods in border enforcement and prompt a closer examination of the reported practices. By a narrow margin of 5-4, the Supreme Court ruled in favor of the Biden administration. In response, Governor Greg Abbott of Texas is enacting Senate Bill 4, compelling Texas law enforcement to apprehend immigrants crossing the border between ports of entry.² Consequently,

¹ Daniel Chaitin, Texas governor Abbott says Biden “failing” on two duties to deter illegal immigration *The Daily Wire* (2024), <https://www.dailywire.com/news/texas-governor-abbott-says-biden-failing-on-two-duties-to-deter-illegal-immigration>.

² Uriel J. Garcia, U.S. Justice Department sues Texas to halt new state law targeting illegal immigration *The Texas Tribune* (2024), <https://www.texastribune.org/2024/01/03/texas-senate-bill-4-illegal-immigration-justice-department->

this has prompted federal agents to file a lawsuit against him, citing the unconstitutionality of the enforced bill. Amidst these ongoing legal disputes, this article delves into the intricacies of former President Donald Trump's border policies. It highlights the notable distinctions in approach found in President Joe Biden's current policies. Each administration's policies have consequences and allegations that raise a pressing question: Why does the Federal Government persist in impeding the capacity to safeguard its border, all the while permitting the utilization of exploitative, dangerous, and inhumane methods that facilitate the illegal crossing of immigrants? Upholding the principle of fairness ensures that individuals facing immigration-related decisions are granted a just and equitable legal process, safeguarding their rights even in the context of potential removal or restrictions.

Introduction

The origins of attempts to control immigration to the United States and fortify border security can be traced back to the 1800s, marked by establishing inspection stations along the southern border. In 1790, the initiation of such efforts can be noted with the enactment of the 1790 Naturalization Act, which laid down the inaugural standardized regulations for naturalization. However, this legislation, displaying evident discrimination, exclusively granted legal citizenship to white individuals residing in the United States for two years, provided they pledged allegiance to the Constitution and demonstrated good character.³

lawsuit/#:~:text=U.S.%20Justice%20Department%20sues%20Texas,says%20the%20law%20is%20unconstitutional.

³ Major US immigration laws, 1790 - present, Major US Immigration Laws, 1790-Present (2013),

<https://www.migrationpolicy.org/sites/default/files/publications/CIR-1790Timeline.pdf>.

Over the years, the United States has undergone significant changes in inclusivity, witnessing the implementation of anti-discriminatory policies and endeavors to ensure justice and fairness for those seeking refuge. Legislative milestones include the Immigration Act of 1864, which legitimized labor recruitment practices akin to indentured servitude, and the Homeland Security Act of 2003, establishing the Department of Homeland Security responsible for immigration services and border enforcement.

Presently, the U.S. Department of Homeland Security emphasizes the stringent nature of immigration laws, citing Title 8, which imposes both immigration and criminal consequences. The department asserts that the U.S. border is not open to illegal or irregular migration, and border control personnel are tasked with daily vigilance to safeguard the borders.⁴ However, with the advent of President Joe Biden's administration, there is a noticeable shift in regulatory and policymaking efforts, leading to what is now considered the most severe border crisis in the nation's history.

Lawsuit Against the Biden Administration

On the 25th of October, 2023, Texas Attorney General Ken Paxton took legal action against the Biden administration, initiating a lawsuit that alleged federal agents operating at the Mexico-Texas border were unlawfully damaging state property. This destruction involved the cutting through concertina wires, initially installed by the Texas Military Department along the southern border. A staggering \$11 million had been expended on placing around 70,000 rolls of wire in a

⁴ The U.S. Immigration System: Explained: Homeland security, The U.S. Immigration System: Explained (2023), <https://www.dhs.gov/medialibrary/assets/videos/42528#:~:text=Migrant%20who%20try%20to%20illegally,in%20accordance%20with%20the%20law.>

strategic effort to counteract undocumented immigrant crossings.⁵ Astonishingly, rather than acting as a deterrent, Border Patrol agents were found not only dismantling these wires but actively aiding migrants in crossing the border. This assistance extended to attaching ropes and cables to trucks, thereby facilitating unauthorized crossings.

Crucially, the concertina wires were intentionally positioned on properties belonging to border city residents and private landowners, not federal land. The essence of the lawsuit rested on the assertion that the actions of immigration agents in cutting the wires constituted an illegal act for which the state of Texas sought damages. According to federal law, Border Patrol agents are mandated to apprehend individuals who have entered U.S. soil without authorization for processing. Their responsibilities extend to intervening when migrants are in peril or conditions pose a risk to the workforce. Although Governor Greg Abbott has pursued legal action, this lawsuit against the Biden administration is not the first of its kind. Despite multiple legal challenges, the Supreme Court consistently sides with the Biden administration, asserting that Texas lacks the legal standing to contest decisions regarding who can or should be deported.⁶

Despite the Department of Homeland Security's support for the Biden administration, it did acknowledge instances where the wires had caused injuries. The fundamental objective of border enforcement is to prevent unauthorized immigrant crossings, reduce injuries, and ensure overall safety. Agents engage in actions that intensify and actively

⁵ Uriel J. Garcia, Texas sues to stop Border Patrol agents from cutting state's razor wire at the border The Texas Tribune (2023), <https://www.texastribune.org/2023/10/24/texas-attorney-general-paxton-lawsuit-border-concertina-wire/> (last visited Feb 28, 2024).

⁶ Uriel J. Garcia, Texas sues to stop Border Patrol agents from cutting state's razor wire at the border The Texas Tribune (2023), <https://www.texastribune.org/2023/10/24/texas-attorney-general-paxton-lawsuit-border-concertina-wire/> (last visited Feb 28, 2024).

contribute to the risk of harm for these immigrants. Consequently, the perplexing issue emerges: Why does the Federal Government persist in hindering the capability to secure its border, concurrently allowing the deployment of exploitative, perilous, and inhumane methods that facilitate the illicit crossing of immigrants? Simultaneously speaking, why does this issue not receive more extensive attention in the public discourse?

Lawsuit Against the State of Texas

Despite the Supreme Court settling this specific lawsuit in favor of the Biden administration by a narrow margin of 5-4, the State of Texas persisted in its efforts. Texas implemented a new state law known as Senate Bill 4, empowering its law enforcement to arrest immigrants apprehended while crossing the Texas-Mexico border. In response, the U.S. Justice Department filed a lawsuit against Texas on January 3, 2024, contending that the law violates the Constitution, challenging the bill under the Supremacy Clause and Foreign Commerce Clause.⁷ Principal Deputy Assistant Attorney General Brian M. Boynton, who heads the Justice Department’s Civil Division, emphasized in a statement, “Texas cannot disregard the United States Constitution and established Supreme Court precedent. We have initiated this action to ensure that Texas adheres to the framework adopted by Congress and the Constitution for regulating immigration (Garcia, 2024).” The Federal Courts are unequivocally asserting that the enforcement of immigration laws falls within the exclusive purview of the federal government.

⁷ Uriel J. Garcia, U.S. Justice Department sues Texas to halt new state law targeting illegal immigration The Texas Tribune (2024), <https://www.texastribune.org/2024/01/03/texas-senate-bill-4-illegal-immigration-justice-department-lawsuit/#:~:text=U.S.%20Justice%20Department%20sues%20Texas,says%20the%20law%20is%20unconstitutional.>

Nevertheless, Florida Governor Ron DeSantis has expressed unwavering support for the enforcement measures that Texas Governor Greg Abbott is working to implement. In a demonstration of solidarity, Governor DeSantis has already deployed 1,000 soldiers from the Florida National Guard and Florida State Guard to Texas to assist in installing barricades and wires along the southern border.⁸ Governor DeSantis stands firmly behind Governor Abbott, emphasizing the importance of defending the sovereignty of his state. He asserts that a nation's identity is inherently tied to its borders, stating, "A country has borders. If you do not have a border, you are not a country, and Biden has failed at his duty as commander-in-chief to ensure our laws are faithfully executed. Therefore, we have every right as states to collaborate and undertake the responsibilities that the federal government is failing to fulfill (para 6)." This resolute stance underscores Governor DeSantis' commitment to reinforcing border security and upholding the rule of law in the face of perceived shortcomings at the federal level.

An unresolved and disconcerting issue revolves around the discernible demarcation between legality and morality. While some may assert the importance of adhering to federal laws, as outlined in the Supremacy Clause⁹ and the Foreign Commerce Clause, others argue that such compliance may lack ethical merit in this scenario. Governors are tasked with enforcing state laws and overseeing the functionality of the state executive branch. As state leaders, governors actively promote and

⁸ Daily Wire News, DeSantis: Florida National Guard being deployed to Texas to help install razor wire, Barricades The Daily Wire (2024), <https://www.dailywire.com/news/desantis-florida-national-guard-being-deployed-to-texas-to-help-install-razor-wire-barricades> (last visited Feb 28, 2024).

⁹ Supremacy clause, Legal Information Institute (2017), https://www.law.cornell.edu/wex/supremacy_clause#:~:text=It%20prohibits%20states%20from%20interfering,entrusted%20to%20the%20federal%20government.

pursue new policies and programs through various means. Nevertheless, these responsibilities should also prioritize the protection of citizens. When the Supreme Court opposes measures implemented to safeguard U.S. citizens, it becomes imperative to explore alternatives. Rather than prioritizing those entering the country illegally and without documentation, it is crucial to devise alternative strategies to ensure the protection of American citizens.

Essential Human Rights and Ethics

It is imperative to initiate the discussion of legality and morality by first examining fundamental human rights and the ethical applicability of the U.S. Constitution to undocumented immigrants. While it is established that the Constitution extends its reach to immigrants, including those without proper documentation, the extent of individual rights protections remains nuanced. It is essential to recognize that these rights are not absolute in the case of undocumented immigrants. Congress holds the ultimate authority, and the principles of due process and equal protection extend to everyone regardless of immigration status.¹⁰ The intricate interplay between constitutional rights and the unique circumstances of undocumented immigrants necessitates a nuanced examination to ascertain the scope and limitations of their legal protections.

While it is essential to consider the implications surrounding the protection of human rights, it is equally crucial to question whether the heightened emphasis on these rights poses an ethical dilemma for U.S. citizens. The dramatized incentive to uphold “essential human rights” prompts an ethical inquiry: Is it morally justifiable to comply with President Biden’s executive orders and actions that inadvertently facilitate cartels in orchestrating diversions leading to the trafficking of

¹⁰ The presidential veto and congressional veto override process, <https://www.archives.gov/files/legislative/resources/education/veto/background.pdf>.

dangerous narcotics, such as fentanyl, across the southern border? Additionally, is it ethically acceptable to ignore the actions of the U.S. Department of Homeland Security, which has released numerous undocumented immigrants into the United States, acknowledging that terrorist organizations exploit the open border agenda? Furthermore, can one morally justify allegiance to an organization that has lost track of over 100,000 children, leaving them vulnerable to exploitation? The commitment of the United States Congress to inclusivity and safeguarding the rights of all individuals within U.S. borders is a source of pride. However, does this dedication extend to allowing free entry for terrorists, criminals, and drug cartels? How can we, as U.S. citizens, oversee the escalating rates of violent crime in this country due to this crisis? These questions prompt a deeper examination of the ethical and moral dimensions associated with current governmental policies and actions. It also delves into the consequences and challenges related to the pursuit of inclusivity while addressing the pressing issues linked to national security and public safety.

The Committee on Oversight and Accountability conducted an extensive hearing titled “The Biden Administration’s Regulatory and Policymaking Efforts to Undermine U.S. Immigration Law,” shedding light on various aspects that emphasize these adverse outcomes. According to Mr. Thomas D. Homan, a retired director of U.S. Immigration and Customs Enforcement (ICE), a glance at CBP’s data reveals a stark reality. In FY20, total enforcement actions stood at approximately 646,000, but in the subsequent years under the Biden administration, this number surged significantly – 1.9 million, 2.7 million, and a staggering 3.2 million in FY23 (para 5).

The implications of these escalating encounters are profound, overwhelming the Border Patrol to the extent that up to 100% of agents are diverted from patrol duties to process these large groups. This depletion of on-duty agents leaves vast stretches of the border unsecured and without a single agent on watch. Mr. Homan, drawing from his experience investigating criminal cartels, highlights the

strategic exploitation of routes of least resistance by smugglers. With 70 to 90% of patrol agents either preoccupied or absent, criminal cartels find many opportunities to facilitate the movement of dangerous substances like fentanyl. Moreover, the statistics reveal a troubling aspect of the immigration crisis. Around 40% of undocumented immigrants have affiliations with gangs, cartels, or smugglers, further complicating the security landscape. Additionally, unaccounted-for children face dire circumstances, with some forced into labor while others remain entirely untraceable.¹¹

Outlining the Difference Between Biden’s Policies and Trump’s Policies

There has been much controversy surrounding the policies implemented by the Trump Administration during its tenure. However, setting aside political perspectives, these policies demonstrated effectiveness when assessed through numerical outcomes. Programs such as "Remain in Mexico," officially known as "Migrant Protection Protocols," facilitated swift intake.¹² Other programs expedited removal processing and the assurance of due process within a few days under the oversight of an immigration judge, reflecting the administration's commitment to managing immigration.

¹¹ Wrap up: Biden Administration’s policies have fueled worst border crisis in U.S. history, United States House Committee on Oversight and Accountability (2024), <https://oversight.house.gov/release/wrap-up-biden-administrations-policies-have-fueled-worst-border-crisis-in-u-s-history%EF%BF%BC/>.

¹² The “Migrant Protection Protocols,” American Immigration Council (2024), <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols> (last visited Mar 1, 2024).

Upon assuming office, President Biden swiftly overturned over ninety executive orders, nullifying these policies.¹³ The absence of alternative proposals from the Biden Administration to replace the previous administration's measures is concerning. If there were disagreements with the prior policies, learning about and considering the alternatives the current administration intends to implement would be constructive. Regrettably, this has not been the case, as the Biden Administration chose to eliminate the policies without offering substitutes due to a divergence in their preferred approach.

Does embracing an open border agenda serve as the solution? It is easier to support it by clearly articulating alternative strategies from the current administration.

Conclusion

Numerous unanswered questions and unresolved situations become known based on the subjects discussed. It is evident that the open border policies implemented by the Biden Administration are exerting a negative impact on the United States, a matter of considerable concern for every American citizen. This issue must be more adequately discussed and publicized, primarily due to the controlled narrative disseminated through mainstream media outlets.

While legal disputes unfold between the state of Texas and the federal government, I emphasize the necessity of elevating awareness about this issue. The outcomes of these legal battles hold implications for the current generation and future generations, shaping the country's trajectory in the years to come. By abandoning immigration policies and

¹³ Wrap up: Biden Administration's policies have fueled worst border crisis in U.S. history, United States House Committee on Oversight and Accountability (2024), <https://oversight.house.gov/release/wrap-up-biden-administrations-policies-have-fueled-worst-border-crisis-in-u-s-history%E2%80%9C/>.

border enforcement, too, The Biden Administration is continually jeopardizing American lives and allocating taxpayer dollars to address a border crisis that stems from their open border agenda.

Acknowledging the complexity of this overwhelming situation that has been escalating in recent years, I refrain from claiming to possess a definitive solution. However, rather than allowing this situation to spiral further out of control, the Biden Administration must prioritize policies focused on deterrence. Equipping border agents with the necessary tools and resources is imperative to effectively address the national security, the morality behind these motives, and the humanitarian aspects of this crisis.