



Written by [R. Cort Kirkwood](#) on April 8, 2022

## CIS Report: Biden Breaks the Secure Fence Act Requiring “Operational Control” of Border

If the GOP retakes Congress in November’s midterm elections and needs another reason to impeach President Joe Biden, they have one in the Secure Fence Act of 2006.

That law, [Andrew Arthur has reported](#) for the Center for Immigration Studies, requires the government to stop illegal aliens from entering the country. Stopping and detaining them is not optional. It’s not a matter of preference. The act does not mention “discretion.” It’s black letter law.

So Biden, aided by his Homeland Security secretary, [open-borders subversive](#) and visa fraudster Alejandro Mayorkas, are ignoring a federal statute.



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Weeks ago, Arthur observed that Biden is also breaking the law by not enforcing other immigration statutes.

Upshot is, Biden is violating his oath to “faithfully execute” the laws of the United States.

### Not Just About Fences

No one is discussing the [Secure Fence Act](#), [Arthur wrote today](#), despite what it clearly states.

The act “was rather exacting (and specific) when it came to “fencing and security improvements” between the Gulf of Mexico and the Pacific Ocean, and “identified five different areas at the Southwest border where Congress required DHS to construct at ‘least 2 layers of reinforced fencing, the installation of additional physical barriers, roads, lighting, cameras, and sensors,’ and specified two ‘priority areas’ for expedited attention.”

But infrastructure wasn’t the act’s point; the “border infrastructure was just a means to an end — not an end in itself. Congress’s end, identified in Section 2 of the bill, was ‘achieving operational control on the border.’”

It goes without saying that Biden and his Cuban legman, Mayorkas, [have purposely undermined](#) operational control of the border.

Wrote Arthur:

Section 2(b) of the act defines it as “the prevention of *all unlawful entries into the United States*, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband”. (Emphasis added.)

Given the fact that Border Patrol agents at the Southwest border were so overwhelmed



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apprehending, processing, and caring for more than 1.659 million illegal migrants in FY 2021 (an all-time record) that more than a half-million others “got away” and entered the United States illegally, preventing the “unlawful entry” of any illegal migrant might seem like a purely aspirational pipe dream.

That isn’t the case, though, Arthur continued. Congress mandated it in the act. The DHS secretary must “take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States.”

Though then-DHS chief Michael Chertoff had a deadline of April 26, 2007 to attain “operational control” of the border, the act’s provision did not expire then. “It is ongoing and has bound Chertoff and his five permanent (and numerous acting) successors, up to and including” Mayorkas, [Arthur continued](#):

There is no “sunset provision” in the Secure Fence Act that would have repealed that mandate at a date certain, or after operational control was achieved once.

In fact, the Secure Fence Act requires the DHS secretary to submit a report “on the progress made toward achieving and maintaining operational control over the entire international land and maritime borders of the United States in accordance with” Section 2 therein annually. If Mayorkas has not simply blown off that requirement, that is one report I would love to see.

To be clear, Section 2 of the Secure Fence Act mandates that Mayorkas “take all actions” he has to in order to “achieve and maintain operational control over the entire international land and maritime borders of the United States”, that is, to prevent even a single alien from entering the United States illegally. More than 500,000 got-aways proves that he is failing to do so.

Amusingly, Arthur observed that Traitor Joe should know all about the act. “He voted for it, as did 79 of his fellow senators, including then-Sens. Barack Obama (D-Ill.) and Hillary Clinton (D-N.Y.).”

That means Obama violated the law, too, by the way, in [unilaterally declaring](#) an amnesty for illegals.

### **INA Violated**

As [The New American reported](#) in January, Arthur also avers that Biden and Mayorkas break the law by ignoring Section 235 of the Immigration and Nationality Act.

DHS has more than two options in dealing with illegals. But the INA requires detaining illegals until their cases are adjudicated.

No matter DHS processes illegals, [Arthur wrote](#), “they are supposed to be detained throughout the entire process — from apprehension to removal or admission.”

Biden, of course, is not doing so. Since October 1, the beginning of fiscal 2022, [he has released](#) almost 320,000 illegals to roam the heartland.



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