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118TH CONGRESS
*1st Session*
HOUSE OF REPRESENTATIVES
REPT. 118–275
Part 1

# PROTECTING OUR COMMUNITIES FROM FAILURE TO SECURE THE BORDER ACT OF 2023

NOVEMBER 17, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources, submitted the following

# R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 5283]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5283) to prohibit the use of Federal funds to provide housing to specified aliens on any land under the administrative jurisdiction of the Federal land management agencies, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SEC. 1. SHORT TITLE.**

This Act may be cited as the "Protecting our Communities from Failure to Secure the Border Act of 2023".

**SEC. 2. PROHIBITION ON PROVIDING HOUSING TO SPECIFIED ALIENS.**

(a) IN GENERAL.—No Federal funds may be used to provide housing to specified aliens on any land under the administrative jurisdiction of the Federal land management agencies, including through leases, contracts, or agreements.

(b) REVOCATION OF LEASE.—The lease between the United States of America/United States Department of the Interior/National Park Service and the City of New York for the Premises known as Portions of Floyd Bennett Field, in the Jamaica Bay Unit of Gateway National Recreation Area (NPS Lease# L–GATE912–2023, Commencement Date - September 15, 2023) is hereby revoked.

(c) DEFINITIONS.—In this section:

(1) FEDERAL LAND MANAGEMENT AGENCIES.—The term "Federal land management agencies" means the National Park Service, the Bureau of Land Management, the United States Fish and Wildlife Service, and the Forest Service.

(2) HOUSING.—The term "housing" means a temporary or permanent encampment used for the primary purpose of sheltering specified aliens.

(3) SPECIFIED ALIEN.—The term "specified alien" means an alien who has not been admitted, as such terms are defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

## PURPOSE OF THE LEGISLATION

The purpose of H.R. 5283 is to prohibit the use of Federal funds to provide housing to specified aliens on any land under the administrative jurisdiction of the Federal land management agencies.

## BACKGROUND AND NEED FOR LEGISLATION

The Biden administration's ongoing failure to secure our nation's southern border has created a confluence of security, environmental, and humanitarian crises as record numbers of migrants cross illegally into the country. Since President Biden took office, more than 6 million illegal immigrants crossed the southern border into the United States. According to the U.S. Customs and Border Protection (CBP), migrant apprehensions are at near record highs, with 2.2 million apprehensions in fiscal year (FY) 2022 and 2.4 million in FY 2023. In September 2023, CBP reported more than 200,000 migrants illegally crossed the border, a high for the year and an increase from the 142,710 migrants who crossed the border two years prior. Concerningly, drug seizures along the border are also increasing. CBP reported seizures of 25,500 pounds of fentanyl from October 2022 to August 2023, an 800 percent increase since FY 2019. This is enough fentanyl to kill approximately 11.6 billion people, or enough fatal doses to kill the entire U.S. population 35 times over.

Illegal immigration is not just affecting southern border communities but has also spilled over into major urban areas like New York City (NYC or the City) and the national park units within them. Over the past year, NYC has had more than 118,800 illegal immigrants flood into the city, prompting even Democratic Mayor Eric Adams to state that "the president and the White House have failed New York City on this issue [immigration]." NYC laws require the City to offer shelter to any person who asks for it, regardless of their citizenship status, through what is known as "right to shelter." The City is now looking to suspend these laws, as the estimated costs for housing illegal immigrants will be roughly $12 billion over the next three years. However, prior to this proposed suspension, the City entered into a legally dubious lease with the Department of the Interior to house illegal immigrants within the boundary of Brooklyn's Gateway National Recreation Area (NRA), a unit of the National Park System.

Finalized on September 15, 2023, against strong public outcry from the local community, the lease signed by the Biden administration proposes to house at least 2,000 migrants at Floyd Bennet Field in the NRA. In doing so, the Committee believes the Biden administration violated several laws including the National Environmental Policy Act (NEPA), the enabling statute for the NRA, and the National Park Service's (NPS) Organic Act, which outlines a very narrow and restrictive mission: "[The] purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

In the documents included with the lease for the migrant camp at Floyd Bennett Field, NPS included a "Decision Memorandum and Environmental Review to Support Emergency Activities for Temporary Housing of Migrants" where NPS outlined its justifications for using emergency procedures under NEPA for the lease. While the use of alternate arrangements itself is not an issue, this was an inappropriate use of the agency's emergency authorities as the emergency did not exist within the park and was not threatening a park resource. Instead, the emergency was occurring in the general vicinity of the park. This also raises serious concerns about the Biden administration's impartiality in using this authority, as the administration has failed to do so for other emergencies, such as the Giant Sequoia trees in Yosemite National Park, which caught on fire last year.

Further, this action created serious concerns about restricted access, decreased recreational activities, and decreased security for local residents. The NRA is a prominent recreation and conservation destination for water-based activities, opportunities for youth and families to experience nature, and wetland and coastal habitat restoration activities. These activities are all in jeopardy because of this lease. For example, parents have already pulled their kids out of a local Sea Cadets program. The local community, which was unable to build soccer fields in the area, has expressed concerns about children recreating in the area due to strained police capacity.

The "Protecting our Communities from Failure to Secure the Border Act of 2023" would prohibit the use of Federal funds to provide housing for migrants on federal lands managed by agencies such as the NPS, Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (USFWS), and U.S. Forest Service (USFS). This legislation is crucial to bolstering border security, the accounting of Federal dollars, and protecting our national parks. Representative Malliotakis introduced the bill in response to execution of the September 15 lease and concerns that agencies like NPS would soon use other park units to house migrants. Earlier this year, Chairman Westerman, Oversight and Investigations Subcommittee Chairman Gosar, and Representative Malliotakis toured impacted sites in the NYC area. Following the tour, the House Committee on Natural Resources held an oversight hearing on examining the Biden administration's use of NPS lands for migrant camps. NYC Council Member Joann Ariola (R–32), a witness at this hearing, along with a Democratic Assemblymember and a representative from the U.S. Park Police all testified about the serious concerns they have with leasing NPS lands for the purposes of creating migrant shelters. At markup, an ANS was offered revoking the September 15 lease.

## COMMITTEE ACTION

H.R. 5283 was introduced on August 25, 2023, by Rep. Nicole Malliotakis (R–NY). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands. The bill was also referred to the Committee on Agriculture. On October 19, 2023, the Subcommittee on Federal Lands held a hearing on the bill. On October 26, 2023, the Committee on Natural Resources met to consider the bill. The Subcommittee on Federal Lands was discharged from further consider-

ation of H.R. 5283 by unanimous consent. Chairman Bruce Westerman (R–AR) offered an amendment in the nature of a substitute, designated Westerman ANS. The amendment in the nature of a substitute offered by Chairman Westerman was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas to 17 nays, as follows:

**Committee on Natural Resources**
U.S. House of Representatives
118th Congress

Date: October 26, 2023 Roll Call# 7

Meeting on / Amendment: **On Favorably Reporting, as amended, H.R. 5283 (Rep. Malliotakis),** *"Protecting Our Communities from Failure to Secure the Border Act of 2023"*

| MEMBERS | Yea | Nay | Pres | MEMBERS | Yea | Nay | Pres |
|---|---|---|---|---|---|---|---|
| Mr. Westerman, AR, Chairman | X | | | *Mr. Grijalva, AZ, Ranking* | | X | |
| Mr. Lamborn, CO | X | | | *Ms. Napolitano, CA* | | X | |
| Mr. Wittman, VA | X | | | *Mr. Sablan, CNMI* | | X | |
| Mr. McClintock, CA | X | | | *Mr. Huffman, CA* | | X | |
| Mr. Gosar, AZ | X | | | *Mr. Gallego, AZ* | | | |
| Mr. Graves, LA | X | | | *Mr. Neguse, CO* | | X | |
| Mrs. Radewagen, AS | X | | | *Mr. Levin, CA* | | X | |
| Mr. LaMalfa, CA | X | | | *Ms. Porter, CA* | | X | |
| Mr. Webster, FL | X | | | *Ms. Leger Fernandez, NM* | | X | |
| Ms. González-Colón, PR | X | | | *Ms. Stansbury, NM* | | X | |
| Mr. Fulcher, ID | X | | | *Mrs. Peltola, AK* | X | | |
| Mr. Stauber, MN | X | | | *Ms. Ocasio-Cortez, NY* | | X | |
| Mr. Curtis, UT | | | | *Mr. Mullin, CA* | | X | |
| Mr. Tiffany, WI | X | | | *Ms. Hoyle, OR* | | X | |
| Mr. Carl, AL | X | | | *Ms. Kamlager-Dove, CA* | | X | |
| Mr. Rosendale, MT | X | | | *Mr. Magaziner, RI* | | X | |
| Mrs. Boebert, CO | X | | | *Ms. Velázquez, NY* | | | |
| Mr. Bentz, OR | X | | | *Mr. Case, HI* | | X | |
| Ms. Kiggans, VA | X | | | *Mrs. Dingell, MI* | | X | |
| Mr. Moylan, Guam | | | | *Ms. Lee, NV* | | X | |
| Mr. Hunt, TX | | | | | | | |
| Mr. Collins, GA | X | | | | | | |
| Ms. Luna, FL | | | | | | | |
| Mr. Duarte, CA | X | | | | | | |
| Ms. Hageman, WY | X | | | | | | |
| | | | | | | | |
| | | | | TOTAL: | 22 | 17 | |

## HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Federal Lands held on October 19, 2023.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 establishes the short title of the bill as the "Protecting our Communities from Failure to Secure the Border Act of 2023".

*Section 2. Prohibition on providing housing to specified aliens*

Section 2 prohibits the use of federal funds to provide housing, including a temporary or permanent encampment, to illegal immigrants on any land under the jurisdiction of Federal land management agencies, including through leases, contracts, or agreements. This would apply to NPS, BLM, USFWS, and USFS. This section also revokes the lease signed between NPS and the City on September 15, 2023, to house illegal immigrants at Floyd Bennett Field. Finally, this section defines key terms, including "federal land management agencies", "housing", and "specified alien".

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## PERFORMANCE GOALS AND OBJECTIVES

As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to prohibit the use of Federal funds to provide housing to specified aliens on any land under the administrative jurisdiction of the Federal land management agencies.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained I the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to the Congressional Budget Act of 1974.

## EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e),

9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

The Committee adopts as its own the estimate of the Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

*Directed Rule Making.* This bill does not contain any directed rule makings.

*Duplication of Existing Programs.* This bill does not establish or reauthorize a program of the Federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

As ordered reported by the Committee on Natural Resources, H.R. 5283 makes no changes in existing law.

GLENN THOMPSON, PENNSYLVANIA,
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COMMITTEE CORRESPONDENCE

# U.S. House of Representatives

## Committee on Agriculture

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November 14, 2023

The Honorable Bruce Westerman, Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This letter confirms our mutual understanding regarding H.R. 5283, the "Protecting our Communities from Failure to Secure the Border Act of 2023". Thank you for collaborating with the Committee on Agriculture on the matters within our jurisdiction.

The Committee on Agriculture will forego any further consideration of this bill. However, by foregoing consideration at this time, we do not waive any jurisdiction over any subject matter contained in this or similar legislation. The Committee on Agriculture also reserves the right to seek appointment of an appropriate number of conferees should it become necessary and ask that you support such a request.

We would appreciate a response to this letter confirming this understanding with respect to H.R. 5283, and request a copy of our letters on this matter be published in the Congressional Record during Floor consideration.

Sincerely,

Glenn GT Thompson

Glenn "GT" Thompson
Chairman

Cc: The Honorable David Scott, Ranking Member, Committee on Agriculture
The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources
The Honorable Mike Johnson, Speaker of the House
The Honorable Jason Smith, Parliamentarian, U.S. House of Representatives

BRUCE WESTERMAN OF ARKANSAS
*CHAIRMAN*

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RAÚL M. GRIJALVA OF ARIZONA
*RANKING DEMOCRAT*

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*DEMOCRAT STAFF DIRECTOR*

**U.S. House of Representatives**
**Committee on Natural Resources**
**Washington, DC 20515**

November 14, 2023

The Honorable Glenn "GT" Thompson
Chairman
Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I write regarding H.R. 5283, the *Protecting our Communities from Failure to Secure the Border Act of 2023*, which was ordered reported by the Committee on Natural Resources on October 26, 2023.

I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Agriculture and appreciate your willingness to forgo action on the bill. I acknowledge that the Committee on Agriculture will not formally consider H.R. 5283 and agree that the inaction of your Committee with respect to the bill does not waive any jurisdiction over the subject matter contained therein.

I am pleased to support your request to name members of the Committee on Agriculture to any conference committee to consider such provisions. I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation.

Sincerely,

Bruce Westerman

Bruce Westerman
Chairman
Committee on Natural Resources

cc: The Honorable Mike Johnson, Speaker of the House
The Honorable David Scott, Ranking Member, Committee on Agriculture
The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources
The Honorable Jason Smith, Parliamentarian, U.S. House of Representatives

## DISSENTING VIEWS

H.R. 5283 would prohibit the use of federal funding to provide migrants who have not been admitted to the United States with temporary or permanent housing on land administrated by federal land management agencies—National Park Service, Bureau of Land Management, Fish and Wildlife Service, and the Forest Service.

Representative Malliotakis introduced H.R. 5283 as a response to the lease agreement between New York City and the National Park Service to use Floyd Bennett Field as an "emergency site to shelter some of the more than 113,300 asylum seekers" who have arrived in the city since spring 2022.[1] NPS manages Floyd Bennett Field as a unit of the National Park System in accordance with the NPS Organic Act. Portions of Floyd Bennett Field have been determined suitable for leasing under Part 18 of Title 36 of the Code of Federal Regulations.[2] The terms of the lease include requirements for the City of New York to invest in improvements that will address deferred maintenance and improve visitor experience at the site. At markup, committee Republicans advanced an amendment offered by Chair Westerman that would directly revoke the lease agreement for the use of Floyd Bennett Field.

The Department of Agriculture and the Department of the Interior oppose H.R. 5283. Rather than identify opportunities to support national parks, this bill extrapolates disagreement over one site decision to advance a policy that limits decision-making regarding the appropriate uses of public lands. In fact, the Forest Service testimony notes that the bill is "unnecessary" and would not change current management of national forests. Floyd Bennett Field has been used for similar purposes after Hurricane Sandy, without opposition from Committee Republicans.

Committee Republicans' efforts to identify violations of law or policy regarding the use of Floyd Bennett Field have included (1) a full committee hearing in September; (2) an Oversight and Investigations Subcommittee hearing on parks and border security in October; (3) a document request letter in September asking for documents and information from the U.S. Department of the Interior, NPS, the Executive Office of the President, and the Office of Management and Budget (OMB); and (4) a request for documents and communications to the Council on Environmental Quality in November. Last week, Committee Republican staff conducted an investigative interview with the career NPS employee who signed the lease agreement between NPS and New York City. Despite these

[1] Office of the Mayor, *Mayor Adams' Statement On Use Of Floyd Bennett Field To Shelter Asylum Seekers* (Sept. 2023) Available online at: https://www.nyc.gov/office-of-the-mayor/news/667-23/mayor-adams-on-use-floyd-bennett-field-shelter-asylum-seekers.

[2] Code of Federal Regulations, *Part 18—Leasing Of Properties In Park Areas* (Dec. 2001) Available online at: https://www.ecfr.gov/current/title-36/chapter-I/part-18.

efforts, Republicans have failed to identify any evidence of violations of federal law or policy.

H.R. 5283 is a diversionary tactic. Republicans are framing their rejection of lease agreements to house migrants as an effort to protect our national parks and public lands—yet they have actively advanced policies and legislation that harm and diminish our parks. This legislation should not be misconstrued as Republicans' genuine interest in protecting national parks and public lands. House Republicans continue to seek deep budget cuts for public land management agencies, including the National Park Service, that would be devastating for our public lands, visitor safety, and recreation opportunities.

H.R. 5283 is a divisive, harmful, and unnecessary bill.

RAÚL M. GRIJALVA,
*Ranking Member, House Committee on Natural Resources.*

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