

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SM 598

INTRODUCER: Senator Ingoglia

SUBJECT: Enforcement of Federal Immigration Laws

DATE: January 8, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SM 598 expresses the will of the Legislature, on behalf of the State of Florida and its residents, that the Federal Government secure the southern border of the United States and repair the legal immigration system.

The memorial lays a predicate for this action by recounting that alien encounters at the southwest border have increased significantly in recent years. This surge in illegal border crossings has led to a corresponding increase in violent crimes, gang activity, human and drug trafficking, and an increasing threat of terrorism.

The memorial states that the policies of the Biden administration have increased the number of aliens seeking asylum and increased the number of aliens released into the interior of the country, regardless of their circumstances. The memorial also notes that illegal crossings at the southern border will likely increase because the construction of a border wall system has been suspended and the current administration has allowed Title 42 to expire. Title 42 was a public health order enacted during the COVID-19 health emergency which allowed border authorities to turn migrants away at the border.

In the concluding clauses, the memorial states that the collapse of order and security at the southern border has led several Texas counties to declare a state of emergency, has created a tremendous financial burden on the taxpaying public, and has compromised a general sense of safety and security among American citizens.

Finally, the memorial urges the Federal Government to secure the southern border and fix the legal immigration system.

II. Present Situation:

Memorials

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto. Memorials often express the Legislature's desire that Congress take action on a certain matter or request that Congress propose an amendment to the United States Constitution.¹

Federal Government's Authority Over Immigration Law

The Federal Government's authority to regulate immigration law is established in the United States Constitution. This power is extensive. The Constitution grants Congress the power to "establish an uniform Rule of Naturalization,"² and to "regulate Commerce with foreign Nations."³ Additional authority is found in the Federal Government's broad powers over foreign affairs. The individual states are not granted similar powers under the Constitution, and they may not encroach upon exclusive federal authority in this area.

The Federal Government's Authority to Secure the Southern Border

The Federal Government's enforcement responsibility rests with the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) and its Enforcement and Removal Operations (ERO). It is the mission of these organizations to "protect the homeland through the arrest and removal of those who undermine the safety of our communities and the integrity of our immigration laws."⁴

The National Magnitude of the Problem

The southwest land border, also referred to as the southern border in the memorial, is the border region of the country which stretches from San Diego, California, eastward to the southern tip of Texas.

U.S. Customs and Border Protection Data – Fiscal Years 2021 – 2024

The chart below records the number of "encounters" between Customs and Border Protection (CBP) and migrants at the southwest land border.⁵ An encounter occurs when an employee of CBP stops someone who is unauthorized or inadmissible from illegally entering the country.

¹ The Florida Senate, Office of Bill Drafting Services, *Manual for Drafting Legislation*, 137-138 (2009), <https://flsenate.sharepoint.com/sites/Secretary/Publications%20Library/Forms/AllItems.aspx?id=%2Fsites%2FSecretary%2FPublications%20Library%2FManual%20for%20Drafting%20Legislation%20%28Senate%29%2Epdf&parent=%2Fsites%2FSecretary%2FPublications%20Library>.


² U.S. CONST. art. 1, s. 8, cl. 4.

³ U.S. CONST. art. 1, s. 8, cl. 3.

⁴ U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations*, <https://www.ice.gov/about-ice/ero> (last visited Jan. 5, 2024).

⁵ U.S. Customs and Border Protection, *Southwest Land Border Encounters*, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited Jan. 5, 2024).

According to the chart there have been 7,072,703 encounters between October 2021 and November 2023. Data from December 2023 will be available in mid-January 2024.



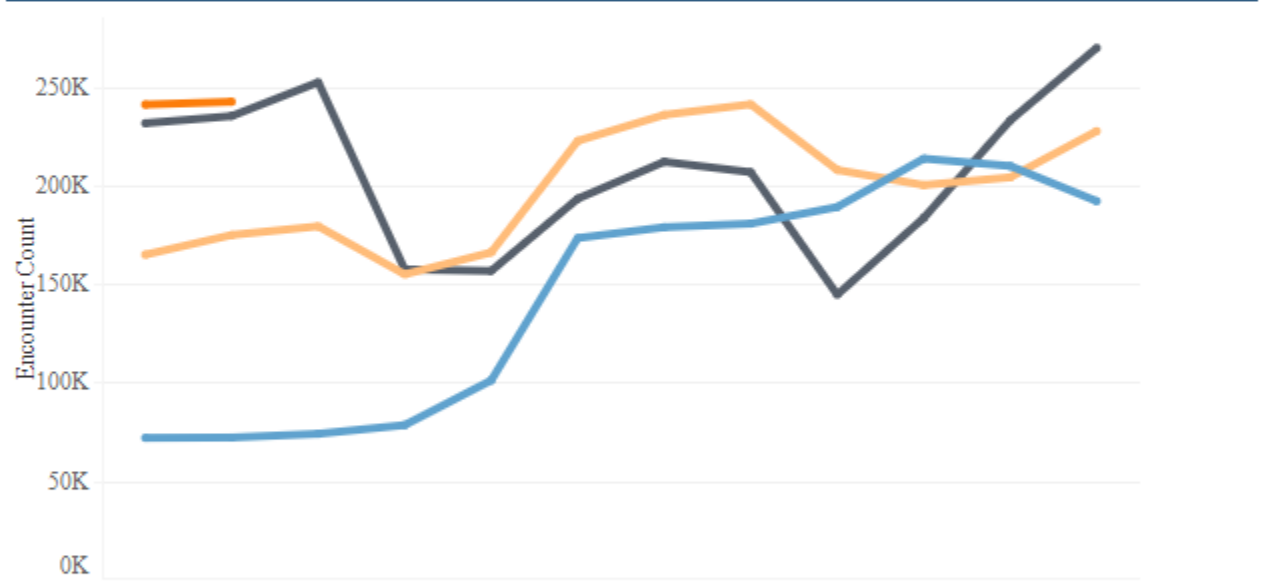
U.S. Customs and Border Protection (CBP) Encounters
 US Border Patrol (USBP) Title 8 Apprehensions,
 Office of Field Operations (OFO) Title 8 Inadmissible Volumes,
 and Title 42 Expulsions by Fiscal Year (FY)

FY: Component: Demographic:

Citizenship Grouping: Title of Authority: Reset Filters

FY ■ 2021 ■ 2022 ■ 2023 ■ 2024 (FYTD)

FY Southwest Land Border Encounters by Month



	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	Total
2024 (FYTD)	240,986	242,418											483,404
2023	231,529	235,173	252,315	157,358	156,630	193,249	211,992	206,690	144,556	183,479	232,963	269,735	2,475,669
2022	164,837	174,845	179,253	154,874	166,010	222,574	235,785	241,136	207,834	200,162	204,087	227,547	2,378,944
2021	71,929	72,113	73,994	78,414	101,099	173,277	178,795	180,597	189,034	213,593	209,840	192,001	1,734,686

The CBP One™ Mobile Application

The CBP One Mobile Application is described “as a single portal to a variety of CBP services.” By providing a series of guided questions, the free app directs a user to the appropriate services they are seeking, including the ability to request an appointment at a land port of entry.⁶ According to one media report, a family recently entered the country in December by using the CBP One cellphone application to set up an appointment. The family was relocating to Tampa from Mexico. The family received a notice to appear and the immigration court hearing was set for 4 years later in 2027.⁷

Attempts to Locate Migrants Who Have Been Released into the Country

The Office of Inspector General (OIG) of DHS released a report in September 2023 entitled *DHS Does Not Have Assurance That All Migrants Can be Located Once Released into the United States*.⁸ The report was written as a memorandum to Mr. Alejandro Mayorkas, Secretary of DHS, and other officials. The report noted that, between March 2021 through August 2022, DHS released more than 1,000,000 migrants into the country. DHS is required to obtain an address for each migrant when possible. However, the inspector general’s office reviewed 981,671 migrant records and found that addresses for more than 177,000 records, or approximately 18 percent, were missing, were not valid for delivery purposes, or did not contain legitimate residential locations. Of the total number of addresses, 80 percent were reported to have been used at least twice during the 18 month period of the review. Over 780 residential addresses were listed more than 20 times. The report stated that 54,663 records did not contain an address. The report also noted that in an average month, DHS releases more than 60,000 migrants into the country and it is essential that the post-release addresses be accurate for ICE to be able to locate migrants once they are released.

The Inspector General made four recommendations for DHS to implement and thereby improve the ability to locate migrants who have been released. DHS responded to the recommendations by stating that it did not concur with the inspector general’s analysis. As a result, the OIG responded that it did not find DHS’ actions to be responsive to the recommendations.

The Immigration Court Backlog Exceeds 3 Million Pending Cases

According to the Transactional Records Access Clearinghouse at Syracuse University, the escalating backlog of immigration cases pending in the United States has reached a new high. In November 2023, the backlog of pending cases in the Immigration Court was 3,075,248. This represents an increase of 1 million cases more than the backlog of 2 million cases pending in November 2022.⁹

⁶ U.S. Customs and Border Protection, *CBP One™ Mobile Application*, <https://www.cbp.gov/about/mobile-apps-directory/cbpone> (last visited Jan. 5, 2024).

⁷ Lauren Villagran, USA TODAY, *As Migration Surges, Immigration Court Case Backlog Swells to Over 3 Million*, (Dec. 27, 2023) <https://www.usatoday.com/story/news/nation/2023/12/27/immigration-court-backlog-grows/72030952007/>.

⁸ Joseph V. Cuffari, Ph.D., Inspector General, Office of Inspector General, Department of Homeland Security, *DHS Does Not Have Assurance That All Migrants Can be Located Once Released into the United States*, (Sept. 6, 2023). <https://www.oig.dhs.gov/sites/default/files/assets/2023-09/OIG-23-47-Sep23-Redacted.pdf>.

⁹ Transactional Records Access Clearing House, Syracuse University, <https://trac.syr.edu/reports/734/>, (Dec. 18, 2023).

The report concludes that immigration judges are overwhelmed. On average, each immigration judge is in charge of 4,500 pending cases. To provide a comparison, the report stated that if each person who has a pending immigration case was assembled in one location, the gathering would exceed the population of Chicago, Illinois, which is the third largest city in the country.¹⁰

The Magnitude of the Problem in Florida

Federal District Court Case

While it is difficult to quantify the precise economic and social impact that illegal immigration has had on the state, there are some areas that are predictable and even measurable. In a recent 2023 federal court case in which the State of Florida sued the United States over a failure to enforce federal immigration policies, the court stated that

There is an immigration “crisis” at the Southwest Border. The Chief of the U.S. Border Patrol (USBP) candidly admitted it in his testimony and the overwhelming weight of the evidence confirms it. The crisis has been ongoing for over two years and shows no sign of abating.¹¹

The court also stated that it “has no trouble finding from this evidence that well over 100,000 aliens released at the Southwest Border under the challenged policies ended up in Florida.”¹²

The court found in favor of Florida, for the most part, because

[A]s detailed below, the evidence establishes that Defendants have effectively turned the Southwest Border into a meaningless line in the sand and little more than a speedbump for aliens flooding into the country by prioritizing “alternatives to detention” over actual detention and by releasing more than a million aliens into the country—on “parole” or pursuant to the exercise of “prosecutorial discretion” under a wholly inapplicable statute—without even initiating removal proceedings. The evidence further establishes that Florida is harmed by the challenged policies because well over 100,000 aliens have been released into Florida under the policies and the state has incurred substantial costs in providing public services to aliens, including those who should have been detained ... and would not have been in the state but for the challenged policies.¹³

The court concluded its opinion by vacating the DHS’ Parole Plus Alternative Detention Policy.¹⁴

¹⁰ *Id.*

¹¹ *Florida v. United States*, 660 F.Supp.3d 1239, 1247 (N.D. Fla. 2023).

¹² *Id.*, at 1262. The court stated that it used the term “alien” throughout the case because that is the term Congress used in the immigration laws.

¹³ *Id.* at 1249.

¹⁴ *Id.* at 1285.

Alien Inmate Prison Population and Costs

According to the Department of Corrections, an “alien inmate” is an inmate who does not possess U.S. citizenship. When these inmates are admitted to prison, they are referred to Immigration and Customs Enforcement agents who are responsible for identifying and investigating the people who might be aliens.¹⁵

As of November 30, 2023, the Florida Department of Corrections housed 4,635 inmates who were confirmed aliens. This represents a decrease of 47 inmates from June 30, 2023, when the population was 4,682.¹⁶

At a cost of \$84.61 per inmate per day,¹⁷ this equates to an expense of \$392,167 to house the alien inmate population in Florida for 1 day. The cost to house the alien inmate population for 1 year is \$143,141,082.

Of the 4,635 alien inmates, the Department of Corrections estimates that:

- 79.6 percent were imprisoned for violent crimes,
- 8.5 percent for property crimes,
- 7.3 percent for drug-related crimes, and
- 4.6 percent for other crimes.¹⁸

Immigrant Students Enrolled in Public Education

According to the Department of Education, the number of immigrant students enrolled in the public schools of the state has increased significantly each school year.¹⁹ The data shows:

School Year	Number of Immigrant Students
2020-2021	95,084
2021-2022	112,375
2022-2023	152,437

The state spends approximately \$8,000 per public school student each year.²⁰

¹⁵ Email from David Ensley, Bureau Chief, Bureau of Research and Data Analysis, Florida Department of Corrections, *Inmate Population*, (Dec. 22, 2023) (on file with the Senate Committee on Judiciary).

¹⁶ *Id.*

¹⁷ Email from David Ensley, Bureau Chief, Bureau of Research and Data Analysis, Florida Department of Corrections, *FY 2022-2023 Per Diems* (Jan. 3, 2024) (on file with the Senate Committee on Judiciary).

¹⁸ The five birth countries with the largest inmate populations are:

- Cuba – 1,301 inmates for 28.1 percent
- Mexico – 801 inmates for 17.3 percent
- Haiti – 471 inmates for 10.2 percent
- Jamaica – 357 inmates for 7.7 percent
- Honduras – 311 inmates for 6.7 percent
- All others – 1,394 inmates for 30.1 percent.

¹⁹ Email from Daniel Ellinger, Deputy Legislative Affairs Director, Florida Department of Education, *Enrollment by Immigration Status, 2019-20 through 2022-23* (Jan 4, 2024) (on file with the Senate Committee on Judiciary).

²⁰ *Florida*, 660 F.Supp.3d at 1263.

The Twenty-First Statewide Grand Jury

The “Presentments of the Twenty-First Statewide Grand Jury”²¹ provide an in-depth examination of illegal immigration in the State. The Florida Supreme Court ordered that a statewide grand jury be impaneled, at the request of the Governor, for 12 months, subject to a 6-month extension. The statewide grand jury began meeting in 2022 and continues to meet.

The grand jury was tasked with investigating the impact that illegal immigration has on the State of Florida.” In its Fifth Presentment, dated November 17, 2023, the statewide grand jury reported that it had met in session for approximately 450 hours and interviewed more than 100 witnesses, both local and from other countries, whose expertise ranged across multiple disciplines. The statewide grand jury noted that its mandate is “to explore whether there is criminal activity affecting our state, how it is made possible, and what, if anything might be done by our state leaders to address it.”²² The presentment concludes its summary by stating that the members have found the evidence to be “at varying times sobering, upsetting, depressing, and the cause of significant outrage.” The grand jury found that crimes were certainly being committed and the crimes are sometimes enabled by government agencies, and their policies and activities. The jurors stated:

We are convinced that, **because** the driving forces are largely federal policies, and political incentives seem to not prioritize solving the problems, it will be up to Florida and other states to help themselves, at least in the short term.²³

III. Effect of Proposed Changes:

The memorial enumerates in the “whereas” clauses that the failure of the Federal Government to enforce the immigration laws has led to a surge in unauthorized border crossings at the southwest border. After recounting statistics documented by U.S. Customs and Border Protection, the memorial notes that the failings of the current administration have led to an increase in violent crime, gang activity, and human and drug trafficking. These criminal activities caused by the flood of undocumented aliens have overwhelmed the resources of the CBP and increased the threat of terrorism.

The memorial states that the policies of the current administration have increased the number of aliens seeking asylum and have increased the number of aliens released into the interior of the country, regardless of their circumstances. The memorial also notes that illegal crossings at the southern border will likely increase because the construction of a border wall system has been suspended and the current administration has allowed Title 42 to expire. Title 42 was a policy enacted during the COVID-19 health emergency which allowed border authorities to turn migrants away at the border.

²¹ *Presentments of the Twenty-first Statewide Grand Jury*, Case No.: SC 2022-0796, <https://acis.flcourts.gov/portal/court/68f021c4-6a44-4735-9a76-5360b2e8af13/case/651d8f68-f322-4cd0-831f-74dc9b0d77a8>.

²² *Fifth Presentment of the Twenty-First Statewide Grand Jury*, Case No.: SC 2022-0796, 1, (Nov. 17, 2023), <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/651d8f68-f322-4cd0-831f-74dc9b0d77a8/docketentrydocuments/57d791ab-196f-41df-8e1b-47e04a3468e1>.

²³ *Id.* at 2.

In the concluding clauses, the memorial states that the collapse of order and security at the southern border has led several Texas counties to declare a state of emergency, has created a tremendous financial burden on the taxpaying public, and has compromised a general sense of safety and security among American citizens.

The memorial then urges the Federal Government to secure the southern border and fix the legal immigration system.

The Secretary of State is directed to dispatch copies of the memorial to the President of the United States, the President of the U.S. Senate, the Speaker of the House of Representatives, the Secretary of the United States Department of Homeland Security, and to each member of the Florida delegation in Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.