

Promoting a Secure and Humane Border Security System

By Julie Myers Wood and Michael Neifach



Introduction

Immigration is essential to building a strong economy and bolstering the national security interests of the United States. However, the U.S. also has an obligation to maintain border security and the capability to identify non-U.S. persons entering our country. To do so, the U.S. Customs and Border Protection (CBP) agency, along with its component agencies, the U.S. Border Patrol (USBP) and the Office of Field Operations (OFO), should have the resources necessary to uphold their responsibility to manage and secure the border in a humane manner.

CBP is only one component of a broader ecosystem to uphold the stability of our immigration laws and their enforcement. This document specifically highlights necessary resources CBP needs to effectively manage and secure the Southern Border. However, there should be robust support for other critical immigration enforcement components including Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and our immigration courts within the Department of Justice (Executive Office for Immigration Review). All component agencies face substantial resource and capacity problems, and Congress and the White House should work together to direct resources to address them.

According to [DHS data](#), in May 2022 CBP encountered 239,416 undocumented migrants who entered the United States at the U.S.-Mexico border. This represented a two percent increase above the 235,478 encounters in April 2022 and a 44% increase from February. These are the highest month-to-month encounters of unauthorized individuals since the U.S. government began recording apprehensions at the Southwest border, and they have remained at elevated levels even after a seasonal decline in June and July. These are staggering figures and reflect the burden CBP is facing at the Southwest border.

The U.S. has a responsibility to carry out border security solutions between and at ports of entry by implementing practical, evidence-based approaches. It must build a modern and secure migration system at the U.S.-Mexico border by making border processing more effective and efficient, increasing interdiction rates, and eliminating incentives for smugglers and cartels. It must establish consistent border metrics and use them to create a plan to address future migration influxes in a coordinated, proactive, and humane manner.

Furthermore, we must ensure that CBP and its partner agencies have the resources necessary to intercept cross-border human smuggling and drug and contraband trafficking. CBP needs sufficient resources, including more personnel and state-of-the-art technology to help detect and intercept smuggling and trafficking activity at

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the border. Many of the illicit drugs fueling the opioid and fentanyl epidemic that is scouring American communities can be traced to drugs smuggled across the southern border. CBP personnel are stretched in capacity to handle the influx of asylum claims and migrant entrants, but they must also stop drug trafficking from spilling over our border.

Finally, as asylum claims continue to escalate while the immigration courts' backlog continues to grow, the U.S. should examine ways to explore processing asylum cases such that those with legitimate claims of credible fear are admitted into the U.S., while other claims result in expeditious removal. To protect vulnerable asylum seekers, we must ensure that the processing system is both accepting and rejecting claims as quickly as possible while incorporating due process safeguards. In that way, CBP can carry out its mission to secure the border from illegal entry and facilitate lawful cross-border trade and travel.

This white paper examines recent border budget proposals and explores methods for the U.S. to advance policies that discourage illegal immigration, strengthen border security, and humanely and expeditiously manage migrant populations at the U.S. border in a fair manner. These include:

- Investing in border security technology, including the deployment of unmanned aircraft systems, autonomous surveillance systems, and mesh networks to detect unlawful migrant entries and illicit drug smuggling along the U.S.-Mexico border.
- Boosting CBP personnel numbers and improving hiring practices to help enhance U.S. capacity to manage the migrant surge, including efforts by migrants to illegally enter the U.S. at the southern border between ports of entry, while also ensuring that CBP is meeting its statutory responsibilities to screen imported cargo, legal foreign visitors, and returning U.S. citizens.
- Conducting a study to examine the relationship between CBP's capacity to process asylum claims at ports of entry and rates of unlawful migrant entry between ports of entry and the time to process defensive asylum requests for migrants who unlawfully entered the U.S.
- Modernizing and expanding ports of entry at the Southwest border to ensure adequate processing while maintaining the flow of lawful visitors, workers, and goods.

Investing in border security technology and hiring more agents to bolster border security measures

CBP manages 50 border crossings along the U.S.-Mexico border. There are over 18,000 Border Patrol (USBP) agents deployed along the 1,954-mile southern border. Nationwide, CBP has a force of more than 25,000 CBP officers. In FY 2022, CBP has encountered 1.2 million unauthorized migrants along the Southwest border.

To help address the border crisis, Congress should increase its appropriations funding for CBP personnel and invest in technologies to detect unlawful border crossings, including the use of manned and unmanned aircraft, to adequately detect and apprehend unlawful entry along the border.



THE BIDEN ADMINISTRATION SHOULD BE FORTHCOMING TO CONGRESS AND THE PUBLIC ABOUT ITS CAPABILITIES AND RESOURCES TO ADDRESS THE BORDER SURGE AND IDENTIFY OBSTACLES THAT PREVENT DHS FROM ACCOMPLISHING CONGRESSIONAL SPENDING DIRECTIVES.

It was a missed opportunity that the Biden administration's first budget request to Congress in 2021 for FY 2022 requested no new Border Patrol officers and no new CBP officers. Congress did not appropriate specific funds for additional officers for FY 2022. However, Congress appropriated \$201.8 million for border security technology, including \$4.2 million for counter unmanned aircraft systems and \$8.7 million for small unmanned aerial vehicles. Also, Congress appropriated \$80 million for "cross border tunnel threats, aerostats, autonomous surveillance, geospatial capabilities, mobile surveillance, search and rescue capabilities and mesh networks."

As CBP engages with the highest migrant encounter rates on record, it is encouraging to observe that the Biden administration has requested \$1 billion in "new investments in modern border security technology for border security" for FY 2023. Similarly, the administration's FY 2023 request to hire an additional 300 USBP agents and 33 USBP intelligence agents is a step in the right direction. Likewise, the agency's budget request calls for \$55 million for non-intrusive inspection systems which will help counter human smuggling and contraband threats.

These budget proposals are positive developments, but there needs to be verification and substantial study to examine the resource needs of the CBP and USBP and to execute policies that speed up a slow-moving hiring process that the Government Accountability Office has described as an impediment to accomplishing statutory staffing requirements.

In addition, the Biden administration should be forthcoming to Congress and the public about its on-the-ground capabilities and resources to address the border surge and identify obstacles that prevent DHS from accomplishing congressional spending directives.

Modernizing and expanding ports of entry, including providing for additional screening, security mechanisms, and personnel

CBP's Office of Field Operations (OFO) is responsible for managing U.S. ports of entry and is tasked with maintaining border security as it pertains to immigration, trade compliance, agriculture protection, anti-terrorism, and anti-smuggling. OFO officers are responsible for protecting the public from dangerous people and materials while helping facilitate legitimate trade and travel. According to CBP's drug seizure statistics, the vast majority of opiates and other hard drugs are seized by OFO at ports of entry.

Since 2014, CBP has experienced substantial increases of migrants seeking to enter the Southwest border at or between ports of entry. According to the DHS Inspector General (DHS-OIG), such surges have created overcrowded conditions at CBP ports of entry and CBP holding facilities. CBP facilities were designed and constructed before such increases became commonplace.



As of 2021, the CBP has more than 29,000 CBP employees at ports of entry, but has a staffing gap of 1,700 CBP officers, largely due to high attrition rates, slow hiring processes, and lack of resources to fund improved recruitment. The employees union for CBP agents, the National Treasury Employees Union, has requested that Congress fund at least 800 new CBP officer positions to help meet its various responsibilities at U.S. ports of entry. To address migrant surges at the Southwest border, CBP has pulled personnel from their regular operational assignments, including officers tasked with trade and travel.

To help stem the pressure on CBP ports of entry and CBP personnel, Congress should appropriate funding for updated ports of entry, additional personnel, and investments in advanced screening technology. These steps will help ease bottlenecks and sustain the flow of migrants and goods, increasing security while reducing long wait times.

In 1996, Congress mandated that the U.S. government develop an automated entry and exit control system for foreign visitors entering and leaving the U.S. to help identify visa overstays. Due to various technological, logistical, and funding limitations, progress in creating such a system has been slow across multiple presidential administrations, which have slowly implemented biometric entry/exit systems at airports and, to some extent, at land ports of entry. However, Congress should improve funding mechanisms and better fund entry-exit systems, including investing in pilot programs to improve biometric screening at land ports of entry.

Exploring solutions to process asylum claims efficiently and discourage unsafe entry between ports of entry

When CBP encounters migrants without valid documents or who have entered the United States unlawfully, USBP agents and CBP OFO officers process them to determine whether they are admissible to enter the United States. If the individual is determined to be inadmissible, he or she is processed for appropriate removal proceedings and may be detained during those proceedings. Individuals who

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assert that they intend to apply for asylum are also typically subject to detention. CBP is responsible for short-term holding of migrants at Border Patrol stations and checkpoints and OFO ports of entry while they are being processed. If CBP determines the individuals are inadmissible, they then are referred for appropriate immigration processing, which may include removal proceedings under Sec. 1229a of the Immigration & Nationality Act (including applying for asylum) or expedited removal proceedings.

Proceedings for detained individuals can take anywhere from days to years from apprehension to resolution. According to the DHS-OIG, an expedited removal case with no claims of fear of returning to a contiguous country could be resolved relatively quickly. In contrast, it could take years to resolve a case where an inadmissible alien applies for asylum and undergoes removal proceedings under Sec. 1229a,



appeals. These long wait times create uncertainty for those with legitimate claims to remain in the U.S., while also potentially serving as a pull factor encouraging migrants with weaker cases to travel to the border.

To ensure asylum processing is conducted efficiently and quickly, Congress should appropriate funding for additional resources and personnel for CBP to improve and expedite the initial processing of arriving migrants and expand capacity at CBP border facilities. It should also explore the relationship between the processing rates of asylum claims at points of entry (POEs) and the rates of unlawful entry between POEs. DHS should use this data to enact policies to encourage safe, orderly processing of asylum seekers while discouraging illegal and dangerous crossings between ports of entry. A robust policy would save lives and USBP and OFO resources and capacity to respond to unlawful border crossings.

Furthermore, to help increase capacity for CBP to process asylum claims and to stem overcrowding in holding facilities, DHS should receive appropriations to fund the expansion and new construction of detention facilities to ensure that CBP officers are not overwhelmed and migrants are processed in humane conditions.

Conclusion

The Southwest border of the United States is facing an unprecedented challenge, with CBP facing major capacity and logistical constraints as it faces near-record levels of border encounters. The United States must tackle the challenge at the border and prioritize admitting vulnerable migrants in need of asylum in a timely manner, disincentivizing people from crossing between points of entry.

In order to promote policies that foster safer and more efficient border processing, Congress must:

- Appropriate funds to hiring more CBP and USBP officers and invest in border security technology, including unmanned aircrafts;
- Modernize and expand U.S. ports of entry and establish additional screening and security mechanisms, including biometric identification; and
- Explore solutions to process asylum claims expeditiously - including hiring more personnel for processing and enforcement to unsafe and illegal entry across the Southwest border between Ports of Entry.

The United States is a beacon of hope for many people who are attempting to leave unstable countries and pursue a life of safety and economic freedom. However, for the U.S. to provide protection to those seeking asylum, we must have a working border with the resources necessary to quickly process asylum claims and control who is entering our country. Tightening border protection and improving asylum processing will better allow the United States to offer safe passage into our country for those in need of refuge.



About the Authors

Julie Myers Wood has more than 25 years of experience in public and private sectors working on regulatory and enforcement issues from many perspectives, including as a federal prosecutor, defense counsel, government investigator, and compliance consultant. Ms. Wood is currently the Chief Executive Officer at Guidepost Solutions, a leading investigations, compliance, and security firm with offices throughout the United States, England, Colombia, and Singapore. At Guidepost, she focuses on regulatory compliance and investigative work and regularly serves as an independent monitor/consultant appointed by the U.S. government. She is often called to assist companies and organizations in crisis and help them make meaningful changes to their compliance structure, practices, and accountability.

Michael Neifach has served in senior national security and immigration positions at the White House Homeland Security Council, U.S. Department of Homeland Security, and U.S. Immigration and Customs Enforcement (ICE). He served as Principal Legal Advisor at ICE from July 2007 through January 2009. He also served on the ABA Commission on Immigration (2016-2019). He is currently the Office Managing Principal of the Washington, D.C. Region office of the Jackson Lewis P.C. and is co-leader of the firm's Immigration Practice Group.