



Building America's Trust Act: Bill Summary

On August 3, 2017, Sen. John Cornyn (R-Texas) introduced a wide-ranging border security and interior enforcement bill, Building America's Trust Act ([S. 1757](#)), in the U.S. Senate with [8 Republican co-sponsors](#). This 462-page bill would significantly expand border security and interior enforcement in the U.S. This document provides a summary and analysis of the bill's key provisions.

Border Security

- 1. Build Physical Barriers and Deploy Technology Along the Border.** The bill requires the Secretary of the Department of Homeland Security (DHS) to build physical barriers between ports of entry, including fencing, a border wall system and/or levee walls, and deploy modern technology where appropriate to achieve so-called operational control and situational awareness of the southern border by January 20, 2021. (*Section 102*).

Analysis: The U.S. has [built](#) border fencing along 654 miles of the southern border. The cost of building a wall along all 2,000 miles of the southern border is [expected to range](#) from \$21.6 billion to \$31.2 billion, not including the cost of maintaining the wall and other physical barriers over the years. Congress should provide funding to build a fence in the southern border only where it is the most appropriate solution and prioritize the use of modern technology to build a virtual fence in areas on the southern border where building a physical barrier is not practical.

- 2. Hire 5,000 Border Patrol Agents.** The bill requires the Commissioner of U.S. Customs and Border Protection (CBP) to hire an additional 5,000 Border Patrol agents, increasing the Border Patrol's required active duty presence to 26,370 agents. The bill also includes the [Anti-Border Corruption Reauthorization Act](#), which permits the CBP Commissioner to waive the polygraph requirement for certain federal, state or local law enforcement officers and for members of the Armed Forces or veterans when applying for a position at CBP, if they meet certain requirements. (*Sections 131 and 133*).

Analysis: Congress must carefully examine whether spending money to hire and station more Border Patrol agents is the most effective investment to secure our borders. The number of Border Patrol agents [nearly doubled](#) between FY 2002 and FY 2017 (increasing from 10,045 to 19,437) and the Border Patrol's budget [increased](#) from about \$1 billion in FY 2000 to almost \$3.8 billion in FY 2017, or about a 380 percent increase. Meanwhile, the average annual number of apprehensions for each Border Patrol agent dropped from 182 in FY 2000 to just less than 16 in FY 2017 or, on average, less than 2 apprehensions per month per Border Patrol agent.

- 3. Increase Criminal Prosecutions Along the Border:** The bill provides as much funding as necessary to increase the number of criminal prosecutions for crossing the U.S.-Mexico border without documentation by 80 percent or more per day, compared to the previous 12-month period. (*Section 141*).

Analysis: Immigration prosecution policies, such as Operation Streamline, have previously inundated the justice system. These policies and lack of transparency

surrounding them raise questions about the cost of such operations, their lack of due process, and their impact on other crucial law enforcement and judicial needs.

- 4. Authorize the Use of the National Guard for Border Security.** The bill permits the DHS Secretary or the Governor of a State to order units of the National Guard to assist CBP in securing the border. The responsibilities would include constructing reinforced fencing or other barriers along the border, constructing checkpoints and conducting surveillance, among other activities. The bill allows the Department of Defense (DoD) to reimburse up to \$35 million a year to border states for the cost of deploying National Guard units to secure the southern border. (*Section 110*).

Analysis: Deploying National Guard units to the border is a questionable use of resources because border crossings have dipped to near-record low levels. From 2000 to 2017, apprehensions of undocumented immigrants crossing the border [dipped](#) from 1.7 million to about 310,000 each year. In addition, there are already many Border Patrol agents who could perform many of the National Guard's responsibilities along the border as defined in the bill, while allowing the National Guard units to be reserved for national emergencies. As mentioned earlier, the number of Border Patrol agents nearly doubled between FY 2002 and FY 2017 (increasing from 10,045 to 19,437).

- 5. Eradicate Carrizo Cane and Salt Cedar Along the Rio Grande.** The bill directs the DHS Secretary to remove the Carrizo Cane and Salt Cedar plants along the Rio Grande before January 20, 2021. (*Section 116*).

Analysis: Eradicating the invasive and nonnative Carrizo Cane and Salt Cedar plants along the Rio Grande River in Texas would [provide](#) the Border Patrol with greater visibility and access to the Rio Grande. These plants, which cover between 30,000 and 60,000 acres, must be removed from the riverbanks. This is an effective policy that improves border management in areas where building a fence or other physical barriers is not practical.

- 6. Increases Penalties for Unlawful Entry and Reentry.** Under the bill, an immigrant crossing the U.S.-Mexico border without authorization for the first time would be ineligible for most types of immigration relief, other than certain humanitarian exceptions such as asylum. The current criminal penalty for first-time unlawful entry remains unchanged - a maximum six months of prison and up to a \$250 fee. However, the bill increases the criminal penalty for an undocumented immigrant who reenters the U.S. without authorization to a maximum of five years in prison and/or a fine, compared to the current penalty of a maximum 2 years in prison and/or a fine. (*Sections 405 and 406*).

Analysis: The bill would make immigrants who enter the U.S. without authorization and do not qualify for certain humanitarian exceptions ineligible to transition into legal status while in the U.S., even if they marry a U.S. citizen. The bill also increases the maximum sentences for immigrants who reenter the country without authorization, even though reentry to the U.S. is already a federal crime. With its longer sentences, the bill would likely increase America's population of nonviolent prisoners and cost taxpayers more money.

Ports of Entry

- 1. Improve Port of Entry Infrastructure.** The bill authorizes the DHS Secretary to construct new ports of entry along the southern and northern borders, establish plans to expand inspection lanes at the top ten highest-volume ports of entry at the southern

border, and authorizes \$4 billion over four years to fund these improvements. (*Section 201*).

Analysis: Investing in infrastructure at our ports of entry is important to keep pace with increasing demand and security requirements. The revenue gained from trade at the border generates jobs for Americans. Nearly six million American jobs [depend directly on trade](#) with Mexico. Yet, wait times to cross the border are often long, regularly reaching up to an hour, which can detract from commerce and lead to billions of dollars in spoiled goods and opportunity cost for American businesses.

- 2. Hire an Additional 4,000 Ports of Entry Officers.** The bill requires the CBP Commissioner to hire an additional 4,000 ports of entry officers, increasing the OFO required active duty presence to 27,725 officers. (*Section 131*).

Analysis: Adding officers at ports of entry will help our economy. Through FY 2014, CBP OFO [identified an overall shortage](#) of 3,811 OFO officers to effectively manage ports of entry. CBP OFO had [1,404 unfilled officer positions](#) in June 2017 and needs additional officers on top of today's required active duty presence to effectively operate ports of entry. The magnitude of the shortage is amplified by the fact that [adding a single CBP OFO officer](#) to a port of entry would result in annual benefits of a \$2 million increase in our country's Gross Domestic Product (GDP), \$640,000 saved in opportunity costs, and 33 jobs added to the economy.

- 3. Implement a Biometric Exit Data System.** The bill directs the DHS Secretary to submit an implementation plan within 180 days of the bill's enactment to establish a biometric exit data system. The plan must include a master schedule and cost estimate, as well as input from private sector stakeholders. Within five years of the bill's enactment, CBP must establish a biometric exit system at all airports, sea ports and to non-pedestrian outbound traffic at land ports, with certain exceptions. (*Section 206*).

Analysis: While the government now collects biometric data on individuals entering the U.S., DHS has yet to implement a biometric exit system, which has been mandated by federal law since the aftermath of the September 11 terrorist attacks in 2001.

Interior Enforcement

- 1. Encourage State and Local Law Enforcement to Enforce Federal Immigration Laws:** The bill includes the [Stop Dangerous Sanctuary Cities Act](#), which provides state and local law enforcement complying with a federal detainer request all the enforcement authority available to DHS to enforce federal immigration laws. The bill also protects state or local law enforcement from any liability related to the arrest or detention of an individual as a result of a federal detainer request. The bill shifts liability to the federal government. In addition, the bill makes so-called sanctuary jurisdictions ineligible for federal grants for public works, economic development, and community block grants. (*Section 308*).

Analysis: This provision would permit jurisdictions to honor federal immigration detainers, which courts have found [legally dubious](#), without incurring any liability. Federal immigration detainers typically ask state and local law enforcement to hold immigrants in their custody for up to 48 hours beyond the time when they are legally required to release the person. However, improper detention of a person implicates the Fourth Amendment

and due process concerns. Since the bill shifts liability to the federal government, American taxpayers would be responsible for footing the bill for state and local government decisions to honor legally dubious federal immigration detainers. In addition, the provision would make so-called [sanctuary jurisdictions](#) ineligible for a number of federal grants. Over the last 30 years, many state and local law enforcement leaders in so-called sanctuary jurisdictions have adopted community-policing principles emphasizing trust building in immigrant populations to ensure immigrant victims and witnesses of crimes to cooperate with police. By barring these jurisdictions from receiving certain federal grants, the bill would discourage law enforcement leaders from creating policies that best protect the public safety in their respective communities.

- 2. Impose New Bars on Visa Overstays.** The bill includes a provision requiring individuals with nonimmigrant visas, such as tourist visas, to sign a waiver making them ineligible for all immigration benefits or relief if they overstay their visa, except for relief based on a claim under the Convention Against Torture. (*Section 302*).

Analysis: This provision attempts to deter people who remain in the U.S. after overstaying a nonimmigrant visa. Currently, about [42 percent](#) of the undocumented population overstayed a visa. However, this policy could affect visitors who overstay their visa unintentionally or for circumstances beyond their control for short periods of time, even less than 24 hours.

- 3. Increase Immigration Detention in the U.S.:** The bill directs DHS to increase the number of immigration detention beds to an average daily capacity of at least 48,879 detention beds. The bill also increases the minimum bond amount for certain immigrants in detention from \$1,500 to \$5,000. In addition, the bill requires the DHS Secretary to detain any undocumented immigrant apprehended within 100 miles of the U.S. border, or convicted of illegal entry or reentry, or sentenced to any crime that carries a maximum penalty of more than 30 days in jail. (*Section 303*).

Analysis: Increased immigration detention [burdens](#) U.S. taxpayers. The federal government already spends billions of dollars each year to detain thousands of noncitizens in immigration detention, a cost that will only increase as the average daily capacity of detention beds increases. In FY 2017, the federal government spent approximately [\\$2.6 billion](#) in custody operations for U.S. Immigration and Customs Enforcement (ICE), which included funding for detention beds for individuals in removal proceedings. This use of taxpayer's money amounted to \$7 million per day on custody costs. In addition, by raising the minimum bond amount, more noncitizens will [not be able to afford to pay](#) the bond amount and will have to remain in immigration detention until their cases are fully processed through the federal immigration system. If noncitizens cannot pay the bond amount, they may be detained anywhere from a few months to several years until they receive a final order from an immigration court. Since most of the individuals in immigration detention are not a threat to national security or public safety, it does not make sense to detain them at the expense of the American taxpayer.

- 4. Hire 2,800 Immigration Enforcement Officers.** The bill requires the Director of Immigrations and Customs Enforcement (ICE) to hire an additional 2,800 Enforcement and Removal Operations (ERO) officers by September 30, 2021, increasing ICE's required active duty presence to 8,500 immigration officers. The bill also directs ICE to increase the number of active duty Homeland Security Investigations (HSI) agents, responsible for investigating cross-border activity, to at least 1,500 agents. (*Section 134*).

- 5. Hire 200 Immigration Judges and Support Staff:** The bill directs the Department of Justice (DOJ) to hire at least an additional 200 immigration judges and their support staff by September 30, 2021. (*Section 135*).

Analysis: The immigration court system currently faces a backlog of [about 630,000 immigration cases](#). Hiring additional immigration judge teams would reduce the backlog of immigration court cases.

- 6. Double the Number of ICE Immigration Attorneys:** The bill directs the ICE Director to increase the number of trial attorneys in the ICE Office of the Principal Legal Advisor (OPLA), responsible for litigating all deportation cases, by at least 1,200. The current number of ICE trial attorneys is about 1,100 attorneys. (*Section 135*).

- 7. Reinstate the Secure Communities Program:** The bill requires the DHS Secretary to reestablish the Secure Communities Program and provides \$150 million to operate the program. (*Section 309*).

Analysis: ICE [reactivated](#) the Secure Communities program, which was originally in effect from 2008 to 2014, on January 25, 2017. Under the Secure Communities program, non-citizens who come into the custody of law enforcement have their fingerprints checked against DHS immigration databases. The program was originally touted as focusing on the removal of “dangerous criminal aliens,” but in fact it [identified and led](#) to removal proceedings for hundreds of thousands of non-citizens who had no criminal record and in some cases were simply detained for a traffic violation or a minor offense. Critics contended that the program also was a “one-size-fits-all” policy that led to racial profiling and undermined community policing, instead of working with individual state and local law enforcement agencies to receive their input and cooperation. As a result of these concerns, as well as the prospect of civil liability arising from unlawful detentions, a [growing number](#) of localities limited their cooperation with DHS.

- 8. Place CBP Agents and ICE Officers in Police Departments:** The bill permits DHS to have agreements with state or local law enforcement to assign CBP agents or ICE officers to state or local agencies. The CBP agents or ICE officers would determine the immigration status of individuals in custody, issue charging documents, and arrange for transfer of individuals to DHS custody, among other responsibilities. (*Section 504*).

Analysis: Numerous state and local law enforcement agencies have proactively implemented community policing strategies that emphasize trust building in immigrant populations, which recognize that state and local law enforcement need the trust of their communities to ensure that immigrant victims and witnesses of crimes cooperate with police. Assigning CBP agents or ICE officers to state or local agencies may [conflate the roles of federal immigration authorities and local law enforcement](#). This risks creating a chilling effect on the trust immigrant populations place in state and local law enforcement.

- 9. Limit U.S. Parole Activity:** The bill limits the power of the DHS Secretary to parole categories or groups of individuals into the U.S. and prohibits the use of advance parole for the purpose of qualifying for the adjustment of status to lawful permanent resident.

Analysis: Parole allows individuals applying for admission to the U.S. to be admitted temporarily for urgent humanitarian reasons or if their presence provides a significant

public benefit. Currently, a grant of advanced parole could be used to allow an undocumented immigrant who married a U.S. citizen or is the spouse and/or family member of a military service member to reenter the U.S. legally, thereby allowing the individuals to adjust to lawful permanent resident status. (*Section 307*).

- 10. Designate and Prevent Admission Based on “Gang” Activity:** The bill would allow the DHS Secretary to designate as a criminal gang or cartel an ongoing group, club, organization, or association of five or more people who, within the last five years, have engaged in at least one of a wide range of offenses. The bill would prevent immigrants associated with a criminal gang or cartel from entering the U.S. if the DHS Secretary, the Attorney General or a consular officer “knows” or “has reason to believe” the individual is or has been a member of a criminal gang. (*Section 511*).

Analysis: The bill’s broad definition of what constitutes a criminal gang or cartel and wide range of applicable offenses may impose criminal liability on non-criminal groups. For instance, a church that offers to drive an undocumented immigrant to church or to a religious event could be considered a criminal gang or cartel under the bill. In addition, the bill could weaken protections for vulnerable populations, including unaccompanied children and/or asylum seekers, by blocking individuals merely suspected of belonging to a criminal gang or cartel from entering the U.S. even if they qualify for asylum.

- 11. Expands Visa Security Requirements:** The bill provides DHS certain authority over visa interviews and determination. For instance, the DHS Secretary may refuse or revoke any visa to any individual or class of individuals, as long as DHS determines the action is necessary for the security interests of the U.S. The bill also requires the DHS Secretary to review the social media accounts of certain visa applicants who are citizens or reside in so-called high risk countries. (*Section 552*).
- 12. Criminalize Document Fraud:** The bill makes an immigrant who is convicted of using or admits to having used a fake Social Security Number or a Social Security Number that was not theirs inadmissible to the U.S. (*Section 513*).

Immigrant Children

- 1. Removes Protections for Unaccompanied Children:** The bill amends the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 to allow DHS to return unaccompanied children from El Salvador, Guatemala, and Honduras to their country of origin without placing them in formal removal proceedings which is the current process for unaccompanied children from Canada and Mexico. The bill also provides DHS the authority to place an unaccompanied child in expedited removal proceedings if “it has reason to believe” that the unaccompanied child has been convicted of one of a wide-range of criminal offenses designated in the bill. (*Section 231*).
- 2. Increases Requirements for Special Immigrant Juvenile (SIJ) Status:** The bill toughens the requirements for Special Immigrant Juvenile status by requiring the child to be under the age of 18, instead of 21, and by limiting eligibility to children who suffered abuse, neglect or abandonment by both parents, not only one parent. (*Section 325*).
- 3. Prohibits Certain Use of Prosecutorial Discretion:** The bill prohibits the DHS Secretary to issue work authorization documents and advance parole to travel outside of the U.S. to an undocumented immigrant in the U.S. who is waiting for his or her case to be fully processed through the federal immigration system. (*Section 236*).