

42 Border Solutions That Are Not Title 42

In March 2022, the Biden administration [announced](#) it intends to suspend the use of Title 42 at the border. The [pandemic-era policy](#) has been a significant part of both the Trump and Biden administration's approach to border management, and since its introduction in 2020 it has been used over 1.7 million times to rapidly expel arriving migrants without providing them the chance to seek humanitarian protection under U.S. law. The suspension of Title 42 is set to go into effect on May 23, although an [ongoing court challenge](#) may lead to an indefinite delay in this timeline.

Some have raised concerns that the Biden administration is not adequately prepared to manage and process increasing numbers of migrants at the border without the use of Title 42. On April 7, a bipartisan group of 11 Senators [introduced legislation](#) intended to require the administration to keep the policy in place.

But Title 42 has been an ineffective border management tool. Its use has [driven](#) higher repeat crossing rates and caused negative enforcement outcomes. The Title 42 era has [been a boon](#) to cartels and smugglers at the border, and it has returned vulnerable migrants into dangerous conditions where [thousands](#) have been victims of kidnappings, tortures, rapes, and violent assaults. Title 42 has failed to treat arriving migrants with dignity or to create a secure and orderly border.

The administration *does* face a challenge in replacing Title 42 at the border. Increasing migration will continue to pose [logistical](#), [humanitarian](#), and [security](#) concerns. For decades, our approach at the border has resulted in reactive, uncoordinated, and ineffective border policy.

The following **42 border solutions** would create sustainable asylum and border management processes, address the root causes of migration, and implement practical and needed border security reforms. They would lead to a more humane, more orderly, and more secure border.

I. CREATING BETTER BORDER PROCESSES

II. ADDRESSING ROOT CAUSES

III. IMPLEMENTING NEEDED BORDER SECURITY

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I. Creating Better Border Processes

Recent periods of increased migration have exposed and exacerbated longstanding problems associated with the processing of asylum seekers and other newly arriving migrants. These include a lack of coordination between CBP and other agencies/NGOs at the border and an understaffed and inefficient asylum adjudication process. The result is a system which routinely fails to provide adequate legal services or detention conditions to new arrivals, *and* one that is so backlogged that it has caused some to voice concerns that the long wait times serve as a pull factor encouraging more irregular migration. The U.S. can respond to these challenges by improving coordination and conditions at the border and streamlining the immigration court system.

Procedural reforms

- 1.** Expand capacity at legal ports of entry to handle intake and process asylum claims. Currently, ports of entry remain largely closed to asylum seekers, and migrants are not permitted to enter (or must wait weeks or months) at ports of entry. Increasing capacity will allow for asylum processing in an orderly manner at legal ports of entry and disincentivize unlawful crossing between ports of entry.
- 2.** Co-locate necessary personnel into CBP initial border processing locations. Office of Refugee Resettlement (ORR) staff, Federal Emergency Management Association (FEMA) personnel, case management workers, mental health professionals, and others should be brought under one roof for more efficient processing and provision of key services. Permit relevant NGOs to have access to these processing sites as well, including those capable of conducting oversight and offering legal services and information. This enhanced coordination — proposed in [various pieces of legislation](#) — would make the processing of children, asylum seekers, and others more humane and efficient. It would also allow CBP and Border Patrol to focus on their mission of securing the border.
- 3.** Permit U.S. Citizenship and Immigration Services (USCIS) asylum officers to see cases through to the end. Because of their expertise and familiarity with a case, they would be able to adjudicate claims more effectively and efficiently. Via the implementation of a [new rule](#) on May 29, this reform is part of the Biden administration's [coming efforts](#) to replace Title 42.
- 4.** Create a border court division of the Executive Office for Immigration Review (EOIR). A new, separate immigration court focused on adjudicating cases involving recent entrants at the border would allow for faster resolution of those cases, addressing concerns that long asylum case wait times serve as a pull factor encouraging irregular migration at the border. This effort will require additional congressional resourcing and authorization if it is to be more successful than existing "[dedicated docket](#)" attempts.
- 5.** Ensure that agencies integral to the processing of certain migrants are able to operate around the clock, as necessary, in times of influx. Key agencies, including ORR require additional authority, capacity, and funding to process migrants on a similar schedule as Customs and Border Protection (CBP). While CBP must operate around the clock, other federal agencies do not have a similar mandate, which can lead to delays in processing migrants.
- 6.** Create a plan to respond to future influxes of migrants at the border. Develop metrics based on resource constraints to define periods of significant influx. Relevant metrics may include processing capacity in specific border sectors, the time migrants spend in

intake facilities during processing, Border Patrol man-hours, and overall costs devoted to migrant processing. Create crisis management, coordination, and funding strategies such as those proposed in [recent bipartisan legislation](#) to respond proactively to periods of influx.

7. End CDC's Title 42 rule as planned on May 23. The protocol has withheld due process from asylum seekers and resulted in rapid expulsions of vulnerable migrants to dangerous conditions with little to no safety precautions. It has failed to penalize repeat crossing, encouraging those who are summarily removed to make multiple attempts to enter the U.S. and significantly inflating border crossing numbers. The policy is a [boon](#) for smugglers and cartels and Border Patrol officials has [reported](#) that it "negatively affected enforcement."

Staffing

8. Increase the number of trained immigration judge teams (including those to staff a new border court division) and USCIS asylum officers to increase immigration court and asylum system capacity and adjudicate asylum claims in a timely manner. Audit immigration courts and asylum systems and respond to any additional staffing needs.
9. Hire needed personnel to provide essential services to migrants during processing, including child welfare experts, translators, case managers, medical professionals, and [processing coordinators](#). These additional personnel would assist with the processing of migrants at the border or in short-term detention facilities and provide increased access to translation, medical, and legal services.
10. Fully staff ORR shelters in order to provide a full range of services to unaccompanied children waiting to be transferred to sponsors. These include security, sanitation, food service, access to clothing, medical care, mental health services, education, recreation, case management, and locating and facilitating release to family members.
11. Resource additional personnel at ports of entry to expand asylum processing. Supplementing existing personnel levels will permit the efficient processing of asylum claims without adversely impacting cross-border trade and travel.

Funding

12. Fund a significant expansion of capacity to house unaccompanied children at licensed ORR shelters or those with equivalent standards, with a goal of being able to phase out the use of emergency intake sites and other unlicensed temporary facilities.
13. Establish a cross-agency fund set aside for future migration influx events that could be rapidly used to distribute funds to CBP and HHS facilities and NGO shelters and expanding processing capacity. This fund would be consistent with the one proposed in the bipartisan [Border Response Resilience Act](#).
14. Reimburse border communities, faith groups, and other non-governmental organizations for additional expenditures relating to welcoming vulnerable migrants.

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II. Addressing Root Causes

We cannot respond to increases in migration without recognizing that the problems — and solutions — are not confined to the border. Even small policy changes in Mexico and Guatemala can dramatically impact the number of arrivals at the U.S. border, and push factors in Central America continue to be the key driver of migratory flows. For example, after Mexico [enacted visa restrictions](#) on Venezuelans in January 2022, the number of Venezuelans arriving at the U.S.-Mexico border in February 2022 [plummeted](#) 87% — declining from 22,779 to 3,072. For this reason, we recommend a series of short and long-term regional interventions, including those designed to address the root causes of migration, crack down on smuggling networks, and establish robust systems for protecting vulnerable migrants in-region.

Aid and Support

15. Assist with immediate disaster relief to areas in countries — including Haiti, Guatemala, and Honduras — that are significantly affected by hurricanes and climate events.
16. Work with citizens and local civil society organizations to deliver targeted aid to migrant-sending countries. Relief efforts should be designed to further existing anti-corruption initiatives and improve political legitimacy and economic stability. Target corruption in particular by empowering local civil society organizations working to strengthen institutions and to investigate and prosecute instances of corruption.
17. Fund programs that would help Central American countries address gang and drug violence, track and arrest human smugglers, and combat international organized crime. In particular, the community-based crime prevention programs carried out by the U.S. Agency for International Development (USAID) under the [Central American Regional Security Initiative \(CARSI\)](#) have demonstrated effectiveness in reducing violence and strengthening civil society.
18. Establish educational and agricultural programs in sending nations to improve education levels and economic conditions, including vocational education related to fishing, forestry, and market gardening. New programs should be consistent with the development and poverty-reduction programs of the [U.S. Strategy for Engagement in Central America](#).

19. Increase U.S. funding to the U.N. World Food Program (WFP) to assist efforts addressing food insecurity. By addressing food shortages and a lack of economic opportunities in Central and South America, particularly in rural areas, the U.S. can help reduce the need to migrate northward.

Diplomacy and Information Dissemination

20. Conduct a public information campaign aimed at migrants in key sending communities. This campaign should work to actively dispel misinformation from smugglers. The campaign also should help migrants understand asylum eligibility, discourage those who lack valid claims for protection from making the dangerous journey to the U.S., and provide information about alternative legal pathways.
21. Engage diplomatically with Mexico, Guatemala, Honduras, El Salvador, Costa Rica, Cuba, Panama, and other countries in the hemisphere on information sharing to combat and undermine smuggling and trafficking networks. Partner with the Mexican government on its own interior immigration enforcement and border security priorities to reduce migration flows to the U.S.-Mexico border.
22. Encourage implementation of national plans developed under the U.N.'s [Comprehensive Regional Framework for Protection and Solutions](#) (known by its Spanish acronym, MIRPS).

Alternative Pathways to Protection

23. Expand eligibility and processing capacity of the Central American Minors (CAM) program, which allows certain family members of U.S. residents to apply for refugee protections and other protective status from their home countries.
24. Increase U.S. refugee admissions allocated to Central America and the Caribbean in the annual Presidential Determination, and work with UNHCR and local NGOs to build processing capacity and get prospective refugees from the region into the refugee resettlement pipeline.
25. Work with Costa Rica to reinstitute and expand the Protection Transfer Agreement (PTA) and encourage other countries to enter into similar agreements to safely and temporarily house refugees awaiting resettlement. The PTA allows the State Department to pre-screen migrants in their home countries and transfer the most vulnerable to Costa Rica, where they can safely wait while their refugee claim is being processed.
26. Work with regional governments, UNHCR, and other international migration and refugee organizations to advocate for legal protections for internally displaced persons (IDPs) and for the creation of relocation areas/safe zones for IDPs.
27. Provide technical assistance to governments in the region to help them develop more effective asylum processing, including improving adjudication capacity, establishing appeals processes, and ensuring the safety of those seeking asylum. Assist governments in the region to provide shelter and adequate care to unaccompanied children and other vulnerable migrants.

- 28.** Utilize and expand capacity of seasonal guestworker programs like H-2A and H-2B to bring in needed workers from Northern Triangle countries. The U.S. government should work with U.S. employers to establish safe, informative recruiting networks in Northern Triangle countries to grow these legal pathways. These efforts also should include increasing the H-2B cap and earmarking additional visas for individuals from Northern Triangle countries.
- 29.** Consider creating new legal pathways for Mexican and Central American migrants, as well as tools to expedite family-based green card backlogs.



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**III. Implementing
Needed Border
Security**

The Southern border has never been more secure, in part because of significant investment in physical barriers and personnel in the past two decades. Congress has increased Border Patrol's budget 445% since FY 2000, and the number of agents stationed at the border has nearly doubled in the same period. The Trump administration also spent over \$13 billion for the construction of border barriers, adding to hundreds of miles of walling previously constructed by the Obama and George W. Bush administrations. Despite these investments, vulnerabilities persist, including at ports of entry where the vast majority of hard drugs are smuggled through the border. We recommend that the U.S. re-allocate existing funds towards modernized, targeted solutions that address these key remaining vulnerabilities.

Ports of Entry

- 30.** Invest in the CBP Office of Field Operations (OFO), which oversees the flow of commerce and immigrants at all 328 ports of entry in the nation. CBP OFO currently has a staffing shortage of 2,700 officers for ports of entry, representing a border security vulnerability.
- 31.** Improve and modernize infrastructure at land ports of entry on the border, including by investing in advanced screening technology. Most ports of entry are also not built to securely and efficiently process the volume of cross-border trade and traffic that pass through each day. CBP is currently only able to inspect [15%](#) of vehicles that come into the U.S., and millions of dollars are lost because of long wait times. Implementing modern screening technology and expanding physical capacity would address these problems and improve security.
- 32.** Improve biometric and/or biographic entry-exit tracking at ports of entry. CBP has [struggled to track](#) entry and exit data – including biographic data – for individuals

who are entering and leaving the U.S. at land ports along the U.S. southern border. Expanding data sharing arrangements with Mexico — as well as technological improvements and investments — can help resolve these issues.

Technology and Modernization

- 33.** Complete planned overhaul of obsolete surveillance technologies and systems at the border. Since 2017, CBP has [implemented](#) just 28% of planned surveillance and subterranean technology solutions. Phase out use of outdated systems still in use by many sectors.
- 34.** Fund additional technological enhancements along the U.S. southern border, including radar surveillance systems, Vehicle Dismount Exploitation Radars (VADER), tunneling detection technology, and unmanned cameras and aerial vehicles.
- 35.** Fund infrastructure between ports of entry to reduce migrant deaths, including borderland medical centers and trauma clinics and rescue beacons in remote areas.
- 36.** Develop a formal process to assess the cost-effectiveness of new technology. CBP currently does not have an adequate process in place to determine whether expensive “smart border” technologies are contributing to a more safe and secure border.

Training and Allocation for Border Patrol

- 37.** Allow Border Patrol agents to focus on securing the border by handing off migrant processing duties to other agencies or [trained case management personnel](#). During periods of significant influx, rather than responding to security threats, border agents can spend as much as [60%](#) of their time processing, transporting, and managing migrants that were already encountered and are being held in facilities.
- 38.** Provide flexible overtime and mental health resources to CBP personnel at the border. Provide incentives for CBP personnel to receive EMT and paramedic training.
- 39.** Continue to invest in the use of body-worn camera technology at CBP. Evidence indicates that body-worn cameras lead to [88%](#) fewer complaints against agents and fewer assaults, benefitting both the public and CBP personnel.

Adopting an evidenced-based, sector-by-sector approach

- 40.** Invest in solutions that are tailored to meet the specific problems or vulnerabilities that each border sector faces. For example, an effective policy for border sectors in the Rio Grande Valley is to eradicate the invasive and non-native Carrizo cane and salt cedar plants that block the view of Border Patrol agents.
- 41.** Fund upgraded or additional physical barriers in areas of need, including filling needed gaps and directing construction to address structural integrity concerns along existing border barriers. Additional physical barriers should not be a focus where sufficient barriers already exist or where technology and personnel are a superior and less costly option to exert operational control over the border.

42. Rely on evidenced-backed reports and audits from federal agencies and oversight committees to make investments in border security. Act on recommendations included in the DHS Technology Needs Analysis commissioned by the [Southwest Border Security Technology Improvement Act of 2020](#).