



Defending Borders, Defending Democracies Act: Bill Summary

A group of Republicans and Democrats in the U.S. House of Representatives introduced the Defending Borders, Defending Democracies Act ([H.R. 7372](#)) on February 15, 2024. This legislative package [includes changes](#) to border security policies and the asylum process in the U.S., along with \$66.32 billion in national security spending. The bill is sponsored by Reps. Brian Fitzpatrick (R-Pennsylvania) and Jared Golden (D-Maine), and was introduced with a bipartisan group of [eight](#) additional original cosponsors.

The bill requires immigration officers to expel inadmissible migrants encountered at the southern border, provides the Department of Homeland Security (DHS) Secretary with the power to suspend the entry of migrants, limits the ability of the federal government to move migrants held in immigration custody to other locations, and restarts the [Migrant Protection Protocols \(MPP\)](#) program, also known as “Remain in Mexico.” The bill’s provisions sunset after a one-year period. The bill’s border security and asylum provisions are [part of a larger national security package](#) that include U.S. support for Ukraine (\$47.7 billion), Israel (\$10.4 billion), and Indo-Pacific operations (\$4.9 billion). This legislative package was introduced after House Speaker Mike Johnson [indicated](#) the House will not vote on a Senate-passed national security supplemental, criticizing its lack of border security provisions. Previously, a Senate-negotiated bipartisan [border and immigration proposal](#) collapsed following House and Senate Republican defections.

One-Year Mandatory Expulsions at Southern Border

The bill establishes a one-year mandatory expulsion authority that requires immigration officers to expel migrants at the U.S.-Mexico border if they are deemed inadmissible. The expulsion authority lasts for one year following the date of the bill’s enactment.

- **Expulsions.** Migrants must be expelled to Mexico. If Mexico is unwilling to accept expelled migrants, the Department of Homeland Security (DHS) must expel an individual to one of the following: 1) the individual’s country of citizenship; 2) country of birth; 3) country of residence; or 4) a country willing to accept such individual into its territory if expulsion to each country described in numbers 1 to 3 are “impracticable, inadvisable, or impossible.”
- **Detention.** Migrants subject to expulsion at the U.S.-Mexico border must be detained until they are expelled.
- **Humanitarian Protections.** The bill includes humanitarian exceptions to the mandatory expulsion authority. Under the bill, the DHS Secretary cannot expel an individual to a country if their life or freedom would be threatened due to the individual’s “race, religion, nationality, membership in a particular social group or political opinion” or if there are “substantial grounds for believing” the individual would be in danger of torture if expelled to such country.
 - **Asylum Officer Screening.** Migrants who express a fear of persecution or torture must be referred to an U.S. Citizenship and Immigration Services (USCIS) asylum officer for an initial screening interview. The asylum officer must

determine whether the asylum seeker has sustained his or her “burden of proof” and make a credibility determination.

- **Funding.** The bill does not include funding for hiring additional asylum officers to screen individuals who express a fear of persecution or torture. Without additional funding, USCIS will continue to maintain the same capacity as before to conduct about [400 to 600 fear screenings](#) a day. As a result, the bill is unlikely to reduce asylum screening backlogs.
- **Exceptions to Humanitarian Protections.** Migrants are not eligible for the humanitarian exceptions to expulsion if one of the following is true: they ordered or participated in the persecution of another individual; they have been convicted of a particularly serious crime and are a danger to U.S. citizens; there are serious reasons to believe they have committed a serious non-political crime outside the U.S.; or there are reasonable grounds to believe the individual is a danger to U.S. national security.
- **Waiver.** An immigration officer may, on a case-by-case basis, exempt an individual from the expulsion authority based on the totality of the circumstances. This may include consideration of significant law enforcement officer, public safety, humanitarian, and public health interests.

DHS Expulsion Authority

Similar to the COVID-era [Title 42 health authority](#) that halted asylum processing at the border, the bill permits the DHS Secretary to suspend the entry of migrants deemed inadmissible at a land or maritime U.S. border to achieve “operational control” over that border. This authority is at the discretion of the DHS Secretary and can only be used for the one year following the bill’s enactment. The bill defines “operational control” as it is defined in the Secure the Fence Act of 2006, an [unfeasible standard](#) that means “the prevention of *all* unlawful entries into the United States” (emphasis added).

Based on the legislative text, it appears this section may override the humanitarian protections established in the bill’s section on mandatory expulsions at the U.S.-Mexico border (as mentioned above). If interpreted in this manner, this provision is likely to have a major detrimental effect on humanitarian protections in the U.S., as it would serve as a categorical bar to asylum seekers with valid claims and others seeking humanitarian protections from finding safety in the U.S.

Transportation Limits on Migrants

The bill prohibits the use of federal funds to transfer or move migrants from a facility where they are initially detained to another location except for the purpose of adjudicating their asylum claim. The provision would prevent border officials from transferring migrants to medical facilities for care or to other immigration facilities to avoid overcrowding.

Restarting Migrant Protection Protocols (“Remain in Mexico”)

This section requires the DHS Secretary to return migrants who arrive by land contiguous to the U.S. back to the country from which they entered. It would effectively re-start the Trump administration’s [Migrant Protection Protocols \(MPP\)](#) program, also known as “Remain in Mexico.” The bill, however, would require migrants both to “Remain in Mexico” and “Remain in Canada,” depending on where they entered.

Under MPP, certain migrants seeking asylum at the U.S.-Mexico border were [returned to Mexico](#) after making an asylum claim in the U.S. They were expected to wait near the border for the duration of their immigration proceedings, sometimes facing violence and dangerous conditions while they waited months for their cases to be heard. Asylum seekers were generally sent back with instructions to return to a specific port of entry at a specific date and time to receive a notice to appear in court and eventually to appear before an immigration judge.

By making a seemingly innocuous change, switching the word “may” to “shall” in [Section 1225\(b\)\(2\)\(C\) of title 8](#), United States Code, the bill restarts MPP and expands it to the U.S. northern border.

Processing at Ports of Entry

The bill requires the Office of Field Operations (OFO) to determine the maximum number of migrants per day that each port of entry (POE) is capable of “safely processing” and placing with non-governmental organizations that provide short-term shelter and services.

Under the bill, the OFO Director must develop a strategy to give priority to individuals at a port of entry who have a disability or an acute medical condition, are in need of advance medical care that cannot be obtained at their current location, or express a fear of persecution or torture.