

Immigration Priorities for a Just Budget in 2023
Deep Dive: Decrease Size of ICE and Border Patrol Agent Forces
September 2021

Reduce the over policing of immigrant and border communities by decreasing the number of Immigration and Customs Enforcement and U.S. Border Patrol agents. Save scarce government resources by reducing federal immigration enforcement agents operating throughout the United States.

Context and State of Play: Since the creation of the Department of Homeland Security (DHS) in 2003, Congressional appropriations have fueled the explosive growth of the two main federal immigration enforcement agencies: Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). CBP’s budget has increased from \$3.4 billion in 2004 to \$15 billion in 2021, while ICE’s budget has increased from \$3.4 billion to \$8 billion over the same period. Along with the Office of Biometric Identity Management (which works in tandem with both agencies), ICE and CBP receive more funding than all other federal law enforcement agencies *combined*. As of 2020, CBP’s sub-component the U.S. Border Patrol had nearly 20,000 sworn law enforcement agents, while ICE Enforcement and Removal Operations (ERO) had approximately 6,000. As DHS’s Office of Inspector General (DHS OIG) has repeatedly found, DHS has failed to provide the training, oversight, transparency, or accountability mechanisms sufficient to control this vast corps of armed federal agents—with tragic results.

The **Border Patrol** is notorious for its culture of cruelty and impunity. In Fiscal Year (FY) 2018 alone, nine percent of the CBP workforce was subject to formal disciplinary action, including Border Patrol agents who committed sexual misconduct and assault. Worse, Border Patrol agents have killed at least fifty-five people in “use-of-force” incidents, including Claudia Patricia Gomez Gonzalez, a nineteen-year-old indigenous Guatemalan girl. Twenty-one people have died in Border Patrol custody due to lack of adequate care, including at least seven children. In 2019, media reports revealed 9,500 current or former Border Patrol agents—including then and current sector chiefs—were part of a secret Facebook group that included “crudely manipulated images of men sexually assaulting Rep. Alexandria Ocasio-Cortez,” “joke[s] about migrants who died while trying to enter the United States,” and “racist insults about Central Americans.” Yet, CBP obstructed a House investigation and ended up firing only four agents.

ICE agents have also engaged in extreme abuses and routinely violate people’s constitutional rights while making arrests.¹ In addition to the rampant sexual assault and other heinous violations in ICE detention centers—committed by both ICE employees and contractors—multiple people have also reported rapes committed by ICE agents in the field. ICE agents also routinely violate people’s civil and constitutional rights: collusion with local law enforcement agencies has led to widespread

¹ This Leave Behind only discusses agents and does not discuss the abuses and deaths immigrants suffer in detention, which also falls under the purview of ICE ERO. Such abuses are, however, well-documented and horrifying, from [routine sexual assault](#) to [unnecessary gynecological procedures](#) to hundreds of deaths from [suicide, inadequate care](#), and [COVID-19](#).

racial profiling and ICE's common practice of pretending to be police and probation officers—without the permission of local police—coerces people into admitting ICE into their homes, in violation of their Fourth Amendment rights. Whole communities live in fear of ICE, and ICE's militaristic and unlawful tactics have led to decreased societal participation and distrust of local law enforcement. Increased immigration enforcement is not correlated to any increase in public safety; on the contrary, this chilling effect makes communities less safe.

Federal Immigration Enforcement Agencies Are Overstaffed

In April 2011, Congress mandated that Border Patrol achieve an active duty presence of not less than 21,370 agents. The agency has never achieved this staffing goal. In FY 2020, the Border Patrol had an active duty presence of 19,740 agents.² **This staffing mandate should be revised downward or eliminated outright.**

Notably, even after former President Trump directed DHS to hire an additional 5,000 Border Patrol agents (and 10,000 additional ICE agents) via an executive order, DHS OIG determined that CBP failed to implement a workforce staffing model, which suggests that its agents “may not be operating in the most efficient and economical manner.”³ DHS OIG's findings show that DHS is overstaffed, even if the existing force were trustworthy and its current policies acceptable, which they are not.

Furthermore, in FY 2022, the White House budget request included \$9.1 million for 125 U.S. Border Patrol “Processing Coordinators,” which would ostensibly permit Border Patrol agents to spend more time in the field. If the Processing Coordinators permit Border Patrol agents more time in the field, the overstaffing problem will only worsen, which will likewise worsen the agency's oversight, training, and accountability deficits. The request for Processing Coordinators necessitates concomitant cuts to the number of Border Patrol agents.

Neither the Biden administration nor Congress should reward the Border Patrol or ICE for their fatal failures with more unchecked growth. Instead, both the Biden administration and Congress should reduce funding for the Border Patrol and ICE ERO agents and instead invest in an efficient humanitarian response to migration.

Budgetary Ask: The Biden administration should significantly reduce the number of U.S. Border Patrol agents by (1) proposing a budget for FY 2023 that decreases funding for U.S. Border Patrol agents by 20 percent, and (2) asking Congress to immediately eliminate the April 2011 Border Patrol staffing mandate.

The Biden administration should also significantly reduce the number of ICE ERO agents by proposing a budget for FY 2023 that decreases funding for ICE ERO by 20 percent from the FY 2022 request (from \$4.067 billion to \$3.2536 billion), which would support a staff of approximately 4,800 ICE ERO agents.

² U.S. Border Patrol, Sector Profile - Fiscal Year 2020, available at <https://bit.ly/3zeGQuY>.

³ DHS Office of Inspector Gen., *Border Patrol Needs a Staffing Model to Better Plan for Hiring More Agents* (Feb. 28, 2019), <https://bit.ly/39fcmhN>.

Additionally, the Biden administration should ensure that *no funds* are used to remove a child from a parent, legal guardian, or primary caregiver for the purpose of immigration enforcement or deterring individuals from migrating to the United States. Nor should the Biden administration permit any funds to be used to refer for criminal prosecution of migration-related offenses any individual where such a referral will result in the separation of a parent, legal guardian, or primary caregiver from one or more children; one or more siblings from any accompanying siblings; any spouses or partners from each other; or any other verified family members from one another. The Trump administration used Border Patrol arrests and referrals for prosecution to execute its unconscionable family separation policy, and the Biden administration must ensure that such separations do not recur.

For decades, the United States has placed enforcement and deterrence at the heart of immigration policy, spending billions of dollars annually on immigration enforcement—more than the United States spends on *all other federal law enforcement combined*. The consequences have been deadly and disproportionately harm Black, Brown, Indigenous, and other people of color, and border communities. Instead of maintaining (or expanding) unnecessary staffing levels for the Border Patrol and ICE, the White House should urge Congress to allocate resources in a manner that restores humanity to our immigration system.

Policy Asks: The reduction in ICE and CBP agents should be accompanied by full termination of the 287(g) program, including the end of all existing contracts under this title. 287(g) agreements between ICE and local law enforcement agencies grant state and local police officers the authority to apprehend community members based on their immigration status and funnel them into the detention and deportation system—effectively expanding the federal immigration agent force and resulting in racial profiling, civil rights violations, isolation of immigrant communities, and family separations. At the start of FY 2021, there were a total of 150 Memoranda of Agreement under the 287(g) program. Ending these agreements and prohibiting the program’s continuation is an essential part of scaling back ICE’s agent force and thereby protecting immigrant communities from being unjustly targeted for deportation.

CBP should not receive any funding for personnel or equipment to conduct any non-emergency law-enforcement operations beyond the “reasonable distance from any external boundary” specified in 8 U.S.C. § 1357 and implementing regulations. All surveillance, including within that area, should be strictly limited to locations or situations where CBP concludes with reasonable certainty that unauthorized border crossings recently occurred or may occur, and should never be applied to First Amendment-protected activity. Any emergency operations should be limited to 48 hours’ duration unless an emergency declaration or major disaster declaration applies to the location concerned.

Additionally, the Office of Management and Budget should invest in timely, transparent, and meaningful accountability and oversight measures. We support the transparency provision in the FY2021 House Appropriations DHS Act that would require DHS to publicly report, semi-monthly, all requests made to DHS components for law enforcement support in the form of personnel, aircraft, equipment, or any other assets, and urge that this provision is included in FY2023 as well.

Neither the Border Patrol nor ICE ERO should receive *any* funding until the following accountability mechanisms are in place:

- DHS OIG and the Office for Civil Rights and Civil Liberties jointly conduct a comprehensive review of CBP's use-of-force policies, incident tracking, and training, and make this review available to Congress and the public.
- CBP and ICE issue public summaries, not later than 24 hours afterward, of every incident in which CBP's or ICE's use of force resulted in serious injury or death of any party involved; and upon CBP and ICE collecting and publishing data on *all* use-of-force incidents.
- Establishment of an independent commission of experts, including border stakeholders and advocates, to (1) reexamine cases of death and serious injury caused by CBP over the last 10 years, and (2) serve as a permanent civilian oversight body for CBP with power to review new investigations by internal components and to identify patterns and practices of use-of-force and other misconduct. The commission should have authority to observe national and local Discipline Review Board and Use of Force Review Board proceedings, as well as full access to CBP hiring criteria, training materials, and related data.
- Establishment by the Secretary of Homeland Security of an independent, civilian-led review of CBP and ICE disciplinary practices when inappropriate behavior or policy deviations occur. This review should be shared with the House and Senate Appropriations Committees, Subcommittees on Homeland Security, and the public. Before releasing funds, the DHS Office of General Counsel must work with this independent, civilian-led review team to develop a new and meaningful disciplinary process whereby verified violations of policy which have negatively impacted the rights of persons in DHS custody, or otherwise interacting with the enforcement components, are punished appropriately and transparently, with public reports including all non-protected information posted every ninety days thereafter.

Resources:

- American Immigration Council, "The Cost of Immigration Enforcement and Border Security" (Jan. 20, 2021), <https://bit.ly/2XpXo66>.
- Muzaffar Chishti & Jessica Bolter, "As #DefundThePolice Movement Gains Steam, Immigration Enforcement Spending and Practices Attract Scrutiny," Migration Policy Institute (June 25, 2020), <https://bit.ly/3EwIzR9>.
- Southern Border Communities Coalition, "Fatal Encounters with CBP Since 2010" (Jun. 11, 2021), https://www.southernborder.org/deaths_by_border_patrol; see also, American Immigration Lawyers Association, "Deaths in CBP Custody" (Aug. 6, 2021), <https://bit.ly/3lxTyQF>.
- A.C. Thompson, "After a Year of Investigation, the Border Patrol Has Little to Say About Agents' Misogynistic and Racist Facebook Group," *ProPublica* (Aug. 5, 2020), <https://bit.ly/3tNWNXZ>.
- Kavitha Surana, "How Racial Profiling Goes Unchecked in Immigration Enforcement," *ProPublica* (Jun. 18, 2018), <https://bit.ly/2Z7LChw>; see also, Maria Ines Zamudio, "Group

Sues Federal Agency Over Racial Profiling Of Immigrants In Chicago,” WBEZ Chicago (Feb. 20, 2020), <https://bit.ly/2ZadWzO>.

- ACLU of Southern California, “ICE Impersonation of Police—FAQ” (2021), <https://bit.ly/3kjRQD1>; see also, Rebecca Hersher, “Los Angeles Officials to ICE: Stop Identifying Yourselves As Police,” *NPR* (Feb. 24, 2017), <https://n.pr/3tRj8E7>.
- National Immigrant Justice Center, “Disentangling Local Law Enforcement from Federal Immigration Enforcement” (Jan. 13, 2021), <https://bit.ly/3CsF8YZ>.
- “Former ICE Agent from Riverside Arrested for Sexually Assaulting Two Women,” ABC7 (Aug. 15, 2018), <https://bit.ly/3hG5rD6>; see also, Alice Speri, “Detained Then Violated,” *The Intercept* (Apr. 11, 2018), <https://bit.ly/3zkjggm>.
- Garrett M. Graff, “The Green Monster: How the Border Patrol Became America’s Most Out-of-Control Law Enforcement Agency,” *Politico* (Nov./Dec. 2014), <https://politi.co/2FO5Sbh>; see also, Garrett M. Graff, “The Border Patrol Hits a Breaking Point,” *Politico* (July 15, 2019), <https://politi.co/30uecEY>.

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