

Immigration Priorities for a Just Budget in 2023
Deep Dive: Decrease Funds for Immigrant and Border Surveillance
September 2021

*Budget accountability is one meaningful way to halt the most harmful aspects of the Department of Homeland Security (DHS)'s role in mass surveillance, criminalization, and deportations. Border technology initiatives can [waste billions of taxpayer dollars](#); harm wildlife; interrupt tourism, recreation, and businesses; and interfere with the rights of border and indigenous communities. **The administration should significantly reduce reliance on invasive surveillance technologies deployed at the border and the interior.** The White House can do this by proposing a budget for Fiscal Year (FY) 2023 that significantly decreases “smart” border security measures and implements accountability measures that protect civil rights and limit wasteful and harmful spending.*

Context and State of Play: Between FY 2017 and FY 2020, Congress [appropriated more than](#) \$743 million specifically to Customs and Border Protection (CBP) for the acquisition and development of border security technology and in FY 2021, Congress [appropriated](#) more than \$160 million to CBP for the same. For FY 2022, the House Appropriations Committee has [recommended](#) \$170 million for border technology in the FY 2022 Homeland Security appropriations bill. In addition, Congressional reports and accompanying appropriations bills consistently provide funding for the [expansion](#) of surveillance technology, including drones, biometrics, and enforcement databases, with few requirements for transparency or accountability over how the funds will be specifically spent or technologies deployed.

The House [report](#) for the draft FY 2022 Homeland Security appropriations bill includes oversight language that would require DHS to make available a public website on each type of border security surveillance technology in use between ports of entry, engage in a public notice and comment period at least 60 days prior to deploying the technology to allow for input from privacy and technology stakeholders, and hold forums in communities impacted by such technology to allow for community comment and feedback. These provisions, adopted in response to community calls for accountability, begin to address the need for greater transparency, but much more is needed to prevent unaccountable spending on harmful surveillance technologies. At a minimum, border technology deployment must be contingent on community assessments and approval.

The technologies deployed by DHS for surveillance-related enforcement operations include the following infrastructure and corresponding contractors: mobile sentry towers (Anduril Industries); fixed surveillance towers (Israeli Elbit Systems); mobile location cell phone data tracking (commercial data broker Venntel); Drones (Anduril, Lockheed Martin, FLIR Systems, AeroVironment and General Dynamics); case management systems (Palantir Technologies); personal vehicle surveillance tools (CBP uses automated license plate reader software from Vigilant Solutions, which shares and compiles data from law enforcement across the country). Such programs present profound privacy risks and diminish quality of life for the millions who call the

border regions home as well as visitors. Additionally, DHS plans to invest \$4.3 billion to build a massive, invasive biometrics collection database called the Homeland Advanced Recognition Technology (HART) to replace its current database, the Automated Biometric Identification System (IDENT). Despite multiple Government Accountability Office (GAO) reports raising concerns about overspending and lack of oversight, HART continues growing, and little is known about the details of the contractor or architecture of the database.

The White House's [budget](#) request for FY 2022 includes \$1.2 billion for border infrastructure, including modernization of land ports of entry and treatment of people in CBP detention, of which security technology is touted as a critical component. The topline proposal does not, however, offer details on how much the White House is seeking for CBP surveillance-related enforcement operations. As discussed below, this continues a worrisome trend of increased funding to DHS and its component agencies for tech surveillance with little consideration given to its harmful impacts. Border communities have [emphasized](#) the negative impacts of multi-million dollar increases in mobile surveillance technology in disenfranchised communities, where each dollar could go to better use by instead investing in education, infrastructure, or public health. Although the White House somewhat reduced HART's budget because of overspending concerns, HART's construction is expected to continue in 2023.

Budgetary Ask: The Biden administration should significantly reduce reliance on, and use of, surveillance technologies by proposing a budget for FY 2023 that decreases "smart" border security measures and HART by 50 percent from the FY 2022 request. CBP's budget for surveillance technology increased significantly in FY 2018 as required under President Trump's January 25, 2017, "Border Security and Immigration Enforcement Improvements" Executive Order 13767, and has remained at high levels for the past five years. However, on February 2, 2021, President Biden revoked Executive Order 13767 and now no order requiring use of technology to secure the border is in effect. As the [February 2021 report](#) from the [DHS Office of Inspector General](#) (OIG) notes, CBP has used only 28% of the funds appropriated since FY 2017 for surveillance technology and has failed to address deficiencies in its use of technology despite having ample time to do so.

Because CBP has failed to use the bulk of the funds it has been appropriated, has demonstrated that it cannot effectively manage these funds, and because of the significant environmental and privacy implications that surveillance technologies raise, a 50 percent decrease would effectively rein in CBP's ability to rely on harmful surveillance technology at the border.

Additionally, DHS should delay construction of HART until the completion of the recommended OIG audit, including a privacy audit, to address operational and cost problems. (See DHS Appropriations 20022, Congressional Report, [117-87, p. 24](#))

Policy Asks:

The White House FY 2023 budget should include the following provisions:

- Any funding for the deployment or expansion of CBP invasive technology must adhere to strict limits and oversight, including the following principles and processes:

- Public consultation with local government and community stakeholders: Prior to any expansion of existing or new deployment of invasive technology, CBP must notify, meet, and obtain consent from local and Tribal government officials and community stakeholders impacted by the invasive surveillance technology including community residents and experts on privacy, civil rights, environmental protection, and migrants.
- The agency has provided a 60-day public notice and comment period prior to the deployment of invasive surveillance technology which should include legal and use justification, any memorandums of understanding with other agencies and accompanying justifications for each agreement, details about the capabilities of the technology and its data collection and handling policies, a list of contracts and solicitations, and a privacy impact assessment, as well as public consultation with local government and community stakeholders.
- The technology is: 1) effective and serves a legitimate agency purpose; 2) is the least intrusive means of serving the stated purpose; and 3) does not adversely impact the rights and civil liberties of border communities.
- The agency is complying with existing civil rights, civil liberties, and privacy laws, guidance, and principles and there is appropriate redress for violations.
- Any data collection, processing, sharing, and retention is handled appropriately, strictly limited in scope and use, and has appropriate cybersecurity protections.
- The agency has released legal justification for the use of the technology.
- Any proposed surveillance programs involving infrastructure that may have an environmental or related social or economic impact are subject to a robust environmental impact assessment, including a NEPA review.

The White House budget proposal should propose the following be included in the FY 2023 DHS Appropriations bill and accompanying report:

- DHS Appropriations bill
 - Reduce DHS surveillance and technology budgetary appropriations by a minimum of 50%. This should include limiting funding for CBP biometric surveillance collection programs, unmanned aerial vehicles, automatic license plate readers, facial recognition technology, tethered blimps, thermal imaging technology, surveillance towers, and wide-area surveillance.
 - Reduce DHS surveillance and technology budgetary appropriations for HART.
- DHS Appropriations report language
 - Demand DHS produce a transparent explanatory report that includes full details of all appropriations for surveillance technology and related staffing and infrastructure. This should include at minimum: a list of all hardware, software, physical devices, and electronic tools used for DHS surveillance and locations of surveillance technology deployment.
 - Require meaningful oversight by creating a review and public comment period of no less than 60 days prior to the deployment of surveillance technology to allow for input from impacted communities and privacy and technology experts.

Resources:

- Mijente and Just Futures Law, "[The Dangers of a Tech Wall](#)" (April 2021)
- [Defund Hate Coalition statement \(July 2021\)](#)
- [Demands of border community groups \(Feb 2021\)](#)
- [Letter from 40 NGOs: A Virtual Wall is Trump's Wall by Another Name \(Feb 2021\)](#)
- [Statement of 28 tech and human rights groups against surveillance tech border funding \(Feb 2019\)](#)
- [Immigrant Defense Project, Just Futures Law, and Mijente, "Freeze Expansion of the HART database" \(April 2021\)](#)

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