Insight

Rethinking Southwest Border Solutions

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Executive Summary

- The U.S. Southwest border is under strain as migrant encounters reached a monthly record high of more than 250,000 individuals in December 2022, rendering border authorities unable to control illegal migration or adequately process asylum seekers, as well as creating overcrowding and violating CBP's health and safety standards.
- To temporarily suppress arrivals, the Biden Administration has focused on emergency and deterrence-based policies, including the extension of COVID-era Title 42 and the January 2023 border plan to increase restrictions and enforcement at the border, but these policies do not provide long-term immigration solutions.
- Ensuring a comprehensive and sustainable approach to controlling the flow of migrants at the U.S. Southwest border must include policies that expand pathways to legal employment, promote international cooperation with Mexico and the countries of the Northern Triangle, and improve border infrastructure.

Introduction

U.S. Customs and Border Protection (CBP) reported just over 251,000 migrant encounters at the Southwest land border in December 2022, a monthly record high. The volume of migrants is exacerbating the border's infrastructural challenges, such as inadequate detention capacity, overwhelmed federal resources, insufficient staffing, and CBP officers' inability to flexibly handle various migrant cases. To temporarily suppress arrivals, the Biden Administration has relied on emergency and deterrence-based policies such as COVID-era Title 42 and the January 2023 plan to increase restrictions and enforcement at the border, but neither of these policies is likely to result in a long-term solution to the overwhelming border traffic. Ensuring a sustainable approach to controlling the flow of

migrants requires both addressing the root causes of migration and better equipping CBP to efficiently process migrants attempting to cross the Southwest border. To achieve this, lawmakers should focus on adopting a set of policies that reduce border arrivals, such as expanding pathways to legal employment and improving international cooperation with Mexico and the Northern Triangle countries, and that better equip CBP to handle migrant traffic.

The Border Problem

CBP reported more than 250,000 migrant encounters at the U.S. Southwest border in December 2022 – a monthly record high and a migration level not seen since early 2000. The migratory traffic is exacerbating the Southwest border's infrastructural challenges, such as inadequate detention capacity, overwhelmed federal resources, insufficient staffing, and CBP officers' inflexibility in handling different migrant cases. The strain has rendered border authorities unable to control illegal migration or adequately process asylum seekers.

In theory, migrant encounters result in either apprehension or immediate expulsion. In December 2022, there were approximately 202,000 apprehensions at the Southwest border, meaning that 80 percent of all migrants attempting to cross the border were taken into temporary custody in the United States to await adjudication. Prior to these record high migration numbers, CBP detention facilities were already operating beyond capacity, creating overcrowding and violating CBP's health and safety standards. The current migration level has made this problem worse.

Current border staffing is limited and insufficient for the number of migrants that need processing. To compensate, the Department of Homeland Security (DHS) has recently solicited volunteers throughout the agency to supplement border personnel. DHS also requested funding to hire 300 new Border Patrol agents in fiscal year (FY) 2023.

CBP officers possess little ability to adapt to various migrant situations due to strict border policies, time constraints, and the overwhelming number of migrants that must be processed. The immigration enforcement system in the United States was designed to deter single adults seeking work from attempting to cross the border but while single adults make up most of the recent border encounters, the percentage of encounters involving families and unaccompanied minors has risen since the start of the COVID-19 pandemic. This trend suggests a shift in migrant demographics to which the immigration enforcement system cannot easily adapt, adding pressure to the already overwhelmed border.

Current Policies

The Biden Administration has been attempting to resolve the strain at the border with

emergency and deterrence-based policies such as Title 42 and the January 2023 border plan, neither of which is likely to result in a long-term decrease in migration levels.

Title 42 is a COVID-era policy, started under the Trump Administration, that permits the Centers for Disease Control and Prevention director to suspend entry into the United States in the interest of protecting public health. The policy was originally set to terminate in May 2022 as the pandemic subsided, but after a string of lawsuits, appeals, and court orders, it has been extended to May 11, 2023, with its expiration corresponding with the end of the pandemic public health emergency. Until then, CBP will continue to expel migrants at the border without opportunity to seek asylum under the authority of Title 42. Though intended as a deterrent for border crossers, Title 42 has increased repeat border crossings, as individuals who are expelled under the provision are then able to attempt another crossing mere hours after their initial apprehension. In other words, Title 42 does not – and was not designed to – offer a permanent or sustainable solution to managing traffic at the Southwest border.

In January 2023, the Biden Administration announced a border plan intended to address the increasing migrant numbers at the Southwest border. The strategy includes plans to increase funding for DHS and the Department of Justice (DOJ) and expand legal pathways for humanitarian reasons. The plan's focus, however, is an expansion of Title 42 expulsions and increased restrictions and enforcement at the Southwest border. Prior to the January plan, the U.S. and Mexican governments agreed that Mexico would accept expelled migrants from Venezuela, Mexico, Guatemala, Honduras, and El Salvador. Under the new plan, Mexico agreed to the expansion of nationalities subject to Title 42 and will accept an additional 30,000 Nicaraguan, Haitian, and Cuban expelled migrants each month. Also under the new plan, the United States will begin rulemaking to limit the ability of migrants to claim asylum. Like the Trump-era "transit ban," the rule will bar migrants from claiming asylum at ports of entry if they have traveled through a third country and have not sought protection from that country.

The Biden Administration is already claiming success under the January plan, as initial border encounters data from January 2023 reported a decrease in border traffic. Yet while the deterrence policies in this plan may temporarily suppress arrivals, they are not a lasting solution as they fail to address either the drivers of migration or the structural issues at the border.

Replacement Approach to the Border

A lasting solution to controlling migratory traffic at the border requires complementary efforts to limit border encounters and increase processing efficiency for the migrants that

remain. The following policy suggestions, if imposed together, would provide a holistic approach to addressing the strain at the Southwest border.

Expansion of Legal Employment Pathways for Migrants

To reduce traffic at the border, the United States must provide alternative and legal pathways for migrants. As most border crossers are single adults, some of whom approach the border hoping to claim the need for asylum and to then seek employment, expanding employment options for immigrants is essential to controlling border encounters. Expanding these pathways for migrants would provide them with an alternative immigration option, decongesting the border so that those truly in need of humanitarian aid can be processed efficiently. Such a policy would also provide the United States an economic benefit.

According to the December 2022 Job Openings and Labor Turnover Survey, the United States currently has 11 million job openings. At the end of January 2023, there were 5.7 million unemployed people in the labor force; there are thus approximately two open positions for every one unemployed current U.S. resident to fill. The labor shortage is forcing employers to compete for workers by offering higher pay and better working conditions. Increased legal immigration could provide employers with the workers they need and migrants with income and stability.

To that end, expanding the H-2A and H-2B visa programs, which provide the United States with temporary workers in the agricultural and non-agricultural sectors, could help to fill the gap between open positions and unemployed U.S. workers. The number of noncitizens that may receive an H-2B visas is currently capped at 66,000 per year. H-2A visas have no cap but are limited to temporary and seasonal work. Increasing the cap on H-2B and issuing more H-2A visas would benefit both employers and migrants. These visas are temporary, however, so coupling this policy with legislation that would provide green cards to these workers after multiple years of productive service to one employer would establish an option for permanent economic migration, incentivizing the H-2A and H-2B system over the border for migrants seeking employment.

International Cooperation with the Northern Triangle

Any long-lasting border solution requires international cooperation to address the root causes of migration. Improving communication and cooperation between the United States, Mexico, and the Northern Triangle countries of Guatemala, Honduras, and El Salvador is therefore necessary to lessen U.S. border traffic. To that end, the creation of a regional law enforcement and immigration strategy would help to control crime and more evenly share the responsibility of handling high migration levels.

The United States should consider forming a law enforcement strategy with the Northern Triangle that would improve security by strengthening the rule of law in the Northern Triangle countries. Through such a partnership, the United States could assist these countries with funding and training for their law enforcement agencies. The countries would cooperate to target crimes such as gang violence, arms dealing, and human trafficking to improve safety and resilience within communities and reduce the number of individuals who feel the need to seek protection at the border.

The United States, Mexico, and the Northern Triangle would also benefit from a shared border metrics database to report data related to caps on refugees, detainments, and expulsions. Developing a shared platform for border information would allow the countries and CBP to better allocate staff, address root causes for migration, and adapt to changing migrant flows.

Improving Border Infrastructure

While addressing root causes of migration will likely lessen the number of encounters, it will not eliminate traffic at the border. CBP must be better equipped to handle the migrants that remain and, therefore, the agency will require more staff, expanded detention capacity, and updated screening technology. The following proposals address these necessary infrastructural changes and would likely cost $380 million to implement, most of which is already budgeted for in the $17.5 billion allocated to the CBP in the FY 2023 President's Budget.

In a recent House Oversight Committee Hearing, a chief border patrol agent testified that current border staffing is insufficient to deal with the influx of migrants. This understaffing is corroborated by DHS, which is soliciting volunteers throughout the department to supplement personnel on the border. The cost estimate for the additional 300 border patrol officers requested by DHS for FY 2023 is approximately $23 million and has already been budgeted for in the FY 2023 budget. In addition to increasing CBP agent presence, personnel from various agencies, including the Federal Emergency Management Agency, should be reallocated to the border when it is faced with an influx of migrants. Diversifying border personnel during times of high migrant traffic would better address the complex needs of diverse and vulnerable migrant populations and reserve CBP's skills for situations involving border crime.

Immigration detention and housing centers must be updated and their capacity expanded. The shelters should be adequately funded to ensure they meet DHS health and safety standards. The FY 2023 CBP budget has allocated approximately $145.4 million for construction and facility improvements. As federal resources are limited, policy should be

implemented to establish a partnership between DHS and nonprofits such as the Red Cross. Under such partnerships, new facilities could open to house migrants apprehended at the southwest border. The maximum facility capacity along the Southwest border is approximately 5,000 migrants. The projected cost of detaining an adult migrant is approximately $148.62 per day for FY 2023 and the average length of detainment is 33.8 days. As a result, in FY 2023, it costs an average $5,023 to detain each immigrant. Each additional detention center opened along the Southwest border would therefore cost approximately $25 million to run at capacity.

Updating screening technology at the border would allow for more efficient processing of migrants. Technology at the border has improved in recent years but the systems still cannot keep up with the number of migrants attempting to cross the border. By 2022 CBP had acquired only 28 percent of the new technology planned to assist with border detections since receiving increased funding for upgrades in 2017. Investments in the use of biometrics at the border should be made with the objective of improving screening and inspection efficiency. The FY 2023 budget has allocated approximately $186 million for modern border security technology.

Conclusion

The U.S. Southwest border is overwhelmed with migrant encounters, rendering border authorities unable to control illegal migration or process asylum seekers and creating overcrowding and violating CBP's health and safety standards. While the Biden Administration has relied on Title 42 and the January 2023 border plan to control the influx of migrants, these are not comprehensive or sustainable solutions. Instead, lawmakers should consider a proactive and holistic approach to the border that expands legal migration pathways, improves international cooperation with the Northern Triangle, and provides for better infrastructure and security at the border as a long-term solution.