

BIDEN'S BORDER FUNDING: WHAT'S AT STAKE

Explainer

Introduction:

In October of 2023 President Biden presented Congress with a \$106 billion [supplemental funding request](#) which included an additional \$5.3 billion for Customs and Border Protection (CBP) and \$2.5 billion for Immigration and Customs Enforcement (ICE) as well as military aid to Israel for its [genocidal war](#) in Gaza and aid to Ukraine and Taiwan. For the past several months, Congress has been negotiating the President's request, using immigrant communities as political pawns in the process.

Although the request already included billions of dollars in additional funding for border militarization, Republicans demanded that passage of the supplemental come with harsh immigration policies like those passed by the House last year in [House Resolution 2 \(HR2\)](#). As negotiations continued, [President Biden](#) and top Senate Democrats agreed to make significant and disastrous concessions that would be immensely harmful to immigrant communities in the U.S. and to those seeking to migrate here. The changes would not only gut the asylum system but would lead to more immigration detention and interior enforcement.

On February 4, 2024 the Senate released text of a proposed bill, the "[Emergency National Security Supplemental Appropriations Act, 2024](#)," that [provides](#) Biden with \$118 billion and includes numerous cruel and dangerous anti-immigrant provisions that will gravely impact people's ability to seek safety and opportunity in the U.S. ICE and CBP already operate at astronomical levels, using their combined budget of [more than \\$25 billion](#) to detain and deport people away from their loved ones, safety and opportunity. This bill infuses these agencies with an additional \$13.6 billion.

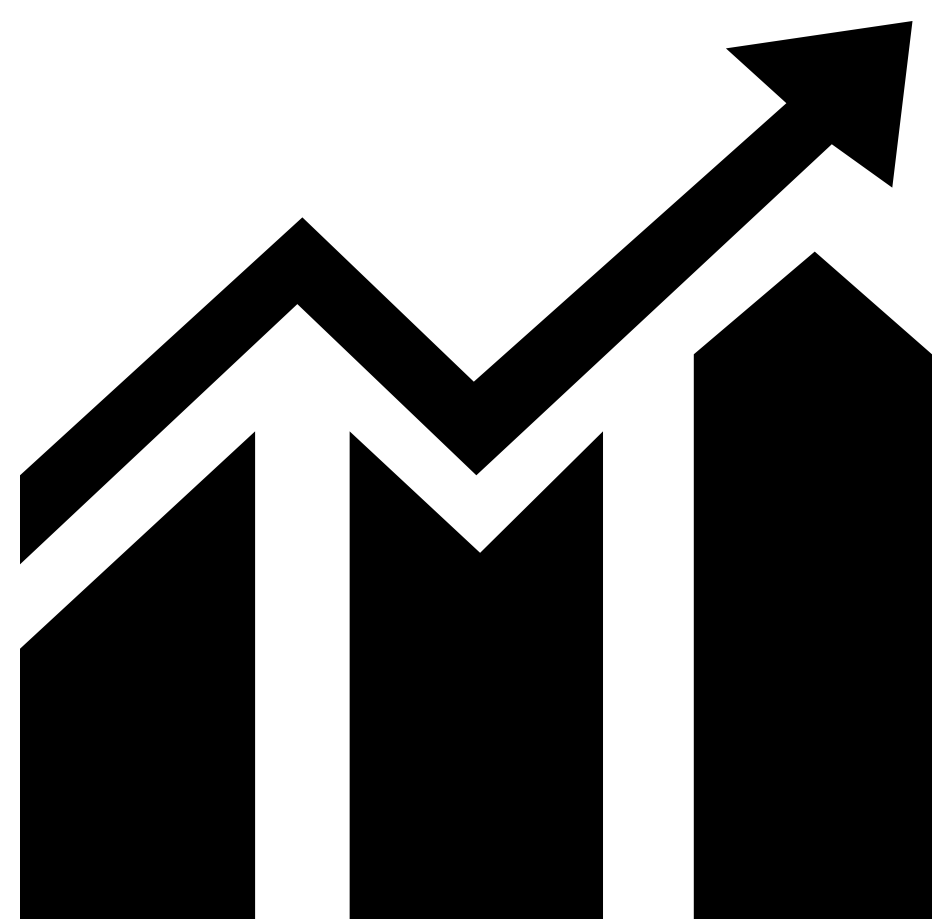
If passed, this bill will be devastating for immigrant communities, making it all but impossible for people to obtain asylum in the U.S. and putting immigrants already here at heightened risk of detention and deportation. Even if the bill fails, the conversations surrounding it have intensified the already toxic rhetoric around immigration and the border, and will impact the starting point of future negotiations.



What's in the Bill? Funding Provisions:

If passed, the supplemental bill provides the Biden administration with \$118 billion, well above the amount in his initial funding request for foreign military aid and border militarization. Below are some of the funding provisions that impact immigrant communities.

- **\$7.6 billion for ICE (over \$5 billion more than the amount initially requested by Biden), including the largest appropriation of funds for immigration detention custody and surveillance operations in ICE's history.**
 - Over \$3.2 billion for expanding ICE detention (more than doubling the currently appropriated budget);
 - Over \$2.5 billion for removal flights and related activities, including “staging facilities” for deportation flights;
 - \$534.68 million for hiring additional ICE officers;
 - \$1.29 billion to expand ICE's surveillance or “Alternatives to Detention” (ATD) programming (nearly triple its regular annual appropriation) to increase capacity for immediate enrollment at the border as required by new asylum processing policies detailed below.
- **\$6 billion for CBP (over half a billion more than the amount initially requested by Biden), including:**
 - \$584.12 million for hiring additional CBP officers, Border Patrol agents;
 - \$758 million for CBP's Procurement, Construction, and Improvements account to fund its mass surveillance infrastructure, including surveillance towers, drones and other unmanned surveillance vehicles, and other “border security” technologies;
 - Re-appropriation of previously unspent funds allocated under the Trump administration for building a wall on the Southern border; and
 - Reimbursements to the Department of Defense for contributed resources that further militarize border regions.
- **Additional harmful funding provisions, including:**
 - As an incentive to increase detention capacity, an additional \$350 million is available to transfer to DHS' Federal Emergency Management Agency (FEMA) if ICE reaches a detention capacity of 46,500 people, among other conditions.
 - Nearly \$4 billion for U.S. Citizenship and Immigration Services (USCIS) to facilitate the new expedited asylum processing system described below.
 - \$100 million for Operation Stonegarden, a federal program that facilitates collaboration between state and local police and CBP for border enforcement purposes.
 - \$210 million for U.S. Marshals Service (USMS) detention in anticipation of increased border prosecutions.



Shockingly, this bill includes what would be the largest appropriation of funds for immigration detention custody and surveillance operations in ICE's history.



What's in the Bill? Policy Provisions and Implications:

Lawmakers took advantage of Biden's already harmful supplemental funding request to push through permanent changes to the U.S. immigration system. Below are some of the harmful policy changes that would go into effect if the bill is passed in its current form.

- **New Expulsion Authority:**
 - The Senate bill includes a new border expulsion authority. Many people may be familiar with Title 42, an expulsion policy implemented by President Trump at the start of the Covid-19 pandemic. In the case of Title 42, the pandemic was the [pretense](#) for giving CBP the authority to expel people. Under this proposed policy, CBP's ability to expel people would be triggered when the number of people crossing at the Southern border reaches an average of 5,000 people or 8,500 people in a single day.
 - Once triggered, the new expulsion policy, like Title 42, would allow CBP to "expel" or turn away anyone at the border. It will ban entry for nearly everyone in between ports of entry at the Southern border, including asylum seekers, and DHS is not required to screen people for fear prior to expelling them. Only those who affirmatively make their fear known may be granted a screening interview, but for withholding of removal, a lesser form of protection.
 - At ports of entry, while the expulsion authority is in effect, Border Patrol will process at least 1,400 people per day, but this means that a person's access to asylum will depend on *when* they arrive at the border and how many people arrived that day before them. This will also inherently mean that asylum seekers and other immigrants will regularly be sent back to places of danger.
- **Heightened Credible Fear Standard for Asylum and New Asylum Bar:**
 - The Senate bill proposes an entirely new asylum system that makes obtaining asylum nearly impossible. The new system includes fast-tracked processing and requires that all migrants going through the process are placed in punitive ICE surveillance and monitoring programming. It also heightens the standard for showing a credible fear of persecution, which is the first step in the asylum process for someone who arrives at the border. After an often long and traumatic journey, an asylum seeker must show that they have a credible fear of returning to their home country so that they can then have a chance to argue their case more fully. Heightening the standard to pass this stage of the process will mean many more people will be deported back without a fair chance at winning their asylum claim. On top of all of this, the bill also adds a new bar to asylum, which applies where the government argues the migrant could have safely relocated to a different part of their country.
 - In addition to subjecting migrants to this expedited, more stringent process to obtain protection, the system doubles down by then eliminating any form of judicial review of the decisions made by asylum officers. Migrants can only appeal a negative decision to a new appeals board that is also composed of asylum officers, not federal or immigration judges.



What's in the Bill? Policy Provisions and Implications:

- **Criminalization at the Border & Interior Enforcement:**
 - As noted above, the bill provides funding to the USMS, an agency of the Department of Justice that is responsible for [pre-trial detention](#) of people in criminal proceedings, a vast majority of whom are being prosecuted on immigration grounds. The bill specifically names “increased enforcement activity” as the basis for this funding.
 - Additionally, while the bill does not include any new policies explicitly focused on interior enforcement, [increased detention and surveillance capacity](#) often leads to more enforcement, detention, and deportation. If passed, the bill incentivises DHS to increase ICE detention to at least 46,500. Additionally, the bill provides triple the amount of ICE’s current budget for electronic monitoring and surveillance (through its ATD program). More detention and surveillance capacity puts all immigrants at heightened risk of detention and deportation, not just those recently arriving but also those who have been living and working in the U.S. for years. It would also allow any future administration greater flexibility to increase interior enforcement by providing the capacity needed to do so.
 - Finally, the new asylum processing system criminalizes asylum seekers by mandating that everyone be enrolled in ICE’s punitive surveillance (ATD) program.

The Bottom Line - If passed, this bill will have devastating consequences for many immigrant communities:

Any one of the proposed changes would have dire consequences for immigrant communities and combined they would be devastating. All of these changes will lead to more detention, more family separation, more deportation, and more vulnerability to death for migrants.

The funding and policy provisions detailed below would result in many people being turned away at the border and sent into dangerous situations in border camps, caught in the Mexican immigration detention system, or facing persecution and violence in their home countries. Many people would be forced to seek more dangerous paths in between ports of entry. Many will be denied the ability to apply for asylum at all. For those that are able to make it to the first stage of a new asylum process, proposed changes would make it near impossible for many to then make it past that stage. Funding for increased CBP surveillance technology and personnel along with funds to increase U.S. Marshals Service (USMS) capacity further criminalizes migrants at the border. Funding for increased ICE detention, surveillance, and personnel could also have an impact on interior enforcement, putting people who have been living and working in the United States for years at heightened risk of arrest and deportation.

Take Action:

The Senate is set to vote on this bill **this week**, as early as Wednesday, February 6, 2024. Detention Watch Network **wholly** rejects the White House’s supplemental funding request, and we demand that the administration and Members of Congress steadfastly reject any anti-immigrant tradeoffs like those described above. The Senate must vote down this bill.

Join us and take action today:

- **Individuals** - contact your Members of Congress to show your opposition to this bill by using this [toolkit](#).
- **Organizations** - issue a “vote recommendation” urging Senators to vote “No” on this bill. Here is [DWN’s vote recommendation](#) that you can use as a reference and should feel free to repurpose.

Please contact policy@detentionwatchnetwork.org with any questions or to get more involved.