



# Migration at the U.S.-Mexico Border

A Challenge Decades in the Making

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U.S. IMMIGRATION POLICY PROGRAM

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## Executive Summary

The U.S. border security enterprise as it relates to addressing irregular migration at the southwest border has changed considerably over the last four decades. Although migration management has presented recurring policy, operation, and security challenges, these can largely be split into two eras. In the first, from roughly the 1980s through the early 2010s, the primary challenge and thus the focus of government policy was managing the flows of unauthorized Mexican migrants, the majority of whom were adults seeking job opportunities. While the government never stopped this type of migration completely, it developed an effective strategic approach backed by adequate resources to allow border officials to dramatically reduce the levels of illicit border crossing. In the mid-2010s, however, the profile of migrants arriving at the border changed with the arrival of Central American families and children, which morphed into unprecedented flows of asylum seekers from Central and South America and beyond. This shift has sparked an intense period of crisis, as the federal government has struggled to adapt policy and operational structures to match the changed nature of the migration problems to be managed.

A close look at the U.S. government's attempts to control irregular migration at the southwest border over this extended period points to important lessons for the policymakers and political leadership of today. These include the necessity of recognizing how the Department of Homeland Security's mission has evolved and how vital interagency partnerships are to

the success of its border management operations, and that a transnational phenomenon such as irregular migration requires policies and international partnerships that stretch far beyond the border line itself, with a particular focus on forging a durable and effective U.S.-Mexican partnership.

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## 1 Introduction

Southwest border security has been a central policy matter and divisive political issue in the United States for four decades. But the phrase "border security," as it has divided the country politically, is less all-encompassing than it suggests. The phrase generally has been used by politicians, policymakers, and, indeed, the public to refer to the law enforcement enterprise intended to prevent illegal border crossings and apprehend those who enter the United States without authorization.

For two decades until 2016, bipartisan majorities invested major resources in securing the southwest border. This involved increasing the numbers of federal law enforcement agents and officers, building infrastructure to support law enforcement and deter illegal crossing, and deploying new technological capabilities. In a seeming paradox, despite the United States having built the most well-resourced and advanced border security enterprise in the world, the U.S. government has struggled to adapt to changing migration patterns at the southwest border that have overwhelmed U.S. border agencies' ability to manage migration effectively.

This paradox raises major questions not only about the security of the southwest border but also the decades of strategic, policy, and resource decisions the U.S. government has made: What has actually happened at the border over the last five presidential administrations? Is the story one of an inhumane and continuous militarization of the border? Or is it a failure by multiple administrations to effectively control migration into the United States while addressing serious security challenges? How is it that the U.S. government has been so challenged by the situation at the border for so long? After decades of major investments in border security, how is the country now facing record levels of irregular migrants arriving at the southwest border? Why, in short, is controlling the border so hard?

This report recounts the history of the federal government's efforts to improve southwest border security in the modern era, beginning with the Clinton administration in 1993 and looking at each subsequent presidential administration. The report identifies key developments in the evolution of southwest border security, analytical points, and lessons learned that may inform the next phase of the federal government's southwest border strategy.

The principal focus of the analysis is on southwest border security as *migration management*, as opposed to a holistic treatment of the breadth of security or policy concerns attendant to securing and managing U.S. borders. This is not to downplay or ignore the significant public policy concerns related to, for instance, drug trafficking, economic policy with Mexico and more generally in North America, trade regulation and regulation enforcement, or counterterrorism. Instead, this framing reflects the fact that the public debate and understanding of border security in the United States since the early 1990s has largely centered on addressing unauthorized migration across the U.S.-Mexico border.

The experience on the southwest border has worldwide implications. It is among the places where the most difficult mass migration challenges in recent history have been most directly confronted, due to the combination of the United States being a highly desirable destination for many migrants and sharing a nearly 2,000-mile border with a still-developing country in Mexico. These lessons are of growing importance given the explosion of mass migration challenges around the world, which are likely to continue, and grow, in the coming decades. Understanding border security and migration management at the U.S. southwest border is essential to understanding how these challenges are presenting themselves to developed countries around the world.

## 2 The Evolution of U.S. Border Security

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High-profile incidents through the 1980s and a broad perception that the southwest border was out of control led to a significant increase in federal attention to the problem of stopping illegal crossings in the early 1990s. For each of the five presidential administrations since that time, border security has presented one of the highest profile—and most politically contentious—issues with which the president and his administration have contended. However, this heightened attention to the border and recurring migration “crises” there have not resulted in significant changes by Congress to immigration law. Instead of reforming immigration law to reflect the changing demographics and claims of arriving migrants and the nation's labor market needs, the main area of legislative focus has been a tacit bipartisan agreement in Congress

(most prominently in the 1990s and 2000s) to commit increasing resources to improving the government's ability to secure the border through improved identification and apprehension of migrants crossing illicitly between legal ports of entry.

With congressional backing, the administrations of Bill Clinton, George W. Bush, and Barack Obama developed and advanced the modern approach to border security through the application of a three-tiered resourcing strategy of personnel, infrastructure, and technology. Securing the nearly 2,000-mile U.S.-Mexico border against irregular migration presented a massive logistical and technical challenge, and the U.S. government was effective ultimately at mobilizing resources in a bipartisan manner to make it much more difficult to cross the border illegally. Over the course of two decades, the 1990s and 2000s, the security situation at the border improved dramatically, if occasionally unevenly, such that by the early to mid-2010s, illegal border crossings had reached generational lows.

The border security approach that emerged during this period reflected the characteristics of migrants crossing the border at the time. In the 1990s and 2000s, nearly all unauthorized migration across the U.S. southwest border was of individuals with a similar profile: Mexican nationals, mostly adult men, seeking seasonal work after crossing the border between authorized ports of entry. A major demand for inexpensive labor among U.S. employers, combined with the absence of an effective temporary worker program and limited or no sanctions on employers for hiring unauthorized workers, drove substantial seasonal flows of migrants across the southwest border to work in industries such as agriculture, hotels, restaurants, child care, and construction. The federal government built a border security enterprise in response to the public perception—largely accurate—that the southwest border was not under control and that this particular type of migration had become a law-and-order problem.

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Circumstances at the border began to change, however, in approximately 2014 with the first period of significantly increased arrivals of unaccompanied children and then families in 2016, mostly from the Central American countries of Guatemala, Honduras, and El Salvador, and then asylum seekers more generally. Over the ensuing years, the prior two decades of progress evaporated as the number of asylum seekers and other migrants arriving at the border went from generational lows to record highs under both the Trump and Biden administrations. The approach to border security that once proved adept at managing the irregular migration of Mexican nationals (for whom it is more difficult to claim humanitarian protection) showed itself to be a poor fit for newer arrivals. And as the operational situation at the border changed and became more complex for border and immigration authorities to manage, the politics around border security and migration management also intensified. By the 2020s, the question of how to handle unauthorized migration had again become one of the most divisive and polarized public policy issues in American politics.

## *Border Security and Migration Management*

To understand what has happened along the southwest border in the last three decades and how the work of border security has evolved into a complex migration management challenge, border control (in terms of preventing the unlawful movement of people across a border) must be understood as a specific component of a larger process of migration management. Migration management revolves around certain core issues:

- 1 Determining what legal status people have when they arrive at the border or are apprehended crossing it, and what access they have to processes to change their status (such as what protections they are able to claim, whether they have access to asylum, how claims are adjudicated, and the level of appeals available);
- 2 Caring and providing for the needs of people both in government custody and those who are not detained as they move through the immigration court process (such as school, medical care, shelter and housing, and work authorization);
- 3 For those without a legal status or other claim to enter the country, how such people will be removed and where they will go (such as planning for their return to their country of origin, obtaining travel documents, interim care and housing, and scheduling return transportation); and
- 4 For those with legal status, facilitating their integration into U.S. communities after admission into the country.

When seasonal Mexican migration dominated the southwest border, through roughly the early 2000s, enforcement was fairly straightforward. Once authorities apprehended a migrant attempting to cross the border without authorization, the violator could be returned to Mexico in an expedited manner without complex court determinations about legal status, extended shelter or care requirements, or coordinating international flights and travel documents for repatriation to the migrant's home country. The vast majority of migrants who were apprehended were immediately returned to Mexico, and many tried multiple times to cross the border.

The situation began to change dramatically with the arrival of large numbers of Central American asylum seekers in 2014 to 2016. A border control enterprise that was effective at apprehending and quickly returning Mexican nationals became faced with large numbers of non-Mexicans, including large numbers of vulnerable groups including unaccompanied children and families, who claimed humanitarian protections that take months or years for immigration courts to adjudicate. The caseloads and backlogs became so large that many new border crossers were likely to be released into the country with a court date that was years down the line. The asylum system, as a result, has turned into a parallel immigration system admitting significant numbers of people beyond those coming into the United States through the legal immigration system.

Meanwhile, the political questions surrounding immigration policy have languished due to fractured politics that have paralyzed successive Congresses. Instead, decisions have fallen into the realm of executive orders and judicial rulings. This has led to a less stable and coherent system, as actors with diametrically opposed

beliefs and aims battle over comparatively technical aspects of the system while the major questions that drive migration and shape the country's handling of it—such as “How many total humanitarian admissions, including both refugees and asylum seekers, should the United States allow each year?” and “What types of work authorizations should the United States permit?”—have been left largely unaddressed.

### 3 Framing the Problem

Sustained national attention to immigration across the U.S. southwest border is a relatively recent phenomenon. While the United States has a checkered history with respect to immigration management, in particular as it relates to race-based exclusionary policies such as the *Chinese Exclusion Act of 1882* and the *Immigration Act of 1924* (which included the *Asian Exclusion Act* and *National Origins Act*),<sup>1</sup> for most of U.S. history the southwest border received relatively little federal attention.

For many years, the border was a bicultural region—known by residents as the third country—far from the U.S. and Mexican national capitals and where people moved informally and regularly between the two countries.<sup>2</sup> Indeed, the Border Patrol, which was founded in 1924, grew to only a few thousand agents over the ensuing decades—a fraction of the approximately 20,000 agents it has now.<sup>3</sup> The exception was the Bracero Program, which ran from the 1940s until the 1960s. This program was an agreement between the United States and Mexico to address labor shortages in the United States during World War II by authorizing a certain number of Mexican temporary workers to travel to the United States for seasonal jobs.<sup>4</sup>

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Several factors would come to reshape the U.S. approach to southwest border security. The Bracero Program ended due to widespread abuses of workers without accounting for the complex labor market dynamics that had been established through decades of flows of Mexican workers into the U.S. agricultural economy. At the same time, Congress enacted sweeping immigration legislation in 1965 that, among other things, established numerical ceilings on immigration from the Western Hemisphere for the first time. As a result, the number of now-unauthorized migrants began to grow noticeably in the 1970s, with southwest border apprehensions surpassing 1 million per year by the mid-1980s<sup>5</sup>—a number that materially exceeded historical levels for the region and overwhelmed existing enforcement structures and resources.

This period also saw the cocaine market in the United States explode, and after a crackdown on maritime smuggling in the Caribbean, narcotics trafficking from South America to the United States shifted principally

- 1 U.S. Department of State, Office of the Historian, Foreign Service Institute, “[The Immigration Act of 1924 \(The Johnson-Reed Act\)](#),” accessed August 28, 2023.
- 2 See Michael S. Malone, *El Tercer Pais: San Diego and Tijuana – Two Cities, Two Countries, One Community* (Saratoga, CA: Silicon Valley Press, 2020).
- 3 U.S. Border Patrol, “[Border Patrol Agent Nationwide Staffing by Fiscal Year](#)” (data tables, August 2021).
- 4 Philip Martin, “[Mexican Braceros and US Farm Workers](#),” Wilson Center, July 10, 2020.
- 5 U.S. Border Patrol, “[U.S. Border Patrol Total Apprehensions \(FY 1925 - FY 2020\)](#)” (data tables, August 2021).



to transiting through Mexico. This change caused a substantial growth in narcotics trafficking across the U.S.-Mexico border, which fueled the growth of powerful, dangerous transnational criminal organizations in Mexico.<sup>6</sup>

The lax federal law enforcement presence in the border environment enabled high levels of visible criminality, and the border was increasingly perceived and depicted as violent. The situation at the border garnered media and public attention, so much so that President Ronald Reagan, a proponent of immigration reform, stated in a 1984 presidential debate that “it is true our borders are out of control.”<sup>7</sup>

Beginning in the mid-1970s, legislative proposals to curb unauthorized immigration began to be put forward in Congress and by the executive branch. Failing passage, Congress established the Select Commission on Immigration and Refugee Policy (SCIRP), a bipartisan body chaired by Father Theodore “Ted” Hesburgh. Its 1981 report and recommendations ultimately resulted in the passage of the *Immigration Reform and Control Act* (IRCA) of 1986.

Signed into law by President Reagan, IRCA rested on three core components: border enforcement, sanctions on employers who hire unauthorized migrant workers, and legalization of those who came to the United States before 1982. Of these aims, IRCA is notable for conferring legal status on millions of unauthorized migrants who were present in the United States—what is often referred to as “amnesty.”<sup>8</sup> The employer sanctions provisions were weak and difficult to enforce, and the resources required to strengthen border enforcement did not materialize until the 1990s. Thus, the act ultimately came to generate political controversy for granting immigration benefits to large numbers of people who had entered the United States illegally, while not achieving the “border control” it promised.<sup>9</sup>

The political climate around border security and migration management at the time may be best captured by the 1994 election in California, in which voters approved Proposition 187 and re-elected Governor Pete Wilson. He campaigned in support of the proposition, which was widely described as hostile to unauthorized immigrants as it sought to bar them from accessing most state and local services.<sup>10</sup> This public sentiment generated a response from the federal government with an emphasis on enforcement from President Bill Clinton, who said in the 1995 State of the Union Address:

*“We are a nation of immigrants. But we are also a nation of laws. It is wrong and ultimately self-defeating for a nation of immigrants to permit the kind of abuse of our immigration laws we have seen in recent years, and we must do more to stop it.”<sup>11</sup>*

With conditions at the border demanding attention and growing political and public support for robust action, the federal government embarked upon a significant, multidecade effort to establish control over the southwest border and the movement of migrants across it.

6 Council on Foreign Relations Editors, “Mexico’s Long War: Drugs, Crime, and the Cartels,” updated September 7, 2022.

7 Ronald Reagan Presidential Library and Museum “Debate between the President and Former Vice President Walter F. Mondale in Kansas City, Missouri,” updated October 21, 1984.

8 Library of Congress, “1986: Immigration Reform and Control Act of 1986,” updated December 30, 2020.

9 National Public Radio, “A Reagan Legacy: Amnesty for Illegal Immigrants,” updated July 4, 2010.

10 Library of Congress, “1994: California’s Proposition 187,” updated December 30, 2020.

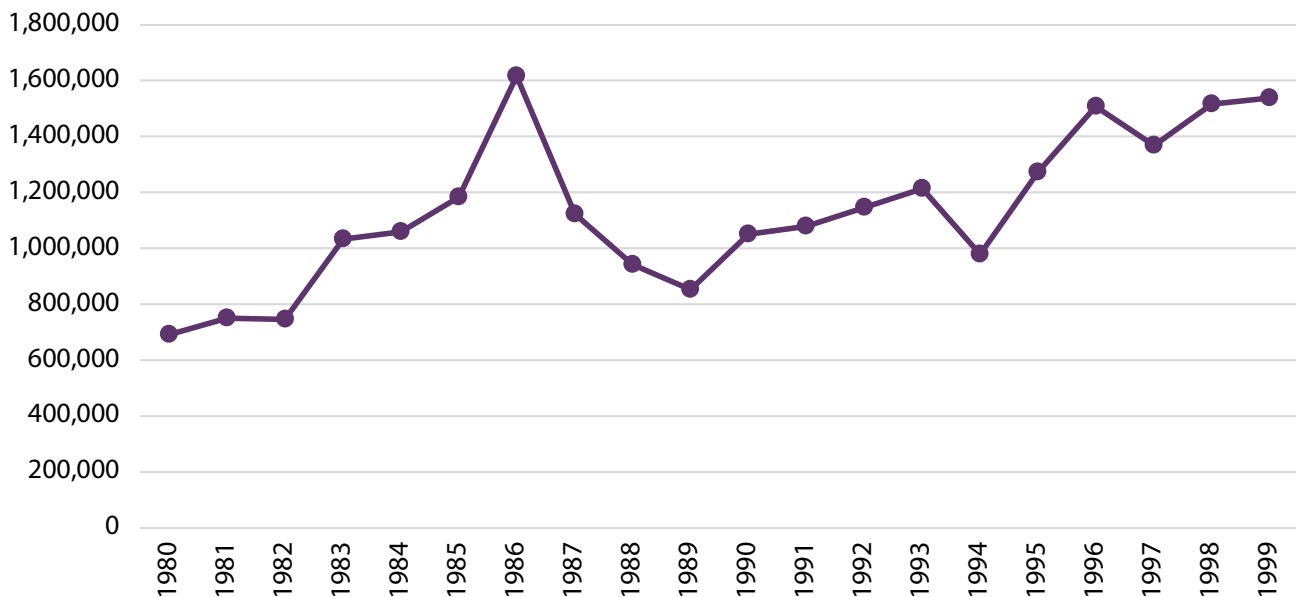
11 Speech by William J. Clinton, President of the United States, *State of the Union 1995*, for a Joint Session of the 104th Congress, January 24, 1995.

## 4 The 1990s and a New Enforcement Model

The large numbers of unauthorized migrants crossing the border in the 1980s continued into the 1990s, as the Border Patrol regularly made apprehensions<sup>12</sup> in excess of 1 million per year at the southwest border (see Figure 1).

FIGURE 1

### Border Patrol Apprehensions at the Southwest Border, FY 1980–99



Source: U.S. Border Patrol, “Southwest Border Sectors: Total Encounters by Fiscal Year,” accessed October 5, 2023.

The levels of unauthorized border crossings were particularly high in and around binational urban areas, particularly in the Tijuana–San Diego and Ciudad Juárez–El Paso corridors. In fiscal year (FY) 1992, the Border Patrol made 565,581 apprehensions in the San Diego Sector and 248,642 in the El Paso Sector.<sup>13</sup> So many migrants were crossing near the San Ysidro, California, port of entry and struck by cars while attempting to run across Interstate 5 that the state put up caution signs on the highway showing a running migrant family.<sup>14</sup> While the high apprehension numbers during this period fluctuated from year to year, they clearly were not an aberration, as reflected in Figure 1.

Urban areas presented a particular enforcement challenge for the Border Patrol. Once a migrant had illegally crossed the border, the person could enter a city and blend in among its residents. Extensive informal networks established over generations then enabled migrants to quickly move to urban centers around the country and find work.

<sup>12</sup> U.S. Border Patrol, “Southwest Border Sectors: Total Illegal Alien Apprehensions by Fiscal Year (FY1960-2019)” (data tables, January 2020).

<sup>13</sup> U.S. Border Patrol, “Southwest Border Sectors: Total Illegal Alien Apprehensions.”

<sup>14</sup> Cindy Carcamo, “With Only One Left, Iconic Yellow Road Sign Showing Running Immigrants Now Borders on the Extinct,” *The Los Angeles Times*, July 7, 2017.

Lacking the agents and resources necessary to meaningfully confront the high level of illicit crossings, internal U.S. Department of Justice assessments showed that the Border Patrol also had no “coherent” strategy and agents were given “no real aim other than to apprehend as many illegal immigrants as possible.”<sup>15</sup> Agents would stop as many migrants illegally crossing the border as they could, quickly process them for a return to Mexico, and then start over. The lack of a strategy was matched by a lack of any meaningful consequences for much of the illicit border activity; that is, there was no strategic approach to deterring migrants from repeatedly trying to cross the border until they managed to evade apprehension.<sup>16</sup> Federal authorities attempted mass criminal misdemeanor prosecutions as a deterrent in the early 1990s, but this had the effect of overwhelming the criminal justice and confinement systems without generating a noticeable deterrent impact.<sup>17</sup>

From a public safety and law enforcement perspective, the federal authorities were ineffective. As a result, there was broad lawlessness in the border region, leading the Department of Justice to reconceive its enforcement strategy beginning in 1993 under the leadership of Attorney General Janet Reno and Commissioner of the Immigration and Naturalization Service Doris Meissner.

## A. *New Strategies to Respond to Illegal Crossing*

Beginning in 1993, the Border Patrol started deploying its resources to *prevent* illegal border crossing, rather than its previous focus on apprehending unauthorized migrants at key transit nodes. In priority border cities, the Border Patrol deployed agents nearer to the border and in a visible manner. These forward deployed agents were supported by additional agents behind them at strategic points to apprehend border crossers who made it past the first line of agents. In internal documents and interviews, the Border Patrol described the conception and execution of this approach as a “show of force” and a layered “defense in depth” strategy.<sup>18</sup>

The intent of these strategic shifts was to change the pattern of illicit border activity. As described above, the vast majority of illicit activity occurred in urban areas as border crossers and smugglers looked to quickly blend into the population, take advantage of informal networks, and access an established transportation infrastructure. Four crossing corridors accounted for the vast majority of apprehensions. They were San Diego, California; Tucson, Arizona; and El Paso and Harlingen, Texas. In this environment, the Border Patrol had only a narrow window to identify and apprehend migrants who crossed the border illegally. The terrain provided a strategic advantage to migrants and their smugglers, known as “coyotes.” The Border Patrol’s new approach was to deny unauthorized migrants that strategic advantage by gaining operational control over

15 U.S. Department of Justice, Office of the Inspector General, “Background to the Office of the Inspector General Investigation,” accessed August 28, 2023.

16 Interview with Mike Fisher, U.S. Border Patrol Chief (retired), September 2, 2021.

17 Executive Office for United States Attorneys, “Criminal Alien Prosecution Program,” *United States Attorneys Bulletin* 44, no. 2 (April 1996): 29.

18 U.S. Customs and Border Protection (CBP), “Border Patrol History,” updated July 21, 2020.

the four crossing corridors, thereby de facto establishing border-wide control. The strategy contemplated shifting the flow of arriving migrants to other areas that did not provide the same opportunities to evade agents, but at a significantly reduced, manageable scale. In practice, the result turned out to be otherwise.

In 1993, the Border Patrol's El Paso Sector Chief Silvestre Reyes tested a short-term forward deployment called Operation Blockade. Its success in deterring unlawful crossing and reducing illicit entry led to an ongoing effort in the area called Operation Hold the Line. The San Diego Sector, which had the highest volume crossing corridor at that time, followed in 1994 with Operation Gatekeeper, a sustained new strategy designed and implemented by Chief Gustavo de la Viña.<sup>19</sup> Those operations were followed by analogous efforts in Arizona and southern Texas. All relied on directing newly appropriated resources to these high-volume crossing corridors, which allowed for the strategic forward deployment of agents that was needed to alter the flow of illicit crossings and bring border-adjacent urban areas under control.

Termed "prevention through deterrence," these operations, coupled with a new approach to prosecutions that prioritized public safety and the deployment of a reliable biometric identity program (which allowed authorities for the first time to track who they were encountering), were assessed by the Department of Justice as resulting in "dramatic improvement(s)."<sup>20</sup> The drop in apprehension numbers reflects the successes of the changed strategy. Following the start of Operation Hold the Line, apprehensions in the El Paso Sector fell from 285,781 in FY 1993 to 79,688 in FY 1994 before an uptick and leveling off around 125,000 annually.<sup>21</sup> Similarly, the number of apprehensions in San Diego dropped by half to 243,793 by FY 1997 and continued to fall.

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*The new funding levels doubled the size of the Border Patrol between 1992 and 1999.*

The new strategy required significant new resources, which the Clinton administration requested and Congress appropriated. The new funding levels doubled the size of the Border Patrol between 1992 and 1999, growing the agency from approximately 4,000 agents to more than 8,000.<sup>22</sup> The Border Patrol also deployed new technologies to provide agents better situational awareness in the field, including better vehicles, sensors, and infrared cameras, along with the biometric identity system noted above.<sup>23</sup> This improved situational awareness and mobility allowed agents to more accurately and more quickly identify unlawful activity and respond to it.

In urban areas, the government also began to install fencing and physical barriers that made rapid crossing and disappearance into urban populations more challenging. The fencing—principally Vietnam-era aircraft landing pads placed upright—was far less sophisticated than what is in place in many areas today. But the barriers provided critical support to the Border Patrol by slowing migrants' attempts to illegally cross the border or redirecting them to other areas altogether.<sup>24</sup>

19 U.S. Department of Justice, Office of the Inspector General, "Background."

20 Executive Office for United States Attorneys, "Interview with United States Attorney Alan Bersin, Southern District of California," *United States Attorneys Bulletin* 44, no. 2 (April 1996): 12.

21 U.S. Border Patrol, "Southwest Border Sectors: Total Illegal Alien Apprehensions."

22 U.S. Border Patrol, "Border Patrol Agent Nationwide Staffing."

23 U.S. Department of Justice, Office of the Inspector General, "Background."

24 Peter Rowe, "Focus: Border Wall: San Diego's Been There, Done That," *The San Diego Union-Tribune*, January 27, 2017.



Congress also addressed the legal framework for managing unlawful border entries during this time period through “expedited removal,” which it authorized in the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*.<sup>25</sup> Expedited removal is a streamlined removal or deportation process for certain unauthorized migrants. Instead of voluntarily returning migrants to Mexico without meaningful sanctions for multiple crossing attempts, expedited removal meant that apprehended migrants could be rapidly and formally deported and would face significant penalties if apprehended again. Initially, this authority was used at airports and then extended to seaports. Beginning in 2004, the Border Patrol was authorized to use it at the southwest border to remove unauthorized migrants apprehended after crossing or found within 100 miles of the border if they had been in the United States for 14 days or fewer.<sup>26</sup>

## B. *Impacts of the New Strategies*

As the Border Patrol gained control in binational urban areas, the illicit traffic began to shift to more remote areas. Once Operation Gatekeeper was in full effect, traffic through the San Diego Sector shifted eastward. The more remote El Centro Sector (the central and eastern part of California’s stretch of the border) saw its apprehensions essentially double in each of FY 1995, 1996, 1997, and 1998, from 37,317 to 66,873 to 146,210 to 226,695. The increased efforts in western California and western Texas also began pushing illicit activity to the Arizona–Sonora border. Both the Yuma and Tucson Sectors in Arizona saw a fivefold increase in apprehensions by the end of the 1990s.<sup>27</sup>

The 1990s also marked the beginning of a new era of cooperation between the Mexican and U.S. governments. A key turning point came with the North American Free Trade Agreement (NAFTA) negotiated by Presidents Carlos Salinas and George H. W. Bush, and then shepherded through Congress and signed by President Bill Clinton in December 1993. NAFTA laid the groundwork for long-term economic integration among the three core countries of North America, quadrupling trade in the region over a 25-year period.<sup>28</sup> The U.S.-Mexico border region in particular was transformed by major increases in U.S. investment in Mexico, the broad expansion of incentivized manufacturing in northern Mexico through the maquiladora program, and the expansion of multinational production platforms for complex goods such as automobiles, electronics, and medical equipment.

By redefining binational and continental relationships, NAFTA paved the way for enhanced cooperation between Mexico and the United States on law enforcement generally and border management specifically. At their 1997 summit in Mexico City, U.S. President Clinton and Mexican President Ernesto Zedillo affirmed a mutual “political will to strive to fulfill a vision of our shared border in the 21st century as a place that supports and depends on building communities of cooperation rather than conflict.”<sup>29</sup> President Clinton also articulated more clearly than any of his predecessors the role of U.S. demand for drugs in driving cross-border crime.<sup>30</sup> For his part, President Zedillo undertook major reforms to strengthen Mexico’s law

25 *Omnibus Consolidated Appropriations Act, 1997*, Public Law 104–208, *U.S. Statutes at Large* 110 (September 30, 1996): 3009.

26 Alison Siskin and Ruth Ellen Wasem, *Immigration Policy on Expedited Removal of Aliens* (Washington, DC: Congressional Research Service, 2009).

27 U.S. Border Patrol, “Southwest Border Sectors: Total Illegal Alien Apprehensions.”

28 Knowledge at Wharton Staff, “NAFTA’s Impact on the U.S. Economy: What Are the Facts?,” updated September 6, 2016.

29 William J. Clinton and Ernesto Zedillo Ponce de León, “Joint Statement on Migration Adopted by the President of the United States and the President of Mexico,” updated May 6, 1997.

30 William J. Clinton, “The President’s News Conference with President Ernesto Zedillo of Mexico in Mexico City,” updated May 6, 1997.

enforcement apparatus and strove to reduce corruption. Cooperation between the governments would accelerate in the coming years, as Mexico transitioned from single-party rule to successful multiparty democratic elections and the interdependencies of the two countries, their labor markets, and their shared border became more apparent.

At the close of the 1990s and the Clinton administration, the Border Patrol had achieved both a redesign of its operations and a clear path to attaining its strategic objectives: it had shifted illicit cross-border movements out of urban areas and to places where the agency had the tactical advantages of time and space on its side.

There were significant criticisms of the government's revised approach to border security. By increasing enforcement and consequences for crossing the border, which previously had been technically illegal but broadly accepted, critics argued that the government had transformed unofficial seasonal guest workers into unauthorized immigrants. This was seen by some as an echo and continuation of the nativist migration enforcement of America's past, which had been exemplified by the broad deportations of Mexican Americans that had taken place in the 1950s under the offensively named Operation Wetback during the Eisenhower administration.<sup>31</sup>

Others criticized enforcement efforts because shifting migration patterns out of urban areas to rural places increased the physical dangers migrants faced, including the likelihood of injury or death.<sup>32</sup> And from an enforcement perspective, making it more difficult to cross the border created a new illicit market for smugglers, as migrants now routinely required their services to cross in remote areas. This development would intensify over the years, transforming the human smuggling business over time from "mom and pop" operations into increasingly more organized criminal enterprises.<sup>33</sup>

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*As much as there was a political push to improve security at the border and prevent illegal crossing, the U.S. labor market still expected and relied upon access to cheap Mexican labor.*

The period also reflected one of the central paradoxes of enforcement at the southwest border, foreshadowed by the Bracero Program decades before: as much as there was a political push to improve security at the border and prevent illegal crossing, the U.S. labor market still expected and relied upon access to cheap Mexican labor.

Although cracking down at the border had strong support, the employer sanctions law was weak and powerful business interests pushed back hard against government efforts to impose strict enforcement and penalties against employers and labor market sectors that hired unauthorized migrant workers.<sup>34</sup> As compared to the attention and increased resources given to border security, interior workplace enforcement was nearly nonexistent. This ultimately limited the effectiveness of enforcement efforts at the border, as

31 Kelly Lytle Hernandez, "Operation Wetback (1953-1954)," Immigration History, updated 2019.

32 Pedro Rios, "For 25 Years, Operation Gatekeeper Has Made Life Worse for Border Communities," *The Washington Post*, October 1, 2019.

33 Guadalupe Correa-Cabrera, *Dismantling Migrant Smuggling Networks in the Americas: A Strategy for Human Security and Homeland Security Along Migration Routes* (Cambridge, MA: Harvard Kennedy School, 2022).

34 Peter Brownell, "The Declining Enforcement of Employer Sanctions," *Migration Information Source*, September 1, 2005.

the opportunity to work in the United States remained a prime driver of unauthorized immigration to the country. The danger of crossing the border and the risk of apprehension may have increased, but the reward of a U.S. job still outweighed those considerations in the calculations and experiences of many migrants.

## 5 9/11 and the Emergence of the Modern Border Security State

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Although the substantial resource investments in border security and the changed strategy had their intended effect of altering the enforcement landscape geographically at the southwest border, overall crossing levels and apprehensions remained high. In FY 2000, the U.S. Border Patrol apprehended the highest number of migrants to date, approximately 1.6 million.<sup>35</sup> Major investments in border security had fundamentally changed border crossing patterns, but the southwest border was not under control, particularly in areas such as Arizona where the number of crossings dramatically increased as flows shifted. Due to the dangerous conditions of the Sonoran Desert and the sophisticated smuggling infrastructure that existed in the Tucson Sector, progress on the border control mission stalled in central Arizona.

Concern around border security increased dramatically following the terrorist attacks of September 11, 2001. In response, the Bush administration temporarily shut down U.S. borders and the question of who, exactly, was entering the United States took on unprecedented levels of public scrutiny.<sup>36</sup>

As the investigations into the 9/11 attacks unfolded, they revealed, among other defects in U.S. government policies and practices, serious gaps in the U.S. government's ability to provide information about dangerous people to border management agencies that were responsible for preventing such people from entering the country at and between legal ports of entry.<sup>37</sup> The fact that large numbers of people were entering the United States at the southwest border illegally and without security vetting demonstrated a potentially even larger gap in border control: what if a terrorist crossed at the southwest border? Border security, which quickly was understood to include migration management at the border, became a key focus of the domestic policy response to 9/11, which led to the largest reorganization of government since World War II. In particular, it changed the way in which federal immigration agencies defined their missions and managed the U.S. borders.

### A. *The Formation of the Department of Homeland Security*

As part of this reorganization, Congress created the U.S. Department of Homeland Security (DHS), which became operational in March 2003. Structurally, the creation of DHS remade the government's border security and management enterprise much more comprehensively than it did its counterterrorism enterprise, where the breakdown that enabled the 9/11 terrorist attacks occurred. Counterterrorism functions remained under the leadership of the Federal Bureau of Investigation (FBI) and Central

<sup>35</sup> U.S. Border Patrol, "Southwest Border Sectors: Total Illegal Alien Apprehensions."

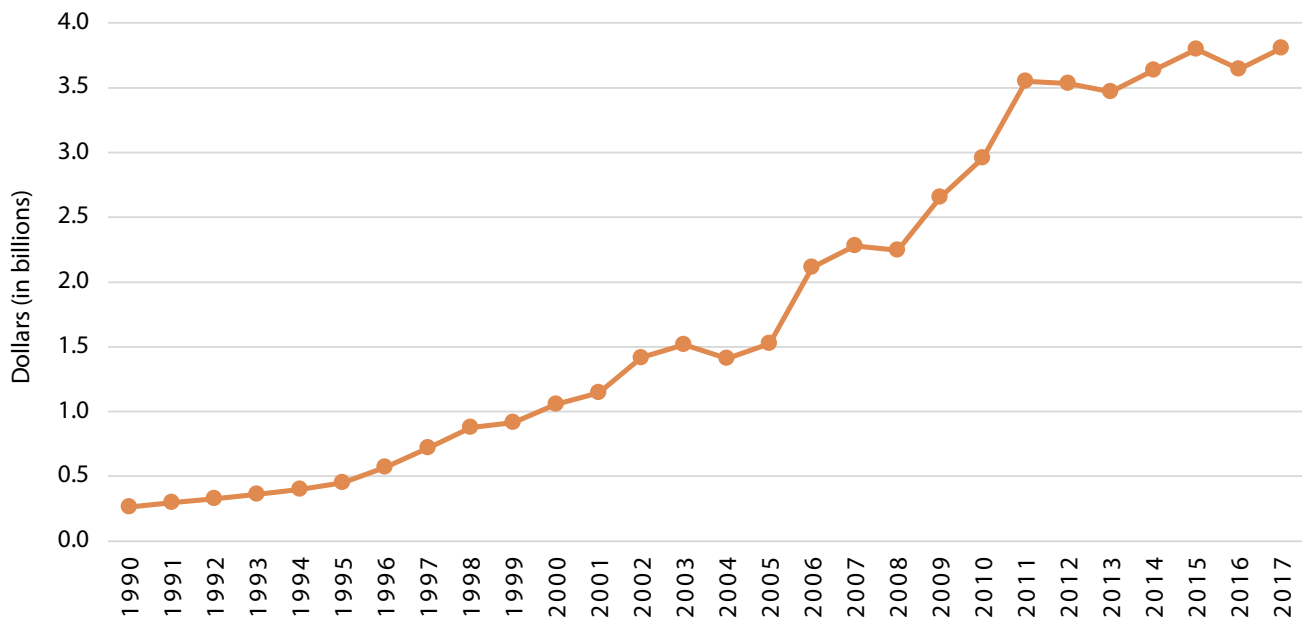
<sup>36</sup> Chappell Lawson, Alan Bersin, and Juliette N. Kayyem, eds., *Beyond 9/11: Homeland Security for the Twenty-First Century* (Cambridge, MA: MIT Press, 2020).

<sup>37</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington, DC: National Commission on Terrorist Attacks Upon the United States, 2004).

Intelligence Agency (CIA). In establishing DHS, however, Congress created a unified border management agency—U.S. Customs and Border Protection (CBP)—responsible for both immigration and customs enforcement. Congress placed within CBP the U.S. Border Patrol, as well as border inspection functions previously performed by the Customs Service, the Immigration and Naturalization Service, and the Department of Agriculture. Some significant components of the border management enterprise were not repositioned within CBP. These included investigative and detention functions, which were placed in the newly created Immigration and Customs Enforcement (ICE), another component of DHS, and the immigration courts, which remained in the Department of Justice’s Executive Office for Immigration Review.<sup>38</sup>

DHS prioritized border security, and bipartisan majorities in Congress appropriated significant increases in resources for CBP and, in particular, the Border Patrol. Among the key investments, Congress provided resources to again double the number of Border Patrol agents.<sup>39</sup> Moreover, in 2011, Congress mandated that the number of Border Patrol agents could not drop below 21,370, with the vast majority of these agents deployed to the southwest border.<sup>40</sup> In so doing, along with the more modest growth in CBP’s Office of Field Operations officers (who staff and manage ports of entry) and its Air and Marine Operations agents, CBP became the largest federal law enforcement agency in the United States and one of the largest law enforcement agencies in the world.

**FIGURE 2**  
**U.S. Border Patrol Budget, FY 1990–2017**



Source: U.S. Border Patrol, “Enacted Border Patrol Program Budget by Fiscal Year,” accessed October 4, 2023; U.S. Border Patrol, “U.S. Border Patrol Budget History,” accessed October 4, 2023.

<sup>38</sup> For a full breakdown of which organizations became part of the U.S. Department of Homeland Security (DHS), see DHS, “Who Joined DHS,” updated February 27, 2023.

<sup>39</sup> U.S. Border Patrol, “Border Patrol Agent Nationwide Staffing.”

<sup>40</sup> DHS Office of the Inspector General, *Border Patrol Needs a Staffing Model to Better Plan for Hiring More Agents* (Washington, DC: DHS, 2019).



The growth in the size of the Border Patrol, in particular, posed significant challenges for DHS and CBP during this time period. Any organization that is required to grow that quickly and to such large numbers will experience difficulties in recruiting, training, deploying, and effectively utilizing new employees. But these challenges were amplified in CBP by the unique nature of its operational environment. Border Patrol agents generally work in remote areas, where they often lack the immediate support and supervision they need. Further, the work is demanding and often dangerous, and given the isolated nature of much border terrain, agents can be targeted by criminal organizations as part of corruption schemes.<sup>41</sup> Challenging under normal circumstances, these issues were all the more pressing as the agency doubled in size, bringing thousands of new agents into its ranks.

To assist the Border Patrol while it hired and deployed new agents, the Bush administration deployed 6,000 National Guard troops to the border from 2006 to 2008 in Operation Jump Start to assist in identifying and apprehending border crossers.<sup>42</sup> Although prohibited from taking law enforcement actions such as apprehending or arresting migrants, National Guard personnel provided numerous other kinds of support to CBP and the Border Patrol, ranging from training to intelligence analysis to logistical assistance.<sup>43</sup>

Some observers consider the use of National Guard resources as a “militarization” of the border,<sup>44</sup> and the issue has engendered significant interagency conflict; many within the national security establishment, particularly at the Department of Defense, do not view this mission as warranting the use of National Guard resources. The debate, more fundamentally, is whether border security is in fact an aspect of national security or strictly a civilian law enforcement function. These questions notwithstanding, multiple administrations both prior to and since the 2000s have turned to National Guard support in border enforcement. The practice continued through the Obama administration, and the Trump administration deployed even greater levels of Department of Defense support at the border, including active-duty military personnel.

This increase in staffing was accompanied by significant new investments in technology and surveillance capabilities at CBP. Some of the most notable included:

- ▶ CBP established Air and Marine Operations in January 2006, which became the largest civilian law enforcement air fleet in the world, to provide operational support through a mix of fixed-wing and rotary aircraft.
- ▶ CBP began adapting military systems to the civilian border environment, including (unarmed) Predator drones and tethered aerostats to monitor illicit crossing attempts and to enable faster enforcement responses.

41 *New Border War: Corruption of U.S. Officials by Drug Cartels*, hearing before the Ad Hoc Subcommittee on State, Local, and Private Sector Preparedness and Integration of the Committee on Homeland Security and Governmental Affairs, U.S. Senate, Senate Hearing 111-649, 111th Cong., 2nd sess., March 11, 2010.

42 White House, “Fact Sheet: Operation Jump Start: Acting Now to Secure the Border,” updated August 3, 2006.

43 David Aguilar, “I Ran U.S. Border Patrol—And I Support Trump’s Call to Deploy the National Guard,” *The Atlantic*, April 13, 2018.

44 See, for example, Joseph Nunn, “As Title 42 Comes to an End, So Should Military Operations at the US-Mexico Border,” Just Security, May 19, 2023; American Civil Liberties Union of Texas Border Rights Center, “Written Statement Submitted to the Inter-American Commission on Human Rights” (statement, December 6, 2018).

- ▶ DHS launched a major technology development project called the Secure Border Initiative Network (SBI-net) to develop a “virtual fence” that would integrate a network of sensors and cameras to provide comprehensive situational awareness at the border. While this effort was unsuccessful and DHS ultimately canceled it, the program was followed by a major increase in the deployment of ground sensors, fixed and mobile camera systems, surveillance towers, and expanded communication networks to support on-the-ground enforcement by agents.
- ▶ CBP built extensive new infrastructure at the border to support operational responses to illicit crossing, including expanded fencing in and near urban centers, Normandy-type vehicle barriers in rural areas, lighted roadway networks on the border boundary line, and forward operating bases in the desert.

## B. *Bipartisan Border Security Consensus and Efforts at Immigration Reform*

Throughout this period there was broad bipartisan support for continued investments in border security. In addition to increased Border Patrol staffing, the *Secure Fence Act of 2006*, signed by President George W. Bush, provided resources for major expansions of physical barriers and required regular reports from the Homeland Security Secretary on border control progress.<sup>45</sup> This law passed the Senate with an 80–19 majority (notably including the support of then-Senators Barack Obama and Hillary Clinton).<sup>46</sup> The act placed into law a standard that defined “operational control” of the border as the ability to respond to and prevent 100 percent of illegal entries. Unrealistic and unachievable, the standard has consistently provoked heated rhetoric concerning the meaning of “border security” and the Border Patrol’s capacity to properly carry out its mission.

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*Support from across the aisle for increased border security resources continued throughout the 2000s and into the early 2010s.*

Support from across the aisle for increased border security resources continued throughout the 2000s and into the early 2010s, often as a component of negotiations over comprehensive immigration reform. It was not until the failure of the “Gang of 8” immigration bill in 2013, the last major effort at immigration reform across the aisle, that bipartisan support for border security resources began to erode.

The efforts at immigration reform during this period reflected a centrist consensus around addressing three main elements of the immigration enterprise: further growth of border security resources, a path to citizenship for unauthorized migrants already in the country, and the establishment of a guest worker program for Mexican seasonal workers. The key attempts at passing comprehensive immigration reform during the Bush administration, all of which failed, included the *Secure and Orderly Immigration Act of 2005*, also known as the McCain–Kennedy Bill; the *Comprehensive Enforcement and Immigration Reform Act of 2005*, also known as the Cornyn–Kyl Bill; and the *Comprehensive Immigration Reform Act of 2006*.

<sup>45</sup> White House, “Fact Sheet: The Secure Fence Act of 2006,” updated October 26, 2006.

<sup>46</sup> U.S. Senate, “Roll Call Vote on Passage of the Bill (H.R. 6061),” 109th Cong., 2nd sess., September 29, 2006.

These bills were integrated into the compromise *Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007*, which was sponsored by then-Democratic Majority Leader Harry Reid and strongly supported by Republican President George W. Bush, who had proposed broad immigration legislation immediately after he was elected in 2000 but that was sidetracked in the wake of 9/11. Despite this bipartisan backing, the bill received major criticism from immigration advocates and opponents alike, and it never passed the Senate.<sup>47</sup>

## 6 The Border Is under Control, the Border Is out of Control

As the Obama administration began in 2009, the main focus of public discussion about the southwest border was on continuing border security efforts and the president's commitment to enacting immigration reform. These issues were inextricably intertwined: further investing in and improving border security was seen as a necessary foundation for legislative negotiations and compromise. With the backdrop of continued work in Congress on comprehensive immigration reform, the Obama administration maintained the general approaches to southwest border enforcement of the two prior administrations.

By 2009, there had been a considerable downtick in the number of southwest border apprehensions. From FY 1990 through FY 2006, there had been (nearly) 1 million apprehensions each year. Those numbers dropped in FY 2007 and FY 2008 to approximately 850,000 and 700,000,

respectively,<sup>48</sup> and continued to decrease throughout the post-2008 financial crisis recession until migration from Mexico reached net negative levels.<sup>49</sup> This drop in apprehensions at the border would continue through the Obama administration and into the beginning of the Trump administration.

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*Following the earlier successful enforcement efforts in urban areas such as El Paso and San Diego, the epicenter of illegal border crossings had shifted to remote areas in Arizona.*

Following the earlier successful enforcement efforts in urban areas such as El Paso and San Diego, the epicenter of illegal border crossings had shifted to remote areas in Arizona, particularly the Border Patrol's Tucson Sector, which covers most of the state. In FY 2009, the Tucson Sector—with approximately 242,000 apprehensions—tallied the largest number of apprehensions along the southwest border (see Figure 3), although, like other sectors, it had also experienced significant decreases in unlawful crossing activity by then. Nonetheless, this level of enforcement activity was more than double that of the next highest sector (San Diego) and roughly four times the level in the third highest sector (Rio Grande Valley).<sup>50</sup>

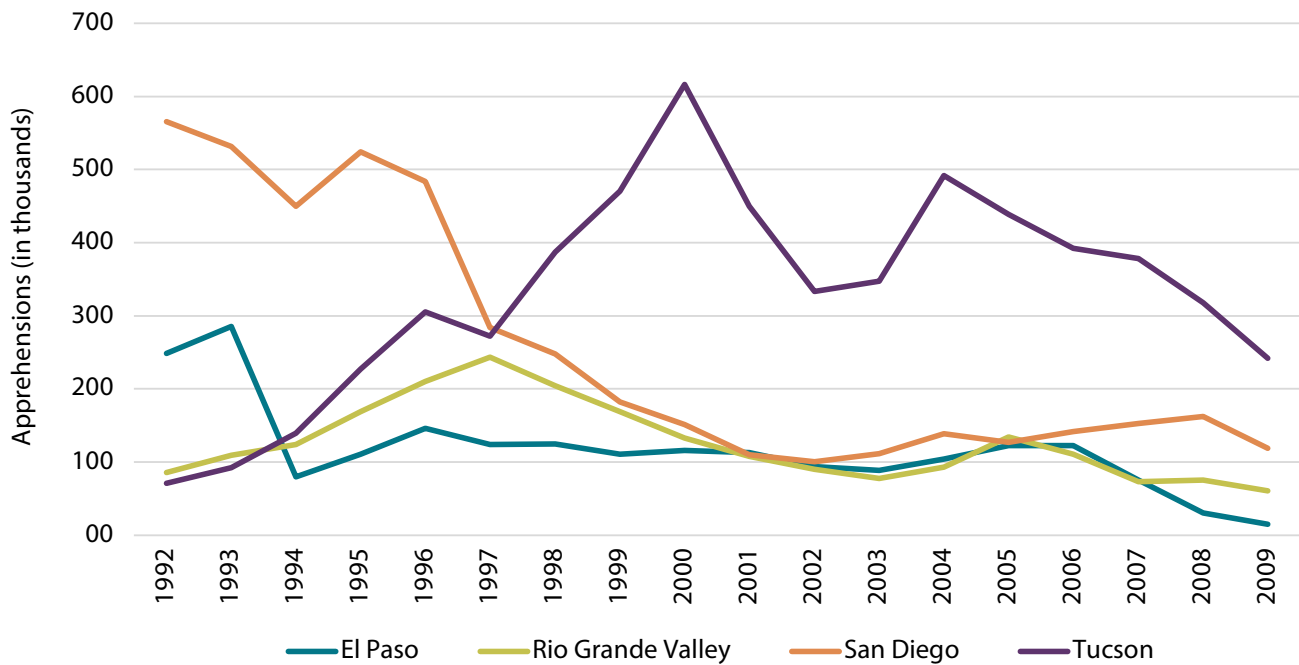
47 CNN, "Senate Immigration Bill Suffers Crushing Defeat," updated June 28, 2007.

48 U.S. Border Patrol, "Southwest Border Sectors: Total Illegal Alien Apprehensions."

49 Ana Gonzalez-Barrera, "More Mexicans Leaving Than Coming to the U.S.," Pew Research Center, November 19, 2015.

50 U.S. Border Patrol, "Southwest Border Sectors: Total Illegal Alien Apprehensions."

FIGURE 3

**Apprehensions in the San Diego, Rio Grande Valley, Tucson, and El Paso Sectors, FY 1992–2009**

Source: U.S. Border Patrol, "Southwest Border Sectors: Total Encounters by Fiscal Year."

The continued high levels of unlawful crossing led to a major political backlash that resulted in Arizona's passage of the *Support Our Law Enforcement and Safe Neighborhoods Act* (known generally as SB 1070) in 2010. The law made it a misdemeanor under state law for migrants to be present in Arizona without legal documents, and it required state law enforcement officers to ascertain an individual's immigration status when they had a reasonable suspicion that a migrant may have entered the United States illegally.<sup>51</sup> The law was challenged and subsequently overturned by the Supreme Court, reinforcing the federal government's primacy in immigration enforcement matters.

At the same time, there remained a centrist consensus that a compromise on immigration reform was achievable and that improvements in border security would enable a deal on comprehensive immigration reform. This approach was exemplified by a bipartisan report published by the Council on Foreign Relations in August 2009 that was coauthored by former Clinton White House Chief of Staff Thomas "Mack" McLarty and former Florida Governor Jeb Bush. The report identified the continued disconnect between increasing security investments on the border with minimal employer enforcement and the continued high demand for unauthorized migrant labor, with the introduction stating:

*"The continued failure to devise and implement a sound and sustainable immigration policy threatens to weaken America's economy, to jeopardize its diplomacy, and to imperil its national security."<sup>52</sup>*

51 Randal C. Archibold, "Arizona Enacts Stringent Law on Immigration," *The New York Times*, April 23, 2010.

52 Jeb Bush, Thomas F. McLarty III, and Edward Alden, *U.S. Immigration Policy*, Independent Task Force Report No. 63 (New York: Council on Foreign Relations, 2009).



This period also saw a dangerous new phenomenon in Mexico, as organized crime, which had long operated in an “under the radar” mentality, began to assert its power, unleashing a wave of devastating violence that engulfed large areas of the country. Civilians became targets for the criminal organizations or collateral casualties, and there was genuine concern within the U.S. government that the gang warfare in Mexico could threaten border communities in the United States with spillover violence. Following the decision by Mexican President Felipe Calderón to confront Mexico-based drug trafficking organizations,<sup>53</sup> as well as an attempt by the Sinaloa Cartel to take over the lucrative Ciudad Juárez plaza from the Juárez Cartel (also known as the Carrillo Fuentes Organization), violence on the Mexican side of the border exploded.<sup>54</sup> The homicide rate in Mexico more than doubled from 8 to 24 per 100,000 inhabitants between 2007 and 2010 and then remained at elevated levels.<sup>55</sup>

## A. *The Obama Administration Focuses on the Border*

The Obama administration responded to these challenges with a series of steps to improve enforcement capabilities at the southwest border. The innovations included: reconfiguring technology deployments to better align with requirements across different terrain in the various border regions; integrated, joint operations that coordinated the work of multiple law enforcement agencies; strategic targeting of enforcement consequences; improved cooperation with Mexican counterparts; and a series of operations to counter binational organized criminal activity along key corridors in the United States and Mexico.

Many of these enhancements focused on Arizona, given the high levels of illegal crossing activity there. In addition to the strategic shifts noted above, the administration deployed 1,200 National Guard troops to assist CBP as part of its Operation Phalanx<sup>56</sup> and sought supplemental resources from Congress.<sup>57</sup> After canceling the SBI-net virtual fence program, DHS reconceived its surveillance needs around identifying and addressing the unique circumstances of specific areas, rather than applying a one-size-fits-all solution to the entire border. DHS further utilized a taskforce model to bring together different federal, state, and local law enforcement agencies to integrate their respective authorities and missions under a common strategic umbrella.

CBP also established and implemented what it termed the Consequence Delivery System (CDS). To strengthen deterrence, CDS established a proportionate sanction for any given instance of illegal border crossing. Whereas in the past a smuggler might be caught dozens of times and repeatedly returned voluntarily, now border crossers involved in criminal activity would receive comparatively onerous sanctions (whether criminal or administrative) while economic migrants would receive expedited removal processing and be targeted for return to various locations deeper into Mexico.<sup>58</sup> With the increased resources the Border Patrol had received, it could now handle this more time-consuming processing and steadily moved

53 ABC News, “Mexican President Vows to Win Drug War,” ABC News, April 15, 2009.

54 Alicia A. Caldwell and Mark Stevenson, “AP Exclusive: Sinaloa Cartel Wins Juarez Turf War,” *The Seattle Times*, April 9, 2010.

55 Macrotrends, “Mexico Murder and Homicide Rate,” accessed October 4, 2023.

56 Army National Guard, “Army National Guard Operation Phalanx,” updated May 19, 2011.

57 White House, “Statement by the President on the Passage of the Southwest Border Security Bill” (press release, August 12, 2010).

58 Randy Capps, Faye Hipsman, and Doris Meissner, *Advances in U.S.-Mexico Border Enforcement: A Review of the Consequence Delivery System* (Washington, DC: Migration Policy Institute, 2017).

away from decades of voluntary return practices, which functioned as a proverbial “revolving door” at the border, and toward a new system of consequence enforcement.

The administration reached record high levels of deportations<sup>59</sup> and continued to exercise discretion to focus interior enforcement resources, including prosecution, on migrants with criminal records. Finally, CBP experimented with reorganizing its operational structure in the field by creating the Joint Field Command in Arizona. CBP placed all of the agency’s law enforcement assets under a unified command structure as opposed to the traditional divisions between Border Patrol sectors and Office of Field Operations districts. CBP augmented these policy and strategic shifts by surging personnel to the area.<sup>60</sup>

## ***B. Reductions in Illicit Border Crossings***

The result of these efforts was a major drop in apprehensions in the Tucson Sector. From FY 2009 to FY 2012, apprehensions decreased from approximately 240,000 to 120,000, and further declined through the 2010s, reaching a low of approximately 39,000 in FY 2017. Overall apprehension numbers across the border had fallen dramatically as well. From the high-water mark of 1.6 million in FY 2000, apprehensions dropped to 350,000 by FY 2012, and through FY 2018 fluctuated between 300,000 and 400,000 per year, the lowest in a generation.<sup>61</sup>

Given the operational footprint of CBP and the Border Patrol, these overall numbers reflected a level of illicit crossing activity that was eminently manageable. With about 17,000 Border Patrol agents at the southwest border,<sup>62</sup> this amounted to roughly 24 apprehensions a year per agent, supported by a well-developed system for processing and returning Mexican migrants to Mexico.

In addition, the reduced levels coincided with two broader structural forces that were external to the historic investments in border enforcement and operational innovations CBP had made. The first was steeply reduced labor market demand and jobs for foreign-born workers due to the Great Recession that began in 2007–08. Second, Mexico’s economy had grown steadily for a sustained period and was, for the first time, generating sufficient jobs for the numbers of new Mexican workers entering its labor force. This demographic shift changed the push-pull underpinnings of decades of unauthorized immigration from Mexico to the point that more Mexican nationals were returning to Mexico than were entering the United States. This new normal might have prevailed and constituted acceptable levels of border control had the characteristics of the migrant population itself not dramatically changed soon thereafter.

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59 See, for example, ABC News, “Obama Has Deported More People than Any Other President,” ABCNews.com, August 29, 2016; Alex Nowrasteh, “Deportation Rates in Historical Perspective,” Cato Institute, September 16, 2019.

60 CBP, “CBP Announces Arizona Joint Field Command,” updated February 3, 2021.

61 U.S. Border Patrol, “Southwest Border Sectors: Total Illegal Alien Apprehensions.”

62 U.S. Border Patrol, “Border Patrol Agent Nationwide Staffing.”

This period also saw significant changes in the nature of U.S. cooperation with Mexico concerning border management. Following the inauguration of President Calderón, the Mexican government became decidedly more receptive to security collaboration with the United States. A crucial breakthrough came with the signing of the Mérida Initiative in 2007 by Presidents Bush and Calderón. It represented a historic recognition of the binational nature of the organized crime problem in Mexico. Mérida led to unprecedented law enforcement cooperation between the countries, coupled with a substantial commitment of U.S. financial support to Mexico as it confronted the serious threat posed by organized crime.<sup>63</sup>

President Obama built upon the Mérida Initiative by declaring “co-responsibility” for mutual problems. The most public manifestation of this new cooperation was “Mérida 2.0”: a binationally coordinated process aimed at strengthening the rule of law, diminishing irregular migration, dismantling and defeating drug cartels, building resilient communities, and, most significant as it relates to the southwest border, creating a “21st century U.S.-Mexico border.”<sup>64</sup> Along with other binational initiatives and cooperation, this created the groundwork for the two nations to pursue a much deeper and more robust institutionalized agenda related to coordinated or shared border management, including comprehensive programs to expedite lawful trade and travel. The countries further deepened their cross-border collaboration when Presidents Obama and Calderón announced the U.S.-Mexico 21st Century Border Management Initiative in 2010,<sup>65</sup> which established a list of prioritized measures for binational border cooperation together with an organizational structure to implement and sustain them.

Although migration management did not fit neatly into these initiatives, and there remained a historical hesitation on the part of Mexico to address the issue (for domestic political reasons), these initiatives created relationships, experiences, and a level of trust that would be critical in the coming years as the southwest border began to confront a new migration crisis, one that reverberated not just in the United States but in Mexico as well.<sup>66</sup>

### C. *Massive Increases in Central American Border Crossers*

A dramatic change began around 2014 when the demographics of migrants attempting to cross the border illicitly began to shift, ultimately growing into a full-blown crisis. Whereas previously the vast majority of southwest border migrants were Mexicans seeking work, large numbers of Central Americans began arriving at the border, including particularly vulnerable populations such as unaccompanied children and family groups.<sup>67</sup> Many of these Central Americans lodged asylum claims, asking for humanitarian protections based on persecution, often so-called “private violence” (including gang and domestic violence), and general insecurity in their home countries. These migrants did not seek to evade apprehension after crossing the border but instead sought out Border Patrol agents in order to make their asylum claims.

63 Clare Ribando Seelke, *Mexico: Evolution of the Mérida Initiative, FY2008-FY2021* (Washington, DC: Congressional Research Service, 2021).

64 Seelke, *Mexico: Evolution of the Mérida Initiative*.

65 National Archives, “Joint Statement from President Barack Obama and President Felipe Calderón” (statement, May 19, 2010).

66 White House, “Declaration by the Government of the United States of America and the Government of the United Mexican States Concerning Twenty-First Century Border Management” (press release, May 19, 2010).

67 Fernanda Santos, “Border Centers Struggle to Handle Onslaught of Young Migrants,” *The New York Times*, June 18, 2014.

Once an asylum claim is made, the claimant is given a “credible fear” test to assess if their claim merits being adjudicated in formal immigration court proceedings. This test has a relatively low threshold, and the vast majority of Central Americans who have arrived since 2014 have met the standard. Claimants who meet this standard are generally released (paroled) into the United States (or in the case of unaccompanied children, eventually placed with a relative or other guardian). While asylum seekers wait for their case to be processed through the immigration court system, they are allowed to attend school and, in some situations, work after 180 days have passed since filing their asylum application.<sup>68</sup>

The numbers of Central Americans arriving at the border began to increase in about 2012. By Summer 2014, this had become a full-blown crisis, dominated by unaccompanied minors. The changed flows would recur and grow in the coming years, presenting uncomfortable questions for U.S. policymakers and border officials: how could the U.S. border security enterprise, by then the most advanced and well-resourced in the world, face such deep difficulties with these migrants, the vast majority of whom were not seeking to evade apprehension but, instead, turn themselves in, claiming protection under the law of asylum?

The answer resides in the profound mismatch that has developed between the border apparatus the United States had built and this new form of mass migration. The United States had built a border security enterprise to identify, apprehend, and process a certain type of migrants—single Mexican adults seeking employment. From its infrastructure to staffing to processing policies, this system was not designed to handle asylum seekers, and particularly not in large numbers. Thus, border authorities were quickly overwhelmed. DHS and CBP lacked the resources and policies to process, efficiently and effectively, the much more administratively complex claims that asylum seekers present.

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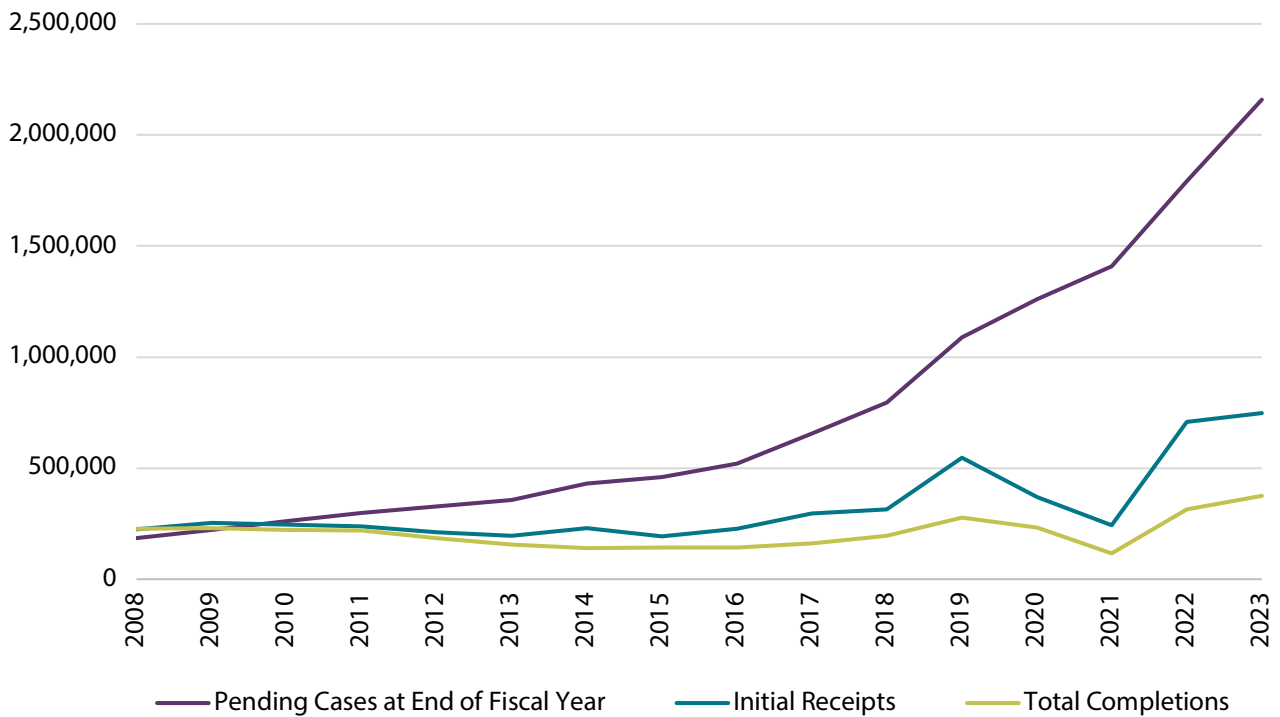
*The changed flows would recur and grow in the coming years, presenting uncomfortable questions for U.S. policymakers and border officials.*

The challenges for DHS were particularly acute in the case of children, who present even more stringent care and processing requirements. Unaccompanied children, who under U.S. law must be transferred to the care of the Department of Health and Human Services’ Office of Refugee Resettlement within 72 hours, ended up stuck for days or weeks in crowded Border Patrol adult detention facilities. Identifying, staffing, opening, and operating appropriate facilities to shelter children and families as they were processed all proved to be significant challenges. The immigration courts, which were already severely backlogged in 2013, soon had multiyear delays in their processing of cases, which meant that asylum seekers could spend years in U.S. communities without knowing whether they would be allowed to stay (see Figure 4).<sup>69</sup>

<sup>68</sup> Diana Roy, “Seeking Protection: How the U.S. Asylum Process Works,” Council on Foreign Relations, May 10, 2023.

<sup>69</sup> Muzaffar Chishti and Julia Gelatt, “Mounting Backlogs Undermine U.S. Immigration System and Impede Biden Policy Changes,” *Migration Information Source*, February 23, 2022.

**FIGURE 4**  
**Immigration Court Case Backlog, FY 2008–23**



Source: Executive Office for Immigration Review, “Workload and Adjudication Statistics – ‘Pending Cases’ and ‘New Cases and Total Completions,’” accessed November 30, 2023.

The Obama administration tried multiple approaches to resolve the challenges of processing large numbers of asylum seekers, including turning to Mexico for assistance. Starting in 2015, Mexico surged personnel for migration enforcement along its southern border with Guatemala and began detaining and removing large numbers of Central American irregular migrants. This caused significant drops in the number of apprehensions at the U.S.-Mexico border and temporarily provided relief for the overwhelmed U.S. migration management system. However, the underlying change in migration dynamics in the region has persisted and deepened. Thus, although the flows of unauthorized migrants were at historic lows when President Obama left office in January 2017,<sup>70</sup> significant new tensions remained unresolved and the new challenges of border control posed by the changing demographics of arriving migrants would continue to vex U.S. officials in the ensuing years.

## 7 The Trump Administration at the Border

Donald Trump’s presidential campaign focused on border and immigration enforcement to a far greater extent than any of his predecessors. Not only did he focus more intently on the issues than prior major candidates, but he also charted a new policy framework that deviated substantially from the general contours of the Clinton, Bush, and Obama administrations. He described the southwest border and illicit migration less as a problem to be managed and more as a significant security threat to the United States. His

<sup>70</sup> U.S. Border Patrol, “Southwest Border Sectors: Total Illegal Alien Apprehensions.”



policies were, therefore, more far-reaching and enforcement oriented. During the campaign, Trump assailed the Mexican government, warned that migrants included criminals and rapists, and promised to build a physical wall across the entire border that the Mexican government would fund.<sup>71</sup> In a dramatic departure from any other major presidential campaign since Pat Buchanan in 1992, unauthorized migration was at the core of the campaign's theme and messaging.

Given the extent of his campaign rhetoric, there was a broad expectation of aggressive migration enforcement, and the Trump administration in fact attempted to follow through with many of these campaign promises, despite being beset by implementation difficulties. During its first week, the administration released an executive order titled *Protecting the Nation from Foreign Terrorist Entry into the United States*. Known colloquially as "the Muslim ban," it halted all travel from Yemen, Syria, Sudan, Iran, Iraq, Libya, and Somalia for 90 days.<sup>72</sup>

In the same week, the administration released the *Border Security and Immigration Enforcement Improvements* executive order, which directed that a wall be built across the entire southwest border.<sup>73</sup> Building infrastructure such as fencing had long been a component of the U.S. government's strategy at the border, but the Trump administration's commitment to a border-long wall was unprecedented.

But despite his administration's early efforts to pursue the border wall, there was little actual progress in building it during the first year in office. Whatever reservoir of bipartisan support for border security remained in Congress was not sufficient to result in budgetary support. Mexican authorities showed no willingness to pay for wall construction, as Trump had promised during his campaign. And the administration had to confront the bureaucratic, legal, and logistical challenges attendant to such a significant public works project. The relatively low numbers of unauthorized border crossings at the time also undermined the political and policy justification for such a vast undertaking.<sup>74</sup>

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*Despite his administration's early efforts to pursue the border wall, there was little actual progress in building it during the first year in office.*

Beginning in late 2017, however, the number of apprehensions at the border began to increase, as Central American asylum seekers found that, despite the administration's aggressive enforcement rhetoric, asylum remained a viable option for gaining entry into the United States. By March 2018, the number of apprehensions of asylum seekers and other migrants at the border was three times as high as the previous year.<sup>75</sup> In addition to unaccompanied children and family groups (the populations that present the most challenges for border officials), migrants increasingly began arriving in so-called "caravans" involving thousands of people, including single adults. The rapid increase in numbers, standing difficulties in

71 Nick Corasaniti, "A Look at Trump's Immigration Plan, Then and Now," *The New York Times*, August 31, 2016.

72 Executive Office of the President, "Protecting the Nation from Foreign Terrorist Entry Into the United States," *Federal Register* 82, no. 20 (February 1, 2017): 8977–8982.

73 Executive Office of the President, "Border Security and Immigration Enforcement Improvements," *Federal Register* 82, no. 18 (January 30, 2017): 8793–8797.

74 Cristobal Ramón and Tim O'Shea, "Border Deterrence: The Limitations of Rhetoric," Bipartisan Policy Center, August 2, 2018.

75 CBP, "Southwest Border Migration FY2018," updated September 28, 2022.

processing and caring for asylum seekers, and renewed public attention to the border caused significant alarm within the administration.

The administration sought to crack down, and subsequently embarked on some of the most controversial border enforcement policies in recent decades: zero-tolerance prosecution and family separation, the Migrant Protection Protocols (colloquially called the “Remain in Mexico” policy), and a showdown with congressional Democrats over border-wall funding after the 2018 election.

The United States had tried before to criminally prosecute its way out of elevated border crossings. During the 1980s and early 1990s, the U.S. government prosecuted substantial numbers of Mexican economic migrants for misdemeanor illegal entry. The problem with this approach was that prosecution did not appear to have much deterrent effect, and it severely strained the prosecutorial and detention capabilities of the U.S. government along the border. The federal government moved away from this approach in the 1990s in favor of targeted felony prosecution of “criminal aliens” for illegal reentry and administrative remedies such as expedited removal and lateral repatriation (whereby migrants are returned to different locations from where they initially crossed to make reentry more difficult).<sup>76</sup>

The Trump administration, led by Attorney General Jeff Sessions and DHS officials, sought to reinstate mass prosecution as a response to unauthorized migration. In May 2018, after a 2017 pilot program,<sup>77</sup> the administration implemented its “zero-tolerance” program, in which all adults caught crossing the border illegally would be criminally prosecuted. The administration did not make exceptions for those claiming asylum or adults arriving with minor children.<sup>78</sup> The policy was met with swift pushback because, in the latter case, the administration separated those adults and children and put them into different and disconnected processes: parents would go to the Department of Justice for criminal prosecution and children would be processed through the Department of Health and Human Services.

The zero-tolerance policy and family separations were not coordinated across the relevant federal departments before the Trump administration ordered their implementation. The result was a chaotic situation that caused severe adverse outcomes for migrant families and generated a major public controversy. The agencies responsible for implementing the policy were not prepared; they lacked resources to care for the children, and a reliable system or process to track where the children were taken was entirely absent. Thousands of parents and children were not able to be reunited for months after the quick prosecutions (and generally no additional jail time) returned the parents to CBP custody. After bipartisan public outcry,<sup>79</sup> the administration soon was forced to reverse the policy. The government’s actions also faced significant legal challenges, and the federal courts ultimately ordered the government to reunite

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76 Alan Bersin, Nate Bruggeman, and Ben Rohrbaugh, “Trump’s ‘Zero Tolerance’ Bluff on the Border Will Hurt Security, Not Help,” *The Washington Post*, May 31, 2018.

77 Lomi Kriel, “El Paso Judge Denies Motion of Immigrant Parents Separated from Children,” *Houston Chronicle*, November 27, 2017; Lisa Riordan Seville and Hannah Rappleye, “Trump Admin Ran ‘Pilot Program’ for Separating Migrant Families in 2017,” *NBC News*, June 29, 2018.

78 William A. Kandel, *The Trump Administration’s “Zero Tolerance” Immigration Enforcement Policy* (Washington, DC: Congressional Research Service, 2021).

79 Jeff Cirillo, “Here Are the Republicans Opposing Migrant Family Separation,” *Roll Call*, June 19, 2018.

families. However, due to the lack of coordination and oversight, the U.S. government has been unable to fully and properly account for all of the children it separated from their parents.<sup>80</sup>

Operationally, the zero-tolerance policy and family separation did not have the effect that the administration had intended: Central American asylum seekers, including family groups, continued to arrive at the border in significant numbers. At its core, it appears that the Trump administration misunderstood the nature and intensity of asylum seekers' motivations to leave their home countries, and they further misunderstood the political ramifications of their policy choices. However concerned Americans were with border security and better managing unauthorized migration, a significant majority of the public was unwilling to condone policy prescriptions—particularly the separation of migrant children from their families—that appeared patently cruel.<sup>81</sup>

Shortly after the 2018 election, in which the Republican Party lost control of the House of Representatives, President Trump doubled down on his demand to build a wall: he announced that if Congress would not give him what he wanted, he would shut the government down. When Congress still refused to provide appropriations for the border wall, the president carried through with his threat. The disruptions caused by this were significant enough that the president was forced to back down and reopen the government.<sup>82</sup>

President Trump then declared a national emergency at the border, deployed active-duty military personnel, and ordered various funds appropriated for other purposes (presumptively at the Department of Defense) be allocated for wall construction without the approval of Congress.<sup>83</sup>

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*Paradoxically, the most border-security-focused administration in history was facing record numbers of border apprehensions.*

The political battle over President Trump's border wall had little actual effect on the flows of unauthorized migrants coming to the United States. In fact, the number of people crossing the border illegally grew in the beginning of 2019, reaching approximately 144,000 in May 2019.<sup>84</sup> Paradoxically, the most border-security-focused administration in history was facing record numbers of border apprehensions.

The Trump administration, like the Obama administration before it, eventually turned to Mexico. However, the bilateral relationship was strained at the time. Mexico had elected Andrés Manuel López Obrador (widely known by his initials, AMLO) as president in December 2018, and his policy platform differed sharply from his recent predecessors. AMLO attempted to deemphasize the law enforcement and military response to organized crime, and he embodied a more traditional view of migration management as a U.S. problem. President Trump's rhetoric about Mexico had also been very negative. Given these factors, AMLO's administration was not predisposed to collaborate with the United States on addressing the movement of Central American migrants. It was only after President Trump threatened Mexico with crippling tariffs if it

80 Caitlin Dickerson, "Parents of 545 Children Separated at the Border Cannot Be Found," *The New York Times*, March 15, 2021; Jasmine Garsd, "U.S. Government Agrees to Settlement with Migrant Families Separated at the Border," NPR, October 16, 2023.

81 Dylan Matthews, "Polls: Trump's Family Separation Policy Is Very Unpopular — Except among Republicans," *Vox*, June 18, 2018.

82 Andrew Restuccia, Burgess Everett, and Heather Caygle, "Longest Shutdown in History Ends after Trump Relents on Wall," *Politico*, January 25, 2019.

83 Jessica Taylor and Brian Naylor, "As Trump Declares National Emergency to Fund Border Wall, Democrats Promise a Fight," NPR, February 15, 2019.

84 CBP, "Southwest Border Migration FY 2019," updated November 14, 2019.

did not act that AMLO's administration began working substantively with the United States on migration.<sup>85</sup> These threats represented an unprecedented conflation of trade and migration issues in the U.S.-Mexico relationship. However, the Trump administration also had misunderstood the political impact its approach to immigration would have in Mexico.

On November 11, 2020, Mexico's Congress approved changes to immigration legislation, prohibiting the detention of accompanied and unaccompanied minors in immigration facilities. Since January 2021, children identified by the Mexican immigration service must be turned over to shelters administered by Mexico's child protection agency (Desarrollo Integral de la Familia), which must provide a nondetention environment for the children and maintain the integrity of family units comprised of children and their accompanying adults (who do not have to be biologically related).<sup>86</sup> This legal requirement significantly reduced Mexico's ability to manage irregular migration as adults increasingly attached themselves to minors, in a regrettable exploitation scheme, that allowed the adults to transit Mexico unimpeded by the risk of detention and repatriation—and then to separate upon reaching the United States. Predictably, this has led to sustained high levels of unaccompanied children encountered by CBP since February 2021.

Three Trump administration programs resulted from this pressure that proved more successful in stemming migrant arrivals in 2019. The first was the Migrant Protection Protocols, which began in January 2019 and was expanded thereafter. Under this program, many Central American asylum seekers would not be paroled into the United States pending adjudication of their asylum claims. Rather, claimants would be required to remain in Mexico during the pendency of their immigration case before an U.S. immigration court.<sup>87</sup> This program removed a key incentive for migrants, which is being able to live and work in the United States as they waited (years) for the immigration courts to adjudicate their claims. The services and job opportunities in Mexico were paltry by comparison, and many border areas experienced severe lawlessness as organized crime and gangs battled each other for territory and against the Mexican government. Migrants became easy targets to exploit for criminals, and the Mexican government had limited ability to mitigate threats such as kidnapping and extortion.<sup>88</sup>

The second critical change was securing Mexico's agreement to commit additional resources to addressing the flows of Central American migrants through Mexican territory to the U.S. border. Mexico deployed additional law enforcement and security personnel, including AMLO's newly deployed National Guard, to border security operations, both at its southern border with Guatemala and at the U.S.-Mexico border, as well as to support interior enforcement.<sup>89</sup> Mexico further agreed to provide additional Central American migrants with authorization to stay in Mexico, and to take steps to increase enforcement related to migrant transportation across the country.

The third policy change involved making migrants who arrived at the U.S. southern border ineligible for asylum if they had transited through a third country (one other than their country of origin) and not

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85 Jill Colvin, Matthew Lee, and Luis Alonso Lugo, "Trump Says Tariffs on Mexico Suspended Indefinitely," AP, June 8, 2019.

86 Gustavo Guerra, "Mexico: Migration Law Amendment Requires Placing Undocumented Children in Shelters, Not Detention Centers," Library of Congress, February 26, 2021.

87 American Immigration Council, "The 'Migrant Protection Protocols'" (fact sheet, January 7, 2022).

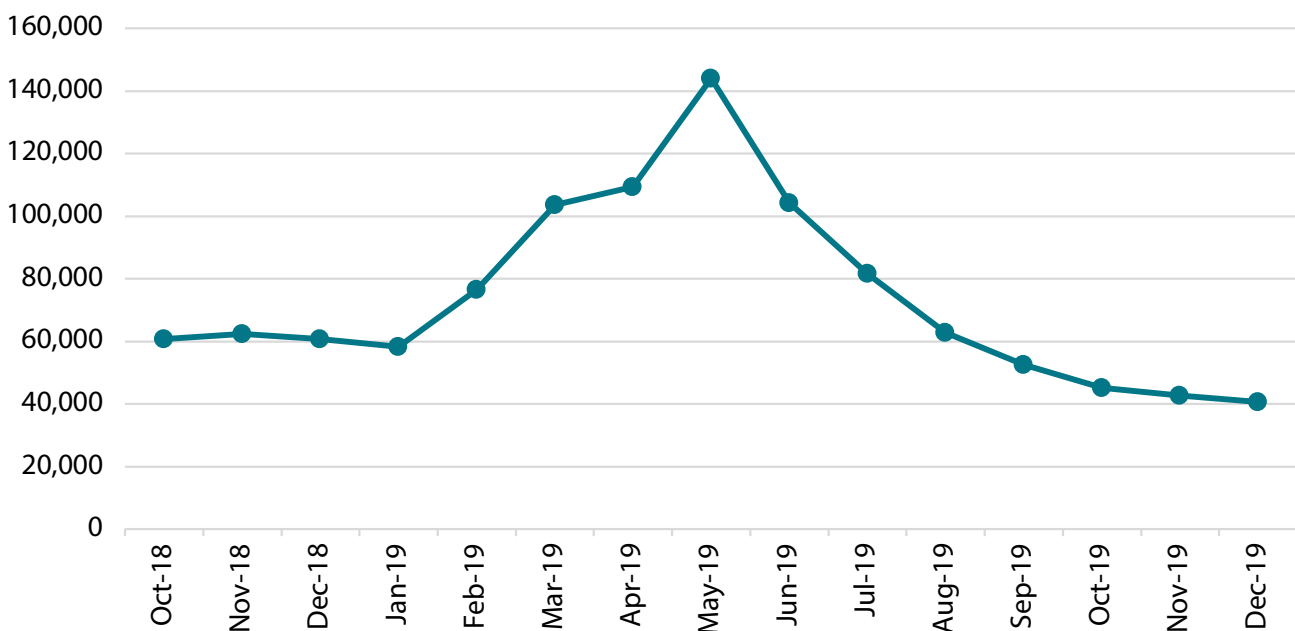
88 Human Rights Watch, "Mexico: Abuses against Asylum Seekers at US Border," updated March 5, 2021.

89 Dave Graham, "Mexico Says It Has Deployed 15,000 Forces in the North to Halt U.S.-Bound Migration," Reuters, June 24, 2019.

applied for asylum and been rejected there.<sup>90</sup> The U.S. government also pursued a set of asylum cooperative agreements with Guatemala, Honduras, and El Salvador that would allow the United States to transport migrants who had not done so to one of these three countries to claim asylum there first.<sup>91</sup> Yet, none of these countries had in place asylum infrastructure to adequately process such claims.

These efforts had a dramatic effect on the scale of migrant arrivals at the U.S. southwest border. From 144,116 Border Patrol apprehensions in May 2019, the numbers dropped to 52,546 apprehensions by September and continued to decrease through the remainder of the year, with just 40,565 in December 2019 (see Figure 5).

**FIGURE 5**  
**Border Patrol Apprehensions, October 2018–December 2019**



Source: U.S. Customs and Border Protection, “Southwest Border Migration FY 2019,” accessed October 4, 2023.

The next year, 2020, would witness dramatic changes at the border. The first significant event was the COVID-19 pandemic. Among other policy responses, the Trump administration, in effect, closed the border to unauthorized border crossers, including asylum applicants. The Centers for Disease Control and Prevention (CDC) issued an order under Title 42 of the United States Code permitting the expulsion of persons without valid travel documents due to an alleged risk they could spread the virus.<sup>92</sup> The CDC would extend this order several times, and it would ultimately remain in place until May 2023. The CDC’s Title 42 order was controversial, as many observers asserted there was no valid public health rationale for it and,

90 Executive Office for Immigration Review and U.S. Citizenship and Immigration Services, “Asylum Eligibility and Procedural Modifications,” *Federal Register* 84, no. 136 (July 16, 2019): 33829–45.

91 Executive Office for Immigration Review and U.S. Citizenship and Immigration Services, “Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act,” *Federal Register* 84, no. 223 (November 19, 2019): 63994–64011.

92 U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, “Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists,” updated March 20, 2020.



instead, it was simply being used for restrictive migration management purposes.<sup>93</sup> Over time, the public health rationale for the order became strained as the country emerged from the pandemic, and arrivals at the border increased dramatically through 2021 and 2022, despite the order remaining in place.

The second event was the 2020 presidential campaign, which saw Joe Biden defeat President Trump. The approach by the Biden administration to border security and migration management would differ sharply from the Trump administration's, at least for its first two years. To state the matter bluntly: the previous bipartisan political center had disappeared from U.S. politics on border security and migration management, and with a change in administrations, the policy pendulum regarding both would swing, at least initially, sharply to the left.

## 8 The Biden Administration

The Biden administration's border and migration management policies roughly fall into two stages: the first two years of the administration, in which the president attempted to follow through on his campaign promises to undo the most restrictive aspects of the Trump administration's policies, and the period following the mid-term elections in November 2022, in which record levels of border encounters<sup>94</sup> have led the administration to combine limitations on irregular migrants' ability to claim asylum with expanded legal pathways through parole programs for certain nationalities. Although it remains too early to fully assess the administration's 2023 pivot, the early indications are that high levels of irregular migration by asylum seekers are continuing, if not increasing, as migrants have largely not been deterred, given the absence of sufficient enforcement activity.

President Biden's campaign promises related to immigration shaped the first two years of his administration's approach to the border, migration, and asylum. As a candidate, Biden was sharply critical of Trump administration actions that limited migrants' ability to claim asylum at the border, saying in his final debate with President Trump in October 2020: "This is the first president in the history of the United States of America that anybody seeking asylum has to do it in another country."<sup>95</sup> The Biden campaign proposed a broadscale reversal of Trump-era border and immigration policies, replacing them with a more expansive and humane approach to managing the border and migrant flows.

The initial stages of the Biden administration were consumed largely with attempts at dismantling Trump policies and mitigating their humanitarian consequences. The Biden administration released 296 executive actions on immigration during its first year in office, in addition to a comprehensive immigration reform proposal addressed to Congress.<sup>96</sup> The executive orders included, for example, establishment of a taskforce focused on reunifying migrant children forcibly separated from their parents.<sup>97</sup> President Biden also rescinded President Trump's emergency border declaration and ordered reprogramming of funding that had

93 Suzanne Monyak, "Top CDC Official Says Title 42 Border Policy 'Came from Outside,'" Roll Call, October 17, 2022.

94 "Encounters" refers to both apprehensions between U.S. ports of entry and encounters at U.S. ports of entry.

95 Michael D. Shear, "Biden Said He'd Veer from Trump on Immigration. The Reality Is More Complicated," *The New York Times*, May 8, 2023.

96 Muzaffar Chishti and Jessica Bolter, "Biden at the One-Year Mark: A Greater Change in Direction on Immigration Than Is Recognized," *Migration Information Source*, January 19, 2022.

97 DHS, "Family Reunification Task Force," updated November 3, 2023.

been redirected to border projects as a result of the declaration.<sup>98</sup> The administration engaged in a review of the Trump border wall, canceled commitments attendant to it,<sup>99</sup> and implemented various remediation efforts.<sup>100</sup>

But the issues that ultimately defined these first years were the administration's attempts to reverse the "Remain in Mexico" policy and rescind the COVID-19 public health order (referred to as Title 42) that resulted in the immediate expulsion to Mexico of asylum seekers and unauthorized migrants who did not meet standards for humanitarian exemptions. Both of these efforts engendered significant political and legal conflicts. Perhaps most notable were efforts by Republican state officials, attorneys general and governors to stop the policy changes through lawsuits. The effect was to further thrust the judiciary—from district courts to the Supreme Court—into a central role of arbitrating the contours of the country's immigration policy.<sup>101</sup> For its part, Congress largely did not act to address these issues, and the legislative reforms to the immigration system that the Biden administration proposed on its first day in office have languished.

Although the Biden administration took immediate and aggressive action to reverse Trump-era border and immigration programs, its own policy with respect to the border and migration management was less defined (or, at least, publicly understood). The key challenge for the Biden administration has been balancing its stated desire to expand legal pathways for humanitarian migrants against the need to reduce unmanageably high levels of irregular crossing at the border. In particular, there has been tension around the question of what level of enforcement and deterrence should be applied against asylum seekers who do not use legal pathways. Before Biden even assumed the presidency, key members of his policy team publicly stated that migrants should not come to the border and Biden himself recognized there needed to be guardrails to avoid a migration surge.<sup>102</sup> Similarly, government officials expected that ending Title 42 expulsions would likely lead to additional migration.<sup>103</sup>

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These concerns manifested themselves early in the administration. CBP encounters at the border, including at ports of entry, began to increase in October 2020 before the presidential election and then jumped significantly in February 2021, shortly after Biden entered office. Overall, encounters at and between ports of entry jumped from 458,088 in FY 2020 to 1,734,686 in FY 2021, to 2,378,944 in FY 2022 (see Figure 6), substantially surpassing the prior highwater mark of 1.6 million in 2001.

98 White House, "Proclamation on the Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction," updated January 20, 2021.

99 Priscilla Alvarez, "Biden Administration Canceling More Border Wall Contracts," CNN, October 8, 2021.

100 Quinn Owen, "Biden Administration Working on More Fixes to Trump Border Wall Construction," ABC News, December 13, 2022.

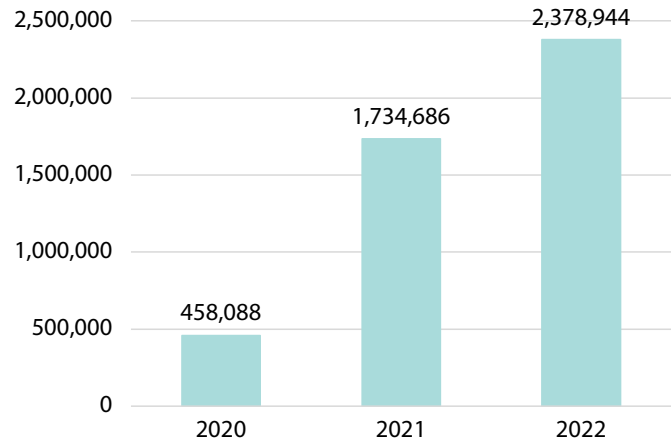
101 Muzaffar Chishti and Kathleen Bush-Joseph, "Federal Judges Step into the Void to Set U.S. Immigration Policy," *Migration Information Source*, March 30, 2023.

102 Ashley Parker, Nick Miroff, Sean Sullivan, and Tyler Pager, "'No End in Sight': Inside the Biden Administration's Failure to Contain the Border Surge," *The Washington Post*, March 20, 2021.

103 Luke Barr, "Title 42 Reversal Will 'Likely Increase' Migration, Influx of Venezuelan Migrants Expected: DHS," ABC News, December 16, 2022.

As the numbers of encounters increased, border and immigration management officials struggled with the same care and asylum claim processing issues that have challenged them since Central American asylum seekers began coming in meaningful numbers to the southwest border in 2014. In addition, the characteristics of arriving migrants began to change and diversify, as significant populations of asylum seekers began arriving from places other than Central America, including Venezuelans, Ecuadorians, Haitians, Nicaraguans, and Cubans, as well as noticeable upticks in asylum seekers from countries outside of the Americas (e.g., nationals of China, India, and Turkey).<sup>104</sup> At the same time, the humanitarian protection space was becoming more complicated as the United States admitted thousands of individuals fleeing geopolitical events in Afghanistan and Ukraine.

**FIGURE 6**  
**CBP Southwest Land Border Encounters, FY 2020–22**



Source: U.S. Customs and Border Protection, “Southwest Land Border Encounters FY22,” accessed October 4, 2023.

Commencing in January 2023, the administration sought to reset its policy at the border. Building on the Uniting for Ukraine sponsored parole program and a similar process implemented in October 2022 for Venezuelans, the administration announced a program for Cubans, Haitians, and Nicaraguans to request advanced authorization to come to the United States and receive a temporary parole for two years. This program requires applicants to have a U.S.-based sponsor or “supporter” who can provide financial support during the parole period and clear security vetting. Nationals from these countries who cross the border without an application are subject to return to Mexico.

The administration announced other measures to regularize migration management at the border, such as encouraging asylum seekers and other migrants to use the CBP One mobile app to schedule appointments at ports of entry (rather than crossing the border between ports of entry and seeking out Border Patrol agents) and increasing deterrence measures (e.g., expanded use of expedited removal).<sup>105</sup> Then in February 2023, in an echo of a Trump policy, the administration announced a rule requiring asylum seekers to have applied for and been denied asylum in the first safe country through which they pass or else face a “rebuttable presumption of asylum ineligibility” in the United States.<sup>106</sup> In the months that have followed, the administration has continued to adjust its policy and announce significant new steps such as extending Temporary Protected Status (TPS) for Venezuelans who had arrived in the United States before July 31, 2023,<sup>107</sup> and resuming repatriation flights to Venezuela. The Biden administration’s policy remains, in short, a work in progress.

<sup>104</sup> Muzaffar Chishti and Kathleen Bush-Joseph, “Biden at the Two-Year Mark: Significant Immigration Actions Eclipsed by Record Border Numbers,” *Migration Information Source*, January 26, 2023.

<sup>105</sup> White House, “Fact Sheet: Biden-Harris Administration Announces New Border Enforcement Actions,” updated January 5, 2023.

<sup>106</sup> Rebecca Santana and Elliott Spagat, “US to Limit Asylum to Migrants Who Pass through a 3rd Nation,” AP, February 22, 2023.

<sup>107</sup> U.S. Citizenship and Immigration Services, “Temporary Protected Status Designated Country: Venezuela,” updated November 17, 2023.

The administration's pivot faces an uncertain future—legally, politically, and operationally. The key aspects of the administration's pivot were quickly subject to legal challenge. For example, the February asylum transit rule has already been blocked by a federal district court judge.<sup>108</sup> Other lawsuits have challenged, for example, the use of the CBP One mobile scheduling app and the authority of border officials to use humanitarian parole to release asylum seekers into the United States.<sup>109</sup>

In addition to lawsuits from immigration advocates, who had initially supported the administration's work to undo Trump policies but now object to limitations on asylum access, the administration is confronting opposition from state and local officials over the financial and logistical toll of large numbers of border arrivals moving to their communities. The significant influxes of migrants, many of whom lack any support network, have strained local budgets and resources not only in border communities but in interior metropolitan areas, from New York and Boston to Denver and Seattle, as communities attempt to house, provide care for, and integrate migrants. This has added a new dimension to the political challenges of addressing southwest border migration beyond the traditional "left-right" disagreement over the threat posed by and the policy response to irregular migration.

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*The administration's pivot faces an uncertain future—legally, politically, and operationally.*

Although the programs and policies announced by the Biden administration in 2023 represent a significant change from its first two years, a key policy challenge remains unresolved: how to balance the need to allow for the filing and fair consideration of claims for humanitarian protections against the urgent need to manage the overwhelming number of asylum seekers showing up at the southwest border, and what level of enforcement is necessary and appropriate to achieve a deterrent effect on unauthorized migration. In short, the administration has formulated and announced a policy framework that is sound on its terms, reflecting the policy bent and values of the administration, but without the infrastructure and resource base required to implement it effectively—and as a result, significant numbers of asylum seekers have come and likely will continue to come to the U.S. southwest border expecting to be admitted into the country.

Border and immigration officials lack the logistical, care, legal, and policy infrastructure to manage the unprecedented scale of migrant arrivals. As such, authorities are processing migrants quickly and releasing large numbers of them into the United States with a notice to appear at later immigration proceedings. Migration through the asylum system and associated humanitarian parole programs<sup>110</sup> is now likely the single largest category of immigrants coming to the United States<sup>111</sup>—a direct consequence of a U.S. asylum system that remains thoroughly broken, dysfunctional, and unaddressed by Congress. Bipartisan negotiations are underway in Congress to address, at least in part, these issues, though the potential scope of congressional action is not clear at this time.

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108 Rebecca Santana, "A Judge Blocks Limits on Asylum at US-Mexico Border but Gives Biden Administration Time to Appeal," AP, July 25, 2023.

109 Elliott Spagat, "As Illegal Crossings Drop, the Legal Challenges over Biden's US-Mexico Border Policies Grow," AP, July 27, 2023.

110 Camilo Montoya-Galvez, "US Has Welcomed More than 500,000 Migrants as Part of Historic Expansion of Legal Immigration under Biden," CBS News, July 18, 2023.

111 DHS, *2022 Yearbook of Immigration Statistics* (Washington, DC: DHS, 2023).

## 9 Conclusion and Lessons

Since the early 1990s, southwest border security—widely understood as migration management—has been a central political and policy focus for the U.S. government. The primary operational challenge for the majority of this time was addressing significant numbers of border crossings by Mexican seasonal and temporary workers, most of whom were adults. In responding to this manifestation of migration, and as it has further evolved during the last decade, policymakers and migration officials have developed an understanding of the calculus that influences migrant decisions and migration patterns. The four key factors for migrants are:

- ▶ the interplay of “push factors” (such as violence and poverty) that drive people to leave their origin countries and the “pull factors” (safety, family reunification, and perceived economic opportunity) that incentivize movement to a particular destination country;
- ▶ migration’s costs (including smuggling fees and the risks and dangers involved in the journey);
- ▶ the likelihood of successfully arriving at and getting into the destination country; and
- ▶ the potential costs and consequences of failure (such as detention, deportation, and prosecution).

As the U.S. government gained deeper insights into these factors starting in the 1990s, it built the world’s most advanced migration management enterprise, which by the mid-2010s was able to effectively manage flows at the southwest border. That enterprise has since faltered in the face of the changing demographics and origins of migrants arriving at the border: now, instead of largely economic migrants from Mexico, the principal group is asylum applicants from countries elsewhere in the Americas, many of whom are part of family groups or unaccompanied children.

Globalization, which has transformed societies and economies across the world over the last generation, also has played a central role in enabling irregular migration:

- ▶ **Compression of time and space.** In today’s environment, communications via the internet and social media platforms have made migrants and human smugglers more agile and adaptable as real-time information (about policy interpretation, special interest group support, local conditions in destination countries, and personal journey stories) have replaced letters, radio announcements, and telegrams that were inherently slower means of messaging in the past. Technology has also facilitated the transfer of funds throughout the migration continuum, helping migrants cover travel and smuggling fees and also send remittances home after arrival.
- ▶ **Transportation infrastructure.** Highway and road infrastructure as well as modern transportation conveyances and efficiencies (air, land, and sea) have reduced travel times from countries of origin to the United States. These advancements have been employed extensively by human smuggling organizations to move people quickly and efficiently.



These changes have bedeviled U.S. government agencies as the legal and policy structures developed in the 1990s and implemented through the 2000s have been rendered inapplicable and ineffective as the nature of migrant flows has changed. Nonetheless, the experience from the Clinton through Biden administrations has important lessons for policymakers as they look to update the U.S. migration management enterprise, the most important of which are:

- 1 **Recognizing mission evolution.** Congress created DHS and organized the department around a broad counterterrorism mission, with each of the components—including CBP—embracing the counterterrorism mandate as its principal mission. Although the counterterrorism function has become and should remain irrevocably an integral part of DHS's and CBP's institutional mission, it should be recognized that changed circumstances have rendered it no longer the “cornerstone” mission it once was, particularly with respect to the border. Rather for CBP, ICE, and U.S. Citizenship and Immigration Services (USCIS), and arguably DHS headquarters, the cornerstone has become migration security and management. This should entail incorporating DHS's unique authorities and capabilities into a whole-of-government effort (including state, local, and tribal authorities) to manage migration to the United States effectively at the nation's borders, off-shore, and in the interior of the country.
- 2 **Accurately framing the problem.** The contemporary challenge at the southwest border is one of border *control* rather border *security*, and the principal lever for control is appropriate migration management. Our political and policy discourse around the border situation, however, continues to frame the problem principally around “security” and whether to further ramp up enforcement resources at the border line. The national objective must be not to solve the border control challenge by apprehending and removing 100 percent of unauthorized migrants, but rather to manage it in a manner consistent with the law and reasonably satisfactory to the American people. Leadership must plan for and educate the populace that global mobility is a “new normal” that will not abate but intensify over the coming decades, and that periodic migration crises will be recurrent and take changing forms, involving diverse migrant populations and reflecting international events. The demographics of migrants have changed and will continue to do so in the coming years.
- 3 **The executive branch needs Congress.** Most critically, the executive branch needs bipartisan support and action by Congress to provide updated legal frameworks and tools scoped to the modern problem set. This includes, crucially, comprehensive reform of the nation's immigration laws, starting with a thorough overhaul and revamping of the asylum system and expansion of legal work visas and other pathways as alternatives to irregular migration. The root cause of the federal government's inability to effectively tackle migration management lies in dysfunctional immigration and asylum laws. The continuing absence of an updated comprehensive immigration policy framework—and an adequate resource infrastructure to implement it—threatens perennial, recurring crisis at the border as migrants believe that there is more than a small chance they will be admitted into the United States. Only by reforming this regime and changing this perception—through the creation of appropriate asylum laws, swifter resolution of claims, expanded legal pathways for long-term visas, and a viable guest worker program coupled with additional legal pathways for family reunification—can the United States create the conditions under which the border will become manageable and less of a routine exercise in crisis management.

- 4 DHS needs robust interagency partnerships.** Migration management, in particular as it has evolved to focus on management of unprecedented numbers of asylum claimants, requires support from across the government. Abroad, DHS needs the active partnership of the State Department to address conditions in countries from which migrants are leaving and through which they are transiting; to create alternate migration paths that are more regular as well as viable options to remain in other countries; and to counter human smuggling. At the border, DHS needs a vastly improved support capability from the Department of Health and Human Services to ensure proper handoff and care for migrant children. Where civilian authorities lack the capacity to quickly respond, DHS on occasion will need the logistical expertise and support of the Department of Defense. At the border and the interior, DHS also needs the robust participation of the Department of Justice to execute a strategic enforcement strategy to break the cycle of human smuggling and to more efficiently and effectively process immigration and asylum claims through the immigration courts or through new processes at the border.
- 5 Transnational problems require international partnerships.** Migration management and, therefore, border control have become inherently transnational in nature. Even with improved interagency coordination and support from Congress, the United States cannot address the international movements of people on its own, nor only after migrants have arrived at the border. As the last three decades of experience at the border have shown, multilateral cooperation has become central to a more satisfactory outcome. In particular, the essential nature of a robust, continuing partnership with Mexico—expanded and resourced by the United States to take account of contemporary migration trends—has become crystal clear. Beyond a U.S.-Mexican partnership, regional migration strategy and policy are required: viewed as a continental North American, if not hemispheric, challenge, the pursuit of this objective must center on Mexico, include Canada, and incorporate (as far as practicable) Central American countries from Panama and Costa Rica northward and Colombia in the south. Further, given the enabling role that international aviation increasingly plays in the migration equation for migrants from outside of North America, the United States will need to expand its partnership on these issues with countries around the world that serve as transit hubs for migrants intending to migrate irregularly.
- 6 Irregular migration cannot be solved at the border.** Reducing irregular migration to the United States in the long term must address the “root” conditions causing people to leave countries such as El Salvador, Guatemala, Honduras, and Haiti in large numbers: poverty, lack of economic opportunity, gang violence, and insecurity. Displacement generated by political events and conflict—as in Afghanistan, Cuba, Ukraine, and Venezuela—embody different challenges to be managed. Confronting these issues effectively, however, requires a candid recognition of the underdevelopment and/or disruption of these societies and the weakness and corruption of their governments. U.S. immigration policy cannot address every individual misfortune in the world, nor can its foreign policy remedy defective governance globally. In this context, however, it must be acknowledged that conventional foreign aid programs cannot deliver ameliorative results in a time frame pertinent to satisfactory border control in the short or medium term. The United States must think creatively to tailor aid programs to the reality on the ground and seek out innovative partnerships with other countries, particularly Mexico and others in North America, to assist in establishing and delivering these programs effectively.

- 7 Transnational crime and human smuggling.** Human smuggling organizations, many of which nowadays are engaged in other criminal activity (e.g., drug trafficking and extortion) independently and/or in concert with transnational criminal organizations, have become a central feature of contemporary irregular migration. They serve as interpreters of the policies of transit and destination countries; as guides and navigators of the pathways calculated to best exploit the defects and vulnerabilities in those policies; and, often, as intermediaries with other criminal groups whose territory migrants must cross to reach their destination. A massively enhanced revenue stream that now stretches into the billions of dollars<sup>112</sup> has led to transnational smuggling networks that are exceedingly well funded, organized, and equipped. Law enforcement campaigns regularly announce the targeting of people smugglers, human traffickers, and their organizations and affiliates. The results, however, with few exceptions, have been unsatisfactory, largely because the organizations have not, in fact, been prioritized and traditional criminal justice strategies are not well-designed to counter international criminal groups (as evidenced, for example, in other areas such as drug trafficking and cybercrime). Confronting migrant smuggling and human trafficking networks effectively requires that the government treat these groups as a top tier national security priority.

In summary, U.S. policymakers built an effective border security and immigration management enterprise during the 1990s, 2000s, and early 2010s, calibrating the response to the nature of irregular migration at the southwest border during those years. The fundamental characteristics of migrants arriving at the border have, however, changed in material ways since then. U.S. policy and operational response have not evolved in turn. As a result, there is now a profound mismatch between the problem and the government response. Future events will not close that gap, but instead it will widen as the drivers of irregular migration intensify and diversify. For much of the world, climate change, increasing authoritarianism and loss of individual freedoms, and economic stagnation (if not erosion) will motivate greater numbers of people to migrate, while technology and international travel continue to ease and facilitate their movement. Confronting this “new normal” in global migration management and reforming the U.S. migration management enterprise accordingly require timely, urgent, and sustained attention.

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*Confronting this “new normal” in global migration management and reforming the U.S. migration management enterprise accordingly require timely, urgent, and sustained attention.*

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112 Miriam Jordan, “Smuggling Migrants at the Border Now a Billion-Dollar Business,” *The New York Times*, July 25, 2022.

## About the Authors

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Alan Bersin has held numerous high-level positions at the federal, state, and local levels of government. Most recently, after serving as the Commissioner of U.S. Customs and Border Protection (CBP), Bersin served as the Assistant Secretary for Policy and Chief Diplomatic Officer for the U.S. Department of Homeland Security (DHS). Previously, he was Secretary of Education in California, the Superintendent of Public Education in San Diego, and the U.S. Attorney for the Southern District of California and the Attorney General's Southwest Border Representative at the Department of Justice. He also served as Vice President for the Americas and on the Executive Committee of INTERPOL. Bersin is the Inaugural North American Fellow at the Wilson Center, a Senior Fellow with the Harvard Kennedy School Belfer Center for Science and International Affairs, and the Executive Chairman of Altana Technologies.

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Ben Rohrbaugh has been at the forefront of border and supply chain security and advancing U.S.-Mexico relations for over a decade. Rohrbaugh held senior policy positions at DHS and CBP, and he was a Director on the White House's National Security Council, where he developed policy on border and supply chain security issues. Rohrbaugh is currently a Fellow at the Strauss Center for International Security and Law at the University of Texas-Austin, and he is the author of *More or Less Afraid of Nearly Everything: Homeland Security, Borders, and Disasters in the Twenty-First Century*.

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