



Toward a Better Immigration System

Fixing Immigration Governance at the
U.S. Department of Homeland Security

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Executive Summary

Whether it is record-breaking numbers of unaccompanied child and family migrants crossing the southwest border or unprecedented backlogs in immigration and naturalization petitions, immigration governance is buckling from breakdowns in performance across key Department of Homeland Security (DHS) immigration components and partner agencies. President Biden's directive to serve as the lead federal agency in receiving Afghan evacuees adds further to the pressures under which DHS is operating. Rethinking immigration governance at DHS and across the executive branch is essential.

In response to the 9/11 terrorist attacks, Congress created DHS from a patchwork of agencies charged to varying degrees with counterterrorism and broader responsibilities relating to the protection of the homeland. Driven primarily by concerns over the nation's border security after terrorist attacks perpetrated by foreign nationals, the functions of the U.S. Immigration and Naturalization Service and the U.S. Customs Service became one of the largest sets of responsibilities assigned to the new department at its founding in 2003. Its three new immigration agencies, known as components—U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS)—made up 34 percent of the DHS budget and 44 percent of its personnel as of fiscal year (FY) 2020.

DHS immigration missions stretch well beyond border security and counterterrorism to include...



Economic
Competitiveness



Legal Immigration
and Naturalization



Foreign Student Education
and Cultural Exchange



Humanitarian
Protection

Almost two decades later, the immigration functions of these three components have been heavily defined by their national security dimensions, as their spending levels reflect. In FY 2020, annual immigration enforcement appropriations (largely CBP and ICE) stood at \$25 billion, an amount that exceeds by about 28 percent the budgets of all other principal federal criminal law enforcement agencies combined. Yet, immigration missions encompass a wide array of national interests beyond border security and counterterrorism, including economic competitiveness, meeting labor market needs, travel facilitation and mobility of goods, legal immigration determinations, naturalization of new Americans, and global leadership in refugee protection, foreign student education, cultural exchange, and technological innovation.

Although many of the issues plaguing the immigration system are due to Congress's failure to update immigration laws to reflect national needs, the management of DHS' immigration components is the responsibility of the executive branch. DHS' chain of command and coordination capabilities have not been strong enough to counteract the centrifugal forces of better-resourced, singular operations (e.g., border security and immigration detention). The DHS components and the agencies they collaborate with in other federal departments lack the assuredness and agility to effectively recalibrate and adjust to new circumstances. The challenge for the DHS immigration components is to fuse broader immigration policy and performance outcomes with enduring border and national security imperatives.

With action on immigration stalled in Congress, this report examines questions of structure—rather than policy—and proposes changes within the authority of the executive branch to enable more encompassing, balanced, humane implementation of the nation’s immigration laws. The report advances the proposition that immigration is a **system** that spans both intra-DHS and interagency organizational entities and processes and that it must operate as a system to successfully carry out its duties.

For example, because of the characteristics of today’s arriving migrants, border management and control rely on asylum screenings (conducted by USCIS), migrant custody and supervision (ICE), shelter and sponsor placements for unaccompanied minors (Department of Health and Human Services), immigration court proceedings (Justice Department), and cooperation with Mexico and neighboring countries to reduce the drivers of migration in immigrants’ origin countries (State Department). Even the Department of Defense can become involved when unforeseen facilities or personnel needs arise, as is the case with the evacuation of interpreters and others from Afghanistan.

Managing immigration as a system calls for coordinated operational capabilities, decision-making structures, and resource allocations.

The missions and capabilities of these agencies all extend beyond CBP’s efforts and jurisdiction at the border. Unless these functions—and others like them—work together as a system, border management and control in today’s reality cannot succeed. Thus, managing immigration as a system

calls for coordinated operational capabilities, decision-making structures, and resource allocations. These become especially critical in responding to sudden changes in migration trends or unforeseen events, such as the pandemic.

The report’s analyses and recommendations reflect research and discussions with more than 50 individuals, including former senior DHS career and non-career government officials and immigration stakeholders who work closely with DHS on immigration matters. The report identifies four organizational areas that are key to the vitality of the immigration system: the missions of the immigration components, institutional structures, funding priorities, and institutional culture.

The report presents 17 recommendations. Among them are two overarching recommendations that should be adopted to better manage crises and to advance an immigration policy agenda that serves key national interests going forward.

First, immigration must be treated and managed as a *system*, which requires DHS, as the government’s lead actor on immigration, to strengthen and institutionalize its intra-agency policy development, resource allocation, policy decision-making, and crisis management processes and coordination among its principal immigration components—CBP, ICE, and USCIS.

Second, DHS must overcome stovepiping and gaps in coordination among its own immigration components to serve as a catalyst for resolving problems of fragmentation across partner Cabinet agencies, especially the Departments of Justice, Health and Human Services, and State, as well as others whose

capabilities are required to carry out critical functions, such as refugee admissions and effective border control.

Additional recommendations include the following:

- ▶ The mission statements for CBP, ICE, and USCIS should be recast to encompass the complex mix of enforcement, economic, and humanitarian responsibilities with which each component is charged. These statements should be used to drive the components' visioning, policy development, budget requests, resource allocations, operational strategies, and recruitment and training. The statements should include concepts such as adapting to rapidly changing migration dynamics; exercising discretion; treating immigration as an asset to the country; providing protection to those in need; facilitating the ability of those eligible for immigration benefits to obtain them; fair and timely decision-making; protecting civil rights and privacy; cooperation and collaboration with other federal, state, local, and international partner agencies; professionalism; and respect for the dignity of all persons.
- ▶ To strengthen coordination and coherence among DHS' three immigration components, the secretary of homeland security should vest broad cross-cutting authority with the under secretary for strategy, policy, and plans and the assistant secretary for border and immigration policy to oversee and coordinate immigration component strategic plans, integrated budgets, and immigration policy directives that implicate intra- and interagency capabilities and responsibilities.
- ▶ Led by the under secretary for management, in consultation with the under secretary for strategy, policy, and plans and the three immigration component heads, DHS should establish a standing process for coordinated budget development and planning across the DHS immigration components and Cabinet agencies. The aim should be right-sizing the budgets of the organizational entities that play key roles in administering the nation's immigration policies. This should include increased funding for the Office of the Secretary and DHS headquarters functions to enable them to serve as the government's lead agency for managing the immigration system. Presenting Congress with cogent budget proposals to properly fund immigration as a system is vital, given the many committees that play a role in appropriations and DHS oversight processes.
- ▶ An interagency standing deputies committee led by the National Security Council and/or Domestic Policy Council should be established to coordinate cross-departmental policy development and implementation of immigration priorities. Although DHS is the lead agency for immigration functions, strengthened support and leadership at the White House level across departments is needed. The unexpected added demands of receiving and settling a large population of Afghan evacuees further illustrates this need.
- ▶ Senior career leadership capabilities should be bolstered through more expansive training programs for rising leaders, competitive details for professional advancement, and operational rotations. CBP, ICE, and USCIS should develop and implement a joint duty program that focuses on core competencies for immigration leadership posts. Integrating such efforts with those of the State Department and the intelligence community would reduce costs from duplication of effort, form

cross-departmental and cross-agency networks, and promote cross-departmental understanding of broader missions.

Should legislation that envisions a broader rethinking of DHS emerge, or should significant immigration legislation move forward in Congress, there are deeper structural changes requiring legislation that could improve the functioning of the immigration enterprise. They include Congress authorizing and appropriating monies for asylum and refugee processing, instead of financing these responsibilities with surcharges on other applicant fees, and re-establishing an Immigration Emergency Fund that could be activated when unanticipated migration contingencies arise.

However, such legislation does not appear to be likely in the near term. Meanwhile, implementing effective, humane immigration policies skillfully is increasingly important to the nation's well-being, the lives of millions of individuals and communities, and the ability of government to address the country's needs, including providing for its homeland security.

To that end, the executive branch must treat and manage immigration as a **system**—one that spans DHS components and extends to other federal agencies. Only then will the U.S. immigration system be able to more effectively meet current and future migration management challenges.

*The executive branch must treat and manage immigration as a **system**—one that spans DHS components and extends to other federal agencies.*

BOX 1

About the Rethinking U.S. Immigration Policy Project

This report is part of a multiyear Migration Policy Institute (MPI) project, Rethinking U.S. Immigration Policy. At a time when U.S. immigration realities are changing rapidly, this initiative aims to generate a big-picture, evidence-driven vision of the role immigration can and should play in America's future. It provides research, analysis, and policy ideas and proposals—both administrative and legislative—that reflect these new realities and needs for immigration to better align with U.S. national interests.

The research, analyses, and convenings conducted for MPI's Rethinking initiative address critical immigration issues, which include economic competitiveness, national security, and changing demographic trends, as well as issues of immigration enforcement and administering the nation's immigration system.

To learn more about the project and read other reports and policy briefs generated by the Rethinking U.S. Immigration Policy initiative, see bit.ly/RethinkingImmigration.

1 Introduction

The Department of Homeland Security (DHS) came into being in 2003 in response to the 9/11 terrorist attacks. Political deals abounded as the administration of President George W. Bush and various interests in Congress bundled into the newly formed department 22 federal agencies charged to varying degrees with counterterrorism responsibilities or protection of the homeland more broadly.

Key national security agencies—principally the Central Intelligence Agency (CIA) and the Federal Bureau of Investigations (FBI)—successfully fought off becoming part of the department. But agencies with ancillary anti-terrorism roles, as well as other disparate responsibilities (e.g., disaster relief, immigration, and election security) were folded into DHS, driven as much, in the case of immigration, by long-standing restructuring aims and policy disagreements as by new counterterrorism imperatives.¹

Responsibility for the nation’s immigration system—especially control and management of the nation’s borders—became one of the largest mandates assigned to the new department. In so doing, the U.S. Immigration and Naturalization Service (INS) was abolished, its functions transferred from the Department of Justice and combined with those of the U.S. Customs Service from the Department of the Treasury to form three separate, new DHS component immigration agencies.²

Eighteen years later, immigration has become defined in the public mind largely by its purview in national and homeland security. Immigration functions play a meaningful role in combating terrorism. But the principal immigration components are charged with missions that address a wide array of national interests beyond border security and countering terrorism and other threats, including economic competitiveness; travel facilitation and mobility of goods; meeting labor market needs; global leadership in higher education, cultural exchange, and humanitarian protection; and legal immigration processes, culminating in conferring U.S. citizenship. DHS’ mission of border security and counterterrorism has limited its ability to advocate for and lead intra- and interagency efforts that advance these broader economic, humanitarian, and diplomatic attributes and values that immigration also embodies.

Threats to U.S. national security have changed dramatically since 9/11.³ Efforts to protect the United States from foreign terrorists have greatly decreased the likelihood of success by such actors. DHS and other national security agencies have turned their focus to evolving threats from a wide variety of other global concerns, such as environmental disasters and public-health crises, as well as concurrent emergencies and the need for prevention and response capabilities across government. Domestically, a fast-growing threat now resides in home-grown terrorism, which draws some of its fury from anti-immigration attitudes, making effective governance of the immigration system that wins public trust urgent for newly compelling reasons.

Under President Donald Trump, DHS and the immigration agencies were led by a series of acting leaders and became embroiled in significant controversies around policy and budget decisions. Among them: the use of funds to build a southwest border wall beyond amounts approved through congressional appropriations, separating children from parents at the border, narrowing grounds for asylum, and sending immigration law enforcement personnel to cities against the wishes of local officials to police anti-racism

1 Much has been written about Department of Homeland Security (DHS) management and performance problems in the past and going forward, including: DHS Office of Inspector General, *Major Management and Performance Challenges Facing the Department of Homeland Security* (Washington, DC: DHS, 2017); Chappell Lawson, Alan Bersin, and Juliette Kayyem, *Beyond 9/11: Homeland Security for the Twenty-First Century* (Cambridge, MA: MIT Press, 2020); Thomas Warrick and Caitlin Durkovich, *Future of DHS Project: Key Findings and Recommendations* (Washington, DC: Atlantic Council, 2020).

2 The import and entry inspection authorities of the Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS) were also transferred to DHS. See Ruth Ellen Wasem et al., *Border Security: Inspections Practices, Policies, and Issues* (Washington, DC: Congressional Research Service, 2004), 8.

3 For an examination of how DHS has responded to changing threats since 9/11, see Amy Pope, *Immigration and U.S. National Security: The State of Play Since 9/11* (Washington, DC: Migration Policy Institute, 2020).

protests. With the arrival of a new administration and immigration continuing to be a top-tier issue, the time is ripe for a serious rethinking of immigration governance at DHS and across the executive branch.

This report examines questions of structure—as compared with leadership and policy—and proposes changes that would enable more effective, humane implementation of the nation’s immigration laws. Based on research and analysis, and informed by discussions with more than 50 individuals, including former DHS and other senior career and non-career government officials, as well as immigration stakeholders who work closely on immigration matters, it argues that immigration is a *system* that spans both intra-DHS and interagency organizational entities and processes, and that it must operate as one to properly carry out its responsibilities.

The report identifies four key organizational areas of concern—mission, institutional structures, funding priorities, and institutional culture—essential to the vitality and governance of the U.S. immigration system. The report provides recommendations that can be accomplished within the current authority of the secretary of homeland security and the executive branch. In addition, it closes with select proposals for a longer-term change agenda that would require legislation.

2 Immigration as a System

The principal DHS immigration components—U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS)—constitute interdependent parts of an overall system. Their functions must be coherent and coordinated for the nation’s immigration policies to be implemented effectively. Similarly, DHS is the lead but not the sole player in managing the immigration system more broadly, which relies heavily on critical responsibilities assigned to other Cabinet agencies that include the Departments of Justice (DOJ), Health and Human Services (HHS), State (DOS), and Labor (DOL).

DHS is the lead but not the sole player in managing the immigration system.

Yet, at both intra-DHS and interagency levels, these entities all operate quite independently. Coordination, planning, and consensus building among the immigration components and across Cabinet agencies have been largely ad hoc and inconsistent.

The need to treat and manage immigration as a system that requires coordinated operational capabilities, decision-making structures, and resource allocations is vividly illustrated by, among other things, U.S.-Mexico border enforcement. Given the shift in arrivals that began in 2012 from primarily young, single Mexican males seeking work in the United States to today’s mix of largely Central Americans—especially unaccompanied minors and families with young children—in search of safety from violence but also jobs, opportunity, and family reunification, effective enforcement cannot be accomplished solely at the border or by CBP, even though it is the principal DHS border enforcement agency.

Instead, because of the complexity of the mission and the characteristics of today’s arriving migrants, border management and control rely on asylum screenings (conducted by USCIS), migrant custody and supervision

(ICE), shelter and sponsor placements for unaccompanied minors (HHS), immigration court proceedings (DOJ), and cooperation with Mexico and neighboring countries to reduce the drivers of migration in immigrants' origin countries (DOS). Even the Department of Defense (DOD) can become involved when unforeseen facilities or personnel needs arise, as is being demonstrated by the evacuation of interpreters and others from Afghanistan and their processing for admission to the United States (USCIS) through the Special Immigrant Visa program, refugee resettlement, and humanitarian parole.⁴ The missions and capabilities of these agencies all extend beyond CBP's efforts and jurisdiction at the border. Unless these functions work together as a *system*, border management and control in today's reality cannot succeed.

Problems of fragmentation and the imperative for whole-of-government responses, especially at the southwest border, have been identified before. Successive administrations have tried but ultimately been unable to institutionalize multicomponent planning and coordinated responses in support of DHS immigration operations. Or, the planning that has been done is overlooked when it is most needed, as the surge in arrivals of unaccompanied minors in early 2021 demonstrated.

DHS, as the government's lead immigration agency, can drive the push to strengthen systemic responses by breaking through its own organizational silos and generating cross-cutting processes, as envisioned by the principle of "one DHS."⁵ In turn, strong leadership and high-performing DHS operations across immigration components should drive accountability across other Cabinet agencies with equities in the immigration system, which must also build the capabilities necessary to deliver in their areas of responsibility.

Weak links can result in failure of the entire system to perform in executing a president's immigration agenda. Thus, strong cross-agency leadership at the White House level is also necessary for any administration to succeed in crisis management as well as in implementing an ambitious immigration policy vision. Taken together, all of this calls for greater competence of the entirety of the homeland security enterprise—that is, building up planning and response capabilities across the government.

3 Department and Component Missions

As the DHS mission, born out of a terrorist attack almost two decades ago, matures to address current threats and other risks to homeland security, rethinking the missions of its three immigration components—CBP, ICE, and USCIS—is an important starting point for strengthening immigration governance.

DHS' immigration agencies made up 34 percent of the department budget and 44 percent of its personnel in fiscal year (FY) 2020.⁶ Given increasing terrorism threats from individuals and groups within the United

4 C. Todd Lopez, "Fort Lee Chosen as First Stop in U.S. for Relocating Afghans under Operation Allies Refuge," U.S. Department of Defense, July 19, 2021; DHS, "DHS to Serve as Lead Federal Agency Coordinating Efforts to Resettle Vulnerable Afghans" (press release, August 29, 2021).

5 DHS, "Video: Defining One DHS," updated December 17, 2009.

6 Migration Policy Institute (MPI) calculations based on DHS, *FY 2022 Budget in Brief* (Washington, DC: DHS, n.d.). The Federal Emergency Management Agency (FEMA) is another major part of DHS, making up more than 20 percent of DHS appropriations in FY 2020. Similarly, it does not typically engage in anti-terrorism or national security activities, though it does play a critical role in the aftermath of a major terrorist attack. See William Painter, *Comparing DHS Component Funding, FY2020: In Brief* (Washington, DC: Congressional Research Service, 2020).

States and other threats including natural disasters, disease, cyberattacks, and transnational organized crime, the challenge going forward is to conceptualize the immigration enterprise as a system.

Although the mission of DHS is set forth in statute,⁷ the mission statements of CBP, ICE, and USCIS have been established by the components and DHS themselves. They have changed somewhat over time, reflecting the policy and interests of respective administrations. For example, the Trump administration rewrote the USCIS mission statement to eliminate “securing our nation of immigrants and promoting citizenship” and replaced it with “protecting Americans and securing the homeland.”⁸ (See the appendix for additional examples.)

Other reformulations have frequently overlooked key long-standing immigration activities. ICE’s responsibilities to combat money laundering, human trafficking, document fraud, and worksite enforcement, for example, are not encompassed in its most recently revised mission statement, nor have its statements referenced its considerable responsibilities in overseeing migrant custody and removal operations.

None of the mission statements point to coordinated responses, integrating functions, or policies aligned with those of partner immigration or other agencies.

CBP has been the predominant and strongest of the three immigration components since DHS was formed. Its mission statement has kept the same themes over time—safeguarding the border, protecting the American people, fostering economic competitiveness, and facilitating lawful

trade and travel. It has not been updated to reflect profound changes in the profile of migrant arrivals at the southwest border in recent years and the border management challenges those changes bring with them.

None of the mission statements point to coordinated responses, integrating functions, or policies aligned with those of partner immigration or other agencies.⁹ Further, a sense of adapting to ever-changing migration dynamics, law enforcement cooperation and collaboration, and planning capabilities for implementing new strategies or mandates are absent. These are top-line concerns, given the ambition of

7 The statute states that the primary mission of DHS is to (A) prevent terrorist attacks within the United States; (B) reduce the vulnerability of the United States to terrorism; (C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States; (D) carry out all functions of entities transferred to the department, including by acting as a focal point regarding natural and manmade crises and emergency planning; (E) ensure that the functions of the agencies and subdivisions within the department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit act of Congress; (F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and (G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking. See Section 101(b) of *Homeland Security Act of 2002*, Public Law 107–296, *U.S. Statutes at Large* 116 (2002).

8 U.S. Citizenship and Immigration Services (USCIS), “USCIS Director L. Francis Cissna on New Agency Mission Statement” (press release, February 22, 2018).

9 Component mission statements should also reflect an overarching process known as the Quadrennial Homeland Security Review (QHSR), which is intended to complement the Quadrennial Defense Review (for the Department of Defense) and Quadrennial Diplomacy and Development Review (for the Department of State). The process is required by statute at the start of a presidential term, though it was last completed in 2014. The QHSR provides the opportunity for an incoming secretary to communicate direction and get alignment across components by updating mission and vision statements, which must align with the QHSR. In fact, the 2014 QHSR named as a DHS mission priority “enhancing management and organization to develop a responsive immigration system,” though that did not get reflected in the mission statement. See DHS, *The 2014 Quadrennial Homeland Security Review* (Washington, DC: DHS, 2014), 70.

the Biden administration’s immigration plans and the demands it has faced with sharply increased arrivals at the U.S.-Mexico border and with Afghan evacuee processing and resettlement imperatives.

Some have argued that DHS’ border and national security mission is fundamentally incompatible with implementing effective and humane immigration policies. The challenge is to infuse a larger focus on broader immigration policy and performance outcomes alongside its inherent border and national security roles and responsibilities. This requires DHS-wide institutional structures, analytics, and practices that have been underdeveloped and inadequately resourced by the department, successive administrations, and Congress in creating DHS and overseeing its work.

4 DHS Institutional Structures: Chain of Command and Policy Coordination

The leadership of the immigration components within DHS are in its secondary layer of management. The commissioner of CBP, the director of ICE, and the director of USCIS are among two dozen DHS officials, including the leaders of the Federal Emergency Management Agency, Secret Service, Transportation Security Administration, and U.S. Coast Guard, who report to the secretary of homeland security through the deputy secretary.

Some former DHS leaders contend that immigration gets a sufficiently large—perhaps disproportionately large—share of the secretary and deputy’s time. For example, both immigration legislation in 2013 and the first unaccompanied minor surge in 2014 were given extensive attention by DHS’ senior leaders. Indeed, officials representing other DHS components and outside observers have suggested that immigration has gotten too much attention, at the expense of other critical DHS missions.¹⁰

Nonetheless, despite the attention immigration demands or gets from the secretary and deputy, there are strong examples of insufficient coordination and coherence, judging by policy outcomes and the performance of the immigration system. DHS’ senior leaders have broad mandates and duties that do not permit the sustained attention and leadership that are essential for active oversight and implementation of integrated immigration policy mandates. Nor have DHS headquarters offices reportedly been sufficiently empowered and used by the secretary and deputy secretary to drive cross-agency activity and work with the components to meet their needs.¹¹

Despite the attention immigration demands or gets from the secretary and deputy, there are strong examples of insufficient coordination and coherence.

As a relatively young Cabinet department, DHS has a chain of command and agency-wide and interagency coordination capabilities and norms that have been insufficiently resourced, empowered, and

¹⁰ Participant discussions during MPI Working Sessions on Immigration Governance, research focus groups of former senior officials, legislative policy leaders, and experts held December 17–18, 2020.

¹¹ Participant discussions during MPI Working Sessions on Immigration Governance, research focus groups of former senior officials, legislative policy leaders, and experts held December 17–18, 2020.

institutionalized. Such structural inadequacies diminish DHS' effectiveness and standing in functioning as the government's lead immigration agency within the federal government and Cabinet. Both to use the secretary and deputy secretary's time most effectively and to strengthen the performance of the immigration system, more robust DHS-wide operational oversight and governance are needed.

A. *Challenges for Intradepartmental Collaboration*

Immigration emergencies and other southwest border issues provide the most visible examples of the need for strong interagency planning and coordinated execution of plans. However, there are numerous other illustrations of the challenges to collaboration across the three components. One resides in tasks that are done in each component that are arguably duplicative. Databases, screening protocols, fraud investigations, staffing international offices, and detention capacity and operations are examples of other immigration responsibilities that cut across components.

Databases

Widespread deficiencies and systemic data issues across DHS are well documented, and immigration components in particular have persistent problems with database operability.¹² There is no comprehensive DHS electronic database of immigration records, although its Automated Biometric Identification System (IDENT) is a department-wide database that the INS initially developed for screening and law enforcement purposes. DHS immigration components have long struggled with their management of case file databases, in part because they inherited systems developed by the Departments of Justice, Treasury, and State. Many of the technology systems for these databases descend from older architectures, limiting their ability to readily understand, modify, and integrate data across immigration components.¹³ Policy development, assessing outcomes, and managing immigration as a system are all severely hampered by this fragmentation. A cohesive data structure with appropriate individual privacy protections—one that makes it possible for authorized components across the immigration system to know what is happening with the others—is an important longer-term need.

Fraud Investigations

Responsibility for fraud investigations is another long-standing problem. In the early years of DHS, the supposition was that ICE—as DHS' self-standing investigations arm—would perform the benefit fraud detection and investigation duties that had been handled by the INS components transferred to ICE. USCIS was to consist of only the benefits and service functions of INS.

12 DHS Office of Inspector General, *Summary Report: Persistent Data Issues Hinder DHS Missions, Programs, and Operations* (Washington, DC: DHS, 2021).

13 There are dozens of different databases maintained by U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS). The Alien File, Index, and National File Tracking System of Records is the official record system across CBP, ICE, and USCIS that contains information regarding the transactions of individuals as they pass through the U.S. immigration process. Currently, A-Files may be maintained in two formats: paper A-Files or electronic A-Files within the Enterprise Document Management System (EDMS). See DHS, "System of Records Notices (SORNs)," updated May 14, 2021.

However, in 2004, the Government Accountability Office (GAO) reported, “some USCIS field officials told us that ICE would not pursue single cases of benefit fraud. ICE field officials cited a lack of investigative resources as to why they could not respond in the manner USCIS wanted.”¹⁴ USCIS then established its own Office of Fraud Detection and National Security to address the immigration fraud activities that ICE was not performing.

Today, all three components engage in anti-fraud investigations and activities with minimal coordination. ICE Homeland Security Investigations (HSI) prioritizes investigations based on locally driven U.S. attorney criteria for criminal prosecutions; many cases of concern to CBP and USCIS do not easily or readily fall within these limited parameters. In turn, HSI is increasingly frustrated by CBP and USCIS referrals, as their lack of training on investigative processes, inconsistency in adhering to processes required for criminal prosecutions, or alignment with U.S. attorney criteria have generally meant that the cases they bring are less likely to be accepted.¹⁵

A national strategy, both administrative and criminal, that addresses the pervasive fraud schemes used to exploit vulnerabilities in immigration law and processes has not been designed but is necessary to buttress both national security and the integrity of the immigration system. Such enforcement efforts require coordination within DHS, as well as with the Departments of State, Labor, and Justice.

International Activities

All three components have a presence in U.S. embassies and consulates around the world. ICE has the largest DHS presence abroad through HSI’s International Operations attachés and the Visa Security Program staff posted overseas. CBP operates attaché offices in 23 countries.¹⁶ USCIS has international field offices in China, El Salvador, Guatemala, India, Kenya, and Mexico, and its Refugee Corps officers travel around the world to interview people seeking admission to the United States as refugees.

Ultimately, it is the DOS chief of mission at a particular consular post who determines the placement of DHS staff. The number of staff at the mission is negotiated with the host country, and the chief of mission must balance competing concerns. DHS and the immigration system would be better served by a coordinated negotiation of DHS staff postings with DOS abroad.

CBP and ICE Interdependencies

CBP and ICE operations, especially at the U.S.-Mexico border, are closely connected in that ICE has responsibility for custody, transportation, and removal of migrants who are apprehended but not able to be quickly returned by CBP. Long-standing tensions between these components include “different prioritization of detainees for transfer from CBP to ICE custody; inconsistent standards for immigration paperwork and

14 U.S. Government Accountability Office (GAO), *Management Challenges Remain in Transforming Immigration Programs* (Washington, DC: GAO, 2004).

15 DHS policy requires ICE Homeland Security Investigations (HSI) to record consensual interviews, for example, but the U.S. Border Patrol, Enforcement and Removal Operations (ERO), and USCIS are not covered by the same policy.

16 For a list of the CBP attaché offices, see CBP, “CBP Attaches,” updated July 20, 2018.

handling of property; separate transportation contracts; and disparate information systems.”¹⁷ Reconciling such interdependencies would enable both components to carry out their missions more professionally.

B. DHS Institutional Structures for Managing Immigration as a System

The issue of coordination and coherence among immigration functions at DHS dates back to the department’s origins. Originally, the *Homeland Security Act of 2002* (HSA), the law that created DHS, established the position of under secretary for border and transportation security. The under secretary was responsible for preventing the entry of terrorists into the United States; securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems; carrying out immigration enforcement functions; administering customs laws; conducting agricultural inspection functions; all while “ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.”¹⁸

The under secretary structure did not include USCIS. The HSA bars combining, joining, or consolidating functions or organizational units of what were then called the Bureau of Border Security and the Bureau of Citizenship and Immigration Services.¹⁹ Congress did not want a new version of the former INS within DHS. USCIS stakeholders also strongly opposed its being folded into a law enforcement regime, even more than was already the case by being included in the newly created DHS.

Then Homeland Security Secretary Michael Chertoff eliminated the under secretary level of management in his 2005 reorganization of DHS, which was subsequently adopted in legislation. Chertoff made each of the component heads essentially equivalent, reporting to the DHS deputy secretary.

The HSA and appropriations laws no longer give the secretary much flexibility to reorganize DHS without approval from Congress.²⁰ Thus, overcoming structural impediments to advancing a new immigration agenda and addressing critical governance needs must in the near term draw on authorities and structures that already exist in statute.

Joint Task Force on Border Security and Immigration

A Joint Task Force (JTF) on Border Security and Immigration, modeled after those established by former Secretary of Homeland Security Jeh Johnson and codified by Congress in 2016, offers one option. The purpose of the task force was to “develop and coordinate policies to promote and ensure quality, consistency, and integration for the programs, components, and activities across the Department.”²¹

17 DHS Office of Inspector General, *DHS’ Fragmented Approach to Immigration Enforcement and Poor Planning Resulted in Extended Migrant Detention during the 2019 Surge* (Washington, DC: DHS, 2021), 28.

18 See Title IV(A) of the *Homeland Security Act of 2002*.

19 See Title IV, Section 471(b), of the *Homeland Security Act of 2002*.

20 The annual DHS appropriation bill for many years has included this language restricting the secretary’s authority to reorganize the department: “None of the funds provided or otherwise made available in this Act shall be available to carry out section 872 of the *Homeland Security Act* (6 USC 452) unless explicitly authorized by Congress.” A recent example is Section 514 of the *Consolidated Appropriations Act, 2018*, Public Law 115–141, *U.S. Statutes at Large* 132 (2018): 627–28.

21 6 U.S. Code 348 Section 708, as amended by Section 1901(b) of the *National Defense Authorization Act for Fiscal Year 2017*, Public Law 114–328, *U.S. Statutes at Large* 130 (2016): 2000.

Critiques of JTFs come from DHS component leaders who viewed them as duplicating functions already performed by the components. Another drawback of such task forces as a system solution is spelled out in the authorizing language: the JTFs must be cost neutral.²² Most importantly, the JTF options are limited to homeland security crises, securing the land and sea borders, and regional operations.²³ Although immigration emergencies have been recurring, it would stretch the current authority of JTFs to establish one as a standing body on immigration governance broadly.

Under Secretary for Strategy, Policy, and Plans

Amendments made by Congress in 2016—offer a second option. Those amendments established an under secretary and a deputy under secretary for strategy, policy, and plans in the Office of the Deputy Secretary.²⁴ The under secretary for strategy, policy, and plans is a political appointee on par with the heads of CBP, ICE, and USCIS and the under secretary for management.

The under secretary is uniquely placed to be tasked with driving systemwide approaches to immigration policy development and execution. Each of the DHS component heads is to coordinate policies and planning with the under secretary and the deputy (required by Congress to be a career employee). Five assistant secretary-led policy offices report to them, including one for border security and immigration, which has three deputy assistant secretaries handling immigration, border security, and immigration statistics.

The under secretary position came into existence during a period of significant leadership turnover and management anomalies in administering immigration mandates. Structurally, however, the responsibility and sustained attention required for building integrated immigration governance could reside in that office. For it to succeed, both the under secretary and the assistant secretary for border and immigration policy must have the trust of the secretary and deputy secretary and be empowered by them to function as co-equals with immigration component heads.

The under secretary is uniquely placed to be tasked with driving systemwide approaches to immigration policy development and execution.

The under secretary/assistant secretary role should be to drive integrated outcomes, using structured decision-making processes that involve the entities with critical roles in immigration policy development and execution while also curbing their stovepiping. In so doing, systemwide collaboration would become institutionalized so that it endures changes in personalities and administrations and builds out DHS-wide career staff skills, processes, and norms that are evident in more institutionally mature agencies, such as DOS and other partner agencies.

²² The Joint Task Force “may not require more resources than would have otherwise been required by the Department to carry out the duties assigned to such Joint Task Force if such Joint Task Force had not been established.” See 6 U.S. Code 348 Section 708, as amended by Section 1901(b) of the *National Defense Authorization Act for Fiscal Year 2017*.

²³ 6 U.S. Code 341 et seq., as amended by Section 1901(b) of the *National Defense Authorization Act for Fiscal Year 2017*.

²⁴ The antecedent of this under secretary position was the assistant secretary for policy, first held by Stewart Baker during the George W. Bush administration. In 2019, Chad Wolf became the first under secretary for strategy, policy, and plans.

The latter has been difficult for DHS in the past. For example, a 2021 report by the DHS Office of Inspector General examining the department’s failings in response to the 2019 surge in migrant arrivals observed that the DHS Office of Strategy, Policy, and Plans “did not implement the 2015 Plan or create a new framework when the number of migrants in detention increased. ... We could not identify an official within the Office of Strategy, Policy, and Plans who would acknowledge the office’s responsibility for DHS-level operational planning for migrant surges. Instead, we were told to consider component plans ...”²⁵

This lack of integration is also apparent in how DHS approaches budget planning and resource allocations when weighing policy determinations, as will be discussed in Section 6. As DHS enters its third decade of existence, overcoming such institutional weaknesses has become imperative.

5 Challenges for Interdepartmental Collaboration

The secretary of state and the attorney general are traditionally among the most powerful Cabinet members, giving them an outsized footprint on immigration, as compared with the secretary of homeland security. Even though DHS is nominally the lead department for immigration matters, its performance is heavily dependent on DOS and DOJ functions and those of other Cabinet agencies. This asymmetry underscores the importance of strengthening systemwide immigration capabilities and accountability.

A. *The Department of Justice*

When Congress established DHS, it left the Executive Office for Immigration Review (EOIR) and the Board of Immigration Appeals (BIA)—the judicial functions of the immigration system—within DOJ. Although immigration matters can be appealed to the federal courts, the vast majority of routine immigration matters are decided by EOIR.

Jurisdictional confusion over immigration law grew because the *Immigration and Nationality Act* has not been uniformly revised to change references from the attorney general (whose department housed the INS when the law was enacted in 1952) to the secretary of homeland security (whose department now administers much of immigration and citizenship law).

Through use of the referral and review power, which permits the attorney general to review and overturn BIA decisions, attorney general decisions can bind DHS even though DOJ no longer holds the expertise that is derived from overseeing immigration operations. Since the creation of DHS, attorneys general have increasingly used this power to play a role in advancing the executive branch’s immigration agenda.

Through use of the referral and review power ... attorney general decisions can bind DHS even though DOJ no longer holds the expertise that is derived from overseeing immigration operations.

²⁵ DHS Office of Inspector General, *DHS’ Fragmented Approach to Immigration Enforcement*, 38–44.

In particular, Attorneys General Jeff Sessions and William Barr expansively interceded in changing immigration precedent decisions that affected not only immigration judges and courts, but also the immigration functions of DHS.²⁶ Their rulings significantly narrowed established law and practice regarding the grounds for granting asylum typically raised in claims filed at the southwest border. They also limited the discretion immigration judges could exercise, constraining EOIR's ability to manage historically high dockets. Attorney General Merrick Garland has since issued a series of decisions reversing many of those actions.²⁷

Such rulings manifest, for example, in demands for more ICE detention space while foreign nationals await their hearings, pressure on USCIS asylum officer resources in carrying out credible-fear interviews, and CBP's managing of border arrivals of predominantly asylum seekers who—in being admitted to the country to pursue an asylum claim—have remained for years while their cases are pending. Thus, legal decisions made by the attorney general ricochet well beyond EOIR and can have significant effects on the policies, resources, and operating procedures of CBP, ICE and USCIS. In turn, the administration has proposed a new asylum rule that would authorize USCIS asylum officers to fully decide asylum cases that arise at the border, with immigration judges serving as the appeal body for those denied who may seek further review. Implementing this will require close coordination and joint planning between DHS and DOJ when it becomes a final rule.²⁸

B. *The Department of State*

Although there was a push to transfer the consular visa issuance function to DHS when the department was created, the HSA achieved a compromise: the visa issuance function remains with DOS consular officers, but the law gave DHS the authority to issue regulations on visa policy. Early tensions over visa security vetting, screening, and placement of CBP, ICE, and USCIS officers in embassies abroad have eased as the two departments have worked out kinks in their collaboration.

One of the issues DHS has had with DOS centers on diplomacy and aid to Central America. DHS viewed DOS as not giving sufficient priority to the Western Hemisphere. Former Secretary of Homeland Security Janet Napolitano added “chief diplomatic officer” to the title of the assistant secretary for international affairs and tasked the assistant secretary with establishing strategies for immigration, narcotics, trade matters, and security initiatives along the nation's borders.

²⁶ For an in-depth discussion of the attorney general's referral and review power, see Sarah Pierce, *Obscure but Powerful: Shaping U.S. Immigration Policy through Attorney General Referral and Review* (Washington, DC: MPI, 2021).

²⁷ As of August 3, 2021, Garland had overturned four attorney general decisions issued during the Trump administration: one that reduced the possibility of qualifying for asylum on the grounds of gang or domestic violence and another reducing the possibility of qualifying on the grounds of a family member's persecution, one limiting immigration judges' ability to manage their dockets by administratively closing cases, and one requiring a full review of every element of asylum cases appealed to the Board of Immigration Appeals. See *Matter of A-B-*, 28 I&N Dec. 307 (Attorney General, June 16, 2021); *Matter of L-E-A-*, 28 I&N Dec. 304 (Attorney General, June 16, 2021); *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (Attorney General, July 15, 2021); *Matter of A-C-A-A-*, 28 I&N Dec. 351 (Attorney General, July 26, 2021).

²⁸ U.S. Department of Justice, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” *Federal Register* 86, no. 159 (August 20, 2021): 46906; Doris Meissner, “Biden Administration Asylum Processing Revamp at the U.S. Border Could Be a Game Changer” (commentary, MPI, Washington, DC, August 2021).

DHS has pressed further in this arena and forged relationships and agreements with Mexico and Central American nations, against considerable DOS pushback. This tension became public when former Homeland Security Secretary Kirstjen Nielsen signed a regional accord in March 2019 with Honduras, Guatemala, and El Salvador aimed at eliciting their cooperation in curtailing migration from those countries. Within a few days, President Trump and Secretary of State Mike Pompeo suspended foreign aid to the region. Pompeo later resumed the aid.²⁹ This illustrates a dynamic that observers describe as a nuanced tug of war in which DOS neglects the region, then slaps DHS' hands when it attempts to fill the void. This has played out in various ways since DHS was created.

The Biden administration's request from Congress for \$4 billion over four years in assistance aimed at the underlying causes of emigration from Central America and its release of detailed plans for addressing the root causes of migration and of collaborative regional migration management strategies, led by Vice President Kamala Harris, signal ambitious new efforts that support effective border control and migration management as a longer-term endeavor.³⁰ The aim is to reduce migration push factors by strengthening livelihoods, education, safety from criminal gangs, and protection within the region by combatting corruption in the communities and countries from which migrants come. Such efforts require new levels of collaboration and engagement across DOS, as well as with DHS.

As the administration ramps up refugee admissions, in addition to Afghan evacuee processing, the importance of DHS coordinating with DOS' Bureau of Population, Refugees, and Migration (PRM) also gains new urgency, particularly on the matter of refugee processing in Central America and reopening and broadening the Central American Minors (CAM) Program.³¹ A strengthened and re-energized PRM will be pivotal in implementing DOS priorities toward refugees and humanitarian concerns in this hemisphere, as well as elsewhere around the globe.

C. *The Department of Health and Human Services*

Since the *Refugee Act of 1980* established the Office of Refugee Resettlement (ORR) within HHS, the department has been a stakeholder in the immigration system. Then in 1986, the *Immigration Reform and Control Act* (IRCA) tasked HHS with administering the \$3.5 billion State Legalization Impact Assistance Grants to help states meet the costs of services provided to foreign nationals granted legal status by IRCA.³² Any future legalization programs would likely involve HHS in a similar way.

In 2002, the HSA transferred the program for unaccompanied child migrants from DOJ to ORR. In addition to administering the refugee resettlement program and services for unaccompanied minors, ORR also oversees

29 Participant discussions during MPI Working Sessions on Immigration Governance, research focus groups of former senior officials, legislative policy leaders, and experts held December 17–18, 2020.

30 U.S. Department of State, "The President's FY 2022 Discretionary Funding Request" (press release, April 9, 2021); National Security Council (NSC), *U.S. Strategy for Addressing the Root Causes of Migration in Central America* (strategy document, Washington, DC, NSC, July 2021); NSC, *Collaborative Migration Management Strategy* (strategy document, Washington, DC, NSC, July 2021).

31 U.S. Department of State, "Joint Statement by the U.S. Department of State and U.S. Department of Homeland Security on the Expansion of Access to the Central American Minors Program" (press release, June 15, 2021).

32 *Immigration Reform and Control Act*, Public Law 99–603, *U.S. Statutes at Large* 100 (1986): 3359–445; U.S. General Accounting Office, *Health and Human Services: Funding for State Legalization Impact Assistance Grants Program* (Washington, DC: U.S. General Accounting Office, 1991), 1.

human services programs for certain other groups of migrants: asylees, Cuban-Haitian entrants, Iraqi and Afghan translators who have Special Immigrant Visas, and victims of human trafficking.

Tasking ORR with custody of unaccompanied children has stretched the agency's capacity and skills. Since states bear the primary public responsibility for ensuring the well-being of children under the U.S. Constitution, HHS' federal role centers on technical support and funding to improve state child welfare capacity. From FY 2003 to FY 2012, ORR had fewer than 8,000 unaccompanied children in its custody annually, but the numbers have been substantially higher in recent years, peaking at 69,488 in FY 2019.³³ The number dropped to 15,381 in FY 2020 due to decreased migration at the beginning of the pandemic.³⁴

Coordination among the three immigration agencies and ORR reached a nadir as Central American families with children and unaccompanied youth began seeking asylum in large numbers during the Trump administration. The former deputy director of children's programs in ORR testified to Congress in 2018 that he had warned administration officials early in discussions about ramping up the "zero-tolerance" policy that led to the large-scale separation of families about the harm such a policy posed to children. He argued that the separation of children from parents entails a "significant risk of harm to children" as well as "psychological injury," but DHS officials overruled him.³⁵ Although the courts largely put an end to family separations, inadequate recordkeeping and incongruous databases made it difficult to redress the harm caused by the inhumane policy. The Biden administration established a high-level interagency task force to locate and reunite the 628 children who remained separated from their families as of December 2020.³⁶

ORR's struggle to respond to large fluctuations in unaccompanied child arrivals came into glaring view once more in early 2021. After being transferred from CBP custody, a child spent an average of 35 days with ORR as of May 2021 before being released to a parent or other sponsor within the United States.³⁷ For FY 2021, ORR funded about 13,450 beds at approximately 200 licensed facilities in 22 states.³⁸ During the first nine months of FY 2021, CBP encountered more than 93,000 unaccompanied children—including more than 18,000 during the peak month of March 2021 alone.³⁹ This led, once more, to a bottleneck of children awaiting transfer from CBP to ORR. Pandemic-related protocols have compounded the difficulties of transferring children to ORR and their subsequent placement with a parent or guardian.⁴⁰

33 U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), "Unaccompanied Children (UC) Program" (fact sheet, HHS, ACF, Washington, DC, May 5, 2021).

34 HHS, ACF, Office of Refugee Resettlement (ORR), "Facts and Data," updated March 11, 2021.

35 Testimony of Jonathan D. White, U.S. Public Health Service Commissioned Corps, Federal Health Coordinating Official for the 2018 UAC Reunification Effort, before the U.S. Senate Committee on the Judiciary, *Oversight of Immigration Enforcement and Family Reunification Efforts*, July 31, 2018.

36 The White House, "Executive Order 14011 of February 2, 2021: Establishment of Interagency Task Force on the Reunification of Families," *Federal Register* 86, no. 23 (February 5, 2021): 8273–75.

37 Aurora Miranda-Maese, "ORR Juvenile Coordinator Interim Report" (filing in the case *Flores v. Garland*, June 4, 2021).

38 In response to the sharp increase in arrivals in 2021, ORR was able to ramp up its available beds to 28,958 as of May 31 by adding beds in emergency intake sites and influx care facilities. However, these facilities are not state licensed, and the emergency intake sites are akin to short-term shelters to provide disaster relief. See Miranda-Maese, "ORR Juvenile Coordinator Interim Report."

39 CBP, "Southwest Land Border Encounters," updated June 9, 2021.

40 HHS ACF, "Carrizo Springs Influx Care Facility," updated June 7, 2021.

Clearly, coordinated planning between DHS immigration components and HHS' ORR must be strengthened. But the disconnects are also cultural, in that human services and immigration enforcement missions have had an uneasy history. This makes the systemic responses needed, particularly under unforeseen circumstances, especially difficult and re-emphasizes the challenge of building capacity and accountability across the government's immigration enterprise.

The disconnects are also cultural, in that human services and immigration enforcement missions have had an uneasy history.

D. *The Department of Labor*

Though DOL was once the home of the INS,⁴¹ it now has a limited hand in the U.S. immigration system—certifying that foreign workers do not displace or adversely affect the working conditions of U.S. workers. The Employment and Training Administration within the department handles the labor certifications for permanent employment-based immigrants, temporary agricultural workers, and temporary nonagricultural workers as well as the simpler process of labor attestations for temporary professional workers. The Wage and Hour Division is responsible for administering and enforcing worker protections provided in several temporary foreign worker visa categories. ICE handles immigration-related worksite enforcement.

The COVID-19 pandemic has raised awareness of the disproportionate number of immigrants employed in “essential critical infrastructure” sectors, as designated by DHS. An estimated 5.6 million unauthorized immigrants work in jobs DHS deems essential, and many of these jobs place them at greater risk of exposure to the virus.⁴² The paradox of being both deportable and essential epitomizes the chasm between the United States' outdated immigration laws and labor market realities.

Numerous studies have found that immigrants are much more likely to be concentrated in economic sectors notorious for violations of wage and hour laws and for unsafe working conditions. DOL received only \$2.0 billion in FY 2018 to enforce all the labor laws aimed at protecting about 146 million U.S. workers, less than 10 percent of the funding allotted for immigration enforcement.⁴³ Scant funding has resulted in an enforcement regime that relies heavily on individuals reporting labor violations. Yet, immigrant workers, especially those who hold temporary visas or who are unauthorized, risk deportation if they report labor law violations, including wage theft.⁴⁴

41 Since so much of early immigration law was focused on restricting contract laborers and securing the borders from economic migrants, the Labor Department was the choice to oversee immigration until 1940. See Ruth Ellen Wasem, “Immigration Governance for the Twenty-First Century,” *Journal on Migration and Human Security* 6, no. 1 (2018): 97–120.

42 Jessica Bolter, Muzaffar Chishti, and Doris Meissner, *Back on the Table: U.S. Legalization and the Unauthorized Immigrant Groups that Could Factor in the Debate* (Washington, DC: MPI, 2021), 12.

43 Daniel Costa, “Immigration Enforcement Is Funded at a Much Higher Rate than Labor Standards Enforcement—and the Gap Is Widening,” Working Economics Blog, Economic Policy Institute, June 20, 2019.

44 Randy Capps, Karina Fortuny, and Michael Fix, *Trends in the Low-Wage Immigrant Labor Force, 2000-2005* (Washington, DC: Urban Institute, 2007); Janice Fine and Gregory Lyon, “Segmentation and the Role of Labor Standards Enforcement in Immigration Reform,” *Journal of Migration and Human Security* 5, no. 2 (2017): 421–451; Rebecca B. Galemba, “‘They Steal Our Work’: Wage Theft and the Criminalization of Immigrant Day Laborers in Colorado, USA,” *European Journal on Criminal Policy and Research* 27 (2021): 91–112.

An increased emphasis on labor law enforcement would better ensure that U.S. workers are not adversely affected by the recruitment of foreign workers and would improve the wages and working conditions of all workers. Prioritizing this realignment would help curb the pull factors of unauthorized migration, likely relieving some pressures at the border. However, it is a proposition that has failed over many years to win support and resources, making the DHS/DOL enforcement regimes largely static, albeit important, actors in the immigration system.

6 Funding Priorities and the Budget Process

Resource levels and allocations are an important gauge of policy priorities and performance. They also provide a powerful tool for advancing new initiatives and fixing disconnects. Overall, DHS' immigration components have had significant resource increases over the past 15 years. However, funding of headquarters functions has not expanded at the rate of the components.

Total funding for the three immigration components more than doubled, with a 104-percent increase, from FY 2006 to FY 2020.⁴⁵ This is consistent with what the Bush administration and Congress sought in creating DHS—that is, multiple agencies whose missions included, to varying degrees, national security roles and resource increases overseen by a budget-neutral departmental management structure.⁴⁶

Overall, DHS' immigration components have had significant resource increases over the past 15 years. However, funding of headquarters functions has not expanded at the rate of the components.

As the components have grown and DHS' responsibilities have increased, the question has arisen of whether sufficient resources have been devoted to DHS-wide capacities for oversight and intra-/interagency coordination and integration. Compared with partner Cabinet agencies, for example, DHS has not had commensurate funding for its Office of the Secretary. An illustration of the disparities is detailed in a recent Center for American Progress report, which states that the Office of the Secretary of State received about \$57 million in funding for FY 2019 and had 75 employees to oversee a bureaucracy of 70,000 personnel while DHS received \$19 million for FY 2018 and had 68 employees overseeing 240,000 personnel.⁴⁷

Recent studies by the Atlantic Council and the Center for a New American Security have also pointed out that the current secretary's office does not have the personnel, resources, or authority to effectively lead a department of DHS' size today, recommending the establishment of an associate secretary position to facilitate high-level departmental coordination and management.⁴⁸

⁴⁵ DHS, *Budget-in-Brief: Fiscal Year 2008* (Washington, DC: DHS, n.d.); DHS, *FY 2022 Budget in Brief*.

⁴⁶ George W. Bush, *The Department of Homeland Security* (Washington, DC: White House, 2002), 16–17.

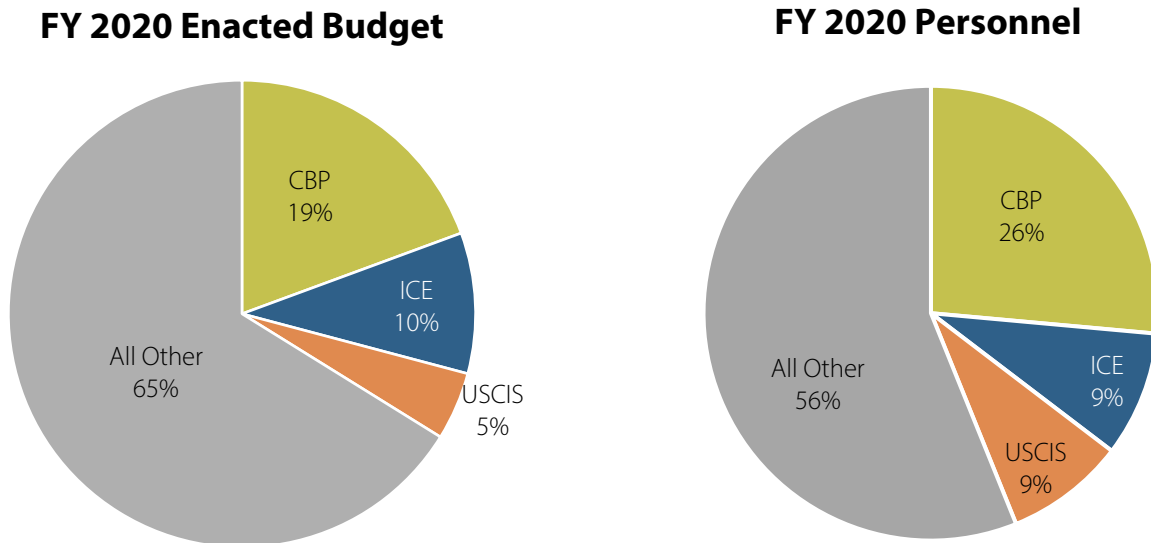
⁴⁷ Mara Rudman et al., *Redefining Homeland Security: A New Framework for DHS to Meet Today's Challenges* (Washington, DC: Center for American Progress, 2021), 14.

⁴⁸ Warrick and Durkovich, *Future of DHS Project*, 32–33; Carrie F. Cordero, *Reforming the Department of Homeland Security through Enhanced Oversight and Accountability* (Washington, DC: Center for a New American Security, 2020), 21–22.

The anachronism in upholding a budget-neutral management structure for DHS is especially evident in its immigration governance components, which in FY 2020 made up more than one-third of the DHS budget and 44 percent of its personnel, as shown in Figure 1.

FIGURE 1

Immigration Components' Share of DHS Budget and Personnel, FY 2020



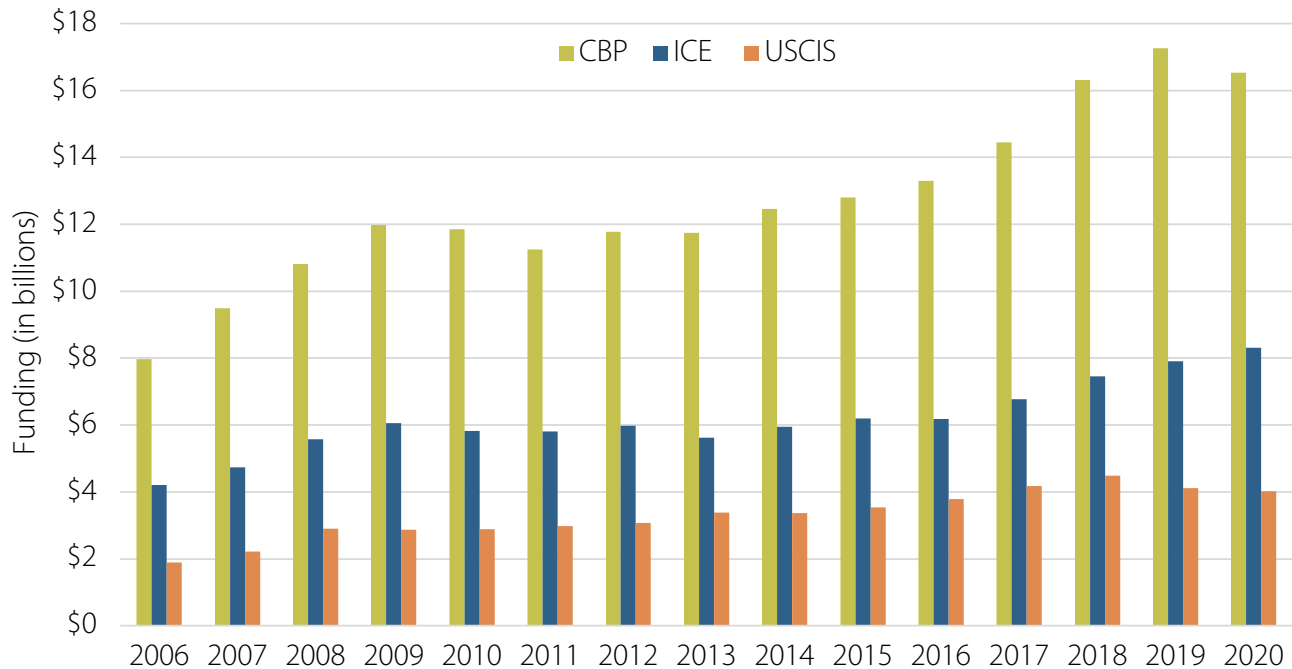
Source: Department of Homeland Security (DHS), *FY 2022 Budget in Brief* (Washington, DC: DHS, n.d.).

In FY 2006, CBP made up 20 percent of the DHS budget, ICE 10 percent, and USCIS 5 percent.⁴⁹ These proportions match today's levels, with CBP continuing to dominate the budget across the immigration system. The consistency in these percentages has held throughout substantial growth by each component over this period, as depicted in Figure 2. From FY 2006 to FY 2020, CBP's budget grew by 106 percent, ICE's grew by 97 percent, and USCIS' grew by 113 percent.⁵⁰

⁴⁹ DHS, *Budget-in-Brief: Fiscal Year 2008*.

⁵⁰ During this period, part of the US-VISIT program moved into CBP, bringing that funding with it. The remainder, now known as the Office of Biometric Identity Management, moved into the Management Directorate.

FIGURE 2
Funding for CBP, ICE, and USCIS, FY 2006–20



Source: Data compiled from DHS budgets in brief for fiscal years 2008 through 2022, available at DHS, “DHS Budget,” updated May 28, 2021.

This growth reflects the “enforcement-first” philosophy that gained traction in opposition to immigration reform legislation in 2006, 2007, and 2013. In FY 2020, annual immigration enforcement appropriations (largely CBP and ICE) stood at \$25 billion, a spending level that exceeds the budgets of all other principal federal criminal law enforcement agencies combined by about 28 percent.⁵¹ With another influx in arrivals of Central American unaccompanied minors and families underway, cooperation with ICE interior enforcement being limited by many states and localities, and the Biden administration having significantly tightened interior enforcement guidelines, the belief that the United States can enforce its way out of the dilemmas of illegal immigration and border control is being severely tested.

A. U.S. Customs and Border Protection

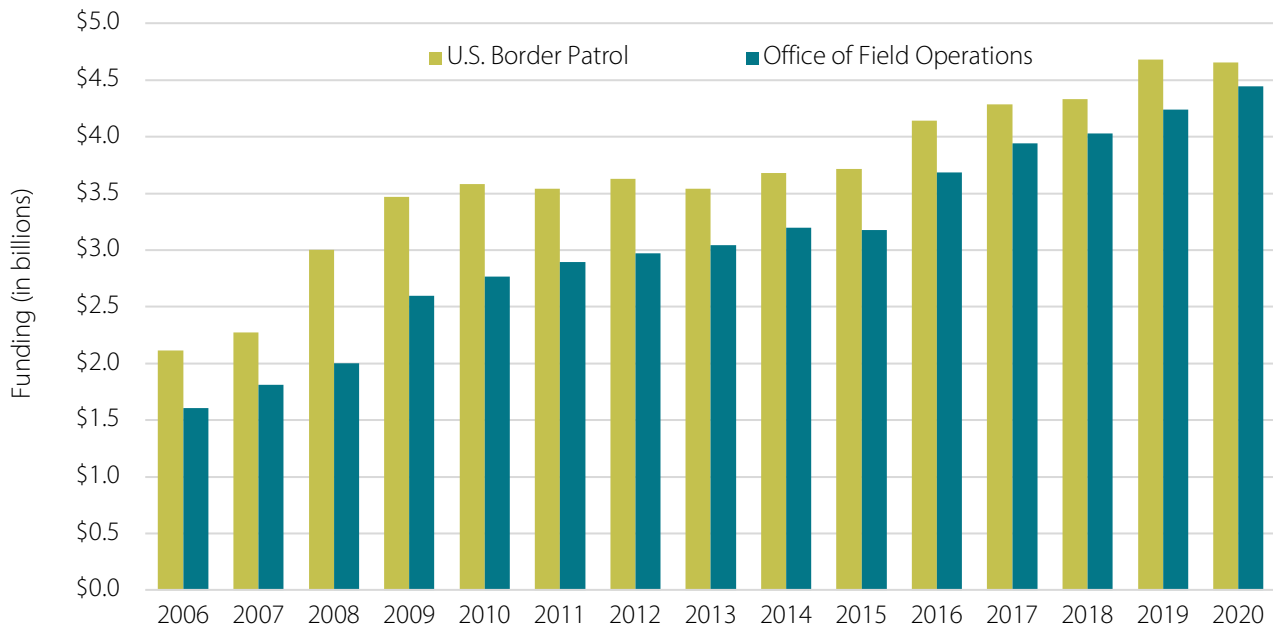
With more personnel than any other DHS component, CBP funding equals the combined budgets of the U.S. Coast Guard, the Transportation Security Agency, and the Cybersecurity and Infrastructure Security Agency.⁵² Beyond personnel, it has made significant investments in modernizing its equipment, technology, and infrastructure. Funding for the core units within CBP—the U.S. Border Patrol, which takes the lead

⁵¹ MPI calculations based on DHS, *FY 2022 Budget in Brief*; U.S. Department of Justice, “Summary of Budget Authority by Appropriation” (data table, generated May 13, 2019).

⁵² FEMA typically has the largest budget because much of its funding is disaster relief that goes directly to states and locales. The agency’s budgeted personnel was only 11,352 compared to CBP’s 61,399 in FY 2020. See DHS, *FY 2020 Budget in Brief* (Washington, DC: DHS, n.d.).

between ports of entry, and the Office of Field Operations, which handles inspections at ports of entry⁵³—grew by 120 percent and 177 percent, respectively, between FY 2006 and FY 2020. The president’s FY 2022 budget request for CBP remains flat, though it is seeking shifts in priorities.⁵⁴

FIGURE 3

Funding for the U.S. Border Patrol and the Office of Field Operations, FY 2006–20

Sources: Data compiled from DHS budgets in brief for fiscal years 2008 through 2016 and 2018 through 2021, available at DHS, “DHS Budget,” updated May 28, 2021; DHS, *Congressional Budget Justification: FY 2017—Volume I* (Washington, DC: DHS, n.d.).

Since the early 1970s, CBP’s core strategies and operations—especially those of the Border Patrol—have revolved around intercepting migrants from Mexico entering the United States illegally to work. But excepting FY 2015 and since the onset of the COVID-19 pandemic in March 2020, arrivals from Central America have outpaced those from Mexico every year since FY 2014. In FY 2008, more than 90 percent of border apprehensions were of Mexicans. By FY 2019, Guatemalans, Hondurans, and Salvadorans represented 74 percent of apprehensions, with 66 percent composed of families traveling together or children making the journey alone, many seeking protection by applying for asylum in the United States.⁵⁵

CBP’s work and resources have not been well suited to maintaining control of the border under these newer circumstances. For example, the specter of children in cages or overcrowded lockdowns reflects the fact that Border Patrol station facilities were designed years ago for turnaround enforcement of primarily Mexican males, not families and children.

53 In addition to the U.S. Border Patrol and the Office of Field Operations, there are 11 other units in CBP. These include Air and Marine Operations, Trade, Chief Counsel, Congressional Affairs, Public Affairs, Enterprise Services, and Operations Support.

54 DHS, *FY 2022 Budget in Brief*, 26–28.

55 Randy Capps, Doris Meissner, Ariel G. Ruiz Soto, Jessica Bolter, and Sarah Pierce, *From Control to Crisis: Changing Trends and Policies Reshaping U.S.-Mexico Border Enforcement* (Washington, DC: MPI, 2019).

Instead, the need is for facilities at the border that co-locate staff from DHS and other federal agencies with roles in screening and processing current migrant arrivals and varied migrant populations.⁵⁶ CBP has envisioned such a “one DHS” model in anticipation of migrant surges and opened a version of one in early 2020 in El Paso, but it has not been fully developed.⁵⁷ Such centers could have built-in surge capacity so that unexpected spikes in arrivals do not become humanitarian emergencies, as happened in 2014 with the child migration crisis, in 2019 with families, and again in the early months of 2021 with these populations.

The Border Patrol has made fundamental changes to its strategies before and sought resources commensurate with them. In the 1990s, it introduced what was termed deterrence through prevention, and in the 2000s “consequence enforcement,” which ended the revolving door of voluntary departure for those crossing the border illegally. The Trump administration implemented measures aimed at foreclosing access to humanitarian protection and asylum in the United States.

In seeking to change policies and the treatment of migrants at the border, the Biden administration has announced measures that require CBP and partner agencies—ICE, USCIS, HHS, EOIR, and DOS—to function interdependently as a system in carrying out border control missions, in ways this report describes.

CBP has called for systemic responses and support in managing the border before, especially in emergency situations. According to a report by the Office of Inspector General that examined the response to the 2019 influx in arrivals, “Border Patrol officials recognized the risks a land migration surge would pose; namely that the surge could overwhelm processing capabilities, affect available detention space, and divert critical personnel.” At the same time, the report found that “although Border Patrol officials developed surge response plans in early 2019, they focused only on CBP actions and did not include ICE [Enforcement and Removal Operations] as an active partner in managing this problem.”⁵⁸

Thus, despite considerable resources and experience with shifts in migration trends and the likelihood of emergencies, CBP and DHS have not yet succeeded in operationalizing immigration system interdependencies that have become essential elements of border control. The challenge has now become more complex, as the border influx during the early months of 2021 demonstrated, because of the inadequacy of HHS capacity in providing shelter space and processing of unaccompanied children for

Despite considerable resources and experience with shifts in migration trends and the likelihood of emergencies, CBP and DHS have not yet succeeded in operationalizing immigration system interdependencies.

release to sponsors. As a result, the Border Patrol has not consistently been able to meet the 72-hour requirement for turning these minors over to ORR, and significant numbers stayed longer in Border Patrol facilities that are inappropriate even for 72-hour stays.

56 For further discussion, see Capps, Meissner, Ruiz Soto, Bolter, and Pierce, *From Control to Crisis*, 36–37. In 2019, CBP created a new Border Patrol Processing Coordinator position, which would be responsible for intake and providing care to children and families. See CBP, “U.S. Border Patrol Creates New Position to Support Border Patrol Agents” (press release, May 28, 2019).

57 Julian Resendiz, “New Processing Center Better Prepares Border Patrol for Migrant Surges,” Border Report, February 25, 2020.

58 DHS Office of Inspector General, *DHS’ Fragmented Approach to Immigration Enforcement*, 29.

Rethinking southwest border infrastructure, CBP personnel roles and skills, cross-agency roles and responsibilities, and resource requirements and allocations all pose urgent border control and immigration governance needs going forward.

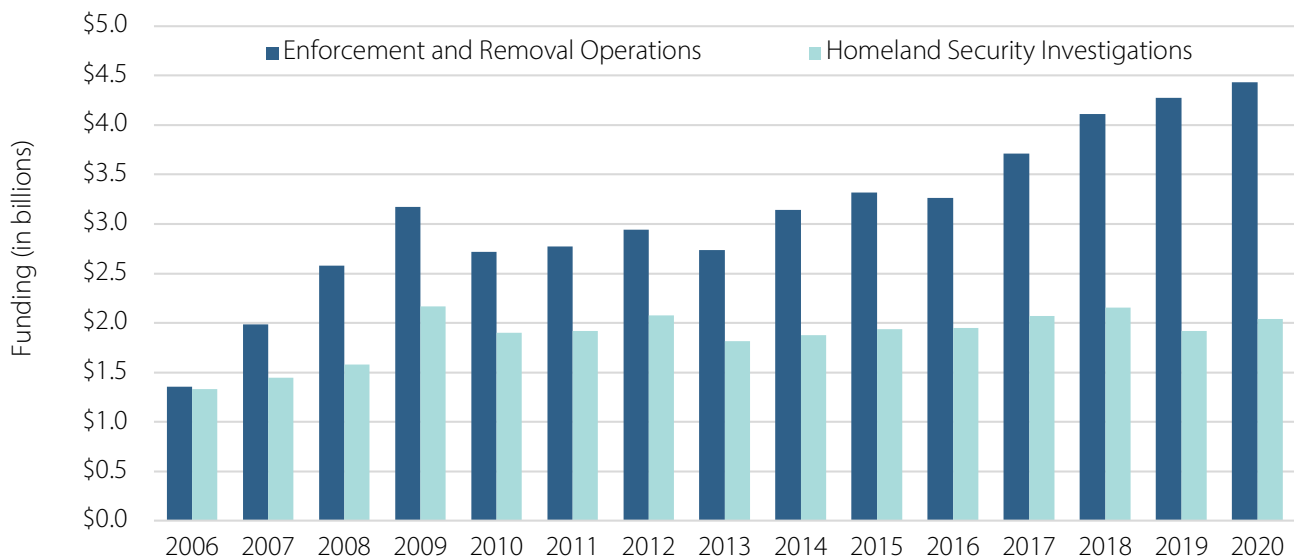
B. U.S. Immigration and Customs Enforcement

The president’s budget request for FY 2022 would keep ICE funding at the FY 2021 level of \$8 billion.⁵⁹ Of its three key units,⁶⁰ ICE funding is dominated by Enforcement and Removal Operations (ERO), which grew by 226 percent from FY 2006 to FY 2020. ERO is charged with locating, detaining, and removing foreign nationals present in the United States in violation of the law.⁶¹

Funding for the second primary ICE unit, Homeland Security Investigations (HSI), illustrates a quite different pattern of modest increases and then reductions over the same period. Overall, HSI grew by 53 percent from FY 2006 to FY 2020, the least of the units analyzed in this review. HSI encompasses some of DHS’ most critical anti-terrorism functions, including units of National Security Investigations, the Office of Intelligence, the Operational Technology and Cyber Division, and International Operations that include the Visa Security Program.

FIGURE 4

Funding for ICE’s Enforcement and Removal Operations and Homeland Security Investigations, FY 2006–20



Source: Data compiled from DHS budgets in brief for fiscal years 2008 through 2021, available at DHS, “DHS Budget,” updated May 28, 2021.

⁵⁹ DHS, *FY 2022 Budget in Brief*, 32–35.

⁶⁰ The other operational unit in ICE is its Management and Administration unit, which includes eight offices covering policy and planning, acquisition management, career development, and the chief financial officer.

⁶¹ DHS, *Budget-in-Brief: Fiscal Year 2008*.

In its predominant immigration function, ICE oversees immigration detention, which involves about 150 facilities across the country.⁶² President Biden has called for the Bureau of Prisons in the Justice Department to phase out the use of private prisons for its criminal detention.⁶³ This order does not affect ICE operations. ERO has contracted out most of its detention capacity to the private prison industry and has held the view that detention is a deterrent to illegal immigration.

Private prison facilities will likely continue to be required for individuals subject to mandatory detention as criminal noncitizens who have completed prison sentences in local, state, or federal facilities for committing crimes that are then subject to deportation. However, more flexible systems of supervision have been called for by the Biden administration. Such programs will need to be developed for other immigrant populations, principally those awaiting asylum and removal hearings. Supervised release strategies would be more suitable for many of those with whom ERO presently works.⁶⁴

Such custody options cost a fraction of detention, which is consuming increasingly large shares of ICE's budget and staffing. Detention accounted for about \$2.8 billion of ICE's total budget of \$8.4 billion in FY 2021, at an official cost of about \$144 per detainee per day.⁶⁵ Unofficial estimates run as high as \$200 per day.⁶⁶ By contrast, other custody methods—such as electronic monitoring, supervised release, and case management with legal advice or representation—have cost between \$4 and \$38 per day depending on their nature and intensity.⁶⁷

While alternatives to detention are already used with a portion of immigrants awaiting immigration court hearings in the United States, adopting supervised release and case management strategies as the prevailing policy and practice by ERO to ensure compliance with immigration appearance and removal proceedings represents a long-term effort that would require fundamental structural changes in the operations, personnel, training and skills, and culture of ICE.⁶⁸ This would also require cross-DHS and cross-departmental coordination and resource realignments with CBP, USCIS, and EOIR.

C. U.S. Citizenship and Immigration Services

Congress established USCIS as a self-standing component to strengthen the benefit-granting functions of the immigration system and sever them from its enforcement missions. However, unlike most federal

62 ICE, "Detention Management—Detention Statistics—FY 2021 ICE Statistics—Facilities FY 21 YTD" (dataset, ICE, Washington, DC, June 22, 2021).

63 The White House, "Executive Order 14006 of January 26, 2021: Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities," *Federal Register* 86, no. 18 (January 29, 2021): 7483–84.

64 For an in-depth discussion of immigration custody options other than detention and how ICE could better leverage supervised release and case management tools, see Randy Capps and Doris Meissner, *From Jailers to Case Managers: Redesigning the U.S. Immigration Detention System to Be Effective and Fair* (Washington, DC: MPI, 2021).

65 DHS, "U.S. Immigration and Customs Enforcement Budget Overview: Fiscal Year 2022 Congressional Justification" (budget document, DHS, Washington, DC, n.d.), 5, 10.

66 Laurence Benenson, *The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply* (Washington, DC: National Immigration Forum, 2018).

67 DHS, "U.S. Immigration and Customs Enforcement Budget Overview: Fiscal Year 2022," 171; Audrey Singer, *Immigration: Alternatives to Detention (ATD) Programs* (Washington, DC: Congressional Research Service, 2019), 13.

68 For more, see Capps and Meissner, *From Jailers to Case Managers*.

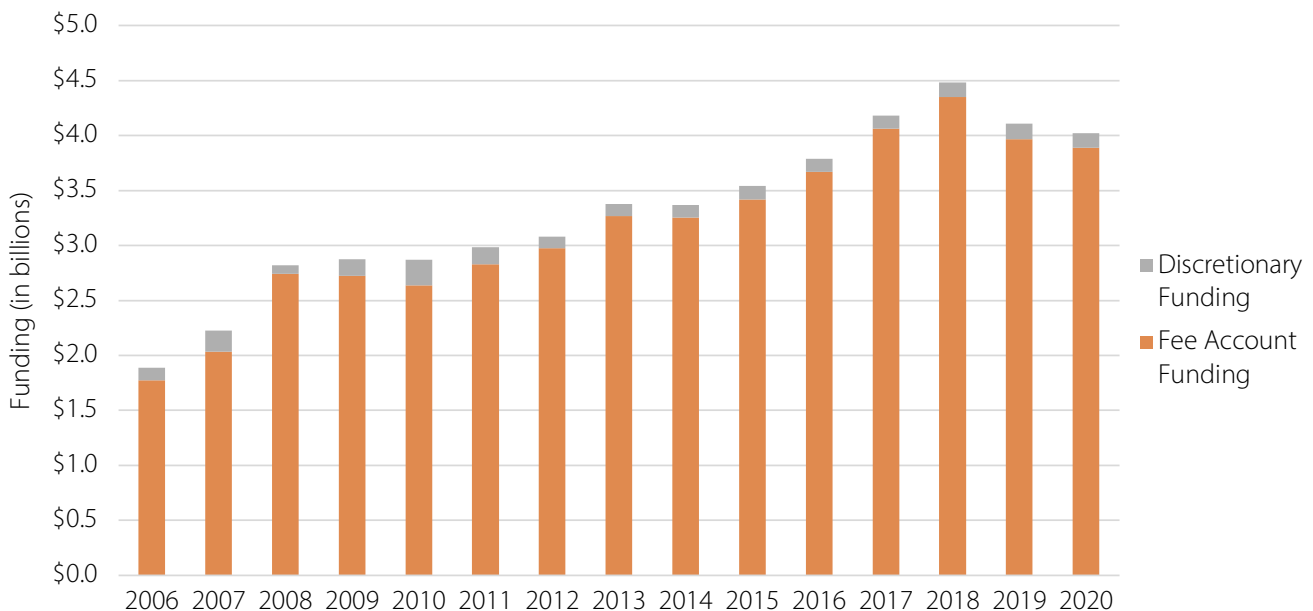
agencies, USCIS' budget depends largely upon fees that applicants for lawful permanent residence (i.e., a green card) and other immigration benefits pay to fund its operations.⁶⁹

Funding USCIS activities through the fees they generate originated in 1988 when Congress created the Immigration Examinations Fee Account that enabled the INS to retain the fees charged for adjudicating immigration and naturalization benefits and services. More recently, appropriations have funded select USCIS programs such as E-Verify, a system used to electronically confirm that individuals have authorization to work in the United States, and grants to support immigrant integration. USCIS appropriations were \$132.4 million in FY 2020. Since 2003, however, annual direct appropriations have constituted a declining portion of the USCIS budget.

As a result, the number of petitions filed as well as the dollar amount of the fees charged for each petition or application overwhelmingly determine USCIS' funding (see Figure 5). USCIS is required to regularly assess whether fees cover processing costs. Notable fee increases in 2007, 2010, and 2016 drove increases in USCIS' funding. Other funding increases have come from fees charged for special immigration benefits, such as Deferred Action for Childhood Arrivals (DACA), initiated in 2012.

FIGURE 5

Funding for U.S. Citizenship and Immigration Services, FY 2006–20



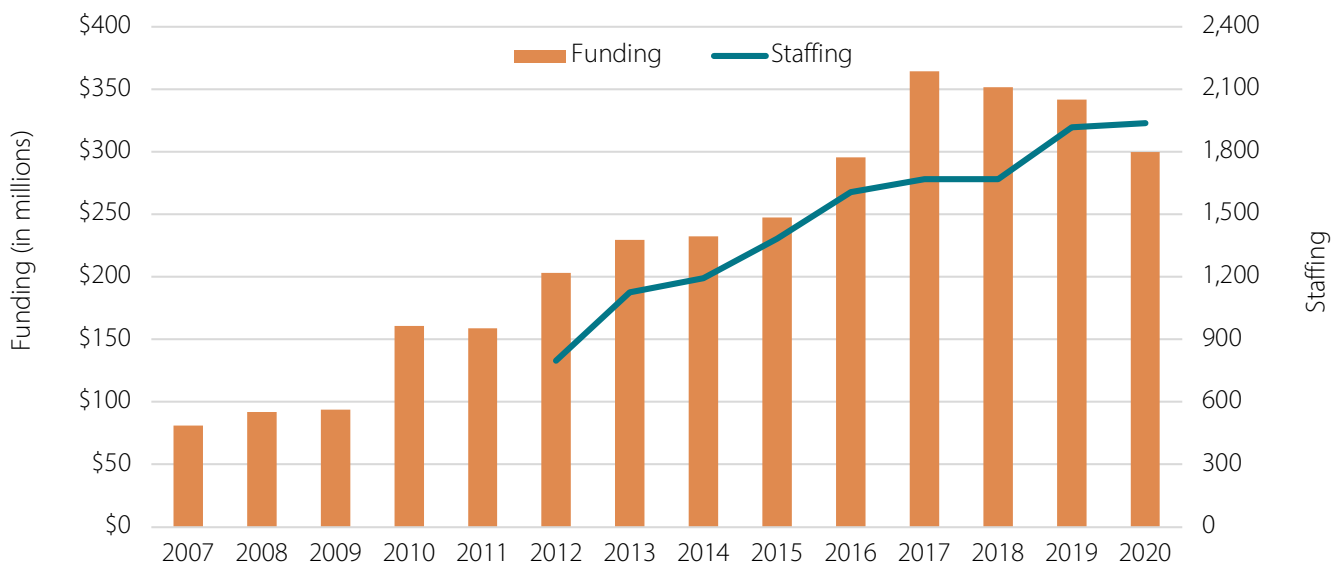
Source: Data compiled from DHS budgets in brief for fiscal years 2008 through 2022, available at DHS, "DHS Budget," updated May 28, 2021.

⁶⁹ The 2002 *Homeland Security Act*, which established USCIS, mandated that the Comptroller General of the United States report to Congress on how USCIS could derive sufficient user fees to function without appropriations. See *Homeland Security Act of 2002*, §477(d)(3).

Fees are generally waived for refugee and asylum applicants, given their circumstances, and their processing costs are assigned to other fee accounts.⁷⁰ In FY 2010, the Obama administration sought a statutory change that would have authorized appropriations for asylum and refugee operations, but Congress did not act on it.⁷¹

Congress did approve USCIS' increased use of the share of funding allocated for the Refugees, Asylum, and International Operations (RAIO) directorate by 269 percent from FY 2007 to FY 2020.⁷² As Figure 6 shows, funding and personnel for RAIO escalated as the Syrian refugee crisis worsened and the number of Central American asylum seekers arriving at the U.S. border rose. RAIO used 4 percent of USCIS' budget in FY 2007, 8 percent in FY 2018, and 6 percent in FY 2020.⁷³ These allocations are likely to change again with large numbers of Afghan evacuees arriving abroad and in the United States for processing.

FIGURE 6
Funding and Staffing for Asylum, Refugees, and International Operations, FY 2007–20



Note: For FY 2011, the agency was under a continuing resolution for the whole year. That year, there was an additional \$80,000 under appropriations for Asylum and Refugee Services and Military Naturalizations, which is not included in the figure.
Source: Data compiled from DHS congressional budget justifications for fiscal years 2009 through 2022, available at DHS, “DHS Budget,” updated May 28, 2021.

Fee funding boosted the budget for immigration adjudications when benefit-granting functions were in competition for resources with enforcement function appropriations within INS. However, the disadvantage of fee funding is its inflexibility in fluctuating situations. USCIS fees are calibrated to recover expenses of

70 The *Homeland Security Act of 2002* originally included an authorization of appropriations for processing refugee and asylum cases, but it was removed through a technical correction because the Bush administration and Congress had agreed that establishing the new department would not result in any new appropriations.
71 USCIS, *FY 2010/2011 Immigration and Examinations Fee Account: Fee Review Supporting Documentation* (Washington, DC: USCIS, 2010), 3.
72 Data compiled from DHS budgets in brief and congressional budget justifications for multiple fiscal years, available at DHS, “DHS Budget,” updated May 28, 2021.
73 Data compiled from DHS congressional budget justifications for fiscal years 2007 to 2020, available at DHS, “DHS Budget,” updated May 28, 2021.

ongoing programs, including operations and maintenance, but are not built to cover “new start” costs for activities not contemplated at the time the fee was set. This could include investments in new technology, leasing physical space for a new program for which fees have not been collected, or expedited hiring. USCIS also cannot sustain operations at established levels during periods of prolonged decreases in application filings.

As immigration and naturalization adjudications have become more complex, questions have arisen over what costs applicants’ fees should cover. Should USCIS recover all of its costs through fees, or only costs directly associated with providing services to applicants for which the fees are imposed? A corollary question is whether the agency should impose a surcharge on fee-paying applicants to compensate for processing applications for which fees are waived—primarily refugee and asylum admissions—or seek appropriations from Congress to cover these costs.⁷⁴

Managing through Revenue Fluctuations

Over the years, each fee adjustment has been preceded by at least one year of the agency’s costs exceeding collections. This mismatch and the need to regularly revise fees make it difficult for the agency to quickly adjust operations, especially staffing, to meet sudden surges or drops in petition rates, which can be driven by the economy, debates over immigration legislation, business cycles, policy changes, and other external factors. USCIS has managed such fluctuations by moving resources between types of adjudications, which can result in significant backlogs, and by “forward funding” (i.e., taking on costs that will be repaid by future revenue).

USCIS has further weathered ups and downs because it maintains an amount of funding in its fee account tied to the amount needed to cover the remaining lifecycle of the applications it has on hand at any one time, regardless of where the government is in the traditional budget cycle. In 2014, USCIS leaders decided the agency needed at least \$600 million carryover funding to provide such stability.⁷⁵

More recently, however, it lowered the \$600 million goal to \$350 million, as it implemented a number of cost-saving measures. Nonetheless, its balances went from \$790 million at the end of FY 2017 to negative territory in FY 2019, the first time it has been in the red since at least 2007. This deficit was on track to reach \$1.1 billion by the end of FY 2020.⁷⁶

Growing Backlogs and Increased Costs

The backlog of pending applications at USCIS has hit historic highs—6.12 million in FY 2020 (see Figure 7).⁷⁷ The growth in asylum applications that do not generate fees is one factor contributing to the rise. At the same time, petition and application filings have been falling. More than 1 million fewer petitions and

74 Chad Haddal and William Kandel, *U.S. Citizenship and Immigration Services’ Immigration Fees and Adjudication Costs: Proposed Adjustments and Historical Context* (Washington, DC: Congressional Research Services, 2015).

75 Sarah Pierce and Doris Meissner, “USCIS Budget Implosion Owes to Far More than Pandemic” (commentary, MPI, Washington, DC, June 2020).

76 USCIS, *FY 2019–2020 Immigration Examinations Fee Account: Fee Review Supporting Documentation with Addendum* (Washington, DC: USCIS, 2020), 17.

77 USCIS, “Number of Service-Wide Forms Fiscal Year to Date - By Quarter and Form Status Fiscal Year 2020” (data table, USCIS, Washington, DC, n.d.).

applications were filed in FY 2018 than in the year before.⁷⁸ Fee receipts fell again in FY 2019 and were projected to fall in FY 2020.⁷⁹

USCIS estimated in November 2019 that it would have a budget shortfall of \$1.26 million and responded with plans for a steep increase in fees. Then, the onset of the COVID-19 pandemic in early 2020 brought in-person USCIS services to a halt and reduced demand for travel worldwide, sharply cutting the receipt of fee payments.

In August 2020, citing the effects of COVID-19, USCIS almost furloughed 70 percent of its workforce for an estimated three to six months, having projected the number of immigration applications would drop 61 percent through the end of the fiscal year.⁸⁰ The agency credits its avoidance of the furloughs to “unprecedented spending cuts and a steady increase in daily incoming revenue and receipts.”⁸¹ And indeed, instead of the expected drop of 61 percent, it turned out that USCIS received only 2 percent fewer applications and petitions in FY 2020 than FY 2019.⁸²

In addition:

- ▶ USCIS has increased spending on detecting immigration-benefit fraud and on vetting applications. Anti-fraud costs more than doubled and vetting costs nearly tripled from FY 2016 to FY 2020.⁸³
- ▶ In October 2017, USCIS incurred cost increases as a result of a policy change to require in-person interviews for adjustment of status applications and certain other applications that previously had been adjudicated without an interview, absent an indication of fraud.
- ▶ USCIS adjudicated 63 percent of its pending and incoming caseload in FY 2016. The adjudication rate dropped to 55 percent in FY 2020 and the backlog of pending petitions grew by nearly 2 million, from 4.3 million at the end of FY 2016 to 6.1 million at the end of FY 2020.⁸⁴

78 USCIS, “Number of Service-Wide Forms by Fiscal Year to Date, Quarter and Form Status 2017” (data table, USCIS, Washington, DC, n.d.); USCIS, “Number of Service-Wide Forms by Fiscal Year to Date, Quarter, and Form Status 2018” (data table, USCIS, Washington, DC, n.d.).

79 USCIS, *FY 2019–2020 Immigration Examinations Fee Account*, 16.

80 Muzaffar Chishti, Sarah Pierce, and Kira Olsen-Medina, “Impending USCIS Furloughs Will Contribute to a Historic Drop in U.S. Immigration Levels,” *Migration Information Source*, July 28, 2020; Nicole Ogrysko, “With Improved Financial Outlook, USCIS Buys More Time to Avoid Employee Furloughs,” *Federal News Network*, July 27, 2020.

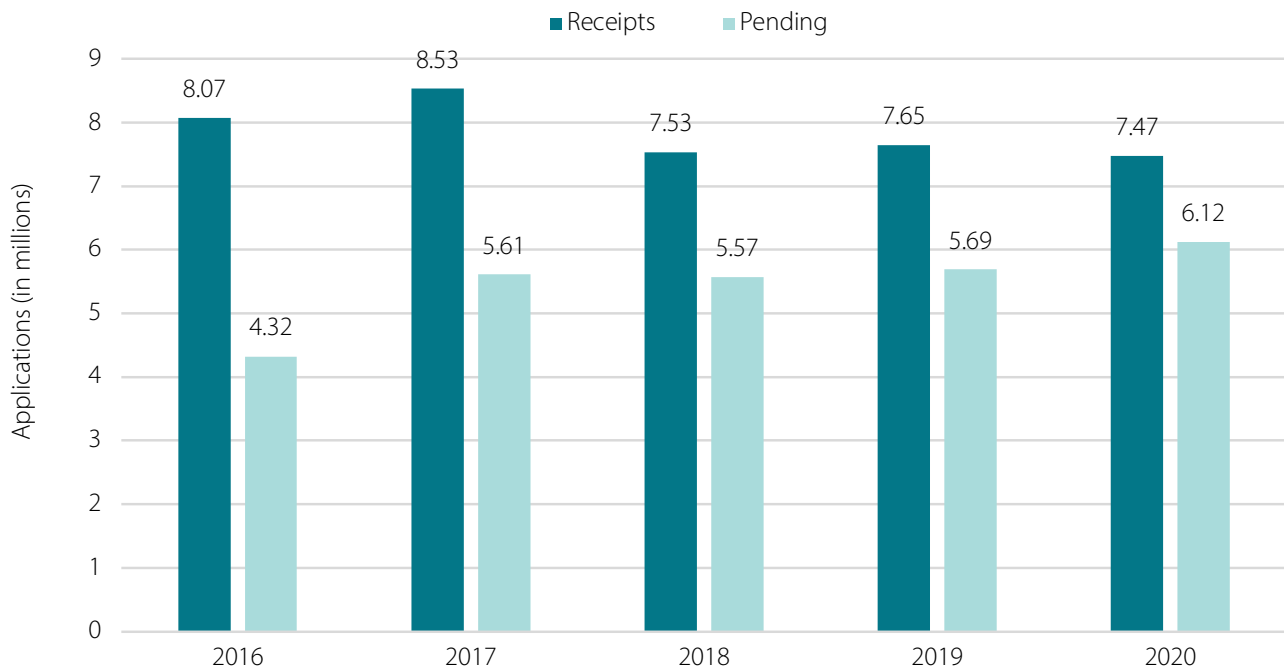
81 USCIS, “USCIS Averts Furlough of Nearly 70% of Workforce” (press release, August 25, 2020). On September 30, 2020, President Trump signed the *Continuing Appropriations Act, 2021 and Other Extensions Act* (Public Law 116–159), which included a provision to address the USCIS budget shortfall by giving the agency immediate access to existing premium processing funds that were dedicated to infrastructure improvement to cover operating expenses.

82 USCIS, “Number of Service-Wide Forms Fiscal Year to Date, by Quarter, and Form Status Fiscal Year 2019” (data table, USCIS, Washington, DC, n.d.); USCIS, “Number of Service-Wide Forms Fiscal Year to Date - By Quarter and Form Status Fiscal Year 2020.”

83 Pierce and Meissner, “USCIS Budget Implosion.”

84 USCIS, “Number of Service-Wide Forms Fiscal Year to Date - By Quarter and Form Status Fiscal Year 2020.”

FIGURE 7

USCIS Applications Received and Applications Pending, FY 2016–20

Note: Data for pending applications show the number pending at the end of each fiscal year.

Sources: USCIS, “Number of Service-Wide Forms by Fiscal Year to Date, Quarter and Form Status 2016” (data table, USCIS, Washington, DC, n.d.); USCIS, “Number of Service-Wide Forms by Fiscal Year to Date, Quarter and Form Status 2017” (data table, USCIS, Washington, DC, n.d.); USCIS, “Number of Service-Wide Forms by Fiscal Year to Date, Quarter, and Form Status 2018” (data table, USCIS, Washington, DC, n.d.); USCIS, “Number of Service-Wide Forms Fiscal Year to Date, by Quarter, and Form Status Fiscal Year 2019” (data table, USCIS, Washington, DC, n.d.); USCIS, “Number of Service-Wide Forms Fiscal Year to Date - By Quarter and Form Status Fiscal Year 2020” (data table, USCIS, Washington, DC, n.d.).

The current picture for USCIS is one of productivity having decreased, largely for reasons of its own making, such as insufficient carryover fund decisions and procedural changes. As a result, processing times for most types of petitions have increased. At the same time, the USCIS is subject to externalities beyond its control, such as refugee and asylum admissions levels and “new start” programs, that can dramatically affect its budget.

The current picture for USCIS is one of productivity having decreased, largely for reasons of its own making.

The Biden administration’s FY 2022 budget request includes \$345 million in new appropriations and 1,250 new staff for USCIS, expressly aimed at reducing application and petition backlogs and increasing refugee adjudications and admissions.⁸⁵ This is

consistent with announcements the administration has made for new initiatives aimed at welcoming immigrants through upgrading legal immigration processes and broadening support for naturalization.

⁸⁵ DHS, *FY 2022 Budget in Brief*, 71–72; Office of Management and Budget, “The President’s Budget for Fiscal Year 2022” (fact sheet, May 28, 2021), 5.

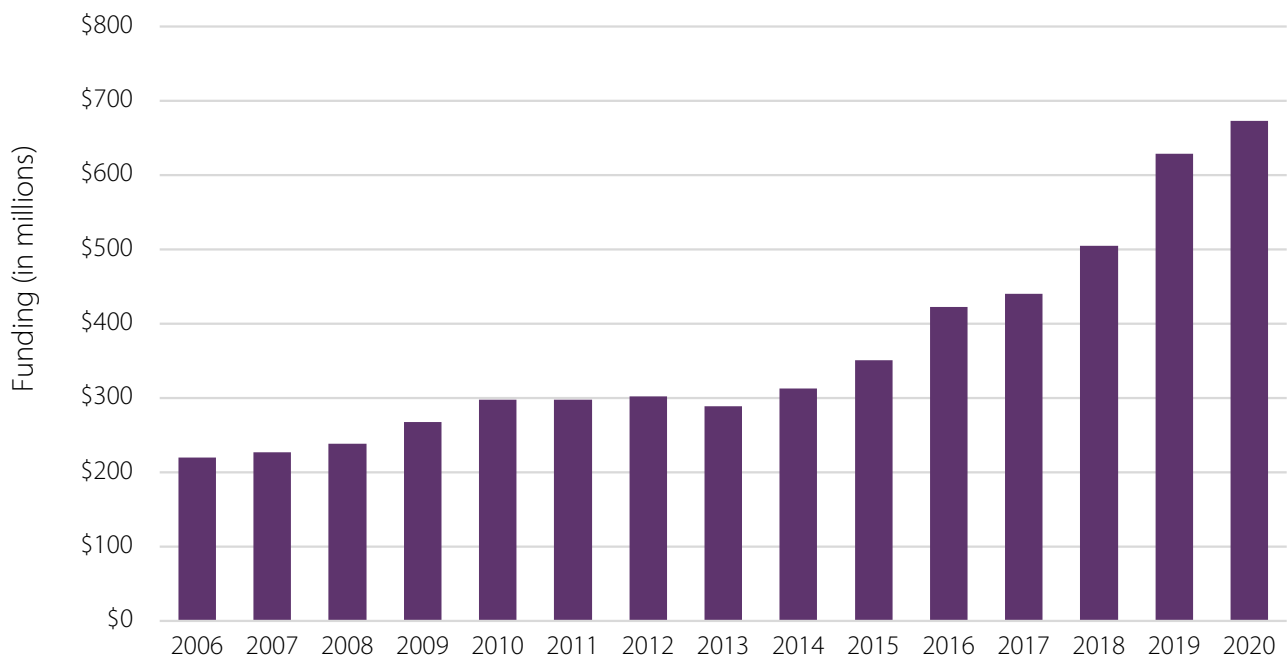
These are important steps in addressing USCIS' performance difficulties. But they are likely to fall short given the structural funding problems USCIS faces, as well as an unanticipated new asylum rule and Afghan evacuee workloads. The stability of USCIS operations and its ability to provide critical services are inherently at risk because of its business model.

D. *The Executive Office for Immigration Review: A Key Partner Agency*

From a budget and resource allocation standpoint, EOIR within DOJ is a DHS partner agency for which capacity and effective performance are critical in meeting present immigration challenges. Funding for EOIR has tripled since FY 2006 and is second only to ERO in terms of percentage growth from FY 2006 to FY 2020 among the core immigration components. While the DHS immigration components had their highest rate of budget growth between FY 2002 and FY 2008, EOIR growth is more recent. As can be seen in Figure 8, its largest increases were in FY 2016 (20 percent) and FY 2019 (25 percent).

FIGURE 8

Funding for the Executive Office for Immigration Review, FY 2006–20



Source: Data compiled from DOJ congressional budget submissions for fiscal years 2008 through 2022, available at DOJ, “[Budget and Performance](#),” accessed June 2021.

Despite the recent funding increases, the backlog of cases at EOIR remains at historic highs. At the end of FY 2020, EOIR had 1.3 million cases pending at an average wait time of 811 days. In FY 2006, that number was 168,827 cases pending, with an average wait time of 406 days.⁸⁶

⁸⁶ Transactional Records Access Clearinghouse (TRAC) Immigration, “[Backlog of Pending Cases in Immigration Courts as of April 2021](#),” accessed May 26, 2021.

This breakdown in the court system turns heavily on asylum cases filed by migrant families crossing the southwest border. According to DHS data, of migrants apprehended while traveling with family from FY 2014 to FY 2019, only 11 percent had either been granted asylum or another form of deportation relief—or been deported—by March 2020.⁸⁷ Another 67 percent were still in removal proceedings, with data showing that families apprehended since 2014 have been spending up to five years in removal proceedings.

The conditions propelling people to leave their countries and seek protection in the United States are severe, and the backlog in the adjudication of asylum claims delays protection for those in need. But this picture also constitutes a powerful pull factor, with some claims filed to secure the right to remain in the country during the years-long wait. The administration’s proposed rule authorizing asylum officers to handle both credible-fear screening and the full merits adjudication for U.S.-Mexico border asylum-seekers would help relieve EOIR workload pressures by having immigration courts serve as the appeal body for only asylum cases that are denied going forward. Restoring more humane border policies and treatment of migrants must include such dramatic changes in how EOIR uses its resources so that the hearing process for asylum cases is fair but also timely.

EOIR’s problems in managing its burgeoning caseloads were deepened by Trump administration decisions that limited the discretion judges have in the past had to manage their dockets. For example, immigration judges were prohibited from closing cases administratively—a practice used to suspend removal proceedings when the plaintiff has a case pending adjudication with USCIS or for other categories of nonpriority cases.⁸⁸

Such case management tools are being restored by the Biden administration. However, the immigration court system has been in dire need of reform and performance improvements for many years. Turnover is high, morale is low, training is insufficient, and administrative support systems and technology are outdated and inadequate.⁸⁹ To improve immigration governance, significant reforms beyond DHS, especially in the immigration court system, are a pressing need.

E. Coordinated Budget Planning

Budget development within DHS, the Office of Management and Budget (OMB), and in Congress fails to treat resource planning, allocations, and budgets as an exercise in funding immigration as a system. The DHS under secretary for management takes the lead in budgeting, personnel, and information technology systems (among other matters), but its management directorate is not organized in a way that enables systemwide immigration planning. Nor do OMB’s review and recommendations to Congress in the president’s budget submissions reflect cost assessments of cross-agency immigration needs.

As a result, a cross-cutting budget process has not been established to analyze and seek funding across immigration components and agencies that reflects the interconnections among them. For example, given the high proportion of migrants arriving at the southwest border who are seeking protection, CBP border

⁸⁷ Marc R. Rosenblum and Hongwei Zhang, *Fiscal Year 2020 Enforcement Lifecycle Report* (Washington, DC: DHS, Office of Immigration Statistics, 2020), 13.

⁸⁸ Pierce, *Obscure but Powerful*, 17–19.

⁸⁹ Muzaffar Chishti, Sarah Pierce, and Doris Meissner, *Rethinking the Immigration Courts* (Washington, DC: MPI, forthcoming).

enforcement responsibilities create an increased need for USCIS asylum officers and DOJ immigration judges. Welcoming Afghan evacuees calls for State Department consular and USCIS processing, State Department administered reception funding, HHS resettlement program resources, and rebuilding the capacities of nongovernmental partner resettlement agencies.

The need for integrated budgeting is not new. During the Obama administration, Homeland Security Secretary Janet Napolitano tried to align border apprehension estimates with ICE bed space and EOIR court case costs, with the goal of describing for OMB and Congress the funding allocations needed for the system to carry out its mission. Similarly, Secretary Jeh Johnson directed the development of integrated budgets for the JTF areas of operations.

In both cases, a combination of timing and congressional dynamics stymied the efforts. Budgets across the government were declining, leading the immigration components to view integrated budgeting as a vehicle for cutting their budgets in the name of efficiencies, rather than plus-ups for acquiring what they believed they needed. OMB may have treated the

The need for integrated budget proposals to properly fund immigration as a system is especially important because of the fragmentation among congressional committees that have oversight and appropriations jurisdiction over DHS funding.

DHS recommendations that way too. In addition, congressional appropriators had begun designating the number of ICE detention beds and Border Patrol agents, often at higher levels than the administration requested. Such lack of support for the administration's budget submissions undercut its efforts to argue the case for funding immigration as a cohesive system.

The need for integrated budget proposals to properly fund immigration as a system is especially important because of the fragmentation among congressional committees that have oversight and appropriations jurisdiction over DHS funding. CBP and ICE are each overseen by multiple congressional committees, whereas USCIS, as a fee-funded agency, receives very little congressional oversight of its expenditures.⁹⁰ The fragmentation has been a long-standing concern for DHS more broadly. In 2020, six former secretaries and acting secretaries of homeland security wrote a letter in support of consolidating DHS congressional oversight in a single authorizing committee.⁹¹ The precedent for such action patterns that for DOD.

For such factors to change, there must be a new political moment. That moment may be unfolding as the threat of terrorism shifts to domestic dangers, such as political extremism, and global phenomena, such as disease and climate change. The immigration counterpart to those shifts resides in the Biden administration's immigration vision for addressing the root causes of unauthorized migration, collaborative regional migration management strategies, strengthening support for legal immigration, and a narrative of immigration as an asset to the country.

⁹⁰ Seven House and seven Senate committees have jurisdiction over different parts of CBP, while four House and five Senate committees have jurisdiction over different parts of ICE. See Thomas Warrick and Mark Massa, *Future of DHS Project: Key Findings and Recommendations: Congressional Oversight* (Washington, DC: Atlantic Council, 2020), 7–9.

⁹¹ Atlantic Council, "Former and Acting Secretaries of Homeland Security Sign Open Letter on Consolidating Congressional Jurisdiction over DHS" (press release, November 9, 2020).

7 Institutional Culture

The institutional cultures and professionalism of the immigration components have suffered from severe internal stresses and external pressures. More than in most areas of public policy, immigration and its workforces have been subject to wild swings of the policy pendulum from one administration to another, beginning with the very creation of DHS. These swings intensified during the Trump administration by the politicization of immigration missions, frequent changes in serially unconfirmed senior leadership officials, and a host of hastily issued directives with little input from the agencies charged with implementing them.

According to a GAO legal opinion issued in mid-2020, the secretary position had been vacant since Kirstjen Nielsen resigned on April 19, 2019, because “an incorrect official assumed the title of acting secretary at that time.”⁹² Since then, the other leadership positions that had been vacant or led by an acting official included the leadership of all three immigration components (director of USCIS, commissioner of CBP, and director of ICE), the deputy secretary, under secretary for management, under secretary for science and technology, under secretary for intelligence and analysis, and director of cybersecurity and infrastructure security.⁹³

More than in most areas of public policy, immigration and its workforces have been subject to wild swings of the policy pendulum from one administration to another.

Sharp divides in public opinion over immigration enforcement missions have further complicated the work and hurt the reputations of immigration enforcement components. This has been especially true for ICE, which has been the target of Abolish ICE demonstrations and rhetoric, just as it has been pushed by others to expand enforcement through 287(g) programs, which delegate immigration enforcement authority to state and local law enforcement entities. Many mid-level staff, especially at the border, work in positions that make them vulnerable to corruption. Others are tasked with enforcing laws that are out of step with the communities in which they work and at cross-purposes with views about immigration broadly held by the American people.

The most meaningful way to address the problems, morale, and performance deficiencies of the immigration system would be for Congress to enact immigration legislation that aligns the nation’s immigration laws with the national interest and the country’s future needs. Legislation that would, for example, provide legalization pathways and revisit issues such as mandatory detention would serve to guide enforcement agencies’ priorities and reduce the size of populations subject to enforcement, alleviating the difficulties immigration officers experience in enforcing unpopular, outdated, and sometimes inhumane laws.

⁹² GAO, “Matter of: Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security” (File B-331650, Washington, DC, August 14, 2020).

⁹³ DHS, “Leadership,” updated April 9, 2021.

At the same time, such legislation would also represent an unprecedented management challenge for DHS to implement, especially on the heels of breakdowns in the agency's performance in recent years. In their wake, the institutional cultures of the immigration components must be rebuilt and professionalized.

A. *Senior Career Leadership*

The separation of immigration functions into autonomous components 18 years ago means that most career personnel have worked in only one agency rather than climbing career ladders that zigzag immigration functions. This fragmentation has reduced staff's knowledge of the missions and tools available in fellow agencies and hindered the cultivation of relationships among mid-level and senior managers to address cross-cutting problems.

In addition, career DHS immigration officials often have limited access to training and professional development compared to defense or private-sector partners with similar requirements, and little to no cross-training in migration management or opportunities to work in related agencies. Such professional isolation has diminished the capacity and ability of career professionals to innovate, develop systemic responses to new immigration challenges, and advance joint planning at the headquarters level.

Taken together, the recommendations this report makes in Section 8 would represent fundamental culture change in many aspects of the work of the immigration components. Especially for senior leaders in the career service, such organizational changes would require deepening career development—for example, continuing education programs for rising leaders, competitive details for professional advancement, and operational rotations as part of an overall realignment of the leadership structures guiding immigration at DHS.

B. *Recruitment, Retention, and Vulnerability to Corruption*

Another serious problem has been recruitment and retention of personnel, particularly for CBP. Hiring new agents is time and resource intensive. It takes the Border Patrol on average 133 applicants and nine to 12 months to put one agent in uniform.⁹⁴ Two-thirds of the applicants fail the mandated polygraph test,⁹⁵ a rate twice as high as applicants for positions in other law enforcement agencies.⁹⁶ CBP also suffers from high staff turnover. The attrition rate for Border Patrol agents stands at 6 percent, compared to 3.2 percent across all federal law enforcement agencies.⁹⁷

Once hired, CBP has well-established, rigorous training programs for its agents. CBP operates the Field Operations Academy and the Border Patrol Training Academy. The Field Operations training program lasts

94 Testimony of John Roth, DHS Office of Inspector General, before the Senate Committee on Homeland Security and Governmental Affairs, "[High Risk: Government Operations Susceptible to Waste, Fraud, and Mismanagement](#)," February 15, 2017; Zoe Todd and Jodi Wei, "[Send Help: Inside CBP's Multi-Year Staffing Struggle](#)," PBS Frontline, January 7, 2020.

95 To save money in 2020, CBP shifted the polygraph test till later in the hiring process so that only the most promising candidates are given the test which costs about \$2,200 per applicant. See Todd and Wei, "[Send Help](#)."

96 Alan Neuhauser, "[Border Patrol Has a Problem with Women](#)," *US News and World Report*, August 3, 2018.

97 Testimony of Jon Anfinsen, National Border Patrol Council, before the House Homeland Security Subcommittee on Border and Maritime Security, "[On the Line: Border Security from an Agent and Officer Perspective](#)," January 9, 2018.

89 days, and the Border Patrol Training Academy provides 940 hours of instruction (117 days).⁹⁸ However, both training programs focus on only the specific knowledge, skills, and abilities required of agents within either the Office of Field Operations or the Border Patrol; they do not include the history of immigration, the functions of partner immigration components and agencies, and the principles that underlie the nation's immigration laws. These are all aspects of the immigration enterprise that contribute to professionalism and career advancement competencies.

As the United States increased immigration enforcement in the 2000s, migrant smuggling and drug trafficking criminal organizations increasingly began to target U.S. law enforcement personnel with bribes and other inducements to facilitate the movement of drugs and unauthorized migrants across the border.⁹⁹ Awareness of this vulnerability to corruption led Congress to establish the CBP Office of Professional Responsibility (OPR) in the *Trade Facilitation and Trade Enforcement Act of 2015*.¹⁰⁰ OPR's responsibility is to ensure compliance with agency-wide programs and policies related to corruption, misconduct, and mismanagement and to execute CBP's internal security and integrity awareness programs.¹⁰¹

Its Joint Intake Center (JIC) received 6,274 reports of alleged misconduct and other matters in FY 2018. Of these, 3,242 came from the Office of Field Operations and 2,403 came from the Border Patrol. In terms of arrests, the JIC received 287 reports of arrests in FY 2018 involving 269 employees.¹⁰² The reported misconduct occurred primarily off duty, but it also included illegal activity while on duty. Of the arrests, the largest numbers were drug/alcohol violations (45 percent) and domestic violence offenses (20 percent). In FY 2018, seven CBP employees were indicted for corruption-related activities.¹⁰³

CBP is not alone in facing misconduct and corruption among its ranks. Within DHS, the Secret Service has had some high-profile incidents of agent misconduct while on duty. Similarly, the DOJ's Drug Enforcement Administration has had widely reported cases of agents allegedly engaging in criminal conduct. Although not reflective of most people in federal law enforcement, cases of misconduct and corruption are sufficient to warrant interagency collaboration regarding appropriate disciplinary actions as well as improvements in recruitment and training to reduce aberrant and illegal conduct.¹⁰⁴

98 CBP, "The Field Operations Academy: What to Expect," updated June 21, 2021; CBP, "CBP Border Patrol Academy," April 27, 2021.

99 David Jancsics, "Law Enforcement Corruption Along the U.S. Border," *Security Journal* 34 (2021): 26–46; Senate Committee on Homeland Security and Governmental Affairs, *Report to Accompany S. 3243, Anti-Border Corruption Act of 2010* (Washington, DC: U.S. Government Printing Office, 2010).

100 *Trade Facilitation and Trade Enforcement Act of 2015*, Public Law 114–125, *U.S. Statutes at Large* 130 (2016): 122.

101 Office of Professional Responsibility, *Annual Report, Employee Misconduct and Corruption Statistics FY2016-FY2017* (Washington, DC: CBP, 2018); Office of Professional Responsibility, *Annual Report, Employee Misconduct and Corruption Statistics FY2018* (Washington, DC: CBP, 2020).

102 Eleven employees reported two arrests, one employee reported four arrests, and one employee reported five arrests. See Office of Professional Responsibility, *Annual Report, Employee Misconduct and Corruption Statistics FY2018*.

103 Many of the corruption cases involve criminal activity that took place over time and investigations that overlapped fiscal years. These employees engaged in criminal activity including drug and migrant smuggling, fraud involving immigration documents, theft, weapons violations, and misuse of government databases. Slightly more than half of these cases had implications for national security, as the employees engaged in criminal activity that directly affected border security. See Office of Professional Responsibility, *Annual Report, Employee Misconduct and Corruption Statistics FY2018*.

104 U.S. House of Representative, Committee on the Judiciary, "Analyzing Misconduct in Federal Law Enforcement" (hearing before the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, April 15, 2015).

C. *Public Opinion and Staff Morale*

In carrying out their missions, DHS' immigration components often find themselves at odds with public opinion. For example:

- ▶ Two-thirds (68 percent) of people surveyed by the Pew Research Center in April 2021 thought the government was doing a very bad (33 percent) or somewhat bad (35 percent) job of dealing with the increased number of people seeking asylum at the country's southern border.¹⁰⁵
- ▶ In July 2019, the Quinnipiac University Poll found that 68 percent of those surveyed thought conditions in detention centers were a serious problem and 62 percent did not think the federal government was doing enough to address the problem.¹⁰⁶
- ▶ A CNN Poll taken just a few days earlier found that 60 percent of those surveyed favored allowing Central Americans to seek asylum in the United States.¹⁰⁷
- ▶ A 2019 Pew Research survey found that ICE was the only federal agency of the 16 in the survey that was viewed more negatively (54 percent) than positively (42 percent).¹⁰⁸

Also in 2019, CBP requested an increase from \$2.1 million to \$9.6 million in its Employee Assistance Program, based upon a mounting necessity for suicide prevention and other mental health services.¹⁰⁹

DHS falls to the bottom of federal departments ranked according to workplace morale, as measured by the Partnership for Public Service (PPS) in 2020.¹¹⁰ Similarly, it ranked 31st out of 35 departments or large agencies in terms of employee satisfaction in a 2020 survey by the federal Office of Personnel Management, though its score has improved over the past several years.¹¹¹ Looking at departmental subcomponents, CBP and ICE rank 328th and 315th respectively out of 411 federal agencies, according to PPS. While USCIS placed at the 90th spot overall in 2019, second only to the U.S. Coast Guard (85th) within DHS, it dropped to 339th in 2020.¹¹²

CBP ranked in the bottom quartile on every indicator but pay, scoring 399th (out of 411) on employee skills-mission match and 401st on innovation. CBP also ranked in the bottom five subcomponents, out of 393 total, on two of the five COVID-19 indicators measured: COVID-19 response overall and employee well-being during COVID-19. Similarly, ICE ranked in the bottom quartile on most indicators, except for pay, for which

105 Pew Research Center, *Most Americans Are Critical of Government's Handling of Situation at U.S.-Mexico Border* (Washington, DC: Pew Research Center, 2021).

106 Poll Reporting, "Immigration/Border Security—Quinnipiac University Poll. July 25-28, 2019," accessed May 26, 2021.

107 Poll Reporting, "CNN Poll Conducted by SSRS. June 28-30, 2019," accessed May 26, 2021.

108 Pew Research Center, *Public Expresses Favorable Views of a Number of Federal Agencies* (Washington, DC: Pew Research Center, 2019).

109 CBP Office of Acquisition in support of the Office of Human Resources with EAP Consultants, Inc., "Justification and Approval (J&A) for Other than Full and Open Competition" (contract opportunity notice, May 2019); Todd and Wei, "Send Help"

110 Partnership for Public Service, "2020 Best Places to Work in the Federal Government Rankings," accessed August 5, 2021.

111 U.S. Office of Personnel Management (OPM), *Federal Employee Viewpoint Survey, Agency Management Report: Department of Homeland Security* (Washington, DC: OPM, 2020), 7–8.

112 For the 2019 rankings, see Partnership for Public Service, "Best Places to Work Agency Rankings," accessed August 5, 2021.

it ranked above median, and effective senior leaders and work-life balance, for which it ranked below the median. Its lowest ranking was also innovation (377th out of 411), followed by—teamwork (367th).¹¹³

USCIS also scored poorly, coming out below the median or in the lowest quartile on every indicator. It ranked lowest in employee empowerment, at 366th out of 410 agency subcomponents, and in the agency's performance during COVID-19, at 350th out of 393. This is a sharp drop over the course of one year: in 2019, USCIS scored above the median on all 12 indicators that PPS measures and was in the top quartile on five.¹¹⁴ While the specific reasons for this shift have not been analyzed, it is likely that the threat of broad furloughs in 2020 played a role.

Across DHS' immigration components, there is a pressing need for increased support and resources for continual learning, reskilling, and upskilling for career employees. However, the acute condition of the institutional culture calls for wider ranging remedies. The recommendations outlined in the next sections envision aggressive change management needs. They would bring with them higher standards of professionalism and reward addressing immigration system gaps and breakdowns that contribute to poor morale and undermine public respect.

By insuring that (1) the missions of the immigration agencies are recalibrated to incorporate a broader spectrum of responsibilities within the statutory expectations for the immigration components; (2) the DHS leadership structures and roles for immigration policymaking and oversight are more effectively aligned; and (3) funding and resource allocations are more proportionately and strategically distributed, the morale and performance of the workforce and the health of the institutional culture should improve, even with the pushback that inevitably accompanies such wide-ranging changes.

8 Recommendations

Governance of the nation's immigration system suffers fundamentally from an acute need for Congress to update the laws and policies that federal agencies and their immigration components are charged with implementing. The political stalemate that persists for immigration legislation extends to revisiting broad DHS mandates and structures that might strengthen its ability to carry out changing homeland security imperatives. DHS can make changes in leadership and in implementing policy, but there is limited executive branch authority for changing the structures of DHS and the interagency responsibilities that comprise the immigration system.

These constraints notwithstanding, changes in the aspects of DHS structures outlined in this report—mission, DHS management of its immigration components, budget and resource allocations, and institutional culture—could substantially improve the management of the immigration system, as detailed in the following recommendations.

¹¹³ Partnership for Public Service, "2020 Best Places to Work."

¹¹⁴ Partnership for Public Service, "Rankings by Category," accessed August 5, 2021.

A. *Immigration as a System*

- 1 To meet the challenges and opportunities immigration represents for the nation's future, immigration must be managed as a system. That requires DHS, as the government's lead immigration agency, to strengthen and institutionalize intra-agency policy development, resource allocation, policy decision-making, and coordination among its immigration components—CBP, ICE, and USCIS.
- 2 DHS must overcome stovepiping and gaps in coordination among its own immigration components to serve as a catalyst for resolving problems of fragmentation across partner Cabinet agencies, especially DOJ, HHS, and DOS, as well as others whose capabilities are required to carry out critical functions, such as refugee protection and effective border management.

B. *Department and Component Missions*

- 3 The mission statements for CBP, ICE, and USCIS should be recast to encompass the complex mix of enforcement, economic, and humanitarian responsibilities with which each component is charged. New mission statements should be used to drive visioning, policy development, budget requests, resource allocations, operational strategies, and recruitment and training.

The statements should include concepts such as adapting to rapidly changing migration dynamics; exercising discretion; treating immigration as an asset to the country; providing protection to those in need; facilitating the ability of those eligible for immigration benefits to obtain them; fair and timely decision-making; protecting civil rights and privacy; cooperation and collaboration with other federal, state, local, and international partner agencies; professionalism; and respect for the dignity of all persons.

C. *DHS Institutional Structures for Managing Immigration as a System*

- 4 The heads of CBP, ICE, and USCIS should be charged with leading and managing their agencies and missions as interdependent organizations in close coordination and collaboration with each other to identify and integrate cross-cutting functions.
- 5 The secretary and deputy secretary should vest the under secretary for strategy, policy, and plans and the assistant secretary for border and immigration policy with the responsibility for prior input and coordination on all matters coming to the secretary and deputy secretary for decisions that implicate the immigration system overall. In this way, the secretary would receive fully analyzed and integrated proposals prior to making policy judgments, with the knowledge that there has been full participation prior to decision-making and that decisions, once made, will be implemented.

This regimen should be institutionalized with a management directive from the secretary, enforceable by the chief of staff. This is not to impede the relationship of the secretary and deputy secretary with their direct-report presidential appointee component heads. Instead, in activating a structure that will direct attention to systemwide coordination requirements, the secretary and deputy secretary's time can be used to optimal advantage, and decision-making and performance outcomes should be strengthened.

- 6 The Office of Strategy, Policy, and Plans should oversee and coordinate the development of policy and implementation plans in at least three areas of work: DHS immigration component strategic plans; integrated budgets for the department's immigration components; and DHS immigration policy directives that implicate intra- and interagency capabilities and impacts.

The ongoing responsibilities for these functions should reside with the assistant secretary for border and immigration policy, whose staff should include persons detailed from headquarters, the management directorate, and the three immigration and border components that have program, policy, and operational knowledge. A rotation in the Office of Strategy, Policy, and Plans should be a competitive assignment aimed at career advancement.

D. Interdepartmental Collaboration

- 7 An interagency standing deputies committee led by the National Security Council (NSC) and/or Domestic Policy Council (DPC) should be established to coordinate cross-departmental policy development and implementation of immigration priorities. Its goal should be to institutionalize collaboration and planning across departments in the management of the immigration system. Although DHS is the lead agency for immigration functions, it cannot carry out its missions without strengthened support and leadership at the White House level across departments. The need for such high-level engagement on a standing basis is underscored by the scope of the Biden administration's immigration policy blueprint, root causes strategy, and regional migration management goals. The unexpected added demands of receiving and settling a large population of Afghan evacuees further illustrates this need.

DHS representation on the standing deputies committee by the deputy secretary should be supported by the office of the under secretary for strategy, policy, and plans and the assistant secretary for border and immigration policy as part of its responsibilities for intra-DHS policy and operational coordination among the three immigration components.

- 8 The standing deputies committee should also create and formally designate an interagency working group on immigration to support the NSC/DPC-led committee. DHS participation in the working group should be by the assistant secretary for border and immigration policy, as well as representatives of CBP, ICE, and USCIS. This body should meet regularly to coordinate and plan across departments. It should also frame the big-picture policy questions and problems that require White House-level decisions. In this way, collaboration and planning across departments can become standard practice.

E. Funding Priorities and the Budget Process

- 9 Presenting Congress with cogent budget proposals to properly fund immigration as a system is vital, given the many committees that play a role in appropriations and DHS oversight processes. Led by its under secretary for management, in close coordination with the under secretary for strategy, policy, and plans, DHS should establish a process for coordinated budget development and planning

across its immigration components. The process should include assessing and meeting the resource needs of DHS headquarters functions, including the Office of the Secretary and Deputy Secretary, so they are sufficiently robust, and on par with partner Cabinet agencies, to carry out the coordination and integration functions described above. In turn, greater DHS headquarters and secretary/deputy secretary heft should enable DHS to more fully serve as the government's lead agency for managing the immigration system.

- 10** Intra-agency processes for coordinated budget development should be formalized at the interagency level with an interdepartmental working group to lead budget discussions involving the other key partner departments—State, Justice, and Health and Human Services—and with OMB to ensure that the various immigration components and agencies across the federal government are funded in a coherent and balanced fashion according to the priorities and needs of the immigration system. The aim should be a budget that reflects common expectations about migration trends and workloads to be managed across agencies, thus right-sizing the budgets of the entities that play key roles in executing the nation's immigration policies.
- 11** A new operational model and infrastructure for processing migrants at the southwest border should be established to provide facilities that augment Border Patrol stations that were designed for turn-around processing of mostly single, young, male Mexican migrants. By contrast, current and projected migrant arrivals are primarily of families, young children, and unaccompanied minors. This shift calls for a network of multi-agency reception centers to provide initial screening and referral of migrants who are apprehended or turn themselves in to immigration enforcement officials.

The centers would be the locus for one-stop screening that leads to the referral of migrants to on-site representatives of the appropriate federal agencies and nonprofit organizations for requisite follow-up actions. These would include referrals to ORR for care and placement of unaccompanied minors, USCIS for credible-fear screening for those seeking asylum, ICE for custody in expedited removal cases and to schedule immigration proceedings, nongovernmental organizations to provide legal-rights counseling and representation services, foreign consulates when needed, and medical services when required. Thus, CBP personnel could readily tap expertise and support that extends beyond the duties for which they are qualified and trained.

- 12** To implement changes in detention practices and expenditures, ERO should redesign implementation of its custody mission from one in which detention has become a centerpiece to one that develops and evaluates various forms of supervised release, case management, and legal services.

Such programs should include assessments of new capacities ERO would need to establish, including personnel skills, training needs, agreements with nongovernmental partners, budget impact, and effectiveness in ensuring appearance and removal, when required.

- 13** USCIS should review its spending on activities such as fraud detection, increased vetting, and mandated interviews, as well as other procedural requirements that have slowed productivity and contributed to deepening backlogs. The aim should be to establish proportionality in detecting misuses of legal immigration processes, so that timely processing norms can be maintained for

applicants who are eligible for the immigration benefits they seek and USCIS can accurately calibrate the fees it charges for adjudicating legal immigration applications.

- 14 Past responses to the deficiencies in the performance of the immigration court system have been largely limited to adding more judges, as the significant growth in the EOIR budget demonstrates. Beyond judges, EOIR and DOJ should determine what technology and support needs must be met to re-engineer an antiquated, paper-based system into one that taps best practices for modernized court administration and record-keeping.

F. *Institutional Culture*

- 15 Through the coordinated budget planning process outlined above, DHS should seek funding to revive the rotational training program it created in 2006, in recognition that leaders need to be trained through exposure to different environments and responsibilities. To pass OMB scrutiny, any proposed professional development programs should clearly articulate return on investment for leadership and oversight.
- 16 The DHS chief human capital officer, in coordination with the chief human capital officers from CBP, ICE, and USCIS, should develop and implement a joint duty program that focuses on core competencies for immigration leadership development. For the program to succeed, employees and their supervisors must see participation as beneficial to career advancement. Integrating leadership development programs with those of the State Department and the intelligence community would reduce costs from duplication of effort, form cross-departmental and cross-agency networks, and promote cross-departmental understanding of broader missions.
- 17 Incoming leaders must establish high standards of performance, professionalism, and accountability. As with all large organizations, a large share of the DHS workforce is dedicated, committed, and mission driven. However, given the politicization surrounding immigration and the flashpoint it represents, culture change is a goal that new leaders will have to pursue tirelessly by setting new norms and expectations for career advancement and organizational success. Dedicated effort will also be needed to win broader public confidence in the professionalism of immigration career officials, operational strategies, and organizational cultures.

9 *Beyond Executive Action*

This report and the recommendations in the prior section focus on actions that the executive branch can initiate on its own authority. They accept, therefore, the basic rationale for the creation of DHS and housing key immigration components within it.

However, some have called for an entire reimagining of DHS, viewing it as star-crossed from its beginnings and increasingly at odds with emerging threats to the well-being of Americans.¹¹⁵ Considering today's most pressing issues—pandemics and other public-health emergencies, climate disasters, cybersecurity attacks, White supremacy, and domestic terrorism—the priorities of a department charged with homeland security

¹¹⁵ See, for example, Rudman et al., *Redefining Homeland Security*.

have indeed expanded well beyond protecting the nation from foreign terrorists. Immigration is a central issue in such considerations, in that it and counterterrorism have been DHS' dominant missions. Moreover, immigration enforcement has increasingly played an outsized role in DHS' work.

Any fundamental reorganization of DHS would require legislation and is beyond the scope of this report. But, should a broader reimagining of DHS develop in the coming period, or should significant immigration legislation move forward in Congress, deeper structural changes should be addressed. Several that would be especially helpful to the operations of the immigration enterprise as DHS presently exists are summarized below.

Should a broader reimagining of DHS develop in the coming period, or should significant immigration legislation move forward in Congress, deeper structural changes should be addressed.

A. Investigative Functions and Impact

HSI could be removed from ICE and merged with other DHS investigative functions, including USCIS' Office of Fraud Detection and National Security and CBP's criminal investigators. This would create a dedicated immigration and law enforcement/national security locus of investigative expertise that would fit within DHS' management structure by playing an overarching role for all three immigration components.

HSI encompasses some of DHS' most critical anti-terrorism functions, including units of National Security Investigations, the Office of Intelligence, the Operational Technology and Cyber Division, and International Operations. Thus, HSI is positioned to play a significant role in immigration enforcement strategies that focus on serious security, transnational crime, and public safety threats.

However, from its founding, HSI's role and jurisdiction have been uncertain in relation to the FBI, which has lead responsibility domestically for terrorism and national security investigations, as well as significant roles in other criminal investigative arenas. As a result, respective roles and responsibilities have not been clearly drawn. This is a chronic problem among law enforcement agencies, but it has especially hampered HSI in carving out a clear mission profile and identity within the law enforcement community that could be resolved by congressional action to strengthen its organizational footing.

B. USCIS' Revenue Model

Congress should authorize and appropriate monies on an ongoing basis to support certain USCIS activities. The Biden administration is requesting \$345 million in new appropriations for USCIS backlog reduction in FY 2022, with a portion set aside to adjudicate refugee and asylum cases.¹¹⁶ With the administration's commitment to significant increases in refugee admissions, Afghan evacuee processing, and rebuilding a functioning asylum system at the southwest border—a critical element in upholding border control—appropriated funding for these programs, in place of surcharges on other fees, is overdue.

¹¹⁶ DHS, *FY 2022 Budget in Brief*, 71–72; Office of Management and Budget, "The President's Budget for Fiscal Year 2022" (fact sheet, May 28, 2021), 5.

USCIS overhead and its budget for information technology—and perhaps naturalization—are other line items that serve broad national interests. By contributing to the financial stability of USCIS, appropriations would help deliver a well-functioning legal immigration system that can earn public confidence and bolster the assets that smart immigration policies provide to the country.

Congress could also amend the law to authorize USCIS access to bailout funds through an existing Treasury-managed loan program, for the rare occasions when an unpredictable drop in workload is sufficiently severe to cause significant interruptions in necessary immigration services or lead to furloughs. Currently, FEMA is the only DHS agency with statutory authority to access this program.

C. *Executive Office for Immigration Review*

The serious institutional problems at EOIR stem in part from its having been left within DOJ, which no longer has operational responsibility, and therefore expertise or mission ownership, for overseeing the immigration system.¹¹⁷ The American Bar Association and the American Immigration Lawyers Association, among others, have argued for assigning EOIR's functions to a new court structure in the judicial branch of government.¹¹⁸ A less sweeping change would be to move it from DOJ to DHS or establish its independence along the lines of other administrative adjudicatory bodies, such as the Social Security Administration or the National Labor Relations Board. These and other potential options should be carefully analyzed to determine a bureaucratic placement best suited for ameliorating its problems and enhancing its independence and ability to discharge its due process responsibilities.

D. *New Missions*

If immigration legislation is enacted to authorize legalization of some or all segments of the unauthorized immigrant population, or if programs such as E-Verify become mandatory, Congress should give DHS wide latitude in implementing the programs. As in the case of the 1986 legalization under IRCA, and again in the 1990s with reforms to the asylum system, the establishment of entirely new organizational structures and hiring of new cadres of personnel proved to be opportunities to bring new blood, management practices, and technologies into the immigration system. In turn, these can contribute importantly to longer-term revitalization and culture change in otherwise hide-bound organizations.

E. *Emergency Fund*

Unanticipated spikes in migrant arrivals at the U.S. border are inherent to the border control mission. To manage them effectively so they do not become humanitarian crises, DHS and the administration should use budget and appropriations processes to press for replenishment of the Immigration Emergency Fund (IEF).

¹¹⁷ Pierce, *Obscure but Powerful*.

¹¹⁸ Arnold & Porter, *2019 Update Report: Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* (Washington, DC: American Bar Association Commission on Immigration, 2019), 6-16-17; AILA, "Featured Issue: Immigration Courts," updated June 2, 2021.

A notable feature of the IEF is that it provides for reimbursement to state and local governments that respond to a federal request for assistance during an emergency, in addition to authorizing emergency funds for federal immigration components. Re-engineering this fund so that it addresses the newer array of challenges at the border (e.g., families and unaccompanied children) would enable the immigration components to respond more rapidly and effectively to changing migration trends and pressures when they arise.¹¹⁹

10 Conclusion

The focus of senior officials at DHS, its partner Cabinet agencies, and the White House must be on recognizing and managing immigration as a *system*—one that spans DHS components and other federal agencies. It is a system with complex processes, numerous interdependent operational and policy connections, and broad-ranging impacts on the lives of millions of individuals—both foreign and U.S. born—as well as communities, workplaces, and institutions of many kinds in the United States and around the world. Implementing effective, humane immigration policies skillfully is increasingly important to the nation’s well-being and the ability of government to address the country’s needs, including providing for its homeland security.

In managing immigration as a system, DHS must play the lead role in policy and implementation of key mission areas, such as border control and facilitating legal immigration, as well as in meeting unexpected new challenges, such as the Afghan arrivals. To that end, adopting the recommendations in this report would strengthen and invest in DHS headquarters capabilities for policy development, planning, coordination, budgeting, and oversight of its immigration components.

At the same time, meeting the migration management challenges of today and tomorrow is a task that extends well beyond DHS. A well-functioning immigration system equipped to manage migration responsibilities in the normal course, advance a proactive agenda of mitigating the causes of unlawful immigration, and respond effectively to sudden or unexpected migration events requires building capabilities and readiness by all the government entities that play a part in the immigration enterprise.

Going forward, an ambitious vision for the role immigration can play in America’s future is deeply in U.S. national interests. Thus, there is urgency in pursuing the range of changes set forth in this report that can be made by the administration without the need for legislative action.

*An ambitious vision for the role immigration can play in
America’s future is deeply in U.S. national interests.*

¹¹⁹ Section 113 of the *Immigration Reform and Control Act of 1986* (Public Law 99-603) established the Immigration Emergency Fund, largely in response to the 1980 Mariel Boatlift. Section 705 of *Immigration Act of 1990* (Public Law 101-649) amended the law to add a triggering mechanism based on an increase in number of asylum claims. *Immigration and Nationality Act* § 404(b), 8 U.S. Code §1101.

Appendix. Changes in DHS Immigration Agency Mission Statements

TABLE A-1

USCIS Mission Statement

Bush Administration	Trump Administration
<i>USCIS secures America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.</i>	<i>U.S. Citizenship and Immigration Services administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.</i>

Source: Richard Gonzales, "America No Longer a 'Nation of Immigrants,' USCIS Says," NPR, February 22, 2018.

TABLE A-2

ICE Mission Statement

Obama Administration	Trump Administration
<i>ICE is the principal criminal investigative arm of the Department of Homeland Security and one of the three department components charged with the civil enforcement of the nation's immigration laws. Our primary mission is to protect national security, public safety and the integrity of our borders through the criminal and civil enforcement of federal law governing border control, customs, trade and immigration.</i>	<i>ICE's mission is to protect America from the cross-border crime and illegal immigration that threaten national security and public safety. This mission is executed through the enforcement of more than 400 federal statutes and focuses on smart immigration enforcement, preventing terrorism and combating the illegal movement of people and goods.</i>

Sources: For the Obama administration statement, see ICE, *ICE Strategic Plan for FY 2010–2014* (Washington, DC, 2010). For the Trump administration statement, see DHS, "The Life Saving Mission of ICE" (news release, April 20, 2018).

TABLE A-3
CBP Mission Statement

Bush Administration	Obama Administration	Trump Administration
<p><i>We are the guardians of our nation's borders. We are America's frontline. We safeguard the American homeland at and beyond our borders. We protect the American public against terrorists and the instruments of terror. We steadfastly enforce the laws of the United States while fostering our nation's economic security through lawful international trade and travel. We serve the American public with vigilance, integrity, and professionalism.</i></p>	<p><i>While the demands on CBP for mission execution are complex and diverse, the principal operational requirements can be summarized within three distinct and mutually supporting themes:</i></p> <ul style="list-style-type: none"> ▶ protect the American people; ▶ protect the national economy; and ▶ safeguard and manage the U.S. air, land, and maritime borders. <p><i>The men and women of CBP pursue this mission every day as they safeguard America at our borders and across the globe with vigilance, selfless service, and unyielding integrity.</i></p> <p><i>To safeguard America's borders thereby protecting the public from dangerous people and materials while enhancing the Nation's global economic competitiveness by enabling legitimate trade and travel.</i></p>	<p><i>To safeguard America's borders thereby protecting the public from dangerous people and materials while enhancing the Nation's global economic competitiveness by enabling legitimate trade and travel.</i></p>

Sources: For the Bush administration statement, see CBP, *Protecting America: U.S. Customs and Border Protection 2005–2010 Strategic Plan* (Washington, DC: CBP, 2005), 4. For the Obama administration statement, see CBP, *Vision and Strategy 2020: U.S. Customs and Border Protection Strategic Plan* (Washington, DC: CBP, 2015), 7. For the Trump administration statement, see CBP, *U.S. Customs and Border Protection: Strategy 2020–2025* (Washington, DC: CBP, 2019), 3.

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From 1993 to 2000, she served in the Clinton administration as Commissioner of the INS. Her accomplishments included reforming the nation's asylum system; creating new strategies for managing U.S. borders; improving naturalization and other services for immigrants; shaping responses to migration and humanitarian emergencies; strengthening cooperation with Mexico, Canada, and other countries; and managing growth that doubled the agency's personnel and tripled its budget.

In 1986, Ms. Meissner joined the Carnegie Endowment for International Peace as a Senior Associate. There, she created the Endowment's Immigration Policy Project, which evolved into MPI in 2001.



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