

STATES TRUST

RECONCILIATION AND BORDER SECURITY

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KEY POINTS

- **The security of the nation's borders** is fundamental to national security, protecting American lives, preserving American sovereignty, and safeguarding American economic interests.
- **Budget reconciliation** is a powerful legislative procedure that bypasses the Senate filibuster, allowing border security legislation to be passed by a majority vote in the House and Senate.
- **Through reconciliation, Congress can secure** the border, including completing the border wall system, expanding Border Patrol and Immigration and Customs Enforcement personnel and capabilities, and ending welfare for illegal aliens. .

INTRODUCTION: THE IMPORTANCE OF BORDER SECURITY

The security of the nation's borders is fundamental to national security, protecting American lives, preserving American sovereignty, and safeguarding American economic interests. Since January 20, 2021, over 8.3 million illegal immigrants have crossed into our nation through the Southern border ([CBP, 2024](#)), not including at least 1.8 million known "got-aways"—individuals who evaded apprehension ([Homeland Security Republicans, 2023](#)). This surge has overwhelmed the border security and immigration system, placing immense strain on communities across the nation. Cities and states far from the border are grappling with the influx of aliens, which is stretching their resources to the breaking point ([Camarota, 2024](#)).

The Biden-Harris Administration's lackadaisical border security policy has also emboldened transnational criminal organizations, most notably the Mexican cartels, to traffic human beings and drugs into the United States across the Southern border ([Homeland Security Republicans, 2023](#)). These organizations have exploited the chaos to expand their operations, trafficking human beings and deadly narcotics. The fentanyl crisis, which claimed over 70,000 American lives in 2022 alone ([CDC, 2024](#)), is a direct result of the cartels' ability to exploit the nation's porous borders.

Foreign adversaries also see America's penetrable border as an opportunity to infiltrate the United States. Between January 2021 and September 2024, the U.S. Border Patrol encountered 64,145 Chinese nationals and 14,450 Russians at the Southwest border ([CBP, 2024](#)). The sharp rise in apprehensions of individuals on terror watch lists at the border is another chilling example of the danger. According to Customs and Border Protection (CBP) data, in fiscal year 2022, a record 98 terror watchlist suspects were arrested between points

of entry at the Southern border—compared to just 15 suspects arrested in 2021. This trend has continued to escalate, with 169 suspects apprehended in fiscal year 2023 (CBP, 2023a), underscoring the urgent need for enhanced border security measures.

The economic and fiscal impact of illegal immigration is significant. According to recent analysis by Daniel Di Martino at the Manhattan Institute, “the border crisis is expected to cost \$1.15 trillion over the lifetime of the new immigrants who entered the country unlawfully, overstayed a visa, or were paroled,” with each illegal immigrant imposing an average fiscal burden of \$130,000 on the American people (Di Martino, 2024). The Biden-Harris Administration even used the Coronavirus State and Local Fiscal Recovery Fund created by the American Rescue Plan Act to provide \$1,000 checks to “undocumented” immigrants in Washington state (Madni, 2024). The immense strain on public services and the billions spent on healthcare and education for illegal immigrants represent a substantial burden on taxpayers and only serves to draw more people from around the globe to make the dangerous journey across the border if they know their economic needs will be taken care of once they reach the U.S.

In total, the Biden-Harris Administration’s approach to border security has been characterized by policies that have not only failed to address illegal immigration but have actively encouraged it (United States Senate Committee on Foreign Relations, 2022). Their catch-and-release policies, coupled with weak enforcement of immigration laws, have sent a clear message that the nation is open to anyone who can make it to the border.

The American people deeply feel the effects of these disastrous policies and see securing the border as a top priority. In preparation for 2025, the Economic Policy Innovation Center (EPIC) commissioned a poll of 1,000 likely voters about priorities for Congress. Overall, securing the border is the top priority of voters, identified by 48% of voters, including 47% of independents and 82% of Republicans (EPIC, 2024). Seventy-six percent of voters agreed that “Federal

funding for border security should go towards solutions that end the crisis, instead of continuing to fund programs that enable or support illegal immigration,” while 69% agreed that “We should secure the southern border so that the federal government no longer has to carry the financial burden of mass illegal immigration” (EPIC, 2024).

Legislative solutions, such as the recently House-passed Secure the Border Act (H.R. 2, 2023), offer policies to tackle these issues and secure our Southern border. Such measures aim to provide the necessary tools and resources to regain control of our borders and protect American interests. It is crucial that policymakers prioritize border security to ensure the safety and security of the American people. Many border security policies have a direct impact on the federal budget. Therefore, in 2025, Congress must look to the budget reconciliation process to secure the border and end the pull factors of illegal immigration.

RECONCILIATION IS A POWERFUL TOOL

Budget reconciliation is a powerful legislative procedure. Reconciliation bypasses the Senate filibuster and can be passed by 51 votes, rather than the 60 votes for cloture required by most other legislation.

A reconciliation bill may include changes to outlays, revenues, or the debt limit. The reconciliation process must begin by adoption of a concurrent resolution on the budget by the House and Senate that includes reconciliation instructions. These reconciliation instructions provide directions to authorizing committees in the House and Senate to propose legislative changes to programs within their jurisdiction to meet fiscal targets specified in the instruction.

After each instructed authorizing committee reports out their reconciliation proposals, the Budget Committee bundles them all into one consolidated reconciliation bill. That reconciliation bill is then considered by the whole House and Senate. In the Senate, a reconciliation bill is privileged, cannot be filibustered, and debate is limited to 20 hours. Once that debate time is exhausted, the Senate considers

germane amendments during what is called the “vote-a-rama.” Passage requires a simple majority vote. After the same reconciliation bill is passed by the House and Senate, it is sent to the President to be signed into law.

The Byrd Rule

A key feature of the reconciliation process is the Senate’s Byrd Rule.¹ In the Senate, the Byrd Rule is meant to keep a reconciliation bill focused on budgetary changes. The Byrd Rule only applies in the Senate. The House does not have a comparable rule.

Under the Byrd Rule, a provision of a reconciliation bill is considered “extraneous” and subject to a point of order in the Senate if the provision:

1. Does not produce a **change in outlays or revenues** or a change in the **terms and conditions** under which outlays are made or revenues are collected;
2. Produces an outlay increase or revenue decrease **when the instructed committee is not in compliance** with its instructions;
3. Is **outside the jurisdiction of the committee** that submitted the title or provision for inclusion in the reconciliation measure;
4. Produces a change in outlays or revenues that is **“merely incidental”** to the non-budgetary components of the provision;
5. Would **increase the deficit for a fiscal year beyond the budget window** covered by the reconciliation measure; or

6. Recommends **changes to Social Security**. (Dickerson & Madni, 2024)

A Byrd Rule point of order is surgical, meaning it only strikes the offending provision. The Byrd rule is not self-enforcing. A Senator must raise the point of order on the Senate floor. A Byrd Rule point of order may be waived by a three-fifths vote of the Senate (60 Senators). This means that a provision that violates the Byrd Rule can be enacted via reconciliation if it has sufficient support in the Senate. The Senate’s Presiding Officer rules on points of order. The Presiding Officer receives advice from the Senate Parliamentarian, who reviews established precedents. Senate precedents are set by previous votes of the Senate or rulings made by the Presiding Officer. While the Byrd Rule imposes some restrictions on what can be included in a reconciliation bill, Congress should be able to enact important policy reforms that would secure the border and end the pull factors for illegal immigration.

Border Security Investments Would Be Eligible for Reconciliation

The American Rescue Plan Act (ARPA) of 2021 pushed new boundaries of including direct spending appropriations in reconciliation legislation for accounts that have traditionally been funded by discretionary appropriations² (Mitchell et al., 2021). ARPA included dozens of appropriations, such as administrative and general operations funding for the U.S. Department of Agriculture, the National Endowments of the Arts and Humanities, the Corporation for Public Broadcasting, the U.S. Department of State, and the White House.

1 The Byrd Rule is named after former Senate Majority Leader Robert Byrd (D-WV). The Byrd Rule was first adopted by the Senate in 1985 after reconciliation bills began to include policies outside of the budgetary issues on which the process was intended to focus. The Byrd Rule was later codified as Section 313 of the Congressional Budget Act in 1990. (Dickerson & Madni, 2024)

2 Federal spending is classified according to the Congressional process through which the budget authority is provided. Discretionary spending is provided through the 12 annual appropriations bills. Direct spending (also known as mandatory or autopilot spending) is provided in authorizing laws that does not require further approval by Congress; the budget authority is automatic until the law is changed or expires. About 25% of annual outlays are discretionary while about 75% are direct spending.

The Inflation Reduction Act (IRA) of 2022 continued the trend of including direct appropriations in reconciliation legislation. Notably, the IRA included funding to substantially increase the size of the federal workforce. The bill included \$79 billion in nine different accounts with the intent of adding tens of thousands of additional Internal Revenue Service agents ([H.R. 5376, 2022](#)).

The Senate Budget Committee reports that in response to challenges to these appropriations provisions during debate on ARPA, “The Parliamentarian advised: ‘Mandatory Approp[riation]s: Appropriate for reconciliation based on interpretation/application of the [Congressional Budget Act] by the Senate in past practice and supporting score by CBO’ ” ([Dauster, 2022, p. 520](#)). The Senate Budget Committee asserts that “The limit to such [appropriations in a reconciliation bill] spending is that the authorizing committees bear the burden to prove jurisdiction over the agencies and programs that they seek to fund in each case” ([Dauster, 2022, p. 520](#)). These precedents have paved the way for future reconciliation legislation to include substantial appropriations provisions. Congress should make responsibly targeted investments in border security projects through the budget reconciliation process.

SPECIFIC ACTIONS TO SECURE THE BORDER AND END THE PULL FACTORS FOR ILLEGAL IMMIGRATION

Congress can take serious action through the reconciliation process to secure the border. Investments in physical barriers and technological infrastructure should be made, such as completion of the border wall system. Additional Border Patrol, Immigration and Customs Enforcement, and judicial personnel and capabilities should be funded, including additional detention beds and enforcement of the Migrant Protection Protocols. Fines and fees should be increased on illegal aliens. Finally, the economic pull factors for illegal immigrants should be ended, including welfare and other public benefits.

Border Wall System

A key component of strengthening border security through the reconciliation process is the completion of the border wall system.

The border wall system refers to a comprehensive physical barrier along the U.S.–Mexico border, which includes not only the wall itself but also associated technology, access roads, and other supporting infrastructure. Completion of the border wall and associated technology was included in the 2023 Secure the Border Act, Division A, Subsection 102 and 106 ([H.R. 2, 2023](#)). This system is designed to enhance the effectiveness of every Border Patrol agent by deterring, detecting, and preventing illegal border crossings, drug smuggling, and other illicit activities. Increasing funding for the smart border wall system would enhance border security by expanding physical barriers in strategic locations, improving surveillance capabilities, and facilitating more effective patrolling by border enforcement agencies. The enhanced infrastructure has been proven to reduce the number of illegal entries, thus making it easier for Border Patrol to monitor and respond to border incursions ([Davis, 2024](#)).

In hand with this increased funding, Congress must mandate that construction be finished by the end of fiscal year 2028. The original money spent on border wall construction that was turned over to the Biden Administration was wasted. The materials rotted in the desert and the smart wall system was never completed, despite the fact that taxpayers’ dollars had already been spent ([United States Senate Committee on Homeland Security and Governmental Affairs, 2023](#)).

The smart border wall system funding can be included in reconciliation legislation and would pass the Byrd Rule due to its significant budgetary impacts. The construction and maintenance of the wall system directly affects federal spending, thus making it a clear budget item. These direct and substantial effects on the federal budget align with the core requirements of the reconciliation process.

Additionally, as an expansion of existing federal border security infrastructure, this funding would not introduce new policy, rather it would adjust spending on an established federal function. This makes a stronger case for its inclusion in a reconciliation bill. While the specific language would need to be carefully crafted, the fundamental budgetary nature of border wall system funding makes it eligible for inclusion in a reconciliation package.

There is precedent in the Senate for border wall system funding that satisfies the Byrd Rule. During consideration of the Inflation Reduction Act of 2022, Senator Dan Sullivan proposed an amendment appropriating \$500 million for “construction or improvement of primary pedestrian fencing and barriers along the southwest border” (Sullivan, 2022). According to the Senate Budget Committee, “The Parliamentarian’s office advised: ‘We do not think this section violates 313(b)(1)(D). It’s money for things in the agency’s jurisdiction—and those things have been appropriated previously, for example in the Consolidated Appropriations Act in the 116th using very similar language, including ‘pedestrian fencing’” (Dauster, 2022, p. 728). During further consideration of the Inflation Reduction Act of 2022, Senator Rob Portman proposed an amendment appropriating \$500 million for Customs and Border Protection for technology to detect fentanyl and other drugs. The Senate Budget Committee reports that the Senate Parliamentarian dismissed Byrd challenges to the amendment (Dauster, 2022, p. 728).

Fund Implementation of Migrant Protection Protocols

The Migrant Protection Protocols (MPP) are a commonsense response to the security and humanitarian crisis at the Southern border. Reimplementation of this policy should be a top priority of the new administration and should be immediately funded by Congress. Commonly referred to as the “remain in Mexico” policy originally implemented in 2019, MPP requires aliens arriving to the United States by land from Mexico to be returned to Mexico to await any judicial proceedings. The MPP policy helped ensure

a safe and orderly immigration process and ended the harmful policy of catching and releasing aliens into the interior of the United States (Bloomberg Editorial Board, 2022; Nielsen, 2019).

Implementing the MPP program requires funding to administer the program. Such direct appropriations can be included in a reconciliation bill and would pass the Byrd Rule due to its clear and direct budgetary implications. There is precedent for funding the administration of similar efforts in reconciliation legislation. During consideration of the Inflation Reduction Act of 2022, Senator James Lankford proposed an amendment to appropriate \$1 million to the Centers for Disease Control and Prevention for the continued implementation of the Title 42 authority to prohibit entry into the United States any person from a foreign country where there is any communicable disease (Lankford, 2022). The Senate Budget Committee reported that the Senate Parliamentarian concluded that the amendment was not subject to a Byrd Rule point of order (Dauster, 2022, p. 727).

Fund Eradication of Carrizo Cane and Salt Cedar

Carrizo cane and salt cedar grow along the U.S.-Mexico border, blocking visibility and access by Border Patrol agents.

Carrizo cane and salt cedar are invasive species in the Rio Grande Valley along the Southern border (National Park Service, 2015). Not only do these plants harm the natural environment, they also harm national security by impeding border security enforcement efforts (Stecker, 2019). Carrizo cane can grow to more than 30 feet high, and the dense foliage provides cover for smugglers and reduces access to the border by law enforcement. Funding carrizo cane and salt cedar eradication efforts would enhance border security efforts and can be included in a reconciliation bill that would pass the Byrd Rule due to its direct and substantial budgetary impact.

Increase the Number of Short-Term Holding Facilities and Capabilities

The Biden-Harris Administration's policy of releasing illegal aliens into local communities around America must end. Any alien who crosses the violates the sovereignty of the United States by illegally crossing the border should be immediately arrested and detained until they are expeditiously removed.

Increasing the short-term holding capability and detention capacity of the Department of Homeland Security (DHS) involves expanding the capacity of permanent and temporary facilities used to hold individuals who have entered the country illegally while they await processing or deportation. Funding for secure transportation of the illegal alien to the detention center after arrest and then for removal out of the country is also necessary. Immigration and Customs Enforcement's Enforcement and Removal Operations (ICE/ERO) manages the living accommodations within these secure detention facilities, including maintaining beds and basic living essentials for detained individuals. These beds are used to ensure that those who have crossed the border illegally remain in custody until their cases are resolved, as opposed to being immediately released into the country. This expansion would allow ICE/ERO and CBP to reduce the number of aliens being released into the U.S. on their own recognizance while awaiting their immigration case to be adjudicated.

By increasing detention capacity, Border Patrol agents would have more flexibility in managing the flow of illegal entrants, thus ending the practice of "catch and release" and "alternatives to detention" policies (Cuffari, 2021). This will lead to more effective enforcement of immigration laws and decrease the number of individuals entering the country illegally or overstaying their visas. A significant reduction in catch and release would disincentivize illegal immigration, as many aliens come to the U.S. because they know they will likely be released with work authorizations while they await removal proceedings.

This provision also directly affects federal spending, as it involves allocating funds for the construction

or expansion of federal facilities and the associated operational costs. The budgetary impact is direct and quantifiable, making it a suitable candidate for reconciliation legislation. As an expansion of existing federal operations rather than a new policy initiative, it further aligns with reconciliation requirements. While the exact language would need to be carefully crafted, the fundamental budgetary nature of increasing detention capacity strongly supports its inclusion in a reconciliation bill.

Increase Funding for Operation Stonegarden

Operation Stonegarden is a federal grant program administered by DHS that provides funding to state, local, and tribal law enforcement agencies to enhance coordination and cooperation with federal law enforcement agencies in border security efforts (FEMA, 2024). The program aims to improve border security by supporting joint operations, intelligence sharing, and equipment purchases for agencies operating in border states and coastal areas. Stonegarden grants do not ask state and local law enforcement to do immigration enforcement—it simply pays law enforcement to do their normal job along the border in areas that would otherwise go without patrol. By increasing funding for Operation Stonegarden, more resources would be available for local law enforcement to assist federal agencies in high-profile deterrence patrols in border areas, detecting and intercepting cross border criminal activity to include (but not limited to) drug trafficking and human trafficking. A version of this policy was included in the Secure the Border Act, Division A, Section 110 (H.R. 2, 2023). Along with increased funding, Congress should include terms and conditions for the funding that stipulate that the receiving agency must work cooperatively with DHS to share immigration status information on individuals taken into custody.

Since Operation Stonegarden is an existing federal grant program, changes to its funding levels would directly affect federal spending, thus making it clearly eligible for inclusion in reconciliation legislation. Requirements for funding have been included in reconciliation bills in the past. Such terms and conditions on the use of funds are necessary for the

administration of the program. This would not be a new precedent.

Expand 287(g)

The 287(g) program is a partnership between federal immigration authorities and state or local law enforcement agencies that allows designated officers to perform limited immigration law enforcement functions. This program derives its name and authority from Section 287(g) of the Immigration and Nationality Act (INA), which was added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Dauster, 2022, p. 722).³ Under 287(g), local law enforcement can identify and process for removal of individuals arrested for other offenses who are also found to be in the country illegally. This expansion would enhance the ability of local authorities to assist in immigration enforcement, potentially leading to more effective identification and processing of individuals who have entered the country illegally or overstayed their visas.

Expansion of an existing program has proven to be eligible for reconciliation in the past; therefore, it should be no different with expanding the 287(g) program. The program expansion would require additional federal funding for training, equipment, and operational support to participating local agencies. This clearly affects federal spending, a key criterion for reconciliation. Furthermore, the expansion could lead to cost savings in federal immigration enforcement by leveraging local resources and potentially reducing the workload on federal agents. These budgetary effects are quantifiable and directly related to federal spending. While the specific language would need careful consideration, the fundamental budgetary nature of expanding the 287(g) program satisfies the Byrd Rule's focus on provisions that change spending or revenues.

Increase Financial Fees for Overstays

In 2022, U.S. Customs and Border Protection reported 853,955 known overstays of foreign travelers beyond the authorized period of admission (Mayorkas, 2023). The financial fees for individuals overstaying a visa should be increased and should be non-waivable, as these fees would deter illegal immigration by reducing the number of overstays as well as provide additional revenues (or offsetting collections) for the federal budget. Increasing fees of overstays can be included in a reconciliation bill and would pass the Byrd Rule due to its direct impact on federal revenues (or offsetting collections), as it clearly affects the federal budget.

Establish a Processing Fee for Asylum Applications

A processing fee for asylum applications should be established.

The U.S. Citizenship and Immigration Services (USCIS) is meant to be a fee-funded agency that charges fees to those who utilize its services in amounts in line with the costs of those services. However, USCIS does not charge fees to process certain types of immigration applicants, including those claiming asylum (USCIS, 2024). Because USCIS has been overwhelmed by hundreds of thousands of frivolous asylum claims in recent years, the agency has run a budgetary shortfall (Cuffari, 2024). The Biden-Harris Administration has begun charging employers who attempt to sponsor workers entering through the legal immigration system an "asylum processing fee" that is unrelated to the services being provided (USCIS, 2024). This has the perverse effect of forcing those who are following the rules to subsidize illegal immigration.

A processing fee for asylum applications should be levied at the time of the application. The fee should be non-waivable, which would ensure that it is

3 While the 287(g) program is codified in the Immigration and Nationality Act, providing additional funding for the program makes no changes to the immigration status of any person. The funding would simply change outlays by providing federal resources to state and local agencies—a common feature of reconciliation legislation. The Senate Parliamentarian has previously distinguished between amending policies that happen to be codified in Title 8 of the U.S. Code and policies that change immigration status.

consistently applied. The amount of the fee should be at least enough to cover the costs of ongoing asylum claim processing and to recoup the costs of asylum processing in recent years that was not covered by fees. Such a fee would ensure that the costs of USCIS processing is covered, would reduce the deficit, and would deter asylum claims by those who are unlikely to be approved on the merits. Implementing a new, non-waivable fee for illegal entry can be included in a reconciliation bill and would pass the Byrd Rule due to its direct impact on federal revenues (or offsetting collections).

Increase Fees for Illegal Entry

When an individual is caught crossing into the United States between ports of entry, he is in violation of 8 U.S.C. § 1325 (8 U.S.C. § 1325, n.d.). This offense is initially classified as a misdemeanor and is punishable by a fine of up to \$5,000, imprisonment for up to six months for first-time offenders, or both. Repeat offenses are treated more severely, classified as felonies with fines up to \$10,000 and imprisonment for up to two years. Upon apprehension, individuals are typically processed by U.S. Border Patrol, which may lead to expedited removal, detention pending an immigration hearing, or, in some cases, release with a notice to appear before an immigration judge.

Increasing the financial penalties for improper entry and removing the caps on these fines could serve as a stronger deterrent to illegal border crossings. Higher mandatory minimum fines, especially for repeat offenders, would significantly raise the economic cost of attempting illegal entry. Without upper limits on fines, judges would have the discretion to impose even steeper penalties in egregious cases. This financial burden, coupled with the risk of imprisonment and removal, could make individuals reconsider attempting to cross between ports of entry. Furthermore, the prospect of accruing substantial debt through these fines might discourage multiple entry attempts, thus potentially reducing recidivism rates among border crossers.

This proposed change to the penalty structure is likely Byrd Rule-eligible for inclusion in a reconciliation bill because it directly affects federal revenues. By increasing minimum fines and removing caps, this provision would lead to a quantifiable increase in funds collected by the federal government. The provision does not introduce new policy but rather adjusts existing financial penalties, further strengthening its case for inclusion under the Byrd Rule. As long as the language focuses solely on the fee structure and its implementation without venturing into broader immigration policy changes, it should withstand Byrd Rule scrutiny.

Hire and Place Immigration Judges at the Border

To streamline the adjudication and removal process for new arrivals, additional immigration judges should be hired and stationed near major border crossing areas and detention facilities.

Hiring and placing immigration judges along the border involves increasing the number of judges specifically stationed near major border crossings and detention facilities. These judges would be responsible for hearing and deciding immigration cases, including asylum claims, deportation proceedings, and other immigration-related legal matters, with a focus on handling new cases arising from recent border crossings. By positioning more judges directly at the border to deal with new cases, the adjudication process could be expedited for recent entrants, in turn reducing the overall backlog of immigration cases and allowing for faster resolution of the immigration proceedings of recent border crossers. This approach would streamline the immigration adjudication process for new arrivals, thus deterring illegal entries by demonstrating a more efficient and responsive legal system at the border.

This initiative directly affects federal spending through increased salaries and operational costs associated with hiring new judges and establishing or expanding court facilities at border locations. Moreover, a more efficient adjudication process

for new cases could lead to cost savings in other areas of immigration enforcement, such as reduced detention times and decreased expenses related to managing a large backlog of cases. These budgetary effects are quantifiable and directly related to federal spending. As an expansion of existing federal judiciary operations rather than a new policy initiative, it aligns well with reconciliation requirements. These direct and substantial effects on the federal budget make a strong argument for the inclusion of funds for the hiring and placement of additional immigration judges in a reconciliation bill. This satisfies the Byrd Rule's focus on provision that affect spending. There is precedent for the direct appropriation of funds in reconciliation legislation for hiring federal employees, including the \$79 billion appropriated for Internal Revenue Service agents in the Inflation Reduction Act ([H.R. 5376, 2022](#)).

Fund Border Patrol Hiring and Training

Increasing funding for the hiring and training of Border Patrol agents would significantly enhance border security capabilities. To expedite the hiring and training process, this initiative should include a general hiring process and two specialized fast-track programs to quickly fill the current vacancies and the new agent positions that will be created.

The first fast-track program would focus on rehiring former Border Patrol agents who have left the service, leveraging their existing experience and knowledge to quickly bolster the force. From October 2020 to April 2024, 4,281 agents left Border Patrol—roughly a quarter of the entire force ([Crane, 2024](#)). Many of these agents cited the Biden Administration's policies as the reason for their departure ([Crane, 2024](#)). Under new Presidential leadership and with a fast track to rehiring, it is possible to attract new candidates and former agents to strengthen the Border Patrol.

The second fast-track program would target former law enforcement officers and military personnel, capitalizing upon their relevant skills and experience in security-related fields. Those with prior law enforcement and military experience have been

through similar hiring process and are far less likely to be ineligible for hiring ([U.S. Office of Personnel Management, n.d.](#)). These programs would aim to expedite the hiring and training process ([DHS, 2023](#)), allowing for a more rapid increase in Border Patrol staffing levels. The funding would cover recruitment efforts, background checks, physical and mental evaluations, and comprehensive training programs tailored to each group's specific needs and prior experience.

Funding for Border Patrol hiring and training programs can be included in a reconciliation bill and would pass the Byrd Rule due to its clear and direct budgetary implications. The allocation of funds for hiring, training, and associated administrative costs directly affects federal spending, which is a key criterion for reconciliation. Moreover, increasing the number of Border Patrol agents could lead to enhanced border security, resulting in cost savings in other areas of immigration enforcement and processing. The fast-track programs for rehiring former agents and recruiting from law enforcement and military backgrounds could also provide cost efficiencies in the hiring and training process. Fewer of these candidates are likely to fail background checks and polygraph testing, meaning the ratio of candidates per hire will decrease, again resulting in cost savings. There is precedent for the direct appropriation of funds in reconciliation legislation for hiring and training federal employees, referring back to the previously covered \$79 billion appropriated for Internal Revenue Service agents in the Inflation Reduction Act ([H.R. 5376, 2022](#)).

Fund and Expand Border Patrol Processing Coordinator Hiring and Training

In order to significantly enhance border security operations, funding for the hiring and training of additional Border Patrol Processing Coordinators should be increased. Border Patrol processing coordinators support Border Patrol agents with the intake, processing, and care of detainees. The coordinators also provide secure detainee transportation and clerical and administrative support to agents,

allowing Border Patrol agents to spend more time performing their law enforcement duties ([CBP, n.d.](#)).

These budgetary effects are quantifiable and directly related to federal spending. As an expansion of existing federal law enforcement operations rather than a new policy initiative, it aligns well with reconciliation requirements. The substantial and direct impact on the federal budget makes this hiring and training funding a strong candidate for inclusion in a reconciliation bill, satisfying the Byrd Rule's focus on provisions that affect spending. There is precedent for the direct appropriation of funds in reconciliation legislation for hiring and training federal employees, referring back to the previously covered \$79 billion appropriated for Internal Revenue Service agents in the Inflation Reduction Act ([H.R. 5376, 2022](#)).

Fund Contract Intelligence Capabilities for U.S. Border Patrol

Funding and enhancing contract intelligence capabilities to support U.S. Border Patrol (USBP) will allow experienced Border Patrol agents to dedicate more hours to operations targeting transnational criminal organizations. Skilled contract intelligence support will consolidate and analyze collected intelligence and provide target packages to enforcement teams to dramatically enhance the effectiveness and efficiency of operations. This funding for contract intelligence capabilities can be included in a reconciliation bill and would pass the Byrd Rule due to its direct and substantial budgetary impact. The allocation of funds for increased contract intelligence capabilities clearly affects federal spending, which is a key requirement for reconciliation.

Fund Border Patrol Air and Marine Operation Hours

The Border Patrol should be provided with resources to expand operations in the air and on the water to enhance its ability to monitor the border and to respond to any security threats.

Funding Border Patrol Air and Marine Operation Hours involves allocating additional resources to increase the operational capacity of the U.S. Customs and

Border Protection's (CBP) Air and Marine Operations (AMO) division. This initiative would expand the number of flight hours for aircraft and operational hours for marine vessels used in border surveillance, interdiction, and law enforcement activities. Increased air and marine operations would enhance the ability to monitor vast stretches of border areas, including remote and difficult-to-access regions ([CBP, 2023b](#)). This expanded coverage would aid in detecting and intercepting illegal border crossings, drug smuggling operations, and other illicit activities. The funding would cover fuel costs, maintenance and repairs for aircraft and vessels, crew salaries for extended operations, and potentially the acquisition of additional assets to support increased operational hours. This is an item that was also included in the Secure the Border Act, Division A, Section III ([H.R. 2, 2023](#)). This funding for expanded Border Patrol Air and Marine Operation Hours can be included in a reconciliation bill and would pass the Byrd Rule due to its direct and substantial budgetary impact.

End the Pull Factor by Prohibiting Eligibility for Welfare and Other Assistance Benefits

The federal government provides billions of taxpayer-funded cash and in-kind benefits for immigrants ([Congressional Budget Office, 2024](#)), which are a significant pull factor for illegal immigration ([Shaw, 2024](#)). These welfare payments are contrary to the long-standing policies of the United States that have expected immigrants to be self-sufficient and not reliant upon government benefit programs. Current law makes inadmissible any alien that "is likely at any time to become a public charge" ([8 U.S.C. § 1182, n.d.](#)). The public charge doctrine dates to the Immigration Act of 1882, which excluded the immigration of "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge" ([Immigration Act, 1882](#)). Furthermore, the landmark welfare reform law signed by President Bill Clinton in 1996 established that it was national policy that:

- (1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

- (2) It continues to be the immigration policy of the United States that–
 - (A) aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and
 - (B) the availability of public benefits not constitute an incentive for immigration to the United States.
- (3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.
- (4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.
- (5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.
- (6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.
- (7) With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits in this chapter, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that alien be self-reliant in accordance with national immigration policy. ([H.R. 3734, 1996](#))

Even then-senator Joe Biden said when voting for this welfare reform law, “The culture of welfare must be replaced with the culture of work. The culture of dependence must be replaced with the culture of self-sufficiency and personal responsibility” ([Biden, 1996](#)). Unfortunately, the public charge doctrine is undermined by loopholes that exempt many categories of immigrants, including asylees and refugees. The Biden-Harris Administration also implemented regulations undermining the public charge doctrine by not considering dozens of health, housing, food assistance, education programs, and other public benefits when making a public charge determination ([Exec. Order No. 14012, 2021](#)).

The 2025 reconciliation bill should prohibit parolees, recipients of asylum, conditional entrants, refugees, temporary protected status (TPS), noncitizens granted withholding of removal, extended voluntary departure, and deferred enforced departure from eligibility for welfare and assistance benefits, including:

- Food Stamps (the Supplemental Nutrition Assistance Program, SNAP)
- Child Nutrition Programs
- Temporary Assistance for Needy Families (TANF)
- Supplemental Security Income (SSI)
- Child Care and Development Block Grant (CCDBG)
- Earned Income Tax Credit (EITC)
- Child Tax Credit (CTC)
- Obamacare Premium Tax Credit
- Medicare
- Medicaid
- Children’s Health Insurance Program (CHIP)
- Pell Grants
- Student Loans

Determining who is eligible for different benefit programs is absolutely essential for the proper administration of these programs. Defining the terms and conditions is necessary for direct spending programs can and should be included in reconciliation legislation. Reconciliation bills have

frequently included changes in the eligibility for federal programs. As reported by the Senate Budget Committee, “The Parliamentarian has remarked ‘that chang[ing] the definitions of eligibility for a range of federal benefits’ is ‘a common theme of reconciliation measures’” (Dauster, 2022, pp. 669–670). It is also reported that the Senate Parliamentarian has advised that a definition in a reconciliation bill was “a permissible regulation of the expenditure of government funds by defining a class of recipients (or defining a class of ineligible recipients) something that reconciliation bills do with great frequency and often in great detail” (Dauster, 2022, p. 670).

Precedent for defining classes of eligible and ineligible recipients in reconciliation legislation has included changing eligibility for benefits based specifically on immigration status. For example, Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PWORA) of 1996 restricted welfare and public benefits for certain aliens. Subtitle D of Title V of the Balanced Budget Act (BBA) of 1997 expanded eligibility for aliens for several programs, including Food Stamps, SSI, and Medicaid. Discussing these provisions, the Senate Parliamentarian wrote:

[PWORA] contained a series of free-standing provisions (later codified in title 8) that changed the definitions of eligibility for a range of federal benefits—a common theme of reconciliation measures. Among the people disqualified or restricted from the various benefits were many classes of immigrants (documented and undocumented), whose prior access to federal benefit programs had been patchy. But there were also classes of U.S. citizens who were disqualified from receipt of federal benefits, including felons, parole violators, people who were in arrears in child support payments and under certain circumstances, people who were not working. BBA 1997 further amended PRWORA’s eligibility standards with respect to SSI benefits and Food Stamps. PRWORA’s restrictions had by that time been codified in title 8, but again, this was not

about immigration status, it was about access to benefits. (Dauster, 2022, p. 722)

Modifications to the eligibility and applicability of tax provisions for noncitizens have also been included in reconciliation legislation, which is precedent for establishing terms and conditions for refundable tax credits and other tax provisions. The Health Care and Education Reconciliation Act of 2010 created a new 3.8% net investment income surtax. As a term and condition of this tax, the Obamacare law provided that it “shall not apply to ... a nonresident alien” (H.R.4872, 2010). The Tax Cuts and Jobs Act of 2017 required a Social Security number for the qualifying child to claim the expanded child tax credit (H.R. 1, 2017).

CONCLUSION

The Biden–Harris Administration’s immigration policies have created a crisis at the border. The effects of these harmful policies are felt in communities all throughout the country, which is why the American people consistently rank border security as a top priority for Congress to address in 2025 (EPIC, 2024).

While not every important policy can be accomplished through reconciliation, many impactful policies to secure the border and end the pull factors of illegal immigration can and should be enacted through the reconciliation process. This research is not comprehensive of everything that can be done to secure the United States’ Southern border through the reconciliation process; rather, it is a guide of policies that are clearly eligible to be included in reconciliation that will have a tremendous impact on securing the nation’s Southern border and proof that Congress can take serious action through the reconciliation process to secure the border. Therefore, if for any reason Congress does not take action to secure the border, it was a choice to continue the crisis. ■

REFERENCES

- 8 U.S.C. § 1182 (n.d.). *Inadmissible aliens*. Retrieved August 26, 2024, from <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>
- 8 U.S.C. § 1325 (n.d.). *Improper entry by alien*. Retrieved August 26, 2024, from [https://uscode.house.gov/view.xhtml?req=\(title:8%20section:1325](https://uscode.house.gov/view.xhtml?req=(title:8%20section:1325)
- Biden, J. (1996, August 1). *Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Conference report* [Speech]. Congressional Record, 142(116), S9399. <https://www.congress.gov/104/crec/1996/08/01/142/116/CREC-1996-08-01-pt1-PgS9387.pdf>
- Bloomberg Editorial Board. (2022, January 3). *The ‘Remain in Mexico’ policy is worth preserving*: Editorial. Bloomberg Opinion. <https://www.bloomberg.com/opinion/articles/2022-01-03/-remain-in-mexico-border-policy-is-worth-preserving>
- Camarota, S. A. (2024, January 11). *The cost of illegal immigration to taxpayers* [Testimony]. Immigration Integrity, Security, and Enforcement Subcommittee of the House Judiciary Committee. https://budget.house.gov/imo/media/doc/the_cost_of_illegal_immigration_to_taxpayers.pdf
- Centers for Disease Control and Prevention (CDC). (2024, August 14). *Provisional drug overdose death counts*. National Center for Health Statistics. <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>
- Congressional Budget Office (CBO). (2024, July 23). *Effects of the immigration surge on the federal budget and the economy*. <https://www.cbo.gov/publication/60165>
- Congressional Research Service. (2016, December 12). *Noncitizen eligibility for federal public assistance: Policy overview*. <https://crsreports.congress.gov/product/pdf/RL/RL33809>
- Crane, E. (2024, May 23). *Border Patrol lost 25% of agents during Biden admin: Report*. New York Post. <https://nypost.com/2024/05/23/us-news/border-patrol-lost-25-of-agents-during-biden-admin-report/>
- Cuffari, J.V. (2021, March 18). *DHS’ fragmented approach to immigration enforcement and poor planning resulted in extended migrant detention during the 2019 surge*. U.S. Department of Homeland Security. <https://www.oig.dhs.gov/sites/default/files/assets/2021-03/OIG-21-29-Mar21.pdf>
- Cuffari, J.V. (2024, July 3). *USCIS faces challenges meeting statutory timelines and reducing its backlog of affirmative asylum claims*. U.S. Department of Homeland Security. <https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf>
- Dauster, B. (2022). *The congressional budget process*. U.S. Government Publishing Office. <https://www.congress.gov/117/cprt/SPRT49524/CPRT-117SPRT49524.pdf>
- Davis, J. (2024, May 14). *Walls work*. U.S. Customs and Border Protection. <https://www.cbp.gov/frontline/walls-work>
- Dickerson, M., & Madni, B. (2024, May 30). *EPIC Explainer: The Reconciliation Byrd Rule*. Economic Policy Innovation Center. <https://epicforamerica.org/federal-budget/the-bird-rule/>
- Di Martino, D. (2024, September 19). *The lifetime fiscal impact of immigrants*. Manhattan Institute. <https://manhattan.institute/article/the-lifetime-fiscal-impact-of-immigrants>

- Economic Policy Innovation Center (EPIC). (2024). *Nationwide survey*. <https://epicforamerica.org/wp-content/uploads/2024/08/2024-06-EPIC-National-DECK-.pdf>
- Exec. Order No. 14012, 3 Federal Register 8277 (February 2, 2021). <https://www.federalregister.gov/documents/2021/02/05/2021-02563/restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts>
- Federal Emergency Management Agency (FEMA). (2024, September 11). *Homeland Security Grant Program*. <https://www.fema.gov/grants/preparedness/homeland-security>
- Homeland Security Republicans. (2023a, September 7). *DHS Secretary Alejandro Mayorkas Has Emboldened Cartels, Criminals, and America's Enemies*. U.S. House Committee on Homeland Security. <https://homeland.house.gov/wp-content/uploads/2023/09/09.07-Phase-2-Final.pdf>
- Homeland Security Republicans. (2023b, October 26). *Factsheet: Final FY23 numbers show worst year at America's borders—ever*. U.S. House Committee on Homeland Security. <https://homeland.house.gov/2023/10/26/factsheet-final-fy23-numbers-show-worst-year-at-americas-borders-ever/>
- H.R. 1. Tax Cuts and Jobs Act of 2017. 115th Congress (2017). <https://www.congress.gov/115/statute/STATUTE-131/STATUTE-131-Pg2054.pdf>
- H.R. 2. Secure the Border Act of 2023. 118th Congress. (2023). <https://www.congress.gov/bill/118th-congress/house-bill/2>
- H.R. 3734. Personal Responsibility and Work Opportunity Reconciliation Act. 104th Congress. (1996). <https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf>
- H.R. 4872. Health Care and Education Reconciliation Act of 2010. 111th Congress. (2010). <https://www.congress.gov/111/statute/STATUTE-124/STATUTE-124-Pg1029.pdf>
- H.R. 5376. Inflation Reduction Act of 2022. 117th Congress. (2022). <https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf>
- Immigration Act, 22 Stat. 214 (1882). <https://www.govinfo.gov/content/pkg/STATUTE-22/pdf/STATUTE-22-Pg214.pdf>
- Lankford, J. (2022, August 6). *Lankford amendment addresses ongoing crisis at the border*. United States Senate. <https://www.lankford.senate.gov/news/press-releases/lankford-amendment-addresses-ongoing-crisis-at-the-border/>
- Madni, B. (2024, February 2). *Bidenomics slush fund subsidizes “undocumented” immigration*. Economic Policy Innovation Center. <https://epicforamerica.org/federal-budget/bidenomics-slush-fund-subsidizes-undocumented-immigration/>
- Mayorkas, A. (2023, June 21). *Fiscal year 2022 entry/exit overstay report*. U.S. Department of Homeland Security. https://www.dhs.gov/sites/default/files/2023-07/23_0707_FY22_FY23_CBP_Integrated_Entry_Exit_Overstay_Report.pdf

- Mitchell, A., Baumrucker, E. P., Binder, C., Colello, K. J., Fernandez, B., Forsberg, V. C., Heisler, E. J., Keyser, J. A., Lynch, M. S., Rosso, R. J., Villagrana, M. A., & Voorhies, P. (2021, April 27). *American Rescue Plan Act of 2021 (P.L. 117-2): Private health insurance, Medicaid, CHIP, and Medicare provisions*. Congressional Research Service. <https://crsreports.congress.gov/product/pdf/R/R46777>
- National Park Service. (2015, February 24). *Nonnative species in Big Bend*. U.S. Department of the Interior. <https://www.nps.gov/bibe/learn/nature/nonnativespecies.htm>
- Nielsen, K. M. (2019, January 25). *Policy guidance for implementation of the Migrant Protection Protocols*. U.S. Department of Homeland Security. https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf
- Shaw, A. (2024, June 7). *Illegal immigrants are offered an array of taxpayer funded benefits, enticing more to come: 'Pull factor'*. Fox News. <https://www.foxnews.com/politics/explained-what-can-illegal-immigrants-get-free-united-states>
- Stecker, T. (2019, February 20). *Border barrier no one wants grows without money to slow spread*. Bloomberg Law. <https://news.bloomberglaw.com/environment-and-energy/border-barrier-no-one-wants-grows-without-money-to-slow-spread>
- Sullivan, D. (2022, August 7). *VIDEO: Democrats block Sullivan amendment to secure the border*. United States Senate. <https://www.sullivan.senate.gov/newsroom/press-releases/video-democrats-block-sullivan-amendment-to-secure-the-border>
- U.S. Citizenship and Immigration Services (USCIS). (2024, April 29). *USCIS reminds certain employment-based petitioners to submit the correct required fees*. <https://www.uscis.gov/newsroom/alerts/uscis-reminds-certain-employment-based-petitioners-to-submit-the-correct-required-fees>
- U.S. Customs and Border Protection (CBP). (n.d.-a). *Border Patrol Processing Coordinator*. Retrieved August 26, 2024, from <https://careers.cbp.gov/s/career-paths/usbpbppc>
- U.S. Customs and Border Protection (CBP). (n.d.-b). *Southwest land border encounters*. Retrieved August 26, 2024, from <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>
- U.S. Customs and Border Protection (CBP). (2023a, November 14). *CBP enforcement statistics fiscal year 2023*. <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2023>
- U.S. Customs and Border Protection (CBP). (2023b). *Air and marine operations missions*. <https://www.cbp.gov/border-security/air-sea/missions>
- U.S. Customs and Border Protection (CBP). (2024, October 22). *Nationwide Encounters*. Retrieved November 11, 2024, from <https://www.cbp.gov/newsroom/stats/nationwide-encounters>
- U.S. Department of Homeland Security (DHS). (2023, September 20). *Fact sheet: Biden-Harris Administration takes new actions to increase border enforcement and accelerate processing for work authorizations, while continuing to call on Congress to act*. <https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border>
<https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border>

U.S. Office of Personnel Management. (n.d.). *Hiring officials*. Retrieved August 26, 2024, from <https://www.opm.gov/fedshirevets/hiring-officials/#>

United States Senate Committee on Foreign Relations. (2022). *Biden's border crisis: Examining policies that encourage illegal migration*. <https://www.foreign.senate.gov/imo/media/doc/348219%20Mexico%20Northern%20Central%20America%20Report.pdf>

United States Senate Committee on Homeland Security and Governmental Affairs. (2023). *President Biden is wasting billions by not building the border wall*. https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/GOBM%20Interim%20Report%20on%20Wall_-_Final.pdf

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