

Why Caution is Needed Before Hiring Additional Border Patrol Agents and ICE Officers

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INTRODUCTION

The last time the Border Patrol received a large infusion of money to hire thousands of new agents, cases of corruption and misconduct spiked in the agency. New hires were not sufficiently vetted, novice agents were not adequately supervised, and agents who abused their authority acted with impunity. Now the Trump administration wants to repeat history by hiring thousands of additional Border Patrol agents, as well as Immigration and Customs Enforcement (ICE) officers, without introducing the reforms and safeguards needed to avoid the abuses and scandals of the past. Corruption is likely to ensue from such a rapid acceleration in hiring, problems which could easily be averted with rigorous hiring practices.

The administration's plans are encapsulated in two memos issued on February 20, 2017, by Secretary of Homeland Security John Kelly. The memos implement President Trump's executive orders on border security and immigration enforcement and call for hiring 5,000 additional Border Patrol agents¹ within Customs and Border Protection (CBP) and 10,000 additional ICE officers—ostensibly as a means of enhancing public safety and national security.² But these two branches of the Department of Homeland Security (DHS) are poorly prepared to recruit, train, and supervise new personnel. While the Border Patrol experienced some improvements in the aftermath of its last expansion, most recommendations for reform remain unimplemented.

Given this history, there are serious concerns that rapid expansion will bring about a resurgence of problems in the Border Patrol and also cause similar problems in ICE. The proposed surge is also stunningly expensive. Yet there is little justification for this expense at a time when undocumented immigration has fallen to historic lows. If the goal is to enhance border security, this money would be better used in many other ways.

UNDERSTANDING THE CONSEQUENCES OF PAST HIRING SURGES

The Border Patrol expanded dramatically between Fiscal Year (FY) 1994 and FY 2016, from 4,287 agents to 19,828. The period from FY 2006-2009 stands out within this long-term expansion, when the Border Patrol added approximately 8,000 new agents (from a total of 12,349 to 20,119).³ An increase of comparable magnitude has now been proposed for both the Border Patrol and ICE. Following the 2006-2009 Border Patrol surge, the *Associated Press* reported that:

“...the number of employees arrested for misconduct, such as civil rights violations or off-duty crimes like domestic violence, grew each year between 2007 and 2012, reaching 336, a 44 percent increase. Additionally, more than 100 employees were arrested or charged with corruption during the six-year span, including taking bribes to smuggle drugs or people.”⁴

CBP officials have repeatedly been charged with misuse of official force, criminal misconduct on and off the job, abuse of migrants, and violating constitutional rights.

We should ask if we have learned the lessons of this experience. The proposed increases have elicited warnings from law enforcement executives, those who dealt with the consequences of past expansions. For instance, interviews with former officials—Ralph Basham, head of CBP under George W. Bush; Gil Kerlikowske, head of CBP under Barack Obama from 2014 to 2017; and Jim Wong, Deputy Assistant Commissioner of CBP’s Office of Internal Affairs from 2009 to 2011—reveal serious misgivings about the hiring surge proposed by the Trump administration. The collective response of these experts is that the hiring plan “will present logistical challenges and might be unnecessary.”⁵ Why did they offer such a warning? The reasons are worth reviewing.

Persistent Corruption

Corruption is a major risk in settings filled with human, drug, and weapons smuggling. This is true of the U.S.-Mexico border, where most of the new Border Patrol agents will be stationed, and where many ICE agents operate since the agency has specific mandates to investigate smuggling of immigrants and drugs.⁶ A recent tabulation by the *New York Times*, for example, “showed that over the last 10 years almost 200 employees and contract workers of the Department of Homeland Security have taken nearly \$15 million in bribes while being paid to protect the nation’s borders and enforce immigration laws.”⁷ Available data on corruption charges filed between 2000 and 2013, compiled by the Center for Investigative Reporting, confirm 153 investigations of CBP personnel alone, including 53 from the Border Patrol.⁸

Arrests for corruption are significantly higher at CBP compared to other federal law-enforcement agencies,⁹ yet the scale of the problem is almost certainly underestimated. The Homeland Security Advisory Council reports that “the true levels of corruption within CBP are not known, nor is there an evaluation based on sophisticated risk analysis. This means that pockets of corruption could fester within CBP, potentially for years.”¹⁰

As border enforcement becomes a larger and more sophisticated enterprise, the risk of corruption may also grow. Fred Burton, chief security officer at Stratfor and former deputy chief of counterterrorism at the State Department’s Diplomatic Security Service, suggests that transnational criminal organizations find it increasingly useful to co-opt officers in order to penetrate and subvert government agencies.¹¹ In a small but quite concerning number of cases, people successfully sought out positions in CBP for the purpose of criminal opportunities, and, even worse, criminal organizations successfully placed operatives inside DHS.¹² This disturbing vulnerability occurred in the context of a push to hire a number of new agents—just like the current situation, according to James Tomscheck, eight-year head of Internal Affairs at CBP. But have the problems been solved? Tomscheck comments that “there has been some progress [in hiring processes,] but not enough.”¹³ This squarely puts the focus on poorly managed expansion, a risk the nation faces once again.

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Excessive Force

The problems at CBP go beyond corruption. Between 2007 and 2012, approximately 1,700 allegations of excessive force were leveled against CBP.¹⁴ The agency changed some policies and training practices following critiques from DHS' own Advisory Council¹⁵ and a use-of-force review by the Police Executive Research Forum, a professional policing organization, which pointedly stated that “too many cases [involving the use of deadly force] do not appear to meet the test of objective reasonableness.”¹⁶ Indeed, use of force by CBP (mainly Border Patrol agents) declined by 26 percent between FY 2013 and FY 2015, but rose again by 21 percent in FY 2016.¹⁷ We might reserve judgment about whether or not CBP has improved its use-of-force practices, but the agency has not adequately confronted the vulnerabilities that could result from the poor management of a mass recruitment of new agents.

The connection between use of force abuses and poorly managed recruitment during a hiring surge is illustrated by a San Diego shooting case involving a Border Patrol agent and a U.S. citizen. In 2012, Border Patrol agent Justin Tackett shot and killed Valerie Tachiquin, but did not provide a statement to police until five days later. The subsequent lawsuit and investigation revealed that Tackett may have created a dangerous situation and misreported the incident.¹⁸ Significantly, the much-debated case exposed Tackett's troubling law-enforcement record. Before joining the Border Patrol in 2006, he resigned from the Imperial County Sheriff's Department, facing a notice of termination that declared him unfit for the job. The notice cited “unprofessional conduct, dishonesty, violation of or refusal to obey reasonable regulations, insubordination, violation of rules, incompetence and failure to follow proper procedures of arrest, search and seizure and treatment of persons in custody.”¹⁹ The troubling acts involving Tackett were numerous: records documented him defying orders by breaking and entering without a warrant, arresting people with no charges issued against them, and engaging in altercations. In 19 months, Tackett faced four disciplinary actions for lying, excessive force, and civil-rights violations. Yet in admitting him as an agent, the Border Patrol either failed to obtain this information or was aware but ignored it anyway.²⁰

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Verbal, Physical, and Legal Abuses

The pervasive problems with CBP also include a wide range of documented abuses. Compared to other federal law-enforcement agencies, for example, CBP has significantly more incidents of sexual abuse and assault.²¹ Physical and verbal abuses of migrants are also widespread problems. In a systematic survey of 1,095 deported Mexicans, 11 percent reported being physically abused by U.S. authorities and 23 percent reported verbal abuse.²² The Border Patrol was involved in 67 percent of the physical abuses and 75 percent of verbal abuse incidents. ICE was involved in 11 percent of each.²³ This corresponds closely to rates reported in two previous systematic surveys of deported Salvadorans.²⁴ Such misconduct is evident in government documents obtained by the American Civil Liberties Union (ACLU):

“Complainants also repeatedly describe agents’ violent, reckless, and threatening conduct, including physically assaulting non-threatening motorists; driving aggressively and tailgating at high speeds; wielding weapons, including knives, electroshock weapons, and assault rifles in routine traffic encounters; threatening to shoot motorists or their pets; and mocking and insulting motorists with profane and derogatory language.”²⁵

There are serious concerns with other illegal and unconstitutional actions by Border Patrol agents, such as conducting unjustified searches and seizures. A portion of government complaint records for just two Arizona Border Patrol sectors, Tucson and Yuma, obtained by the ACLU reveal 81 Fourth Amendment complaints regarding unlawful searches and seizures from FYs 2012-2013. Yet DHS oversight agencies only reported three such complaints nationwide for the same period.²⁶ The ACLU found 142 civil rights complaints in the government documents available, which include descriptions of agents making roving patrol stops on legally insufficient or dubious grounds—such as stopping someone for speeding, driving too slowly, driving with out-of-state license plates, driving vehicles “registered in another town,” driving on less common routes, “turning around,” commuting to work in the early morning, and on the basis of “a possible mistake.”²⁷

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UNRESOLVED ISSUES PERSIST IN FLAWED SYSTEM

As these facts indicate, there are deep-seated problems in the government bodies seeking new recruits. One such problem is how, and whether, complaints are received and addressed. The American Immigration Council obtained 809 complaints alleging abuse against Border Patrol agents between January 2009 and January 2012. Shockingly, among those cases in which a formal decision was issued, 97 percent resulted in no action taken.²⁸ Effectively, almost nothing is done about problem individuals, units, and patterns of misbehavior at Border Patrol. This is not just a specific flaw in the agency, but a systematic one. Failures to act on complaints weaken the ability to recognize and remedy serious problems, including any that arise from the new proposal for large batches of recruits.

The lack of accountability is compounded by concerns with ICE and CBP's organizational cultures, especially at the Border Patrol. In a 2011 study of the CBP workforce, the Homeland Security Studies and Analysis Institute documented a:

“...code of silence—an unwritten rule not to report another colleague's errors, misconducts, or crimes” within CBP, and concluded that “the ‘code’ presents an insidious challenge to workforce integrity, and requires explicit, targeted and sustained attention.”²⁹

The report offered a number of detailed recommendations for reform, but a year later it was unclear how or whether they were being implemented.³⁰ At a congressional oversight hearing in 2012, the deputy commissioner of CBP testified that a new committee “identified a number of recommendations that have already been achieved or are almost achieved, such as the expansion of the polygraph capabilities” and forming an internal working group, but did not provide more detail.³¹ The testimony was vague on other recommendations related to addressing organizational culture issues, such as training for frontline officers and supervisors in the practical application of ethics.

Two years later, the problems were still being discussed. In 2014, Richard Skinner, former DHS Inspector General, cited the code of silence, saying “there was a culture [...] to not report allegations to us. Out in the field, there was a culture to keep things to themselves.”³² And in 2016, James Tomscheck, a former director of CBP internal affairs, said that:

“ I think there has been some progress but not enough. In the 40 years I spent practicing law enforcement in three different agencies, it was my experience that the Border Patrol had an identity and culture that was very different from the rest of U.S. law enforcement. They were an agency that had not always been held accountable.”³³

Culture change takes clear action with widespread, consistent, and strong consequences. At this time, facing a proposal for major expansion, we cannot be sure that these necessary approaches have been used or that changes have taken hold.

While the issues I raise are well-documented for the Border Patrol, ICE is not discussed as often. The relative lack of documentation is, however, due to less scrutiny directed at ICE rather than the absence of such concerns. Nevertheless, according to agency documents and court records examined by the *New York Times*:

“ ...dozens of [ICE] agents and contract guards responsible for the detention and removal of undocumented immigrants have been arrested and charged with beating people, smuggling drugs into detention centers, having sex with detainees and accepting bribes to delay or stop deportations.”³⁴

Moreover, ICE shares some of the same risk factors as CBP. In their operations, officers encounter vulnerable and fearful non-citizen populations who may remain silent about any abuses they suffer. While ICE agents are considered interior enforcement, many ICE operations involve detention and drug and migration enforcement, meaning agents operate in border regions and near the U.S.-Mexico border, a specific zone of risk. ICE officers involved in these operations work in domains with lucrative illegal businesses—both drug and human smuggling—that are prone to corruption, as we have seen with CBP. Finally, ICE often draws its recruits from the troubled ranks of CBP. An expansion of ICE thus raises many of the same concerns associated with the Border Patrol.

CAN DHS AVOID THE PROBLEMS OF THE PAST?

The widespread recruitment problems resulting from the 2006-2009 Border Patrol growth spurt led to important reforms in CBP, including the Anti-Border Corruption Act of 2010.³⁵ The added measures include a cognitive exam, fingerprinting, financial disclosure, fitness tests, medical examinations, and background checks of applicants.³⁶ CBP recruits were now also subject to mandatory polygraph testing, but, notably, it was not required for ICE applicants.³⁷ In many cases, these examinations revealed CBP applicants' troubling backgrounds, "including 10 applicants believed to have links to organized crime who had received sophisticated training on how to defeat the polygraph exam."³⁸ While the reforms prevented the hiring of some unsuitable candidates, there has been a high rate of attrition throughout the hiring process, including the polygraph section. According to recent reports, two-thirds of Border Patrol applicants failed the test;³⁹ a somewhat higher percentage (40 percent) passed previously, according to a 2012 Government Accountability Office (GAO) study.⁴⁰ This means that adding large numbers of agents to the Border Patrol is likely to be slow and expensive.

In this context, CBP is proposing several changes to the polygraph test requirements. Former military and law enforcement applicants who already have certain clearances, for example, would be exempted from the test, and the agency is seeking to use the more limited Test for Espionage, Sabotage, and Corruption instead of the standard Law Enforcement Pre-Employment Test.⁴¹ Although loosening standards would speed up the cumbersome hiring process, the potential consequences are alarming. Jay Ahern, a deputy CBP commissioner when the agency doubled in size, commented on the proposal in an interview with *Foreign Policy* magazine, "We actually lived through this." He cautioned that "if you start lowering standards, the organization pays for it for the next decade, two, or three."⁴² Other current and former DHS officials, as well as outside experts, consulted during *Foreign Policy*'s investigation "are concerned that lowering standards could allow the influx of less-qualified candidates who may be susceptible to corruption." Whether these polygraph test changes are appropriate or not, however, may distract us from other important concerns. The polygraph itself is by no means the only bottleneck in the hiring process. CBP data show a 50 percent Border Patrol candidate failure rate on the written test, 15 percent failure before the oral hiring board, 25 percent medical failure test, 15 percent failure on the physical fitness test, and 56 percent failure on the background check.⁴³ Clearly Border Patrol has significant difficulty recruiting acceptable candidates. While the reasons are not well documented, the absence of an educational standard—even high-school graduation—might be part of it.⁴⁴

Law-enforcement professionals commissioned by DHS itself have identified the major risk factors and improvements needed at DHS' component agencies, the establishments that would be responsible for managing an influx of new recruits. The CBP Integrity Advisory Panel within the DHS Homeland Security Advisory Council, for example, issued reports in 2015 and 2016 outlining key reforms needed in CBP. The Advisory Panel was comprised of an impressive roster of law-enforcement executives, including its co-chairs William Bratton, New York City Police Commissioner, and former Drug Enforcement Administration (DEA) Administrator Karen Tandy. Combined, the Advisory Panel's two reports outlined 53 main recommendations in the following categories: Assuring Integrity, Preventing Unauthorized Use of Force, Improving Transparency, Proactive Integrity Measures, Streamlining CBP's Discipline Process, Improving CBP's Receipt, Tracking and Response to Complaints, Optimizing Interior Checkpoints, Effectively Using Task Forces to Investigate Border Corruption, Enhancing Transparency/Stakeholder Outreach, and Body Worn Cameras and Camera Technology.⁴⁵

Although some recommendations have been undertaken, most have not. More importantly, the agencies have not clearly nor publicly communicated their responses to, or implementation plans for, such recommendations. Expansion should be contingent on thorough and deep responses to these fundamental needs. We should not place valuable resources, the pivotal recruitment and training of personnel, or the public (immigrant and resident) in the hands of an agency that has not energetically, thoroughly, and transparently addressed its documented flaws.⁴⁶

Such flaws and concerns are just as applicable to ICE, despite relatively less public scrutiny on ICE compared to CBP. For example, as previously mentioned, ICE does not currently require its applicants to pass a polygraph test. Even worse, a 2016 report from the DHS Office of Inspector General found that both CBP and ICE have systemic inadequacies that delay the hiring process and fail to track applicants, which could further complicate and hamper any expansion efforts.⁴⁷

ARE ADDITIONAL OFFICERS EVEN NEEDED?

The cost of the proposed expansion is dramatic. In the Trump administration’s budget outline for FY 2018, \$314 million is designated for hiring an additional 500 Border Patrol agents, 1,000 new ICE officers, and support personnel for the new hires.⁴⁸ In total, each agent or officer costs taxpayers \$209,333. The budget proposes an unprecedented one-year increase—more than \$300 million—yet the total cost is even more jarring. The entire long-term plan for 5,000 Border Patrol agents and 10,000 ICE officers would increase DHS’ already large, existing budget by over \$3.14 billion.

Beyond the fiscal consequences, the ability of Border Patrol to recruit thousands of new agents is questionable. Border Patrol is already below its authorized staffing level and has significant attrition, at least 6 percent a year, meaning that an actual 1,880 agents would need to be hired to net an additional 500 agents—a fraction of the proposed 5,000.⁴⁹ Kevin McAleenan, the Acting Commissioner of CBP, calculates that in order to net the 5,000 new agent goal, Border Patrol would have to hire a total of 26,370 agents—or 2,729 new hires each year. McAleenan points out that ICE recruits significantly from existing Border Patrol staff, so with the uptick in ICE recruitment occurring at the same time, the Border Patrol may need an even larger hiring surge.⁵⁰ This constant influx of new agents going through hiring and training would not only be immensely expensive, but presents the serious risk factors that have accompanied past waves of new recruitment.

The proposal for a costly expansion of Border Patrol is in stark contrast with flat and declining enforcement needs. Since 2007, Border Patrol apprehensions of unauthorized immigrants at the southwest border have fallen dramatically. Whereas apprehensions were close to or over 1 million from 1983 to 2006, they have ranged in the 300,000s to 400,000s since 2010.⁵¹ Moreover, the justification for a large hiring increase is connected to a nonexistent “surge,” as portrayed by the media and used politically, of unauthorized arrivals in South Texas. In fact, there has been no immigration increase when comparing yearly apprehension statistics.⁵² Clearly, the need for officers has fallen, not risen.

The decline of apprehensions has occurred at a time when border crossers are changing. In FY 2014, and again in FY 2016, more than half of all apprehensions along the southern border were of non-Mexicans.⁵³ The net unauthorized flow between Mexico and the United

States is approximately zero, so Mexican migration drivers are limited, although there are still flows.⁵⁴ The remainder is largely Central American, many of whom are unaccompanied children and family groups (parents with children).⁵⁵ Many arrivals in South Texas, for example, have been women and children fleeing violence and persecution. Often, children and families go straight to Border Patrol officers and surrender, seeking to initiate an asylum case. While families presenting themselves to Border Patrol has been a challenge in terms of training and logistics—housing and processing children and families, and attending properly to credible fear claims, for instance—it actually reduces the difficulty of detecting covert entrants trying to avoid detection.

WHAT ARE THE ALTERNATIVES?

In an era of essentially no growth in the unauthorized population, it should be abundantly clear that we do not need to add to immigration and border enforcement.⁵⁶ Considering the immensity of President Trump’s recent budget proposal—a \$314 million supplemental request for just one year of a 10-year expansion—could these scarce resources be more usefully spent on alternatives? If we do add resources, they should respond to actual trends on the ground, such as expanding capacity to fully process the increasing proportion of non-Mexicans who have asylum claims that require fair and full adjudication in immigration court.

U.S. immigration courts, however, are quite understaffed and have serious backlogs already. In January 2016, there were 508,036 pending immigration cases with an average wait of 673 days (nearly two years).⁵⁷ In mid-2016, the Executive Office of Immigration Review (EOIR), the office within the Department of Justice that encompasses immigration courts, barely staffed 300 judges even though funding provided for 374 immigration judges.⁵⁸ According to Human Rights First, EOIR needs a total of 524 judges in order to eliminate the backlog by FY 2023, meaning 150 additional immigration judges would need to be hired on top of the 374 currently funded.⁵⁹ The budget of the new administration for FY 2018 proposes to hire 75 additional immigration judge teams (a judge and court staffers), bringing the total number of funded immigration judge teams to 449.⁶⁰ This is a significant improvement, although it is not adequate to overcome the build-up of cases and eliminate the backlog, according to calculations from Human Rights First.

In addition to bottlenecks in immigration court, insufficient staffing can lead to other delays and inefficiencies. More agents at the Office of Field Operations (OFO), the branch of CBP that staffs ports of entry through which legitimate trade and travel pass, would provide substantial economic and social benefits. Yet OFO is not designated for additional officers in President Trump's budget proposal. A DHS-funded economic study estimated that adding a single officer to land border ports of entry would generate \$61.8 million in added dollars to U.S. GDP, \$17 million in annual savings (resulting from reduced wait time for U.S. residents), and 1,053 additional jobs.⁶¹ The GAO, while more cautious about modeling assumptions, also found that large benefits come from adding more inspectors at ports of entry.⁶² Rather than increasing staff between ports of entry, where the Border Patrol operates, pressured ports of entry could benefit from more effective inspections facilitating the interdiction of hard drugs (heroin, cocaine, and methamphetamine) that are generally transported through such corridors.⁶³

Proposing additional OFO officers requires important cautions, however. These officers face the same issues of misconduct, corruption, and flawed management that Border Patrol does. The Homeland Security Advisory Council report previously discussed, for example, addresses concerns with CBP OFO as well as CBP Border Patrol. Furthermore, legal rights abuses are evident at ports of entry, such as officials discouraging or turning away asylum applicants who have asserted a fear of returning to their home countries or an intention to seek asylum under U.S. law.⁶⁴ Growth in personnel at land border ports of entry should only occur alongside fundamental reform in CBP OFO. Nevertheless, attention to ports of entry represents an important policy alternative to repeating the misplaced pattern of Border Patrol and border wall expansion.⁶⁵

Lastly, CBP internal investigations are seriously understaffed. Funding for more investigators needs to be prioritized over additional Border Patrol agents; similarly, ICE would likely benefit from funding increases for accountability measures before an expansion of officers. In 2015, the Homeland Security Advisory Council Interim Report recommended that CBP Internal Affairs staff 550 criminal investigators, a net increase of 350 and more than doubling the existing number.⁶⁶ Such funding does not appear in President Trump's proposed budget. As remarked above, CBP has undertaken and documented few of the reforms recommended by its own Advisory Council. Growth in the Border Patrol, and likely growth in ICE, should be premised on the agencies' accomplishment of thorough reforms that address the recruitment, screening, training, supervision, and monitoring of their law-enforcement workforces.

CONCLUSION

My analysis here has concentrated on a relatively narrow if important topic: the question of the challenges facing the rapid expansion of the Border Patrol and ICE proposed by the Trump administration. Simply put, these branches of DHS are not suitable for rapid expansion and need serious reforms immediately. Beyond this, I have not addressed the major questions of U.S. immigration and border policy. The drive to add more enforcers, at the border and the interior, on the whole needs to be critically reviewed within those frameworks. The continuing power of immigration and border politics that are largely symbolic—comprised of expensive and coercive gestures (such as the proposals discussed here) that are disconnected from effective and humane policies—needs vigorous questioning on both practical and moral grounds.⁶⁷ We need to stop and think carefully before we proceed.

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