



The “Border Security First” Argument: A Red Herring Undermining Real Security

Assessing DHS Progress and Looking Forward

Marshall Fitz, Angela M. Kelley, Ann Garcia | March 2011

Opponents of comprehensive immigration reform argue that we need a fully secure border before we can systemically overhaul our immigration laws. Ironically, the “border security first” mantra is actually thwarting progress on border security.

The argument to delay broader immigration reforms until the border is secure relies on the following dubious assumptions:

- Congress’s current “operational control” standard—implying absolute control of the border—is realistic and achievable.
- The American public will reject practical legislative reforms unless and until the border is fully secured.
- The administration has failed to demonstrate adequate commitment to border enforcement to justify broader reforms.

The evidence belies each of these points, and this brief examines them in turn. It also shows—as the Center for American Progress has done before—that the Department of Homeland Security, or DHS, met and exceeded stringent enforcement benchmarks that “border security first” supporters laid out in legislation that failed to pass Congress in 2007.

It is past time to put aside this tired expression and start working on comprehensive solutions to fix the system.

“Total control” is impossible

Some grandstanding lawmakers suggest that nothing short of “total control of our southern border, our northern border, and our natural ports of entry” will suffice to declare our borders secure. But no serious expert believes it is possible to seal our borders.

“At some point in time, you’ve got to say to yourself, we’re not sending 12 million people home. Now, let’s get over it.”

– Tom Ridge,
the country’s first secretary
of Homeland Security

The “operational control” definition Congress adopted in 2006 sets the bar at an unattainable level: “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.” Yet even the Border Patrol’s current interpretation of this unrealistic congressional operational control standard does not contemplate an impermeable wall. The Border Patrol defines it as the ability to detect, identify, classify, and then respond to and resolve illegal entries along our U.S. borders.” But as Homeland Security Secretary Janet Napolitano explains, operational control is a “very narrow term of art” that “does not reflect the infrastructure and technology and all the other things that happen at the border.”

Border security is much more than creating barriers. It entails a host of overlapping controls that help regulate the flows of goods and people in an orderly manner while preventing those who mean to harm us from entering. Those controls include a combination of intelligence tools, physical barriers, manpower, and virtual detection capabilities at and between ports of entry. But they also include establishing realistic regulatory channels that can funnel legitimate entrants into the legal system and restoring the rule of law in our labor market by dealing with the current undocumented population.

Evaluating “border security,” therefore, cannot and should not be measured against a standard of total control. Not even the Berlin Wall, with its constant patrolling, machine gun towers, relatively small length, and urban location could prevent escapes. Border security and operational control should be measured in terms of risk management. The question should be: Have we implemented the right set of policies and deployed the right set of tools to minimize risk and maximize control in a constantly changing environment with evolving challenges?

As former Secretary Michael Chertoff said recently: “You can, depending where you are on the border, use a series of tools in order to minimize the flow. Is it going to be an absolute seal? No. But will it, again, manage the risk in conjunction with these other tools? Yes.”

Moreover, Chertoff, Tom Ridge, and Janet Napolitano—the only three people to have served as secretary of homeland security since the department was created—all concluded at a recent event honoring the eighth anniversary of the Homeland Security Department’s creation that extraordinary work has been done in strengthening the border but that an airtight border is unachievable and lasting and effective border security requires an overhaul of our immigration system.

Ridge observed that: “At some point in time, you’ve got to say to yourself, we’re not sending 12 million people home. Now, let’s get over it ... let’s just figure out a way to legitimize their status, create a new system. And I think that will add more to border security than any number of fences we can put across the southern border.”

“Is it going to be an absolute seal? No.”

– Michael Chertoff, former secretary of Homeland Security

While we continue to strive for better control of our borders we can no longer let the perfect be the enemy of the good. It's time to take the next step in securing our border: meaningfully reforming our immigration laws.

The public is hungry for a solution

Americans are undeniably frustrated with illegal immigration. Everyone wants a secure border. But Americans are also realistic, and they are calling for tough, pragmatic solutions, not more empty platitudes such as “border security first.”

The signs of bipartisan pragmatism on this issue are everywhere except the conservative corridors of Congress. For years now, virtually every poll shows that strong majorities of Americans of every political stripe support tough border security, a crackdown on unlawful employers, *and* requiring undocumented immigrants to register, pass background checks, pay taxes, and earn citizenship.

Tellingly, both strengthening the border and dealing with the current population receives significantly higher support than doing only one or the other. Last February, a poll in conservative Idaho highlighted that the state's residents think illegal immigration is a problem and that they support strong state enforcement legislation. But the highest level of support (73 percent) was for a program enabling undocumented immigrants to permanently remain in the United States.

Utah, one of the most conservative states in the country, is another recent case in point. As it grappled with legislation to address illegal immigration it became clear that Arizona's enforcement-only approach was insufficient. Utah's Republican state legislature eventually passed a tough package of enforcement measures on March 15—overly harsh and misguided in our view—but they also created a program to bring the state's undocumented residents into the legal fold. The legislation is deeply flawed on a variety of fronts, and ultimately only Congress can solve these problems. But it reinforced the need for a practical solution over an ideological statement.

We've had nearly a year to reflect on Arizona's heavy-handed enforcement approach to immigration, and cooler heads have prevailed. Conservatives now look to move in a more constructive direction. Two highly conservative states, Idaho and Utah, are signaling strong support for a more pragmatic approach, echoing consistent public opinion research on the issue over the last four years.

Obama's enforcement efforts exceed his Republican predecessor's

The final argument the “border security first” crowd raises is that President Obama’s Department of Homeland Security demonstrates a lack of commitment to immigration and border enforcement that undermines public confidence in any changes to immigration law. The numbers tell a different story.

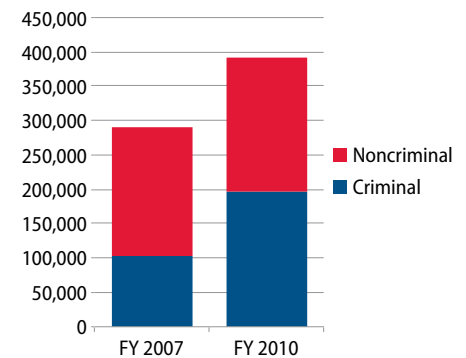
The Obama administration deported 392,862 people during fiscal year 2010—nearly half of these deportees were convicted of a crime. Over the last two years they have deported more than 779,000 people, which is an 18 percent *increase* from President George W. Bush’s last two fiscal years in office.

Not only that, but the administration continues to engage state and local law enforcement officers by aggressively deploying a number of controversial programs such as the 287(g) and Secure Communities initiatives, which aim to give specific immigration enforcement functions to nonfederal agents. Secure Communities expanded from 14 jurisdictions in 2008 to over 1,000 today.

What’s more, Immigration and Customs Enforcement, or ICE, ramped up its workforce compliance efforts to unprecedented levels. ICE charged 180 employers with criminal violations related to unlawful hiring in FY 2010 and conducted more than 2,200 audits. Those audits resulted in nearly \$43 million in penalties.

Layered on top of a fundamentally broken system, we believe many of these enforcement strategies need thorough audits, regular adjustment, and careful monitoring. Unfortunately, too often the execution of these efforts is counterproductive and inflicts unnecessary harm and suffering. Despite admirable attempts to prioritize the focus on serious threats, hundreds of thousands of hard-working families have been torn apart. The economic and humanitarian effects of these ruptures are severe. Nonetheless, these efforts and those sketched below belie the claim that this administration and this agency lack a deep commitment to immigration and border enforcement.

Immigration and Customs Enforcement removals under Obama and Bush administrations



Source: <http://www.ice.gov/doclib/about/offices/ero/pdf/ero-removals.pdf>.

DHS is hitting and surpassing enforcement benchmarks

Many of these same “border security first” proponents argued four years ago that we could only implement reforms to our immigration laws after specific enforcement benchmarks were met. The 2007 reform legislation that contained the benchmarks failed in the Senate, but we demonstrate below that over the last four years the bill’s high goalposts were reached and exceeded.

Our borders are more fortified with infrastructure and personnel than ever before, and we now spend \$17 billion a year on immigration and border enforcement. “A completely secure border is impossible on our land borders,” C. Stewart Verdery, former assistant secretary for border and transportation security policy at DHS, points out, “but the record is clear that the U.S. government has made great strides in gaining operational control of the southern border.”

Yet our system remains broken despite this massive surge of enforcement activity. More than 5 percent of our workforce is undocumented. Hundreds of thousands of individuals still enter the United States without authorization or overstay their visas. And our enforcement budget will continue to drain the nation’s coffers without appreciably improving the integrity of the system until Congress owns up to its responsibility and enacts fundamental reforms.

To put a fine point on this, we’ll review how the following benchmarks, which were included in the 2007 immigration reform bill, have been met.

Benchmark: Operational control of the Mexican border

The 2007 legislation directed the secretary of homeland security to establish and demonstrate operational control of the U.S.-Mexico land border, which includes the ability to monitor the border with available methods and technology. As noted above, operational control is an unrealistic standard that DHS thinks does not reflect the full range of border security activities.

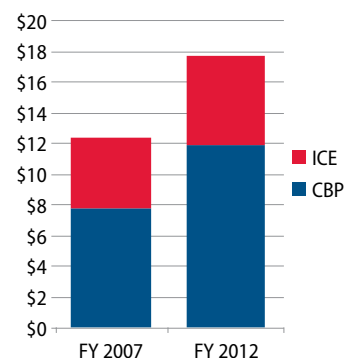
In fact, Michael Fisher, the DHS border patrol chief, recently testified that the agency is actively “taking steps to replace this outdated measure with performance metrics that more accurately depict the state of border security.”

In the meantime, the following extraordinary efforts make clear the federal government’s sustained commitment to securing the border:

- The Customs and Border Protection, or CBP, workforce has grown to 58,223 employees in FY 2010 compared to 44,058 employees in FY 2007, a 32 percent increase. CBP has proposed an \$11.8 billion budget for FY 2012 compared to \$7.7 billion in FY 2007. The Immigration and Customs Enforcement, or ICE, budget also increased to a \$5.8 billion FY 2012 proposal, up from \$4.7 billion in FY 2007.
- President Obama has authorized the deployment of 1,200 additional National Guard troops to augment the Border Patrol agents and CBP officers already at the border.

U.S. Customs and Border Protection and Immigration and Customs Enforcement budgets

In billions



Source: FY2007 revised enacted budgets from http://www.dhs.gov/xlibrary/assets/budget_bib-fy2009.pdf. FY2012 budget requests from <http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf>.

- Border Patrol apprehensions have declined by 36 percent over the last two years, indicating fewer attempted and fewer successful border crossings. Border Patrol apprehended 463,382 unlawful immigrants between ports of entry in FY 2010. By contrast, they apprehended 1.2 million persons in FY 2004.
- The administration now screens 100 percent of southbound rail shipments in search of illegal cash, drugs, and weapons as part of the Secure Border Initiative.
- CBP and ICE seized \$282 million in illicit currency along the southwest border in FY 2009 and FY 2010—a 35 percent increase compared to the previous two years. They also confiscated more than 6,800 firearms and more than 7 million pounds of drugs—a 28 percent and 16.5 percent increase, respectively, when compared to the previous two years.
- CBP had control of 449 miles of the southwest border by the end of 2006 under DHS’s current definition of “operational control.” By the end of FY 2010, 873 southwest border miles, or 44 percent of the length of the border, were under operational control, and the number of miles under operational control is increasing by about 126 miles a year since 2005. The Yuma sector reported that all 126 miles of its border were under operational control. Total control of all 1,950 miles of the U.S.-Mexico border is impossible, but CBP continues to make great strides in gaining control of important sectors.

Benchmark: Staff enhancements for Border Patrol

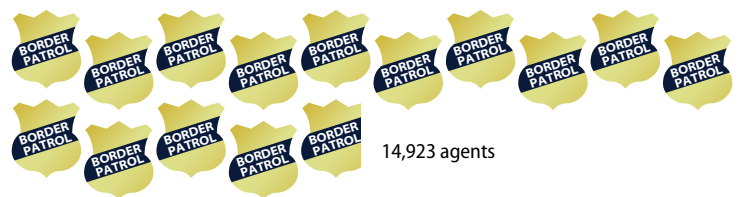
The 2007 legislation directed the CBP’s Border Patrol to put in place 20,000 full-time agents reporting for duty. That mandate was met and exceeded:

- There were 12,349 Border Patrol agents in FY 2006. Today there are 21,370 Border Patrol agents and over 20,600 CBP officers at ports of entry. The president’s FY 2012 budget calls for maintaining this record-high number of agents.
- The number of Border Patrol agents on the northern border is now 2,200, a 700 percent increase since September 11, 2001.

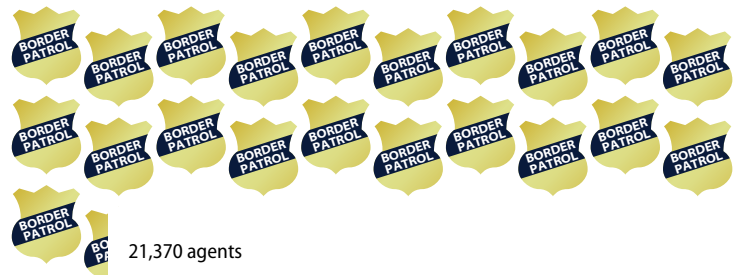
Border Patrol agents

Each badge represents 1,000 agents

FY2007



FY2012



Source: 2007 data from http://www.dhs.gov/xlibrary/assets/budget_bib-fy2009.pdf. 2012 data from <http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf>.

Benchmark: Strong border barriers

The 2007 legislation directed DHS to install at least 300 miles of vehicle barriers, 370 miles of fencing, and 105 ground-based radar and camera towers along the U.S.-Mexico land border, as well as deploy four unmanned aerial vehicles and their supporting systems. The legislation wasn't enacted, but virtually all of those objectives have been met:

- The Department of Homeland Security completed construction of 299 miles of vehicle barriers and 350 miles of pedestrian barriers in FY 2010, totaling approximately 649 miles out of 652 planned miles of fencing along the southwest border. Congress has allocated at least \$2.6 billion for physical barriers since FY 2005.
- Currently there are 130 airplanes and three Unmanned Aircraft Systems operating along the Southwest border. Congress passed \$600 million in supplemental spending appropriations in August 2010 that allow for an increase in unmanned aircraft systems along the border. These unmanned aircraft systems now provide coverage along the entire southwest border.
- CBP intends to add two new forward-operating bases in addition to seven already in operation.
- In the FY 2012 budget \$242 million is requested to support new technology along the Southwest border such as Integrated Fixed Towers. These are intended to be a possible alternative to the newly canceled Secure Borders Initiative.

“A completely secure border is impossible on our land borders.”

– C. Stewart Verdery,
former assistant secretary for
border and transportation
security policy at DHS

Benchmark: An end to catch and release

The legislation directed DHS to detain all removable aliens apprehended illegally crossing the U.S.-Mexico border except as specifically mandated by federal or state law, or in humanitarian circumstances. It was also told to give ICE the resources to maintain this practice, including the resources necessary to detain up to 31,500 aliens per day annually.

These benchmarks have been met:

- When the “catch and release” practice was still in place prior to 2006 approximately 66 percent of unlawful border crossers apprehended from countries other than Mexico were released into the United States pending removal hearings. Approximately 99 percent are now detained.

- ICE detention and removal operations have received significant budget and staff increases to manage this policy change, and immigrant detention has grown exponentially. The average daily population of detainees was 6,785 in FY 1994. This figure rose to 30,885 in FY 2010, and it continues to rise into FY 2011 with detention facilities averaging a daily population of 33,331 over two months.

Benchmark: Workplace enforcement tools

DHS was directed to—and authorized to do so under the failed 2007 legislation—establish and use secure and effective identification tools to prevent unauthorized workers from obtaining employment in the United States. The legislation failed, but DHS still made significant progress expanding voluntary electronic employment verification and enhancing worksite enforcement efforts:

- DHS has strengthened identification tools for workplace enforcement. But the government’s ability to mandate electronic employment verification must be tied to a program for legalizing the status of the nation’s 11 million undocumented individuals. Deploying a mandatory employment verification system without addressing the 11 million undocumented workers will drive more workers and employers into the underground economy, give a boost to document fraud and identity theft enterprises, and hurt U.S. workers rather than protect them.
- A voluntary electronic verification program—E-Verify—already exists. Employers who register on E-Verify enter biographic data from a new hire’s Form I-9 (the federal form that must be completed by all workers and employers upon hiring) into the system. Many states have enacted legislation that requires some or all employers in the state to use E-Verify. Three states require all employers to use E-Verify, 11 states require program use for state agencies and/or contractors, and 11 states have pending legislation for required E-Verify use. The federal government also requires contractors to use E-Verify.
- U.S. Citizenship and Immigration Services has overseen increased employer participation in E-Verify from 88,116 companies at the end of FY 2008 to more than 246,000 participating employers in FY 2010, representing a 250 percent increase. An average of 1,300 employers sign up each week.
- DHS uses employer sanctions as an additional employment enforcement tool. At the start of the Obama administration ICE began targeting employers who knowingly hire illegal workers through investigations, prosecution, and civil and criminal penalties.

- ICE initiated 5,371 financial investigations of employers in FY 2010. These led to 1,811 arrests, 778 convictions, and \$309.8 million in monetary and nonmonetary seizures. ICE also conducted 2,196 Form I-9 inspections in FY 2010 compared to 1,444 in FY 2009. These inspections resulted in 196 arrests and \$42.9 million in civil fines, forfeitures, and restitutions.

Time to move beyond “security first”

“Border security first” proponents are standing in the way of more substantial border security. They are blocking enactment of additional layers of control that would funnel migrants into a legal system and restore the rule of law by requiring undocumented immigrants to register, pay taxes, and earn status.

Blocking immigration reforms that are needed to actually accelerate and enhance border security efforts is the height of cynicism. It is high time that we stop enabling those who want to play politics with this issue and start supporting those who want to solve problems.

The administration’s commitment to border security and robust enforcement is indisputable. The American public’s desire for tough but realistic solutions is clear. Federal legislators can no longer reasonably hide behind their unpersuasive “border security first” calls. Large-scale systemic dysfunction will persist until Congress can muster the political courage to enact comprehensive immigration reforms.

Marshall Fitz is Director for Immigration Policy, Angela Kelley is Vice President for Immigration Policy, and Ann Garcia is a Research Assistant for Immigration Policy at American Progress.