Negative: CBP National Security

By “Coach Vance” Trefethen

AFF Plan has all Customs & Border Protection (CBP) employees classified as "National Security employees" (rather than civil service employees). This is probably intended to clean up corruption and improve performance by making it easier to discipline or fire them for malfeasance. Most CBP employees, however, have nothing to do with import or export trade, so they're extra-topical.

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Negative: CBP National Security

TOPICALITY

1. Outside the bounds of international trade

Link: Resolution says the AFF plan must stay "within the bounds of international trade"

Violation: Customs & Border Protection (CBP) includes many things and people outside the bounds of trade

Jillian Hamilton 2017 (has worked in a variety of Program Management roles for multiple Federal Government contractors. Bachelors degree in Business with an emphasis in Marketing from Penn State University and her MBA from Univ of Phoenix) 5 July 2017 "Customs and Border Patrol: The Idea, the Mission and the Jobs" (accessed 4 May 2023) https://news.clearancejobs.com/2017/07/05/customs-border-patrol-idea-mission-jobs/

CBP is the law enforcement agency under the Department of Homeland Security (DHS) that is charged with the task of preventing terrorists or terrorist weapons from entering our U.S. borders. CPB has over 60,000 employees. While officers and agents are key, the agency also employs pilots, trade and agriculture specialists, forensic scientists, canine enforcement agents, mission support staff and more. [The jobs are many](https://news.clearancejobs.com/2017/05/25/customs-border-protection-expedited-hiring/), and the work is critical to U.S. safety. Keeping terrorists and their weapons out of the U.S. is just one component of CBP’s work. They also play a vital role in enforcing U.S. regulations, import duties, and immigration laws. CBP also fights to keep harmful pests, illegal drugs, and contraband out of the U.S.  In short, CBP’s job is to combine customs, immigration, border security, and agricultural protection into one coordinated agency, while keeping terrorists and weapons out of the U.S.

Most CBP are armed law enforcement agents, just under half are Border Patrol

Muzaffar Chishti and Jessica Bolter 2020 (Muzaffar Chishti is an MPI Senior Fellow and Director of the MPI office at New York University School of Law. Jessica Bolter was an Associate Policy Analyst at MPI, working with the U.S. Immigration Policy Program) 25 June 2020 As #DefundThePolice Movement Gains Steam, Immigration Enforcement Spending and Practices Attract Scrutiny (accessed 4 May 2023) https://www.migrationpolicy.org/article/defundthepolice-movement-gains-steam-immigration-enforcement-spending-and-practices-attract

Rising budgets have led to growing personnel at these agencies. CBP, with a total staff of more than 60,000, boasts 44,000 “armed, sworn law enforcement officers”—the largest number of all federal agents. Just under half of them are Border Patrol agents.

Fighting terrorism - NOT managing trade - is the priority mission of CBP

HOMELAND SECURITY ADVISORY COUNCIL, CBP Integrity Advisory Panel 2016 (co-chaired by Police Commissioner Bill Bratton (N.Y. City) and former Drug Enforcement Administration administrator Karen Tandy) FINAL REPORT OF THE CBP INTEGRITY ADVISORY PANEL March 15, 2016 (accessed 5 May 2023) https://www.hsdl.org/?view&did=791416

In addition to a longer probationary period for CBP’s law enforcement personnel (Border Patrol Agents and CBP Officers), it is noteworthy that these personnel perform an important national security function, i.e., preventing international terrorists and the implements of terror from entering the U.S. across the borders of our nation. Indeed, since the terrorist attacks of 9/11, this has been the priority mission of CBP.

Impact #1: Staying within the bounds requires gutting the plan and a Negative ballot on solvency

Even if we assume that customs agents are somehow a trade policy, to save this plan's topicality, it would have to only apply to customs agents that are doing work related to import and export. It would rule out the Border Patrol and all the work they do to catch illegal immigrants, it would rule out drug interdiction, canine units, and everything else outside the bounds of import and export trade. AFF would have to limit the scope of their plan only to employees that fit within the resolution.

Since none of their solvency evidence advocates reforming CBP but only the small segment of it that fits this resolution, none of their 1AC evidence proves their plan would work or should be adopted. Prima facie, they have not presented a workable plan, and a NEG ballot is warranted

Impact #2: Extra-topical advantages must be dropped

Any advantages coming from plan reforms outside of trade - things like immigration, drug interdiction, etc. - must be dropped from the round. AFF cannot do one small thing within the resolution and then a bunch of other things outside the resolution and claim all the benefits of the extra-topical mandates. Allowing this would be grossly abusive to Negative teams. Every AFF could put one small trade policy change and then a bunch of other mandates on any topic they want, giving NEGs an infinite research burden that we could never effectively debate.

2. None of the reforms are trade policies

The law invoked by AFF to reform CBP doesn't change a single thing about import or export trade. Here's a list of what it would change - see if any of them sound like trade:

Sam Magaram 2021 (JD candidate at Harvard Law School) 5 Apr 2021 To Fix the United States’ Corrupt Border Agency, Defeat Its Union (accessed 4 May 2023) https://globalanticorruptionblog.com/2021/04/05/to-fix-the-united-states-corrupt-border-agency-defeat-its-union/

The President therefore has the statutory authority to designate Border Patrol agents as national security employees, thus excluding them from the collectively bargained protections that shield corrupt CBP personnel and obstruct new integrity policies. Among other things, exempting CBP officers and Border Patrol agents would allow CBP management to more quickly and consistently discipline and terminate corrupt personnel and expand the use of helpful investigatory tools such as polygraph examinations.

The "national security" designation is about immigration policy, not trade

Katherine Hawkins 2023 (Senior Legal Analyst at the Project On Government Oversight) 10 Jan 2023 "The Border Zone Next Door, and Its Out-of-Control Police Force" (accessed 4 May 2023) https://www.pogo.org/report/2023/01/the-border-zone-next-door-and-its-out-of-control-police-force

Whether Border Patrol’s day-to-day work “directly affects national security” is a more complex question than these statements suggest. The overwhelming number of individuals arrested by CBP do not present any danger to the public. Most are families, children, and people seeking refuge from violence and hardship. But if CBP is not a national security agency, it should not receive resources, authorities, and exceptions to accountability measures that are unavailable to ordinary civilian agencies. If CBP is engaged in work that affects national security, President Biden should exercise his authority under the National Labor Relations Act to exempt its agents from collective bargaining. CBP cannot continue to have it both ways.

INHERENCY

1. New investigative staff

(May 2023) CBP is ramping up investigative staff to root out misconduct and build accountability

US Customs & Border Protection 2023. "CBP enhances oversight and accountability by hiring new criminal investigators" 4 May 2023 (accessed 5 May 2023) https://www.cbp.gov/newsroom/national-media-release/cbp-enhances-oversight-and-accountability-hiring-new-criminal

U.S. Customs and Border Protection recently announced that it has been granted [direct-hire authority](https://www.opm.gov/policy-data-oversight/hiring-information/direct-hire-authority/#url=Fact-Shee) that enhances the agency’s ability to rapidly hire highly qualified personnel of diverse backgrounds to complete CBP’s goal of hiring 300 new criminal investigators by the end of the year. These highly trained personnel will investigate allegations of serious misconduct on the part of CBP personnel along with reviewing use of force and critical incidents as well as in-custody deaths. CBP has undertaken significant reform and modernization of its accountability processes and its use of force policies. Building a more robust staff of criminal investigators is another step in maintaining the public’s trust through accountability and transparency, which is vital to CBP’s mission.

Hundreds of new special investigative agents are being added to increase accountability

Anthony Gale 2022 (Senior media officer with Human Rights Watch) 30 June 2022 "Some Important Reforms at the US Border" (accessed 6 May 2023) https://www.hrw.org/news/2022/06/30/some-important-reforms-us-border

US Customs and Border Protection (CBP) officials have been implicated in sexual assault, physical violence, verbal abuse, and the dehumanizing treatment of asylum seekers. But now, thanks in part to Human Rights Watch’s advocacy, as well as that of the [Southern Border Communities Coalition](https://www.southernborder.org/), [Alliance San Diego](https://www.alliancesd.org/), and the [Project on Government Oversight](https://www.pogo.org/), there will soon be more opportunities to hold them accountable for their actions. In the near future, CBP will hire an additional 350 special agents who will be responsible for rapidly responding to allegations of abuse. This will nearly triple those tasked with investigating misconduct.

2. New "use of force" reforms

Incidents involving "use of force" are now investigated and policy changes are being made

Paul Koscak 2017 (writer/editor for US Customs & Border Protection) (ethical disclosure about the date: Article is undated but refers to events in 2016 in the past. It also says it was last updated 4 Jan 2022) Law Enforcement on a Constitutional Scale (accessed 5 May 2023) https://www.cbp.gov/frontline/cbp-use-force

Within the agency, CBP now trains and employs officers and agents to join investigators with CBP’s Office of Professional Responsibility to rapidly respond to and investigate use of force incidents. Training began in December 2014 and as of October, approximately 450 CBP law enforcers are now qualified. As of October, these use of force incident teams traveled to 36 locations to participate with federal and local law enforcement agencies to review circumstances, gather facts and report findings to a board established by CBP to make conclusions about the incident. Cases involving a firearm, death or serious injury that were declined for prosecution are referred to the newly formed National Use of Force Review Board, which determines "whether the actions taken were within" CBP’s use-of-force policy. The board includes senior officials from the Departments of Justice and Homeland Security, as well as U.S. Immigration and Customs Enforcement, the DHS Office of Inspector General and CBP. Based on the review, the board recommends changes in policy, training, tactics or equipment to the senior executive of the relevant operational component, deputy commissioner and ultimately to the commissioner for a final decision. So far, CBP has completed eight reviews of significant use of force incidents.

3. Existing reforms will work, if the management culture changes

Reforms have been implemented. Whether they work depends on CBP management culture (which AFF has no control over)

Sarah Turberville 2023 (Director of the Constitution Project at Project on Government Oversight) "Letter to House Oversight and Accountability Committee on Need for CBP Reform" 7 Feb2023 (accessed 6 May 2023) https://www.pogo.org/letter/2023/02/letter-to-house-oversight-and-accountability-committee-on-need-for-cbp-reform

Until recently, Border Patrol “critical incident teams” were responsible for investigating fatal shootings, vehicle crashes, and other use-of-force incidents by their colleagues, a clear conflict of interest.The transfer of that function to the Office of Professional Responsibility is a step in the right direction, as is the Border Patrol’s recent revision of its vehicle pursuit policy. But how meaningful those changes are will depend on their implementation, and on leadership and supervisors’ willingness to impose recommended discipline on officers when they abuse their authority.

SOLVENCY

1. Political leadership change is required

Nothing will get fixed at CBP until political officials support CBP leaders who will push for change

Prof. Christy E. Lopez 2022 (professor from practice at Georgetown University Law Center and co-director of its Center for Innovations in Community Safety. At the Department of Justice, she led the Civil Rights Division investigations of police department misconduct) 11 Nov 2022 LOS ANGELES TIMES "Top border official Magnus says he’s been asked to resign but has refused" (accessed 5 May 2023) https://www.latimes.com/opinion/story/2022-11-25/chris-magnus-customs-and-border-protection-border-patrol-alejandro-mayorkas

Power structures, whether certain police unions or informal officer cliques and gangs, that become so used to operating above the law that they feel entitled to do so, don’t relinquish that power without a fight. Political leaders then try to placate anti-reformers by removing the same change-makers they brought on to make change. Further, as the NBPC tweet underscores, the administration’s decision to side with CBP’s retrograde elements will embolden, not appease. And, tragically, that means we can expect the Border Patrol to become more brutal and corrupt in the wake of Magnus’ firing. Because when the administration abandoned Magnus, it also abandoned every border agent who dared to hope that Magnus’ arrival might signal a chance for a more humane, accountable culture to take hold. Those agents will go further into hiding and the Border Patrol’s worst elements will solidify their control of the culture. Ending this nation’s devastating cycle of police abuse requires fundamentally changing law enforcement culture, and that is extraordinarily hard work. It requires sustained pressure from both inside and outside an agency. Until political officials support those individuals, like Chris Magnus and so many others, willing and able to lead such change from the inside, history is indeed doomed to repeat itself.

DISADVANTAGES

1. Higher illegal immigration

Link: Removing civil service protections for CBP will anger the employees union. That's why Status Quo hasn't done it.

A.C. Thompson 2019 (staff reporter with ProPublica) 24 June 2019 "BORDER PATROL HAS A LONG HISTORY OF AGENT MISCONDUCT. WHY HASN'T IT BEEN ADDRESSED?" (accessed 6 May 2023) https://psmag.com/social-justice/why-border-patrol-agents-are-not-held-accountable-for-wrongdoing

CBP officials rejected taking away civil service protections in part because it would anger the union representing Border Patrol agents. "That was going to be a difficult one," recalled R. Gil Kerlikowske, who served as CBP commissioner at the time of the panel's reports on corruption and misconduct in 2015 and 2016.

Link: Morale is dangerously low

Anna Giaritelli 2021 (journalist) WASHINGTON EXAMINER 22 Aug 2021 "Border Patrol agents warn of morale collapse amid crisis: 'Downtrodden, almost dead inside' (accessed 6 May 2023) Illegal border crossings set to be ‘worst in US history’" https://www.yahoo.com/video/border-patrol-warn-morale-collapse-100100210.html

The surge of illegal immigration is taking a significant toll because it has kept agents from carrying out their national security mission. Agents say they are physically drained and struggling to see beyond the crisis. “Morale is in the toilet,” said Jon Anfinsen, a spokesman for the Border Patrol's union. "Morale is low because agents aren't allowed to do their job — if our job is to be out patrolling the border in between the ports of entry and actively searching for people who have crossed illegally, but we're not allowed to go do that job, it basically creates this defeated feeling in everyone." “Morale is tanking fast. This can be seen in the simple statements made by agents, but even more importantly, it can be seen in increasing processing times. Agents are just flat tired, and we are seeing and hearing it,” a former senior official at U.S. Customs and Border Protection, the federal agency that oversees the Border Patrol, wrote in an email.

Link: Morale will get even worse without employee protections due to false accusations against Border Patrol agents

Adam Shaw 2022 (journalist) "Border Patrol offering $10K hiring bonus to new agents amid low morale, migrant crisis" (accessed 6 May 2023) https://www.foxnews.com/politics/border-patrol-offering-10k-hiring-bonus-new-agents-low-morale-migrant-crisis

Mayorkas has since touted a pay bump and new hiring for Border Patrol, but many agents have been unhappy with the way that the Biden administration has handled a controversy from last year — where agents were falsely accused of whipping Haitian migrants. President Biden had repeated those false accusations, and many agents feared that the resulting investigation dragged on in order to find anything to hit the agents with. Ultimately, Customs and Border Protection (CBP) [announced last month](https://www.foxnews.com/politics/cbp-finds-no-evidence-border-patrol-agents-whipped-haitian-migrants) that the investigation found "no evidence" that agents struck migrants with their reins or used whips — even as it recommended punishment for the agents for infractions such as "offensive" language and maneuvering a horse too close to a child.

Link: CBP low morale means they can't recruit enough new agents

Ted Hesson 2019 (journalist) 10 Feb 2019 " The Border Patrol’s recruiting crisis" (accessed 6 May 2023) POLITICO https://www.politico.com/story/2019/02/10/border-patrol-recruitment-crisis-1157171

The struggle to recruit and retain Border Patrol agents predates the Trump administration. The number of agents [peaked](https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Staffing%20FY1992-FY2017.pdf) at 21,444 in fiscal year 2011, and since then has mostly trended downward. U.S. Customs and Border Protection, the parent agency to Border Patrol, consistently [ranks](https://bestplacestowork.org/rankings/overall/sub) near the bottom of an annual federal survey of employee satisfaction.

Link: Understaffing at Border Patrol means we can't effectively stop illegal immigration

Rep. Jody Hice 2021 (R-Georgia; member of the House Subcommittee on Government Operations) (accessed 6 May 2023; ellipses in original) Hice: Biden Border Crisis Negatively Impacting Border Patrol Workforce https://oversight.house.gov/release/hice-biden-border-crisis-negatively-impacting-border-patrol-workforce/

As the Biden Administration fails to adequately confront the realities of an unprecedented crisis, the men and women of the Border Patrol have experienced the negative impacts of a staffing shortage, low morale, and ultimately the inability to effectively perform their border security mission,” wrote Subcommittee Ranking Member Hice. “. . . Border Patrol agents are now critically understaffed, working longer hours but less time on the line patrolling the border as their attention is diverted to the care and custody of families and children due to the recent migrant surge.”

Impact: High social costs. Illegal immigrants impose high costs on US taxpayers

Dr. Jason Richwine 2022 (PhD; resident scholar at the Center for Immigration Studies) 24 Jan 2022 " DeSantis is right about the cost of illegal immigration" (accessed 10 Nov 2022) https://cis.org/Oped/DeSantis-right-about-cost-illegal-immigration

Although illegal immigration poses many challenges, the increase in state expenditures is perhaps the most immediate one. In a [recent report](https://cis.org/Richwine/States-Must-Pay-Health-and-Education-Benefits-Illegal-Immigrant-Families) for the Center for Immigration Studies, I calculated that Florida spent approximately $2 billion in 2019 on major health and education programs for the nearly 800,000 immigrants who lived in the state illegally before the recent surge. But aren’t those living in the country illegally barred from receiving public benefits? This is a common misconception. Although most of those entering the country illegally cannot directly receive welfare, the state still supports them in other ways, especially through their children. For example, Florida spent an estimated $52 million on Medicaid coverage for births to immigrants who arrived illegally in 2019, and another $148 million on Medicaid coverage for their older U.S.-born children. By far the largest state expenditure on the U.S.- and foreign-born children of immigrants who came illegally is public schooling, which the state must provide regardless of a student’s immigration status. Extrapolating from Florida’s per-pupil expenditures, educating the children of illegal immigrants cost state taxpayers $1.6 billion in 2019. This figure likely understates the true cost, as it does not reflect the special language training that children of people who came illegally disproportionately require.