



## Bill Analysis: The Bipartisan Border Solutions Act

The Bipartisan Border Solutions Act, or [S. 1358](#), is bipartisan legislation that would allow the U.S. to respond more effectively to increases in arriving migrants by creating regional border processing centers, expediting the asylum process, improving access to legal services and providing additional resources and personnel for border processing.

Senators John Cornyn (R-Texas) and Kyrsten Sinema (D-Arizona) introduced the Bipartisan Border Solutions Act on April 22. A companion bill [was introduced](#) in the House by Representatives Tony Gonzales (R-Texas) and Henry Cuellar (D-Texas).

### Background

U.S. law enshrines the legal right for those fleeing persecution to seek and obtain protection and asylum status at the border and from within the interior. But not everyone who arrives at the border is eligible for asylum. Seeking asylum or other humanitarian protection is [a complicated process](#) that involves numerous legal stages and requires migrants to repeatedly provide evidence and testimony to substantiate their potential eligibility.

There are a number of problems with the way the U.S. asylum system currently operates, particularly for those arriving at the Southern border. Newly arriving migrants — including unaccompanied children — are first held in Customs and Border Patrol (CBP) custody, where they have [limited access](#) to legal counsel or case management services and where they often face [freezing](#) and [inhumane](#) conditions. Adults who express the desire to seek asylum are quickly interviewed to determine whether they have a “credible fear” of persecution. If they fail to meet this standard they are placed in [expedited removal](#) with only cursory access to an appeal before an immigration judge.

Those who do make it past the credible fear screenings are placed in an immigration court backlog that has ballooned to over [1.3 million cases](#). Asylum seekers are left in limbo for an average of over three years. Some have [voiced concerns](#) that the long wait time serves as a pull factor encouraging more migrants — particularly those who may not meet the strict asylum eligibility requirements — to travel to the border.

These problems are exacerbated during periods of significant influx at the border. In 2014, 2016, 2019, and now in the spring of 2021, increases in the number of migrants seeking asylum at the border have placed the system under even greater strain.

### *To address these issues, the Bipartisan Border Solutions Act would:*

- 1. Establish at least four “regional processing centers” in high-traffic sectors along the Southern border to better process arriving migrants and asylum seekers.**

The regional processing centers would:

- **Facilitate asylum interviews and processing for arriving migrants.** The regional processing centers would serve as short-term facilities where DHS and partner agencies and organizations could conduct medical screening, identity verification (including FBI fingerprint checks and biometric collection), legal orientation training and the issuance of immigration court documents. The facilities would only allow for the detention of individuals for up to 72 hours before release or transfer to another facility.
  - **Improve coordination by “co-locating” staff from a variety of agencies at the border.** Constituting a departure from current migrant processing, personnel from Customs and Border Protection (CBP), the Office of Refugee Resettlement (ORR), U.S. Citizenship and Immigration Services (USCIS), the Federal Emergency Management Agency (FEMA), and Immigration and Customs Enforcement (ICE) would be brought under one roof to improve the efficiency of border processing. In addition, the bill explicitly provides that medical staff, licensed social workers, mental health professionals, and appointed child advocates are to be provided access to the centers.
  - **Allow for oversight and access from human rights and legal services organizations.** The bill would provide access to nongovernmental organizations (NGOs) involved in providing humanitarian and legal assistance, and it requires federal authorities to coordinate with these groups on the provision of legal orientation and standards of care for families and individuals. The bill also provides that the DHS Office of Civil Rights and Civil Liberties (CRCL) would have access to the centers, and would mandate CRCL to create an actionable plan to address any concerns about the infringement of migrant rights arising at the centers.
  - **Be put under CBP control.** The bill places the regional processing centers under the direction of CBP, which would be required to consult with a newly-established interagency coordinating committee, including representatives from ORR, FEMA, USCIS, ICE, and other relevant agencies helping to staff the centers.
- 2. Call for the administration to develop pilot programs over three years to both expedite asylum processing and improve asylum seekers’ access to due process.**

The pilot programs would:

- **Facilitate faster credible fear and asylum decisions and improved case management and access to legal counsel.** The bill would require the Department of Homeland Security (DHS) to develop pilot programs and strategies to expedite the asylum process while ensuring that asylum seekers are given a fair opportunity to effectively seek humanitarian relief.
- **Maintain certain standards to protect the rights of migrants and asylum seekers.** The bill prohibits the pilot programs from increasing the length of time for which the government is authorized to detain migrants. The pilot programs also would be required to allow asylum seekers to appeal an adverse decision and preserve their right to judicial review. The pilot programs would not be permitted to include processing of unaccompanied children (UACs).

- **Identify clear metrics and staffing requirements prior to implementation.** Under the bill’s framework, before implementing a pilot program, DHS would have to create an evaluation plan and identify staffing requirements for it. The evaluation plans would include well-defined, measurable objectives and a clearly articulated evaluation methodology.
- **Expire after three years.** The authority to implement the pilot programs would expire after three years.

### 3. Reprioritize the immigration court docket during irregular migration events.

The bill would:

- **Require the Attorney General and DHS to define an “irregular migration surge event.”** The AG and DHS would establish clear and measurable criteria for determining the beginning and end of such an event.
- **Require the Attorney General to prioritize asylum seekers who arrived at the border in connection with a migration surge event.** Similar to previous “last in first out” or “rocket docket” policies, the provision is designed to expedite immigration court proceedings for recent arrivals to prevent the case backlog from serving as a pull factor drawing more migrants to the border.
- **Ensure access to legal counsel for asylum seekers whose cases are prioritized.** While re-prioritizing the docket, the Attorney General would be required to schedule cases at times that result in a fair and reasonable opportunity for asylum seekers to consult with legal counsel.

### 4. Expand and reinforce legal orientation and access to counsel for asylum seekers.

The bill would:

- **Require all asylum and migrant processing reforms implemented under the act to meet standards relating to access to counsel.** The regional processing centers and DHS pilot programs would be required to facilitate communication between migrants and outside counsel prior to their credible fear screenings. The bill does not provide for government-funded counsel to defend those in immigration proceedings, but includes protections for those who are able to retain counsel ensuring that they can visit with and make and receive telephone calls with their legal representatives in a private space.
- **Expand and reinforce the legal orientation program (LOP).** The bill would require DHS to develop a plan to expand the LOP to every facility that is used to process arriving asylum seekers. The bill requires DHS to develop the plan within three months of enactment and it requires the execution of the plan within two months of submission. The bill also provides that asylum seekers receive LOP presentations within 12 hours of apprehension and at least 24 hours before their credible fear screenings.

## 5. Fund additional personnel for various agencies involved in the asylum process.

The bill would provide funding for:

- **At least 150 additional immigration judges under the Executive Office of Immigration Review (EOIR).** The bill would also fund staff attorneys and other staff necessary to support the additional immigration judges, as well as 128 ICE attorneys and 41 support staff to help carry out EOIR removal, asylum, and custody determination proceedings.
- **At least 300 additional asylum officers under USCIS.** Additional asylum officers would allow the agency to play a bigger role in processing asylum claims at the border in addition to its current adjudication capacity related to credible fear screenings and for those who make asylum claims from within the U.S.
- **At least 300 additional case management personnel under ICE.** These positions would provide case management services to those apprehended along the Southern border, including those processed at the regional processing centers.
- **Additional CBP personnel to make up an existing staffing shortfall.** Under the bill, CBP would hire no fewer than 600 new Office of Field Operations Officers annually until reaching staffing requirements identified each year in the agency's Workforce Staffing Model. In addition, the bill provides for at least 250 additional Border Patrol processing coordinators under CBP.

## 6. Establish new vetting standards for sponsors of unaccompanied children.

The bill would:

- **Require new biometric criminal checks of UAC sponsors.** The bill provides that Department of Health and Human Services (HHS) conduct biometric criminal background checks of all members of a household before placing an unaccompanied child in that household. This is a departure from current practice, for which biometric background checks are only required for nonparental sponsors.
- **Prevent the placement of UACs in a household in which an adult has been convicted or is being tried for certain violent or sex offenses.** Prohibited offenses include murder or manslaughter, a sex offense, a crime involving severe forms of trafficking of persons, a crime of child abuse and neglect, and any offense that includes the attempted use of physical force or a deadly weapon. This is a departure from current law, which specifies that children may not be placed with a sponsor that poses a danger to the child, but does not specify crimes that constitute a danger.
- **Require HHS to check-in with children after placing them with sponsors.** The bill would mandate the HHS check-in on children it releases to sponsors within 30 days of their release and then every two months afterwards. Currently, HHS only provides a single well-being follow-up call to most children unless it has designated a particularly vulnerable child for post-release services.

- **Prevent HHS from sharing any information collected with DHS for the purposes of immigration enforcement.** The bill does require DHS to share information with HHS while it is conducting background checks, but it prohibits any information collected during the vetting process to be used by ICE for immigration enforcement purposes.

## **Conclusion**

The Bipartisan Border Solutions Act would work to expedite the asylum process, provide better detention conditions at the border, and ensure minimum standards regarding legal service provision and access to counsel for asylum seekers. The National Immigration Forum has [praised](#) the bill, characterizing it as a “positive step” that “furthers the conversation around much-needed reforms.”