



HOMELAND SECURITY PROJECT | MARCH 2022

Toward a Better Immigration System: Fixing Immigration Governance at the U.S. Department of Homeland Security*

Doris Meissner and Ruth Ellen Wasem

Executive Summary

Whether it is record-breaking numbers of unaccompanied child and family migrants crossing the southwest border or unprecedented backlogs in immigration and naturalization petitions, immigration governance is buckling from breakdowns in performance across key Department of Homeland Security (DHS) immigration components and partner agencies. Rethinking immigration governance at DHS and across the executive branch is essential. Although many of the issues plaguing the immigration system are due to Congress's failure to update immigration laws to reflect national needs, the management of DHS' immigration components is the responsibility of the executive branch.

* This paper is a condensed version of our longer report, *Toward a Better Immigration System: Fixing Immigration Governance at the U.S. Department of Homeland Security*, which was published by the Migration Policy Institute in October 2021. Since the publication of our original report, certain changes have occurred in areas we address, in particular with respect to DHS budgeting and funding. We have not updated our original analysis with these subsequent changes, which, while meaningful, do not alter the underlying thrust of our argument. We are actively monitoring the work of the Administration and Congress, and, as appropriate, we will address the changes that are being made in future work. We express our gratitude for Brianne Berry's assistance in preparing this version of our paper.

DHS' current chain of command and coordination capabilities are not strong enough to counteract the centrifugal forces of better-resourced, singular operations (e.g. border security and immigration detention). The DHS components and the agencies they collaborate with in other federal departments lack the assuredness and agility to effectively recalibrate and adjust to new circumstances. The challenge for the DHS immigration components is to fuse broader immigration policy and performance outcomes with enduring border and national security imperatives.

This paper examines questions of structure—as compared with leadership and policy—and proposes changes that would enable more effective and humane implementation of the nation's immigration laws. It identifies four key organizational areas of concern—mission, institutional structures, funding priorities, and institutional culture—essential to the vitality and governance of the U.S. immigration system. We argue that immigration is a system that spans both intra-DHS and interagency organizational entities and processes, and that it must operate as a system to successfully carry out its duties. Managing immigration as a system calls for coordinated operational capabilities, decision-making structures, and resource allocations. The paper provides recommendations that can be accomplished within the current authority of the secretary of homeland security and the executive branch. In addition, it closes with select proposals for a longer-term change agenda that would require legislation.

Background

The Department of Homeland Security (DHS) came into being in 2003 in response to the 9/11 terrorist attacks. Political deals and compromises abounded as the administration of President George W. Bush and Congress bundled agencies from across the federal government with counterterrorism and homeland security responsibilities into the newly formed department. Agencies with ancillary counterterrorism roles, as well as other disparate responsibilities (e.g. disaster relief, immigration, and election security), also were folded into DHS, driven as much, in the case of immigration, by long-standing restructuring aims and policy disagreements as by new counterterrorism imperatives.

However, the principal components of immigration are charged with missions that address a wide array of national interests beyond border security and countering terrorism and other threats, including economic competitiveness; travel facilitation and mobility of goods; meeting labor market needs; global leadership in higher education, cultural exchange, and humanitarian protection; and legal immigration processes, culminating in conferring U.S. citizenship. DHS' mission of border security and counterterrorism has limited its ability to advocate for and lead intra- and interagency efforts that advance these broader economic, humanitarian, and diplomatic attributes and values that immigration also embodies.

Threats to U.S. national security have changed dramatically since 9/11. They include pandemics and climate change. Domestically, a fast-growing threat now resides in home-grown terrorism, which draws some of its fury from anti-immigration attitudes, making effective governance of the immigration system that wins public trust urgent for newly compelling reasons. With the arrival of a new administration and immigration continuing to be a top-tier policy and political issue, the time is ripe for a serious rethinking of immigration governance at DHS and across the executive branch.

Analysis

Immigration as a System. The principal DHS immigration components—U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS)—constitute interdependent parts of an overall system. Their functions must be coherent and coordinated for the nation’s immigration policies to be implemented effectively. Yet, at both intra-DHS and interagency levels, these entities operate quite independently. Coordination, planning, and consensus building among the immigration components and across Cabinet agencies have been largely ad hoc and inconsistent.

For example, effective enforcement at the U.S. southwest border, particularly of unaccompanied minors and families with young children, cannot be accomplished solely at the border or by CBP, even though it’s the principal DHS border enforcement agency. Border management and control rely on CBP, USCIS, ICE, the Department of Health and Human Services (in particular the Office of Refugee Resettlement), the Department of Justice and even the Departments of State and Defense. The missions, authorities, and capabilities of these agencies all extend beyond CBP’s efforts and jurisdiction at the border. Unless these functions work together as a system, border management and control in today’s reality cannot succeed.

Successive administrations have tried but ultimately been unable to institutionalize multicomponent planning and coordinated responses in support of DHS immigration operations. Or, the planning that has been done is overlooked when it is most needed. Strong leadership and high-performing DHS operations across immigration components should drive accountability across other Cabinet agencies with equities in the immigration system, which must also build the capabilities necessary to deliver in their areas of responsibility. Strong cross-agency leadership at the White House level is also necessary for any administration to succeed in crisis management as well as in implementing an ambitious immigration policy vision.

Department and Component Missions. Rethinking the missions of DHS’ three immigration components—CBP, ICE, and USCIS—is an important starting point for strengthening immigration governance. Although the mission of DHS is set forth in statute, the mission statements of CBP, ICE, and USCIS have been established by the components and DHS themselves. They have changed somewhat over time, reflecting the policy and interests of respective administrations. For example, the Trump administration rewrote the USCIS mission statement to eliminate “securing our nation of immigrants and promoting citizenship” and replaced it with “protecting Americans and securing the homeland.” The current administration has established this formulation: “USCIS upholds America’s promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve.”

Overall, however, the mission statements have been static and are outdated. For example, CBP has been the predominant and strongest of the three immigration components since DHS was formed. Its mission has not been updated to reflect profound changes in the profile of migrant arrivals at the southwest border in recent years and the border management challenges those changes bring with them. None of the mission statements point to coordinated responses, integrating functions or policies aligned with those of partner immigration or other agencies. Indeed, some have argued that, as currently understood, DHS' border and national security missions are fundamentally incompatible with implementing effective and humane immigration policies pledged by the current administration.

DHS Institutional Structures: Chain of Command and Policy Coordination. The leadership of the immigration components within DHS are in its secondary layer of management. The commissioner of CBP, the director of ICE, and the director of USCIS are among two dozen DHS officials, including the leaders of the Federal Emergency Management Agency, Secret Service, Transportation Security Administration, and U.S. Coast Guard, who report to the secretary of homeland security through the deputy secretary.

Despite the attention immigration demands and often receives from the secretary and deputy secretary, there are compelling examples of insufficient coordination and coherence, judging by policy outcomes and the performance of the immigration system. DHS' senior leaders have broad mandates and duties that do not permit the sustained attention and leadership that are essential for active oversight and implementation of integrated immigration policy mandates. Nor have DHS headquarters offices been sufficiently empowered and used by the secretary and deputy secretary to drive cross-agency activity and work with the components to meet their needs. Immigration emergencies and other southwest border issues provide the most visible examples of the need for strong interagency planning and coordinated execution of plans.

Funding Priorities and the Budget Process. Overall, DHS' immigration components have had significant resource increases over the past 15 years. However, funding of headquarters functions has not expanded at the rate of the components. Total funding for the three immigration components more than doubled, with a 104% increase from FY 2006 to FY2020.

As the components have grown and DHS' responsibilities have increased, the question has arisen of whether sufficient resources have been devoted to DHS-wide capacities for oversight and intra- and interagency coordination and integration. Compared with partner Cabinet agencies, for example, DHS has not had commensurate funding for its Office of the Secretary. The current secretary's office does not have the personnel, resources, or authority to effectively lead a department of DHS' size today.

Upholding a budget-neutral management structure for DHS as Congress intended in creating it has become an anachronism that is especially evident in its immigration governance components, which in FY 2020 made up more than one-third of the DHS budget and 44% of its personnel. CBP in particular continuously dominates the budget across the immigration system. This growth reflects the “enforcement-first” philosophy that gained traction in opposition to immigration reform legislation in 2006, 2007, and 2013. In FY 2020, annual immigration enforcement appropriations (largely CBP and ICE) stood at \$25 billion, a spending level that exceeds the budgets of all other principal federal criminal law enforcement agencies combined by about 28%.

Budget development within DHS, the Office of Management and Budget (OMB), and in Congress fails to treat resource planning, allocations, and budgets as an exercise in funding immigration as a system. A cross-cutting budget process has not been established to analyze and seek funding across immigration components and agencies that reflects the interconnections among them. The need for integrated budget proposals to properly fund immigration as a system is especially important because of the fragmentation among congressional committees that have oversight and appropriations jurisdiction over DHS funding. The fragmentation has been a long-standing concern for DHS more broadly.

Institutional Culture. The institutional cultures and professionalism of the immigration components have suffered from severe internal stresses and external pressures. More than in most areas of public policy, immigration and its workforces have been subject to wild swings of the policy pendulum from one administration to another, beginning with the very creation of DHS. These swings intensified during the Trump administration by the politicization of immigration missions, frequent changes in serially unconfirmed senior leadership officials, and a host of hastily issued directives with little input from the agencies charged with implementing them. Sharp divides in public opinion over immigration enforcement missions have further complicated the work and hurt the reputations of immigration enforcement components.

The most meaningful way to address the problems, morale, and performance deficiencies of the immigration system would be for Congress to enact immigration legislation that aligns the nation’s immigration laws with the national interest and the country’s future needs. However compelling, statutory changes are unlikely. Thus, actions within the purview of the executive branch should be made to the extent possible.

Incoming leaders must establish high standards of performance, professionalism, and accountability. Culture change is a goal that new leaders will have to pursue tirelessly by setting new norms and expectations for career advancement and organizational success. Dedicated effort will also be needed to win broader public confidence in the professionalism of immigration career officials, operational strategies, and organizational cultures.

Notwithstanding the pushback that inevitably accompanies wide-ranging changes, the morale and performance of the workforce and the health of the institutional culture would improve by adopting the recommendations our report makes, as summarized below.

Recommendations

Recommendation 1: Executive action should be taken to activate a structure that will direct attention to systemwide coordination requirements to have immigration function as a system.

To meet the challenges and opportunities immigration represents for the nation's future, immigration must be managed as a system. That requires DHS, as the government's lead immigration agency, to strengthen and institutionalize intra-agency policy development, resource allocation, policy decision making, and coordination among its immigration components—CBP, ICE, and USCIS. The heads of CBP, ICE, and USCIS should be charged with leading and managing their agencies and missions as *interdependent* organizations in close coordination and collaboration with each other to identify and integrate cross-cutting functions. To that end, priority actions should include:

- a. The secretary and deputy secretary should vest the undersecretary for strategy, policy, and plans and the assistant secretary for border and immigration policy with the responsibility for coordinating all matters coming to the secretary and deputy secretary for decisions that implicate the immigration system. The Office of Strategy, Policy, and Plans should oversee and coordinate the development of policy and implementation plans in at least three areas of work: DHS immigration component strategic plans; integrated budgets for the department's immigration components; and DHS immigration policy directives that implicate intra- and interagency capabilities and impacts. A rotation in the Office of Strategy, Policy, and Plans should be a competitive assignment aimed at career advancement for leadership candidates in CBP, ICE, and USCIS.
- b. An interagency standing deputies committee led by the National Security Council (NSC) and/or Domestic Policy Council (DPC) should be established to coordinate cross-departmental policy development and implementation of immigration priorities. Although DHS is the lead agency for immigration functions, it cannot carry out its missions without strengthened support and leadership at the White House level across departments. The need for such high-level engagement on a standing basis is underscored by the scope of the Biden administration's immigration policy blueprint, root causes strategy, and regional migration management goals. An interagency working group on immigration should also be created and formally designated to support the NSC/DPC-led committee. DHS participation in the working group should be by the assistant secretary for border and immigration policy supported by representatives of CBP, ICE, and USCIS to frame the big-picture policy questions and problems that require White House-level decisions.

- c. The DHS chief human capital officer, in coordination with the chief human capital officers from CBP, ICE, and USCIS, should develop and implement a joint duty program that focuses on core competencies for immigration leadership development. For the program to succeed, employees and their supervisors must see participation as beneficial—if not necessary—to career advancement. DHS should seek funding to revive the rotational training program it created in 2006, in recognition that leaders need to be trained through exposure to different environments and responsibilities. Integrating leadership development programs with those of the State Department and the intelligence community would reduce costs from duplication of effort, form cross-departmental and cross-agency networks, and promote cross-departmental understanding of broader missions.

Recommendation 2: The mission statements for CBP, ICE, and USCIS should be recast to encompass the complex mix of enforcement, economic, and humanitarian responsibilities with which each component is charged and readdress the issues within institutional culture.

New mission statements should be used to drive visioning, policy development, budget requests, resource allocations, operational strategies, and recruitment and training. The statements should include concepts such as adapting to rapidly changing migration dynamics; exercising discretion; treating immigration as an asset to the country; providing protection to those in need; facilitating the ability of those eligible for immigration benefits to obtain them; fair and timely decision-making; protecting civil rights and privacy; cooperation and collaboration with other federal, state, local, and international partner agencies; professionalism; and respect for the dignity of all persons.

Recommendation 3: Funding and budget allocation for DHS and its perspective immigration components must be reallocated to address reassessed priorities for the department.

Presenting Congress with cogent budget proposals to properly fund immigration as a system is vital, especially given the many committees that play a role in DHS appropriations and oversight. DHS should establish a process for coordinated budget development and planning across its immigration components. Greater DHS headquarters and secretary/deputy secretary heft should enable DHS to more fully serve as the government's lead agency for managing the immigration system.

Intra-agency processes for coordinated budget development should be coordinated at the interagency level with an interdepartmental working group to lead budget discussions involving the other key partner departments—State, Justice, and Health and Human Services—and with OMB to ensure that the various immigration components and agencies across the federal government are funded in a coherent and balanced fashion according to the priorities and needs of the immigration system. The aim should be a budget that reflects common expectations about migration trends and workloads to be managed across agencies, thus right-sizing the budgets of the entities that play key roles in executing the nation’s immigration policies.

Specific budgetary reforms and investments that should be considered include:

- a. USCIS should review its spending on activities such as fraud detection, increased vetting, and mandated interviews, as well as other procedural requirements that have slowed productivity and contributed to deepening backlogs. The aim should be to establish proportionality in detecting misuses of legal immigration processes, so that timely processing norms can be maintained for applicants who are eligible for the immigration benefits they seek and USCIS can accurately calibrate the fees it charges for adjudicating legal immigration applications.
- b. Beyond immigration judge staffing, DOJ/ Executive Office for Immigration Review (EOIR) should determine what technology and support needs must be met to reengineer an antiquated, paper-based system into one that taps best practices for modernized court administration and record-keeping.
- c. A new operational model and infrastructure for processing migrants at the southwest border should be established to provide facilities that augment Border Patrol stations that were designed for turnaround processing of mostly single, young, male Mexican migrants. This shift calls for a network of multi-agency reception centers to provide initial screening and referral of migrants who are apprehended or turn themselves in to immigration enforcement officials. The centers would be the locus for one-stop screening that leads to the referral of migrants to on-site representatives of the appropriate federal agencies and nonprofit organizations for requisite follow-up actions. These would include referrals to the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services for care and placement of unaccompanied minors, USCIS for credible-fear screening for those seeking asylum, ICE for custody in expedited removal cases and to schedule immigration proceedings, nongovernmental organizations to provide legal-rights counseling and representation services, foreign consulates when needed, and medical services when required. Thus, CBP personnel could readily tap expertise and support that extends beyond the duties for which they are qualified and trained.

Beyond Executive Action

A more fundamental reorganization of DHS would require legislation and is beyond the scope of this report. But should a broader reimagining of DHS occur, or should significant immigration legislation move forward in Congress, deeper structural rethinking for the department should be addressed, including:

- a. Congress should authorize and appropriate monies on an ongoing basis to support critical USCIS activities that serve broad national interests, such as refugee and asylum case processing. By contributing to greater financial stability for USCIS, appropriations would help deliver a well-functioning legal immigration system that can earn public confidence and bolster the asset that smart immigration policies provide to the country.
- b. The serious institutional problems at EOIR stem in part from its having been left within DOJ, which no longer has operational responsibility for immigration and therefore no expertise or mission ownership for overseeing the immigration system. EOIR should be moved from DOJ to DHS or Congress should establish its independence along the lines of other administrative adjudicatory bodies.
- c. If immigration legislation is enacted to authorize legalization of some or all segments of the unauthorized immigrant population, Congress should give DHS wide latitude in implementing the programs.
- d. Unanticipated spikes in migrant arrivals at the U.S. border are inherent to the border control mission. To manage them effectively so they do not become humanitarian crises, DHS and the administration should use budget and appropriations processes to press for replenishment of the Immigration Emergency Fund (IEF). Reengineering this fund so that it addresses the newer array of challenges at the border (e.g. families and unaccompanied children) would enable the immigration components to respond more rapidly and effectively to changing migration trends and pressures when they arise.
- e. HSI could be removed from ICE and merged with other DHS investigative functions, including USCIS' Office of Fraud Detection and National Security. This would create a dedicated immigration and law enforcement/national security locus of investigative expertise that would fit within DHS' management structure by playing an overarching role for all three immigration components.

About the Authors

Doris Meissner previously served as the Commissioner of the U.S. Immigration and Naturalization Service (INS). She is a Senior Fellow at the Migration Policy Institute, where she directs the Institute's U.S. immigration policy work.

Ruth Ellen Wasem is a Professor of Policy Practice at the Lyndon B. Johnson School of Public Affairs at the University of Texas and a former immigration policy specialist at the Congressional Research Service (CRS).