

118TH CONGRESS
1ST SESSION

S. 1600

Making further supplemental appropriations for the fiscal year ending September 30, 2023, for border management activities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2023

Mr. DURBIN (for himself, Mr. PETERS, Mr. BROWN, Mr. HEINRICH, Mr. LUJÁN, Mr. PADILLA, Mr. CARPER, Ms. CORTEZ MASTO, Mr. KING, Ms. KLOBUCHAR, Ms. ROSEN, Ms. BALDWIN, and Mr. BENNET) introduced the following bill; which was read twice and referred to the Committee on Appropriations

A BILL

Making further supplemental appropriations for the fiscal year ending September 30, 2023, for border management activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Management,
5 Security, and Assistance Act of 2023”.

6 **SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.

1 276 of the Immigration and Nationality Act (8 U.S.C.
2 1325 or 8 U.S.C. 1326), if such alien has a pending claim
3 for protection, has received a positive adjudication of such
4 claim, or is subject to an administrative or judicial appeal
5 or process.

6 UNITED STATES MARSHALS SERVICE

7 SALARIES AND EXPENSES

8 For an additional amount for “Salaries and Ex-
9 penses”, \$50,100,000, to remain available until September
10 30, 2024, for necessary expenses for increased law en-
11 forcement activities related to Southwest border enforce-
12 ment.

13 FEDERAL PRISONER DETENTION

14 For an additional amount for “Federal Prisoner De-
15 tention”, \$150,000,000, to remain available until ex-
16 pended.

17 FEDERAL BUREAU OF INVESTIGATION

18 SALARIES AND EXPENSES

19 For an additional amount for “Salaries and Ex-
20 penses”, \$160,000,000: *Provided*, That of the amounts
21 made available under this heading, \$2,550,000, to remain
22 available until September 30, 2024, shall be to acquire ad-
23 ditional DNA kits related to Southwest border enforce-
24 ment and \$157,450,000, to remain available until Sep-
25 tember 30, 2025, shall be for analysis of DNA samples

1 received from the Department of Homeland Security re-
2 lated to Southwest border enforcement.

3 DRUG ENFORCEMENT ADMINISTRATION

4 SALARIES AND EXPENSES

5 For an additional amount for “Salaries and Ex-
6 penses”, \$68,400,000, to remain available until September
7 30, 2025, for necessary expenses for increased law en-
8 forcement activities related to Southwest border enforce-
9 ment.

10 STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

11 OFFICE OF JUSTICE PROGRAMS

12 STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

13 For an additional amount for “State and Local Law
14 Enforcement Assistance”, \$13,000,000, to remain avail-
15 able until September 30, 2024: *Provided*, That of the
16 amounts made available under this heading, \$3,000,000
17 shall be for small, rural, and Tribal law enforcement agen-
18 cies in jurisdictions along or near the Southwest border
19 for grants authorized under the Missing Persons and Un-
20 identified Remains Act of 2019 (Public Law 116–277)
21 and \$10,000,000 shall be for a rural violent crime initia-
22 tive to support the investigation and prosecution of violent
23 crime for State, local, and Tribal governments for jurisdic-
24 tions located within 100 miles of the Southwest border.

1 TITLE II
2 DEPARTMENT OF DEFENSE
3 MILITARY PERSONNEL
4 MILITARY PERSONNEL, ARMY

5 For an additional amount for “Military Personnel,
6 Army”, \$135,000,000 for necessary expenses related to
7 Southwest border activities.

8 OPERATION AND MAINTENANCE
9 OPERATION AND MAINTENANCE, ARMY

10 For an additional amount for “Operation and Main-
11 tenance, Army”, \$116,000,000 for necessary expenses re-
12 lated to Southwest border activities.

13 TITLE III
14 SECURITY, ENFORCEMENT, AND
15 INVESTIGATIONS
16 U.S. CUSTOMS AND BORDER PROTECTION
17 OPERATIONS AND SUPPORT
18 (INCLUDING TRANSFER OF FUNDS)

19 For an additional amount for “Operations and Sup-
20 port” for necessary expenses to respond to the rise in non-
21 citizen arrivals at the southwest border and related activi-
22 ties, \$2,888,968,000, to remain available until September
23 30, 2024: *Provided*, That of the amounts made available
24 under this heading, \$1,950,000,000 shall be transferred
25 to “Federal Emergency Management Agency—Federal

1 Assistance” for the Shelter and Services Program to sup-
2 port sheltering and related activities provided by non-Fed-
3 eral entities, including construction and facility improve-
4 ments: *Provided further*, That of the amounts made avail-
5 able under this heading, \$603,520,000 shall be for estab-
6 lishing and operating temporary processing facilities, in-
7 cluding auxiliary facilities to increase processing capacity
8 at ports of entry along the southwest border while sup-
9 porting trade facilitation and travel; \$67,655,000 shall be
10 for temporary duty, overtime costs, and volunteer force;
11 \$57,025,000 shall be for transportation; \$56,000,000
12 shall be for mission support data systems and analysis;
13 \$53,150,000 shall be for contract support for intake proc-
14 essing and data entry; \$51,000,000 shall be for additional
15 Customs and Border Protection Officers; \$28,618,000
16 shall be for caregivers and medical care; \$11,000,000 shall
17 be for employee wellness; and \$11,000,000 shall be for em-
18 ployee retention.

19 PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

20 For an additional amount for “Procurement, Con-
21 struction, and Improvements” for improving security at
22 and between ports of entry along the southwest border,
23 \$1,130,000,000, to remain available until September 30,
24 2025: *Provided*, That of the amounts made available under
25 this heading, \$700,000,000 shall be for additional non-

1 intrusive inspection equipment to increase scanning of ve-
2 hicles and \$430,000,000 shall be for the acquisition and
3 deployment of innovative border security technology, in-
4 cluding for surveillance, such as mobile and fixed towers,
5 unmanned aerial technology, subterranean detection capa-
6 bilities, and other technologies to assist with search and
7 rescue detection.

8 U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
9 OPERATIONS AND SUPPORT

10 For an additional amount for “Operations and Sup-
11 port” for necessary expenses to respond to the rise in non-
12 citizen arrivals at the southwest border and related activi-
13 ties, \$960,000,000, to remain available until September
14 30, 2024: *Provided*, That of the amounts made available
15 under this heading, \$553,420,000 shall be for transpor-
16 tation and removal; \$127,000,000 shall be for alternatives
17 to detention; \$13,000,000 shall be for additional tech-
18 nology and capacity to conduct immigration proceedings
19 while in custody and access counsel; \$36,000,000 shall be
20 for Transportation Processing Coordinator positions;
21 \$52,300,000 shall be for temporary duty, overtime, other
22 on-board personnel costs including reimbursements, and
23 employee wellness; \$117,000,000 shall be to reimburse for
24 noncitizen medical bills acerued by third parties within
25 seven days of release from custody, including State, local,

1 and emergency and first response; and \$61,280,000 shall
2 be for Homeland Security Investigations trafficking inves-
3 tigations and investigations related to Operation Blue
4 Lotus.

5 U.S. CITIZENSHIP AND IMMIGRATION SERVICES
6 OPERATIONS AND SUPPORT

7 For an additional amount for “Operations and Sup-
8 port” for necessary expenses to respond to the rise in non-
9 citizen arrivals at the southwest border and related activi-
10 ties, \$409,000,000, to remain available until September
11 30, 2024: *Provided*, That of the amounts made available
12 under this heading, \$210,000,000 shall be for the efficient
13 processing of asylum claims and related protection
14 screenings; \$100,000,000 shall be for backlogs in the asy-
15 lum system; and \$99,000,000 shall be for work authoriza-
16 tion adjudications associated with processes to adjudicate
17 protection claims in a safe and orderly way.

18 GENERAL PROVISIONS—THIS TITLE

19 SEC. 301. (a) Not later than 45 days after the date
20 of enactment of this Act, the Under Secretary for Manage-
21 ment of the Department of Homeland Security shall pro-
22 vide an expenditure plan for the use of the funds made
23 available in this title to the Committees on Appropriations
24 of the Senate and the House of Representatives.

1 (b) Such plan shall be updated to reflect changes and
2 expenditures and submitted to the Committees on Appro-
3 priations of the Senate and the House of Representatives
4 every 60 days until all funds are expended or expired.

5 SEC. 302. (a) Not later than 180 days after the date
6 of enactment of this Act, the Under Secretary for Manage-
7 ment of the Department of Homeland Security, in coordi-
8 nation with the Federal Emergency Management Agency
9 and U.S. Customs and Border Protection, shall provide
10 a report to Congress on the Shelter and Services Program
11 funds made available in this title.

12 (b) Such plan shall include:

13 (1) award obligations;

14 (2) a description of the outreach to local com-
15 munities and non-governmental organizations receiv-
16 ing newly arrived noncitizens;

17 (3) the program criteria and requirements sug-
18 gested or adapted in response to such outreach to
19 ensure funding is accessible and meeting the needs
20 of local communities;

21 (4) a description of the program goals, policies,
22 and program structure;

23 (5) the award allocation methodology used by
24 the Program that depends to the greatest extent
25 possible on available border data; and

1 (6) outcome performance measures and results
2 related to achieving program goals.

3 TITLE IV
4 DEPARTMENT OF HEALTH AND HUMAN
5 SERVICES
6 ADMINISTRATION FOR CHILDREN AND FAMILIES
7 REFUGEE AND ENTRANT ASSISTANCE

8 For an additional amount for “Refugee and Entrant
9 Assistance”, \$1,000,000,000, to remain available until
10 September 30, 2024, for carrying out section 462 of the
11 Homeland Security Act of 2002 and section 235 of the
12 William Wilberforce Trafficking Victims Protection Reau-
13 thorization Act of 2008, and for refugee and entrant as-
14 sistance activities authorized by section 414 of the Immi-
15 gration and Nationality Act and section 501 of the Ref-
16 ugee Education Assistance Act of 1980, including for hir-
17 ing additional Federal Field Specialists, increasing and
18 improving case management and case coordination serv-
19 ices, and increasing post-release services, legal services,
20 and child advocate services to ensure the physical and
21 mental well-being of children in and after release from the
22 Office of Refugee Resettlement’s care.

1 TITLE V
2 BILATERAL ECONOMIC ASSISTANCE
3 FUNDS APPROPRIATED TO THE PRESIDENT
4 INTERNATIONAL DISASTER ASSISTANCE

5 For an additional amount for “International Disaster
6 Assistance”, \$100,000,000, to remain available until ex-
7 pended, to respond to humanitarian needs in countries in
8 the Western Hemisphere, including the provision of emer-
9 gency food and shelter.

10 ECONOMIC SUPPORT FUND

11 For an additional amount for “Economic Support
12 Fund”, \$150,000,000, to remain available until Sep-
13 tember 30, 2024, for assistance for countries in the West-
14 ern Hemisphere to address the root causes of migration:
15 *Provided*, That funds appropriated under this heading in
16 this Act may be made available as contributions.

17 DEPARTMENT OF STATE

18 MIGRATION AND REFUGEE ASSISTANCE

19 For an additional amount for “Migration and Ref-
20 ugee Assistance”, \$500,000,000, to remain available until
21 expended, to address humanitarian needs in, and to assist
22 migrants from, countries in the Western Hemisphere.

1 TITLE VI
2 GENERAL PROVISIONS—THIS ACT

3 SEC. 601. Each amount appropriated or made avail-
4 able by this Act is in addition to amounts otherwise appro-
5 priated for the fiscal year involved.

6 SEC. 602. No part of any appropriation contained in
7 this Act shall remain available for obligation beyond the
8 current fiscal year unless expressly so provided herein.

9 SEC. 603. Unless otherwise provided for by this Act,
10 the additional amounts appropriated by this Act to appro-
11 priations accounts shall be available under the authorities
12 and conditions applicable to such appropriations accounts
13 for fiscal year 2023.

14 SEC. 604. Each amount provided by this division is
15 designated by the Congress as being for an emergency re-
16 quirement pursuant to section 4001(a)(1) of S. Con. Res.
17 14 (117th Congress), the concurrent resolution on the
18 budget for fiscal year 2022, and to legislation establishing
19 fiscal year 2024 budget enforcement in the House of Rep-
20 resentatives.

21 This division may be cited as the “Border Manage-
22 ment Supplemental Appropriations Act, 2023”.

1 **DIVISION B—BORDER PROCE-**
2 **DURES AND IMPROVEMENTS**
3 **ACT**

4 **SEC. 1001. CONSEQUENCE DELIVERY.**

5 (a) ENHANCED PENALTIES FOR ORGANIZED SMUG-
6 GLING SCHEMES.—

7 (1) IN GENERAL.—Section 274(a)(1)(B) of the
8 Immigration and Nationality Act (8 U.S.C.
9 1324(a)(1)(B)) is amended—

10 (A) by redesignating clauses (iii) and (iv)
11 as clauses (iv) and (v), respectively;

12 (B) by inserting after clause (ii) the fol-
13 lowing:

14 “(iii) in the case of a violation of sub-
15 paragraph (A)(i) during and in relation to
16 which the person, while acting for profit or
17 other financial gain, knowingly directs or
18 participates in an effort or scheme to as-
19 sist or cause 10 or more persons (other
20 than a parent, spouse, or child of the of-
21 fender) to enter or to attempt to enter the
22 United States at the same time at a place
23 other than a designated port of entry or
24 place other than designated by the Sec-
25 retary, be fined under title 18, United

1 States Code, imprisoned not more than 15
2 years, or both;” and

3 (C) in clause (iv), as redesignated, by in-
4 serting “commits or attempts to commit sexual
5 assault of,” after “section 1365 of title 18,
6 United States Code) to,”.

7 (2) BULK CASH SMUGGLING.—Section
8 5332(b)(1) of title 31, United States Code, is
9 amended—

10 (A) in the paragraph heading, by striking
11 “TERM OF IMPRISONMENT” and inserting “IN
12 GENERAL”; and

13 (B) by inserting “, fined under title 18, or
14 both” after “5 years”.

15 (b) ENHANCED PENALTIES FOR ILLEGAL SPOTTING
16 AND SURVEILLANCE.—

17 (1) IMMIGRATION AND NATIONALITY ACT.—The
18 Immigration and Nationality Act (8 U.S.C. 1101 et
19 seq.) is amended by inserting after section 274D the
20 following:

21 **“SEC. 274E. HINDERING IMMIGRATION, BORDER, AND CUS-**
22 **TOMS CONTROLS.**

23 **“(a) ILLICIT SPOTTING.—**

24 **“(1) IN GENERAL.—**It shall be unlawful to
25 knowingly surveil, track, monitor, or transmit the lo-

1 cation, movement, or activities of any officer or em-
2 ployee of a Federal, State, or tribal law enforcement
3 agency—

4 “(A) with the intent to gain financially;

5 and

6 “(B) in furtherance of any violation of the
7 immigration laws, the customs and trade laws
8 of the United States (as defined in section 2 of
9 the Trade Facilitation and Trade Enforcement
10 Act of 2015 (Public Law 114–125)), any other
11 Federal law relating to transporting controlled
12 substances, agriculture, or monetary instru-
13 ments into the United States, or any Federal
14 law relating to border controls measures of the
15 United States.

16 “(2) PENALTY.—Any person who violates para-
17 graph (1) shall be fined under title 18, United
18 States Code, imprisoned for not more than 5 years,
19 or both.

20 “(b) DESTRUCTION OF UNITED STATES BORDER
21 CONTROLS.—

22 “(1) IN GENERAL.—It shall be unlawful to
23 knowingly and without lawful authorization—

24 “(A) destroy or significantly damage any
25 fence, barrier, sensor, camera, or other physical

1 or electronic device deployed by the Federal
 2 Government to control an international border
 3 of, or a port of entry to, the United States; or

4 “(B) otherwise seek to construct, excavate,
 5 or make any structure intended to defeat, cir-
 6 cumvent or evade such a fence, barrier, sensor
 7 camera, or other physical or electronic device
 8 deployed by the Federal Government to control
 9 an international border of, or a port of entry to,
 10 the United States.

11 “(2) PENALTY.—Any person who violates para-
 12 graph (1) shall be fined under title 18, United
 13 States Code, imprisoned for not more than 5 years,
 14 or both.”.

15 (2) CLERICAL AMENDMENT.—The table of con-
 16 tents of such Act (8 U.S.C. 1101 et seq.) is amend-
 17 ed by inserting after the item relating to section
 18 274D the following:

“Sec. 274E. Hindering immigration, border, and customs controls.”.

19 **SEC. 1002. STREAMLINING PROCESSING, ACCESS TO LAW-**
 20 **FUL PATHWAYS, AND REMOVALS.**

21 (a) ELECTRONIC NOTICE TO APPEAR AND IMMIGRA-
 22 TION COURT NOTICE.—

23 (1) IN GENERAL.—Section 239(a) of the Immi-
 24 gration and Nationality Act (8 U.S.C. 1229) is
 25 amended—

1 (A) in paragraph (1)—

2 (i) by inserting “or by any other
3 means that the alien consented to in writ-
4 ing, including by email or other electronic
5 means,” after “by mail,”;

6 (ii) by amending subparagraph (F) to
7 read as follows:

8 “(F)(i) The requirement that the alien
9 must immediately provide (or have provided)
10 the Attorney General with a written record of
11 an address, telephone number (if any), and
12 electronic means (if any) by which the alien
13 may be contacted respecting proceedings under
14 section 1229a of this title.

15 “(ii) The requirement that the alien must
16 provide the Attorney General immediately with
17 a written record of any change of the alien’s
18 contact information described in clause (i).

19 “(iii) The consequences under section
20 1229a(b)(5) of this title of failure to provide
21 contact information pursuant to this subpara-
22 graph.”; and

23 (iii) by amending subsection (c) to
24 read as follows:

25 “(c) SERVICE.—

1 “(1) BY MAIL.—Service by mail under this sec-
2 tion shall be sufficient if there is proof of attempted
3 delivery of the notice to appear to the last address
4 provided by the alien in accordance with subsection
5 (a)(1)(F).

6 “(2) BY ELECTRONIC MEANS.—Service by elec-
7 tronic means under this section shall be sufficient if
8 there is proof that the notice to appear was sent
9 electronically through a system that is accessible to
10 the alien.”.

11 (b) EMPLOYMENT AUTHORIZATION FOR ALIENS
12 SEEKING A DURABLE SOLUTION.—Section 208(d)(2) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1158(d)(2)) is amended to read as follows:

15 “(2) EMPLOYMENT AUTHORIZATION.—

16 “(A) ELIGIBILITY.—Notwithstanding the
17 Immigration and Nationality Act (8 U.S.C.
18 1101, et seq.), the Secretary of Homeland Se-
19 curity shall authorize employment for an alien
20 who is not in the physical custody of the De-
21 partment of Homeland Security after the proce-
22 dures required under paragraph (5)(A)(i) have
23 been completed, and the alien has—

1 “(i) a non-frivolous, properly filed ap-
2 plication for asylum, or other immigration
3 benefit request for humanitarian relief; or

4 “(ii) been processed for release by the
5 Department of Homeland Security pending
6 further processing or proceedings.

7 “(B) EXCEPTIONS.—Paragraph (2)(A)
8 shall not apply to an alien who—

9 “(i) after release, comes into the phys-
10 ical custody of any Federal, State, or local
11 entity for purposes of criminal or civil vio-
12 lations;

13 “(ii) fails to appear for any pro-
14 ceedings described in any section this Act;
15 and

16 “(iii) fails to comply with terms and
17 conditions of release, as determined by the
18 Secretary.

19 “(C) TERMS.—At no time shall employ-
20 ment authorization under this paragraph shall
21 be issued later than 30 days of release from
22 custody or after a properly filed application oc-
23 curs, whichever is sooner, and shall be—

24 “(i) for a period of 2 years;

1 “(ii) renewable for additional 2-year
2 periods while the applicant’s asylum claim
3 is being adjudicated, pending, or adminis-
4 tratively closed, including administrative or
5 judicial review; and

6 “(iii) any other terms or conditions as
7 determined by the Secretary.

8 “(D) CLARIFICATIONS.—Paragraph
9 (2)(A)(ii) shall apply to aliens irrespective of
10 whether any form of removal proceedings have
11 commenced or whether the alien has a pending
12 request for immigration benefits.”.

13 (c) STREAMLINING VOLUNTARY DEPARTURE.—Sec-
14 tion 240B(a)(1) of the Immigration and Nationality Act
15 (8 U.S.C. 1229c(a)(1)) is amended by striking “at the
16 alien’s own expense”.

17 (d) DIRECT ACCESS PATHWAYS FOR REFUGEES IN
18 THE WESTERN HEMISPHERE.—The Secretary of State, in
19 consultation with the Secretary of Homeland Security,
20 shall—

21 (1) monitor Latin America and the Caribbean
22 for regional instability and migration resulting from
23 large scale persecution on account of race, religion,
24 nationality, membership in a particular social group,
25 or political opinion; and

1 (2) designate members of the group experi-
2 encing such persecution as Priority 2 refugees of
3 special humanitarian concern.

4 **SEC. 1003. STAFFING FOR BORDER MANAGEMENT.**

5 (a) STAFFING ALLOCATION MODELS.—

6 (1) DEPARTMENT OF HOMELAND SECURITY.—

7 The Secretary of the Department of Homeland Se-
8 curity shall develop and implement staffing alloca-
9 tion models for U.S. Border Patrol and Air and Ma-
10 rine Operations of U.S. Customs and Border Protec-
11 tion and for U.S. Citizenship and Immigration Serv-
12 ices, by not later than six months after the date of
13 enactment of this Act.

14 (2) EXECUTIVE OFFICE OF IMMIGRATION RE-

15 VIEW.—The Attorney General shall develop and im-
16 plement staffing allocation models for the Executive
17 Office of Immigration Review, by not later than six
18 months after the date of enactment of this Act.

19 (b) REQUIREMENTS.—Each staffing model shall—

20 (1) take into account variations in operating en-
21 vironments, technology, and the required operational
22 support levels to carry out their respective duties;

23 (2) include a plan for periodically updating and
24 improving the model, including incorporating oper-
25 ational, technological, and personnel changes; and

1 (3) receive independent verification and valida-
2 tion by an entity that is technically, managerially,
3 and financially independent from the office or De-
4 partment.

5 (c) REPORTING.—The Secretary and Attorney Gen-
6 eral shall report to the Committee on Homeland Security
7 and Governmental Affairs, the Committee on the Judici-
8 ary, and the Committee on Appropriations of the Senate
9 and the Committee on Homeland Security, the Committee
10 on the Judiciary, and the Committee on Appropriations
11 of the House of Representatives detailing the finalized
12 models, including a description of—

13 (1) the data sources and methodology used to
14 generate the models;

15 (2) actions taken to independently verify the
16 model; and

17 (3) the plan for updating and maturing the
18 model.

19 **SEC. 1004. SHELTER AND SERVICES PROGRAM GAO RE-**
20 **PORT.**

21 Not later than 1 year than the date of enactment of
22 this Act, and every two years thereafter, the Comptroller
23 General of the United States shall submit to the Commit-
24 tees on Homeland Security and Governmental Affairs, the
25 Committee on the Judiciary, and the Committee on Ap-

1 propriations of the Senate and the Committee on Home-
2 land Security, the Committee on the Judiciary, and the
3 Committee on Appropriations of the House of Representa-
4 tives an assessment of the grant criteria for Shelter and
5 Services Program funds, the distribution of those funds,
6 and the impact of program policies and practices on the
7 ability of State and local governments and nongovern-
8 mental organizations to issue such funds.

○