

Why Washington Has Failed to Solve the Border Crisis

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October 17, 2024



Asylum-seeking migrants waiting to be picked up by the U.S. Border Patrol, Jacumba Hot Springs, California, April 2024

On the cusp of the 2024 presidential election, immigration and U.S. border security are among the top issues of concern for American voters. Former President Donald Trump and his opponent, Vice President Kamala Harris, are worlds apart on whether immigration is good or bad for the United States, but they do agree on one thing: the southern border has been in crisis, and the broken U.S. asylum system is to blame. In 2022, the number of unauthorized border crossings reached a peak of 2.2 million, overwhelming not only border communities from Texas to California but also major cities such as New York, which received tens of thousands of new migrants with only limited support from the federal government. Images of disorder in border towns and of families being held in horrific conditions, as well as the increased presence of new arrivals lacking housing or work permits in U.S. cities, escalated public concern about the visible disarray of the U.S. immigration system. Even though the numbers of unauthorized crossings at the southern border are down in 2024, the sense of crisis has persisted across the country.

Although the challenges have become more acute since the COVID-19 pandemic, the border has been in a state of crisis for most of the last decade. When confronted with increases in unauthorized migration, the federal government has often failed to manage the safe and orderly arrival of unauthorized migrants at the U.S.-Mexican border, leading to major operational challenges and political discord. With the vulnerabilities of the country's outdated immigration system on full display, much of the American public, as well as U.S. allies and adversaries, question the United States' ability to manage its borders.

The last time the U.S. Congress weighed in on the question of whom the country should welcome was in 1990, when it passed legislation to increase the number of people who could immigrate to the United States. In the 34 years since then, advances in technology, an evolving labor market, the aging of the U.S. population, climate change, and political and humanitarian crises in the Western Hemisphere have driven more people to leave their homes, despite the fact that there are few safe legal pathways for those with a humanitarian or other urgent need to come to the United States. Today, the United States is relying on an immigration system designed for a different country at a different time.

In the absence of reforms that would have allowed the United States to adjust to the profound changes that have taken place since 1990 by making it easier to legally immigrate, migrants have increasingly resorted to using smuggling networks and claiming asylum at the U.S.-Mexican border in order to enter the country. The U.S. asylum system was crafted to offer a limited form of protection for people fleeing persecution. But with almost no other legal avenues by which to enter the United States, it has become the only option for migrants who have been displaced for a broad array of reasons.

Without Congressional action to address the true source of the resulting border crises—the United States' outdated asylum and immigration laws—administrations from both parties have addressed the problem unilaterally, carving out exceptions to current asylum law to turn people away without screening them for protection claims. Republicans promise to seal the border by blocking all asylum seekers with no exceptions, whereas Democrats want to limit asylum to people who seek advance permission to enter at a port of entry, forcing people to wait in Mexico regardless of the threats they may be facing.

But the focus on blocking migrants from filing asylum claims distorts the debate over immigration and limits the universe of policy solutions; the overwhelmed asylum system is not the cause of the border crisis but rather a consequence of the United States' failure to develop a coherent response to global shifts in irregular migration. Since 2010, mounting instability in the Western Hemisphere has displaced up to 25 million people, including eight million from Venezuela alone. The United States has responded by rolling back its commitment to territorial asylum and outsourcing more of its immigration responsibilities to other countries. But these efforts have done little to stop the unauthorized movement of people to the United States or to restore the public's trust in Washington's ability to control the border.

| The asylum system is collapsing under its own weight.

Moreover, years of chaos at the border have amplified xenophobia at a time when the U.S. economy needs immigrants more than ever. Around 55 percent of Americans now support curbing immigration to the United States—the highest proportion since the months following the terrorist attacks of September 11, 2001. Meanwhile, the United States is showing the first signs of population decline, and demographers have determined that without additional immigration, the country’s working-age population will continue to shrink, as will the U.S. economy. But to advance the immigration reforms that are critical for economic growth, such as updating family and employment-based visa systems and creating a path to citizenship for undocumented immigrants, American policymakers must properly address the public’s concerns about the border and the failures of the current U.S. immigration regime.

To bring the border crisis narrative under control, U.S. policymakers must first acknowledge that immigration policy is both a foreign and a domestic issue and that policies that stabilize people in transit are as important as the policies that govern borders. Washington must also acknowledge that sustainably reducing unauthorized migration at the southern border cannot be achieved solely by tightening asylum rules, because every asylum restriction put in place in the last ten years has given way to higher unauthorized border crossings over time. The U.S. needs a new legal regime that does not merely react once people have reached the border, but one that holistically addresses the incentives and lack of alternative safe routes that draw people to the border in the first place.

With both the demand for and the number of immigrants set to remain extraordinarily high, the only way to reduce unauthorized migration is to expand protections and regional employment opportunities for displaced people in the Western Hemisphere, make legal immigration easier by increasing pathways for entry into the United States, modernizing infrastructure at the border, and better integrating immigrants once they have arrived. Only this kind of multipronged immigration strategy will help the country move away from the failed approach of the past decade.

ASYLUM IS NOT ALL-OR-NOTHING

Up to now, the United States has leaned on an outdated asylum system to manage irregular migration. But the system is collapsing under its own weight. Under current law, when migrants make unauthorized border crossings into the United States, they can claim that they have a fear of facing persecution if they return to their country of origin and file an asylum claim as a defense in their removal proceedings in immigration court. This process, known as defensive asylum, can take years to resolve: the backlog has grown from 100,000 cases in 2014 to one million cases in 2024 as more people have claimed asylum without a corresponding increase in resources or personnel to efficiently adjudicate these cases. After years waiting in legal limbo, the majority of migrants, many of whom represent themselves in highly complicated legal proceedings without a lawyer, have their claims denied or

dismissed. This protracted process hurts the people most in need of humanitarian protection, making it more and more difficult to preserve evidence of their persecution or to respond to shifts in asylum eligibility rules across administrations.

The absence of alternative avenues, however, has pushed many migrants to attempt to enter the United States via the asylum system, even if it entails a dangerous journey with an uncertain outcome and even if they do not meet the criteria for asylum as traditionally understood. For the millions of displaced people who may not meet the high legal threshold for protection and lack other accessible legal paths, seeking asylum at the U.S.-Mexican border could be the only way to enter the United States to find work or to reunite with family.

The U.S. asylum system was not designed to handle this influx of hemispheric migration or to adjudicate hundreds of thousands of claims every month—it was designed to be an emergency protection option for people fleeing persecution. As a result, U.S. facilities, personnel, and procedures at the border are primarily equipped to quickly turn back migrants from a contiguous country that will accept their returned citizens, not to screen people from noncontiguous countries for potential asylum claims. Without the proper infrastructure to process non-Mexican nationals, immigrants have been released from custody into the United States with almost no coordination between the federal government and the communities receiving them, and a limited system in place to manage the timely and fair removal of people who are not eligible for humanitarian protection.

For now, the United States has mostly given up on trying to make asylum work at one of the largest land borders in the world. A bipartisan Senate proposal drafted earlier this year aimed to speed up the process, but still failed to address the underlying problem, by preserving asylum as the only legal option for most immigrants. (The agreement was ultimately shelved after Trump put pressure on Republicans to block the bill.) The jockeying has obscured a basic truth: U.S. policymakers don't need to either expand or abandon the country's commitment to defensive asylum—they just need to stop thinking of it as the primary avenue for processing would-be migrants to the United States.

FROM CRISIS TO CRISIS

Efforts by the Obama, Trump, and Biden administrations to address the border crisis have inadequately addressed the drivers of migration, as well as inherent flaws in the U.S. asylum system and the country's outdated border infrastructure. When faced with a border emergency, Washington has generally responded by combining asylum restrictions with temporary diplomatic agreements with other countries to arrest, detain, and deport migrants before they reach the United States. This approach has not only had serious human rights consequences for migrants—exposing them to kidnapping, sexual assault, and death—but has also failed to stop the decades-long upward trend in arrivals, achieving short-term reductions at best.

The first of these modern border crises occurred in 2014. At the time, I was serving as a policy adviser in the federal Department of Homeland Security (DHS). Families and unaccompanied children from Central America, displaced after years of criminal violence, political turmoil, and natural disasters, arrived at the southern border and claimed asylum in record numbers. Seeking to deter further migration, President Barack Obama expanded family detention, requiring parents and their children, often infants or toddlers, to remain in detention for weeks, during their initial asylum screenings. On the diplomatic front, the administration also worked with Mexico to increase its deportation efforts, leading to a decrease in the number of migrants encountered at the border. But even though this combined domestic and foreign policy response appeared to have some initial success, irregular migration was once again on the rise by 2016.

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As president, Trump pursued an extreme approach to irregular migration. His administration's signature asylum restrictions relied on penalizing migrants for failing to seek humanitarian protection in other countries that in fact did not have functioning asylum systems. One policy required asylum seekers to live in Mexico until their hearing dates, trapping over 60,000 people in some of the most dangerous cities in the world. Trump also pursued the most extreme act of deterrence: intentionally separating children from their parents with no effort to ever reunite them. Additionally, when the COVID-19 pandemic struck in 2020, Trump invoked Title 42, a public health law, to allow DHS to expel migrants back to Mexico or their countries of origin without screening them for humanitarian protection.

But even such restrictive measures as the use of Title 42, which President Joe Biden kept in place for the first two years of his presidency, failed to achieve a reduction in irregular migration. The U.S. government expelled 2.8 million migrants under Title 42; once the policy was lifted in May 2023, Biden attempted to replicate Trump's ban on asylum seekers who failed to seek protection along the migratory route. Still, this policy failed as a deterrent, and by December 2023, unauthorized encounters at the border peaked at 300,000 people in one month—the highest number recorded since U.S. Customs and Border Protection started tracking this data in 2000.

Under pressure from both Democrats and Republicans, Biden enacted further restrictions on asylum access this year, limiting defensive asylum to a lottery system operated through the phone app CBP One. This policy has the same fatal flaw as every previous asylum restriction: it is entirely reliant on Mexico's ability to arrest and detain migrants before they reach U.S. borders. In the first six months of 2024 alone, Mexico apprehended over 700,000 migrants, three times the number from the year before, but it lacks the capacity to deport them. Reports from Mexico show that this enforcement push has had severe human consequences, with migrants subjected to criminal violence as they are transported from

northern to southern Mexico to prevent them from reaching the U.S. border. The current reduction in unauthorized migration continues to hinge on another country's ability—and willingness—to hold hundreds of thousands of people back by any means necessary.

THE MIGRATION CARD

Past administrations have largely treated border management as a domestic political issue, but the border crisis undermines the United States' national sovereignty, safety, and standing in the world. Authoritarian governments routinely weaponize migration for political ends, with autocrats transporting large groups of migrants to another nation's border or to specific communities to sow disarray and fuel right-wing sentiment—a tactic that has also been adopted by some Republican governors in the United States.

Given the United States' inability to manage the processing of migrants at its borders or to manage their orderly resettlement in the country, American politics and society are uniquely vulnerable to weaponized migration. The images of chaos at the southern border communicate to U.S. adversaries that irregular migrants can trigger a widespread and enduring domestic crisis and exacerbate ethnic and racial tensions. Authoritarian leaders have taken notice: President Daniel Ortega of Nicaragua, for instance, has said that he wants to provoke the United States by allowing migrants from Africa and Asia to fly into his country and then make their way toward the U.S. border, creating new migration trends that could be used as a bargaining chip to extract concessions from Washington.

Outsourcing the U.S. immigration system to states such as Mexico likewise creates vulnerabilities for national security and gives other countries additional leverage over the United States. Although passing the buck on enforcement may be a tempting political fix at a time when American voters want less chaos at the border and lawmakers are unlikely to pass legislation, it is not a viable long-term solution to what is fundamentally a U.S. problem. Regional cooperation is necessary to manage our border, but relying on countries such as Mexico to manage the flow of migrants without creating adequate channels and infrastructure in the United States empowers other governments to set off the next U.S. border crisis.

Moreover, countries throughout Latin America and the Caribbean have failed to adjust to these irregular migration trends, with many allowing large numbers of migrants to pass through on their way to the United States without building out their own legal avenues, asylum systems, and immigration enforcement systems in response. Some countries have even benefited financially from the growth of smuggling networks, which reduces their incentive to control their borders. The United States can only expect to be able to persuade other countries of the benefits of modernizing their immigration systems once it has reclaimed the power to manage its own land borders.

HELPING MIGRANTS TO HELP OURSELVES

Policy innovations under the Biden administration suggest a potential path forward. Under Biden, the United States has put in place new legal avenues for migrants from countries including Cuba, Haiti, Nicaragua, and Venezuela that require a potential migrant to find a U.S.-based sponsor. After vetting, the migrant is allowed to purchase a ticket to fly into a designated U.S. airport and legally work and live in the United States for two years. Per DHS's own data, this model has reduced unauthorized border crossings of migrants from these countries by 99 percent—a stunning result. U.S. policymakers should build on the success of this approach by creating other new avenues for entry that meet the country's labor needs, help people reunite with family members, and protect migrants who may not legally qualify as refugees but are still unable to return home.

U.S. authorities could also make the asylum system more orderly by reforming CBP One, the mobile app that allows migrants to enter a lottery in order to receive an appointment to enter the United States at an official port of entry rather than make an unauthorized crossing. Right now, CBP One operates as a decompression mechanism, doling out daily appointments, enrolling people in removal proceedings once they enter the country, and adding them to the back of the immigration court backlog. If use of the app led to a timely screening by an asylum officer, rather than a months-long wait in Mexico, it could help prioritize access to the U.S. land border to people with humanitarian protection claims and, over time, discourage the widespread perception among potential migrants that traveling to Mexico and waiting for an appointment will guarantee entry into the United States. This can be done by increasing the availability of daily appointments and assigning asylum officers to assess the merits of asylum claims raised at ports of entry.

Beyond improving border procedures, Washington's response to increased migration must aim to incentivize regional governments, the private sector, and civil society groups to expand both legal status and employment opportunities for people who are internally displaced or already on the move, rather than relying solely on foreign aid to address the root causes of migration before people decide to leave. Studies have found that rather than deterring irregular migration, U.S. efforts to increase economic stability for would-be migrants have given them the resources to depart, especially in cases where political conditions in their countries make it impossible for them to stay. Moreover, the United States must use targeted financial investments to help governments throughout the region to build their own strong asylum systems and immigration systems to manage their borders.

| Washington must craft a fresh strategy for the modern era of global migration.

The United States should also prioritize the expansion of legal alternatives that make traveling to the U.S.-Mexican border an option of last resort. The Biden administration has taken a step in this direction by creating Safe Mobility Offices in Colombia, Costa Rica, Ecuador, and Guatemala. These offices seek to redirect potential migrants toward legal pathways, both in the United States and other receiving countries. SMOs are a blueprint of

what a modernized system could look like, but they will only work if additional legal routes to entry are made available; otherwise, people will continue to turn to smuggling networks to make their way to the southern border.

To prevent future waves of irregular migration from destabilizing U.S. politics, the United States also needs a federal coordination system that can match new arrivals, specifically those who arrive without sponsors or family ties, with communities that have the capacity to host them. Historically, many migrants—including my family, which entered the United States in the 1920s along with other Mexican immigrants responding to the need for laborers in Arizona—benefited from the existence of diaspora communities that ensured that migrants had housing and a social network upon arrival. In addition to increasing sponsorship opportunities for individuals—and even state governments who want to recruit immigrants—the federal government must take greater responsibility for managing the integration of the asylum seekers it admits at the border through federal relocation programs that place migrants in communities with both available housing and jobs that cannot be filled by U.S. workers.

Finally, the United States cannot secure the border if it lacks the infrastructure to safely and quickly process migrants, no matter where they arrive. Relying solely on existing infrastructure diverts resources from other pressing security needs. Building new ports of entry and modern asylum processing centers would help to both ensure the country's security and guarantee the safe screening of people seeking access to the U.S. immigration system.

Regardless of who takes office in January, Washington must craft a fresh strategy for the modern era of global migration. As U.S. policymakers imagine a future response to the border, they can opt to replicate the current failed framework or embrace a new one, scaling up policies that have proved more effective at preventing irregular migration than stopgap asylum restrictions. Doing so would allow the United States to harness the benefits of migration, control its borders, uphold its values as a country of refuge, and create better outcomes for Americans and immigrants alike.

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