



Outmatched: The U.S. Asylum System Faces Record Demands

In Search of Control, United States of America Country Report

By Kathleen Bush-Joseph

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1 Introduction

The United States has a long tradition of providing refuge and has welcomed millions of refugees and asylum seekers fleeing their countries. However, at a time of mass displacements around the world, including unprecedented numbers and new flows in the Western Hemisphere, the country's humanitarian protection system is under greater strain than ever with record numbers of migrants seeking asylum. In the face of nearly 2.5 million irregular arrivals at the U.S.-Mexico border in fiscal year (FY) 2023 and a backlog of 2 million asylum applications,¹ the Biden administration has put new measures into place that restrict access to asylum for some. And the U.S. Congress is debating statutory changes to asylum law that would provide major funding infusions for border control but would also tighten asylum provisions that have been in place for decades. The pressure to adapt to this new era of migration will continue to grow.

Repudiating President Donald Trump's restrictive immigration and asylum policies, President Joe Biden's administration has recommitted the U.S. immigration system to welcoming migrants and has created new programs for people to arrive through orderly processes. Simultaneously, his administration has ushered in a new border management system that seeks to establish incentives for asylum seekers to enter the United States at legal ports of entry and disincentives to crossing illegally, including by restricting access to asylum.

The goals of the U.S. protection system continue to be to provide lawful status to those in need, and to return those deemed ineligible to remain. The United States grants asylum and refugee statuses, which offer permanent residence, based on the definitions included in the 1951 Refugee Convention and the 1967 Protocol, and subsidiary protections under the Convention Against Torture. But U.S. law differs from international law in that it stipulates that asylum is discretionary, and government officials utilize this legal latitude in administering the asylum system. U.S. law also allows officials to grant humanitarian parole, which enables lawful entrance into the United States on a temporary basis, and Temporary Protected Status (TPS) may be granted to migrants already in the country who lack authorization to be there. The temporary protections may be more vulnerable to litigation and to being cancelled by a future administration.

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Without a more efficient system and resources for adjudicating asylum cases and expanded lawful pathways to meet the growing protection needs, the nation's immigration courts and asylum offices will become increasingly overwhelmed and individuals in need of protection will not receive it in a timely manner. Yet U.S. immigration laws, written decades ago, that would provide other avenues for being admitted to the United States remain stuck in the past and are no longer fit for purpose.

¹ U.S. Customs and Border Protection (CBP), "Southwest Land Border Encounters," accessed October 21, 2023; 1 million cases were pending at U.S. Citizenship and Immigration Services (USCIS) as of November 2023 and another 1 million at the immigration courts as of October 2023. See USCIS, "Asylum Quarterly Engagement Fiscal Year 2023, Quarter 4, Presentation, September 19, 2023," September 19, 2023; Transactional Records Access Clearinghouse (TRAC), "Immigration Court Asylum Backlog," accessed November 25, 2023.

Immigration issues have become so politically charged that Congress has been unable to update key asylum and immigration laws since the 1990s, making large-scale reforms nearly impossible. Facing this logjam, the Biden administration has utilized its executive authority to modernize immigration processes and introduce large-scale programs to provide temporary protections for hundreds of thousands of irregular arrivals.

This report examines the current state of the U.S. protection system, with a particular focus on recent changes the Biden administration has been making in asylum processes and temporary protections, as well as the challenges and lessons the U.S. experience may offer for other systems and countries.

BOX 1

About the Clingendael Institute's Comparative Asylum Project

In December 2022, the Dutch government initiated a [working group](#) focusing on the “fundamental reorientation of the current asylum policy and design of the asylum system.” Its aim is to further structure the asylum migration process, to prevent and/or limit irregular arrivals, and to strengthen public support for migration. One of the working group’s [assumptions](#) is that the externalization of the asylum procedure could be a feasible policy option through effective procedural cooperation, with a country outside the European Union, that “passes the legal test.” In other words, if it would be operationalized in conformity with (international) legal standards and human rights obligations. In that context, the working group expressed the need for more insight on how governments with other legal frameworks than the Netherlands, as an EU Member State, deal with the issue of access to asylum, either territorial or extraterritorial, in order to provide thoughts or angles for evidence-based policy choices by the Dutch government, at national and/or European level.

The purpose of this comparative research project, led by the Clingendael Institute, was to collect existing knowledge about the asylum systems of Australia, Canada, Denmark, the Netherlands, and the United States, and to complement this with an analysis of national legislation, policy, and implementation practices, focusing on access to (extra-)territorial asylum. While there are overlaps, each of the asylum and refugee protection systems in the research project operates in very different geographical situations and political contexts.

Beyond the five country case studies, a separate synthesis report that is based on a comparative analysis of the respective legal frameworks and the asylum systems of those countries addresses directions for Dutch courses of action. The synthesis report and the country case studies can be accessed here:

<https://www.clingendael.org/publication/search-control>

The main question to be answered in the national reports is: *Which instruments are applied or proposed by Australia, Canada, Denmark, the Netherlands, and the United States concerning or affecting access to asylum procedures and humanitarian protection?*

Therefore, the country research focuses on several central elements of the national asylum systems, including their access to, and implementation of, interdiction practices, border and asylum procedures, and other legal pathways. These were put in a broader public, political, and legal context, taking into account the countries’ national policy aims and objectives.

This U.S. country report was developed by the Migration Policy Institute (MPI) as part of the Clingendael research project.

The report begins by outlining the applicable legal framework and the rapid changes in migration flows at the U.S.-Mexico border that have accelerated since 2014. Reviewing the adjudication system for asylum claims, the report underscores the growing gap between resources and the record numbers of recent arrivals seeking asylum and work authorization. Next, it analyses new nationality-based parole programs and the introduction of Safe Mobility Offices (SMOs), which aim to provide greater access to protection in the Western Hemisphere. Finally, the report examines the United States' increased capacity for returns, which relies heavily on cooperation from Mexico. The analysis reflects research and conversations with a diverse group of stakeholders—current and former government officials, immigration lawyers and advocates, legal service providers, academics, and others who have administered and studied the U.S. immigration system.

2 Background and Relevant Developments

The number of asylum applications filed in the United States has risen dramatically in recent years, driven by record encounters at the U.S.-Mexico border. In fiscal year (FY) 2022 (October 1, 2021 to September 30, 2022), U.S. officials recorded just under 2.4 million encounters² at the Southwest border, with many migrants released into the country and allowed to apply for asylum. In FY 2023, there were nearly 2.5 million encounters.³

The United States operates two asylum processes—affirmative and defensive—depending on how individuals enter the country and how border officials process them.

Those crossing the border without authorization or who are in the United States and placed into removal proceedings in immigration court are generally in the defensive asylum process, while individuals who are not in removal proceedings may apply for asylum affirmatively

at U.S. Citizenship and Immigration Services (USCIS). Regardless of which process they are in, migrants must apply for asylum within one year of U.S. entry.⁴ Defensive asylum applications are heard by immigration judges at the Executive Office for Immigration Review (EOIR) as part of the overall removal proceeding.

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Both USCIS and EOIR received record numbers of asylum applications in FY 2023. USCIS received 431,000 affirmative asylum applications, with Venezuelans, Cubans, Colombians, Nicaraguans, and Haitians the top nationalities.⁵ EOIR received 316,000 defensive asylum applications as of the third quarter of FY 2023 (nationality data are unavailable).⁶ Given each application can cover multiple individuals, the total number

² Encounters is the term used by CBP to encompass apprehensions occurring at and between ports of entry under Title 8 of the U.S. Code, as well as the expulsions that were carried out between March 2020 and May 2023 under Title 42, a public health authority that was activated during the COVID-19 pandemic.

³ CBP, "Southwest Land Border Encounters."

⁴ There are limited exceptions to this requirement, such as for unaccompanied children and migrants who can show changed or extraordinary circumstances. See USCIS, "The Affirmative Asylum Process," updated September 13, 2023.

⁵ USCIS, "Asylum Quarterly Engagement Fiscal Year 2023, Quarter 4, Presentation, September 19, 2023."

⁶ Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), "Defensive Asylum Applications" (fact sheet, July 2023).

of people seeking asylum could be higher.⁷ By comparison, in FY 2013, USCIS received 44,000 asylum applications and EOIR received 24,000.⁸

Most asylum seekers today arrive at the U.S.-Mexico border without authorization but are not screened for eligibility for protection there due to resource constraints. Instead, border officials release migrants into the country to await removal proceedings in the immigration courts. Whether screened at the border or not, asylum seekers must file their asylum applications in the U.S. interior with USCIS or EOIR.⁹

Adjudications have not kept up with applications, and backlogs have ballooned as a result. USCIS now has more than 1 million pending affirmative asylum applications,¹⁰ with some applicants waiting years for an interview. At EOIR, there were 851,000 pending asylum cases as of the third quarter of FY 2023, out of 2.16 million immigration court cases.¹¹ These numbers do not capture migrants who have been allowed to enter the country but have not yet filed an asylum claim, whether defensively before EOIR in connection with removal proceedings or affirmatively before USCIS. It is difficult to determine asylum eligibility rates due to a variety of factors reviewed below, but in FY 2022, USCIS granted asylum to about 14,000 individuals and the immigration courts granted asylum to 22,000.¹²

Regional dynamics have played a strong role in shaping the trends of increasing arrivals and diversifying flows. Until 2014, migrants encountered at the U.S.-Mexico border were mostly single, Mexican men seeking to enter for work. Today, record numbers of families (“family units” in U.S. Customs and Border Protection parlance) from Latin America and beyond are arriving at the Southwest border in search of protection, as are high levels of unaccompanied children. Violence, poverty, political instability, and environmental factors and the economic and other destabilizing effects of the COVID-19 pandemic are among the drivers of mass displacement of Cubans, Haitians, Nicaraguans, and Venezuelans, as well as ongoing high migration from northern Central America. At the same time, a growing number of individuals from beyond the Western Hemisphere (“extracontinental” migrants) have sought asylum in the United States.

The Migration Policy Institute (MPI) estimates that there were 11.2 million unauthorized immigrants in the United States as of 2021, the most recent year for which data are available.¹³ The number is expected to grow based on the high number of recent unauthorized arrivals.

7 Data on repeat applications are not available. An example of a repeat application could include when a migrant or their representative files an asylum application online with USCIS after having already filed a paper application. This reportedly occurred when USCIS had a “frontlog” that caused months-long wait times for receipts for paper applications and the option to file online was introduced in November 2022. See USCIS, “USCIS Announces Online Filing for Affirmative Asylum Applications,” November 9, 2022; Department of Homeland Security (DHS), CIS Ombudsman, “June 28, 2023: Defensive Asylum Applications (Form I-589),” accessed November 21, 2023.

8 Andorra Bruno, *Immigration: U.S. Asylum Policy* (Washington, DC: Congressional Research Service, 2019), 33; EOIR, “Defensive Asylum Applications.”

9 The small number of border arrivals processed under the June 2022 asylum officer rule, which is discussed below, are the exception. Their border screening interviews are treated as asylum applications, therefore they do not need to file separate applications, though they may submit additional evidence.

10 USCIS, “Asylum Quarterly Engagement Fiscal Year 2023, Quarter 4, Presentation, September 19, 2023.”

11 Irene Gibson, *Annual Flow Report Refugees and Asylees: 2022* (Washington, DC: DHS Office of Homeland Security Statistics, 2023).

12 EOIR, “Total Asylum Applications”; USCIS, “Immigration and Citizenship Data Asylum Division Monthly Statistics Report Fiscal Year 2022, October 2021 to September 2022,” accessed September 27, 2023.

13 Jennifer Van Hook, Julia Gelatt, and Ariel G. Ruiz Soto, “A Turning Point for the Unauthorized Immigrant Population in the United States,” Migration Policy Institute (MPI) commentary, September 2023.

Political and Economic Context

Politically, asylum has become a fraught issue in the United States, as in other key destination countries. President Donald Trump, a Republican, campaigned on a promise to “build the wall” at the U.S.-Mexico border, and his administration attempted to enact a range of policies restricting access to asylum, most of which were blocked by the courts. Since coming to office in 2021, Biden, a Democrat, has reiterated the U.S. commitment to providing protection to those in need, but he has faced challenges reversing the Trump agenda, in part due to litigation by Republican-led states.

Local officials have declared emergencies due to high migrant arrivals in major interior cities. While Democrats have historically been the more welcoming political party on immigration, Democratic officeholders have criticized the federal government for a lack of coordination and funding for shelter services in particular. Party leaders have called for expediting work permits to allow recent arrivals to support themselves and move out of shelters. In response, the Biden administration announced plans to speed the issuance of work permits and in September 2023 granted almost half a million Venezuelan migrants the opportunity to apply for temporary protection and work authorization.¹⁴

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Republicans, who are generally more focused on border enforcement, have implemented state policies in Texas and Florida to crack down on unauthorized migration. At the national level, congressional Republicans have introduced legislative proposals that would permanently bar access to asylum for many individuals, curtail the executive branch’s ability to create alternative lawful means of entry for asylum seekers and others, and limit the ability to provide temporary protection to those already present in the United States without legal status. Republican presidential candidates have also called for extreme measures, including bombing cartels in Mexico, to stop what some call an “invasion” at the Southwest border.¹⁵ With publics increasingly anxious over record arrivals at the border and in cities in the U.S. interior, immigration will undoubtedly feature prominently in the 2024 presidential election cycle.

The politicized nature of the issue notwithstanding, polls indicate that the majority of the U.S. public expresses support for keeping immigration overall at current or increased levels as the country’s unemployment rate remains low and population aging rises, reducing the number of working-age adults.¹⁶ The overarching legal framework for immigration, which rests on the pillars of laws enacted in 1952 and 1965, has not changed significantly since the 1990s. There are 1.8 million applicants in the employment-based backlog for legal permanent residence, meaning that wait times stretch to decades to obtain a green card (and for many to lawfully enter the United States).¹⁷ While the asylum system is separate from the employment one in law, the two have become intertwined as asylum seekers fill U.S. job vacancies and many work without authorization soon after arrival. Individuals are eligible to receive a work permit

14 DHS, “The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act” (fact sheet, September 2023).

15 *The Economist*, “Why America’s Republicans Want to Bomb Mexico,” *The Economist*, September 14, 2023; *The New York Times*, “Where the Republican Candidates Stand on Immigration,” *The New York Times*, accessed November 22, 2023.

16 Lydia Saad, “Americans Still Value Immigration, But Have Concerns,” Gallup, July 13, 2023.

17 David Bier, “1.8 Million in Employment-Based Green Card Backlog,” CATO Institute blog, August 29, 2023.

no sooner than 180 days after filing an asylum application (and must file a separate application for a work permit), and as wait times for asylum adjudication stretch on for years, the asylum system is increasingly functioning as a new proxy for labour migration in the United States.

3 International Legal Framework

One of the main reasons that the U.S. asylum system is in crisis today is the rigidity of the legal framework for U.S. immigration. The immigration system is made up of four streams: family reunification; employment-based, with quotas that were set in 1990; humanitarian protection, which is an area that is numerically flexible; and a diversity lottery of 55,000 visas for countries under-represented in the other categories. The lack of flexibility in the non-humanitarian areas of immigration law means that in addition to migrants who need protection, many others have applied for asylum as a means to reunite with family members and/or work in the United States. Moreover, some migrants may have multiple motives that include requesting protection and seeking opportunity for themselves and their family members.

The humanitarian protection stream encompasses refugee admissions from abroad through an established resettlement system and, more recently, people applying for asylum from within the United States. The main types of protection available are based on the 1951 United Nations (UN) Convention Relating to the Status of Refugees (“the 1951 Convention”), and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”). U.S. law also provides temporary forms of protection such as humanitarian parole for those seeking admission, and Temporary Protected Status (TPS) and Deferred Enforced Departure (DED) for migrants already residing in the country without authorization. The system is largely based on laws from the 1980s and 1990s, when most asylum applicants flew to airports and border arrivals were predominantly economic migrants from Mexico. Congress’ failure for more than three decades to update immigration laws and adequately fund all aspects of the immigration system has resulted in a system that is no match for today’s realities. Therefore, presidents have increasingly relied on their executive authority to change administrative rules. But resource and litigation constraints, combined with the inherently limited changes that can be made through executive action within the existing statutory structure, have limited their effects.

One of the main reasons that the U.S. asylum system is in crisis today is the rigidity of the legal framework for U.S. immigration.

A. International Treaties

The United States has a federalist system of government, and immigration enforcement is generally the purview of the federal government (though this right has not gone uncontested, including at present). As originally enacted, U.S. immigration laws, which are incorporated into the *Immigration and Nationality Act*, did not contain refugee or asylum provisions.¹⁸ In 1968, the United States acceded to the UN Protocol Relating to the Status of Refugees (the “1967 Protocol”) and, by incorporation, Articles 2-34 of the 1951

¹⁸ Bruno, *Immigration: U.S. Asylum Policy*, 9.

Convention.¹⁹ The United States ratified the Convention Against Torture in October 1994.²⁰ The United States is not party to binding regional agreements that provide other legal bases for international protection beyond the refugee definition as, for example, Latin American countries are under the Cartagena Declaration on Refugees or European countries under the European Convention on Human Rights.

B. Domestic Implementing Legislation: The Refugee Act of 1980

Despite becoming a party to the 1967 Protocol, the United States did not enact domestic implementing legislation with a conforming definition for “refugee” or a mandatory nonrefoulement²¹ provision until the passage of the *Refugee Act of 1980*.²² The main intent of the *Refugee Act* was to provide a legal basis for external processing for refugee resettlement, not asylum. This was because the United States was not receiving high numbers of asylum seekers then, but since the 1950s had been relying on humanitarian parole to provide protection for groups fleeing conflict or instability.²³

As amended by the *Refugee Act*, U.S. immigration law provides for the granting of asylum to a person who applies in accordance with applicable requirements and is determined to be a refugee. A refugee is defined as a person who is outside their country of nationality and is unable or unwilling to return to, or to avail themselves of the protection of, that country because of persecution or a well-founded fear of persecution based on one of five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion.²⁴

Notably, the U.S. statute varies from international law in that a grant of asylum or refugee status is discretionary, while the 1967 Protocol and the 1951 Convention stipulate that someone who meets the relevant standards “shall” be considered a refugee.²⁵ As with the Trump administration before it, the Biden administration has justified regulations that restrict access to asylum based on this element of discretion, though federal courts have repeatedly struck down such rules as contrary to other provisions of U.S. asylum and administrative law, and the 1951 Convention.²⁶

¹⁹ Bruno, *Immigration: U.S. Asylum Policy*, 8.

²⁰ Michael John Garcia, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens* (Washington, DC: Congressional Research Service, 2006).

²¹ The principle of nonrefoulement prohibits countries from “returning a refugee or asylum seeker to territories where there is a risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion.” See Sir Elihu Lauterpacht and Daniel Bethlehem, “[Refugee Protection in International Law: The Scope and Content of the Principle of Non-Refoulement: Opinion \(2.1\)](#),” United Nations High Commissioner for Refugees (UNHCR), accessed November 21, 2023.

²² Bruno, *Immigration: U.S. Asylum Policy*, 9.

²³ Julia Gelatt and Doris Meissner, “[Straight Path to Legal Permanent Residence for Afghan Evacuees Would Build on Strong U.S. Precedent](#),” MPI commentary, March 2022.

²⁴ United Nations (UN) Convention Relating to the Status of Refugees (“the 1951 Convention”), “[Article 1 Definition of the Term ‘Refugee’](#),” 1951.

²⁵ UNHCR, *Comments of the United Nations High Commissioner for Refugees on the Proposed Rule from the U.S. Department of Justice (Executive Office for Immigration Review) and the U.S. Department of Homeland Security (U.S. Citizenship and Immigration Services): ‘Circumvention of Lawful Pathways’* (UNHCR statement, March 20, 2023), 4; federal courts have held that the 1967 Refugee Protocol is not directly enforceable in U.S. courts. Therefore, the protocol does not confer judicially enforceable rights or duties in and of itself, beyond those granted by the domestic implementing legislation. See Hillel R. Smith, *The Biden Administration’s Final Rule on Arriving Aliens Seeking Asylum (Part Two)* (Washington, DC: Congressional Research Service, 2023).

²⁶ See discussion of the circumvention of lawful pathways regulation in the Border section of this report.

U.S. law distinguishes between applicants for asylum or refugee status based on their physical location. Refugee applicants are outside the United States, while applicants for asylum are physically present in the country, either at the border or in the U.S. interior. USCIS and the State Department grant refugee status outside the country. Asylum can be granted by USCIS, a branch of the Department of Homeland Security (DHS), or EOIR, the administrative courts division within the Department of Justice (DOJ), depending on the type of application filed. There are no numerical limitations for those seeking asylum within the U.S. territory, but the number of refugees admitted from overseas is subject to an annual cap set by the president following a required consultation with Congress. The refugee resettlement cap for FY 2024 was set at 125,000, the same level as earlier Biden years.²⁷ Upon arrival, refugees are geographically distributed across the United States and receive short-term resettlement assistance. By contrast, there is no federally organized distribution scheme for asylum seekers, who generally are not eligible for public benefits apart from emergency medical services.²⁸

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Withholding of Removal and Convention Against Torture Protection

To make U.S. law consistent with the 1951 Convention language on nonrefoulement, the *Refugee Act* also revised a provision of U.S. law on a lesser form of protection— withholding of deportation, which is now referred to as withholding of removal.²⁹ Thus, if a migrant is found ineligible for asylum, the individual may be considered for withholding. Per the *Refugee Act*, officials are prohibited from removing a noncitizen whose life or freedom would be threatened because of one of the five protected grounds.

Apart from asylum and withholding, migrants may receive protection under the Convention Against Torture by showing it is more likely than not that they will be tortured in the country of removal. The protection received is deferral of removal from the United States, which is granted after a formal order of removal is entered in immigration court.

Recipients of withholding or CAT protection are not permitted to adjust to lawful permanent resident status; individuals granted asylum may adjust to lawful permanent residence (known as getting a green card) after one year.³⁰ Refugees are required to apply for lawful permanent residence within a year of U.S. arrival.³¹ Regulations provide that an individual granted withholding or deferral of removal may apply for work authorization, and that U.S. officials may remove an individual granted such protections to a third country.³²

27 MPI Data Hub, “U.S. Annual Refugee Resettlement Ceilings and Number of Refugees Admitted, 1980-Present,” accessed November 25, 2023.

28 In addition to emergency medical services, asylum seekers are generally eligible for non-cash disaster relief assistance and English language instruction. Certain groups (such as asylum seekers who are pregnant, children, or youth who meet certain criteria) are eligible for additional medical, nutritional, early childhood development, and financial support. See Essey Workie, Lillie Hinkle, and Stephanie Heredia, *The Missing Link: Connecting Eligible Asylees and Asylum Seekers with Benefits and Services* (Washington, DC: MPI, 2022).

29 Bruno, *Immigration: U.S. Asylum Policy*, 9, 16.

30 Bruno, *Immigration: U.S. Asylum Policy*, 2.

31 USCIS, “Green Card for Refugees,” updated June 26, 2017.

32 Bruno, *Immigration: U.S. Asylum Policy*, 20.

C. *The 1996 Illegal Immigration Reform and Immigrant Responsibility Act*

In response to growing numbers of asylum filings and calls to reform access to work authorization for asylum seekers, Congress in 1996 passed the *Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)*.³³ The law, among other provisions, established that a noncitizen who is present or arrives in the United States, regardless of whether they arrived with authorization or not, can apply for asylum.

Asylum Provisions

Under IIRIRA, an asylum seeker must apply for protection within one year of arriving; an individual is ineligible to apply if their prior asylum application was denied.³⁴ The law also provided that a person is ineligible to apply for asylum if removable pursuant to a safe third country agreement.³⁵ IIRIRA also added grounds for denying asylum (listed in the Asylum section below).³⁶

IIRIRA established that asylum seekers who are not otherwise eligible for employment shall not be granted work authorization until 180 days after filing an asylum application. The law codified the intent that the government adjudicate the application within 180 days of filing. Asylum seekers are generally ineligible for federal public benefits, whether during this 180-day period or afterwards, leaving local governments and nonprofit organizations responsible for providing services for those who otherwise lack support.

Expedited Removal and Credible Fear of Persecution Screenings

In the context of then rising U.S.-Mexico border encounters of mostly single Mexican men seeking to enter the United States illegally to work, IIRIRA established a new immigration enforcement mechanism known as expedited removal. This process allows officials to quickly remove arriving migrants without a hearing before an immigration judge provided the individual lacks an entry document or used counterfeit, altered, or otherwise fraudulent or improper documents. Under IIRIRA, unlawful re-entry is a criminal offense, and migrants deported under expedited removal are barred from re-entering the country for five years.³⁷ IIRIRA included an exception to the expedited removal process by which a migrant seeking protection would be screened for a credible fear of persecution. This exception was established at a time when airports were the primary entry point for asylum seekers. Since most border arrivals were economic migrants at the time, officials did not expect that the credible-fear screening would be frequently used.

33 *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Public Law 104–208, U.S. Statutes at Large 110 (1996): 3009–546.

34 An exception to both restrictions applies if a noncitizen can show changed circumstances.

35 The United States has only one safe third country agreement, which is in effect with Canada. The agreement provides that migrants must seek asylum in the first country of arrival unless they meet an exception. See Muzaffar Chishti and Julia Gelatt, “Roxham Road Meets a Dead End? U.S.-Canada Safe Third Country Agreement Is Revised,” *Migration Information Source*, April 27, 2023.

36 Bruno, *Immigration: U.S. Asylum Policy*, 15.

37 The executive branch may expand the application of expedited removal to individuals who entered without inspection and who have been in the United States for less than two years per a different statutory authority. Officials have used this authority at various points to apply to arrivals by sea and near the U.S.-Mexico border. See Doris Meissner, Faye Hipsman, and T. Alexander Aleinikoff, *The U.S. Asylum System in Crisis: Charting a Way Forward* (Washington, DC: MPI, 2018), 2; Jessica Bolter, Emma Israel, and Sarah Pierce, *Four Years of Profound Change: Immigration Policy during the Trump Presidency* (Washington, DC: MPI, 2022), 45.

Today, most migrants arriving at the U.S. border turn themselves in to officials in order to seek protection. Under U.S. law, as amended by IIRIRA, an individual subject to expedited removal who claims a fear of return to their home country is to be interviewed by an asylum officer to determine if a credible fear of persecution exists.³⁸ Credible fear means that “there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum.”³⁹

Today, most migrants arriving at the U.S. border turn themselves in to officials in order to seek protection.

Individuals found to have a credible fear generally are referred to immigration court, where they can apply for asylum before an immigration judge as part of the overall removal proceeding. If an asylum officer finds that the migrant did not have a credible fear, an immigration judge may review the negative finding. To be granted asylum at USCIS or the courts, asylum seekers must show that there is a reasonable possibility of past persecution or a well-founded fear of future persecution on account of a statutorily protected ground, a higher standard than the credible fear screening.⁴⁰

D. Post-1996 Statutory Provisions

The IIRIRA asylum provisions remain largely in place, though subsequent legislation amended other immigration laws. The United States and Canada signed a Safe Third Country Agreement in 2000, which went into effect in 2004 and is the only existing formal safe third country agreement that the United States has in effect today.⁴¹ Under the agreement, asylum seekers must request protection in the first of the two countries that they arrive in unless they qualify for an exception. The agreement applied only to asylum seekers arriving at ports of entry until 2023, when it was expanded to cover the rising numbers of migrants arriving between ports.⁴²

The *Real ID Act of 2005* added “burden-of-proof” provisions that require an asylum seeker to show that “race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant” to meet the definition of a refugee.⁴³ The law also set forth standards for making determinations about an applicant’s credibility and the need for corroborating evidence. The law eliminated annual caps on the number of asylees who could adjust to lawful permanent residence.⁴⁴

38 Special procedures apply to migrants arriving in the United States from Canada in accordance with the U.S.-Canada Safe Third Country Agreement. Otherwise, individuals who have previously been ordered removed and are taken into custody are screened using a higher standard—reasonable possibility of persecution or torture—in reinstatement of removal proceedings, another expedited procedure for removing migrants without a court hearing. Migrants who pass the screening may seek withholding of removal or deferral of removal in immigration court. See Meissner, Hipsman, and Aleinikoff, *The U.S. Asylum System in Crisis*, 2.

39 *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*: 3009-582.

40 Bruno, *Immigration: U.S. Asylum Policy*, 16.

41 Chishti and Gelatt, “Roxham Road Meets a Dead End?”

42 Chishti and Gelatt, “Roxham Road Meets a Dead End?”

43 *REAL ID Act of 2005*, Public Law 109-13, *U.S. Statutes at Large* 119 (2005): 303.

44 Bruno, *Immigration: U.S. Asylum Policy*, 20.

Facing concerns that DHS was not adequately screening unaccompanied migrant children for evidence of trafficking or persecution, Congress in 2008 passed the *William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA)*.⁴⁵ The law made certain statutory restrictions on applying for asylum inapplicable to unaccompanied children, such as the requirement that an individual generally apply for asylum within one year of their last entry to the country. It also provided that a USCIS asylum officer would have initial jurisdiction over any asylum application filed by an unaccompanied child, even if the minor was in removal proceedings in immigration court.⁴⁶ As such, unaccompanied children may apply for asylum affirmatively at USCIS, and if they are not granted asylum there, they are referred to immigration court, where their claim will be heard by a judge. The arrival of unaccompanied children has increased dramatically in recent years. In FY 2022, unaccompanied minor encounters reached a high of 149,000, almost double the 76,000 encountered in FY 2019.⁴⁷

E. *Regulations on Asylum Eligibility and Procedures*

Although U.S. asylum statutes remain largely unchanged from the 1990s, the government has issued a number of regulations governing asylum procedures. One notable rule that was issued in 2000 and remains in effect provides that an asylum applicant is not considered to have a well-founded fear of persecution if they could relocate within their home country and “under all the circumstances it would be reasonable to expect the applicant to do so.”⁴⁸

The Trump administration issued regulations that restricted access to asylum, including rules that barred from eligibility for asylum those who crossed the U.S.-Mexico border without authorization. A separate rule made ineligible for asylum migrants who transited through a third country and did not apply for asylum there and have their application denied. These rules were eventually blocked by the courts.⁴⁹

Although U.S. asylum statutes remain largely unchanged from the 1990s, the government has issued a number of regulations governing asylum procedures.

The Biden administration has promulgated a number of rules relating to asylum, including one known as the asylum officer rule, which allows USCIS to adjudicate border asylum cases that would normally go to immigration judges after an individual processed through expedited removal has established the requisite level of fear of persecution.⁵⁰ By allowing asylum officers to adjudicate the entire case rather than just the initial credible-fear interview, the rule shortens the adjudication process to months, instead of years. First

45 Congressional Research Service (CRS), *Unaccompanied Alien Children: An Overview* (Washington, DC: CRS, 2021), 6.

46 Bruno, *Immigration: U.S. Asylum Policy*, 20.

47 William A. Kandel, *Increasing Numbers of Unaccompanied Children at the Southwest Border* (Washington, DC: CRS, 2023), 1.

48 The U.S. Code of Federal Regulations, 8 CFR 208.13(b)(3) provides that factors adjudicators should consider include, but are not limited to “whether the applicant would face other serious harm in the place of relocation; ongoing civil strife in the country; administrative, economic, or judicial infrastructure; geographic limitations; and social and cultural constraints such as age, gender, health, and social and family ties.” See U.S. Immigration and Naturalization Service (INS), “*Asylum Procedures*,” *Federal Register* 65, no. 235 (December 6, 2000): 76121-38.

49 Bolter, Israel, and Pierce, *Four Years of Profound Change*, 16-19, 80-81.

50 The rule draws in part on proposals made in an earlier MPI report: Meissner, Hipsman, and Aleinikoff, *The U.S. Asylum System in Crisis*.

implemented in June 2022, the rule was paused in May 2023 due to resource constraints. It was restarted in October 2023, but the number of migrants processed through it is expected to remain low. Fewer than 6,000 migrants had gone through this revised process as of June 2023.⁵¹ Another rule, the circumvention of lawful pathways regulation, restricts eligibility for asylum for those crossing between ports of entry (see Border section for more details). These regulations have been challenged in the courts but remained in effect at the time of this writing.

F. *Case Law on Asylum*

In the absence of updates to U.S. immigration laws, the U.S. Supreme Court and lower-level courts have played an outsized role in deciding the legality of government actions relating to asylum, as well as interpreting existing laws. Decisions issued by the Supreme Court have addressed the detention of asylum seekers; Biden administration efforts to terminate the Trump-era Migrant Protection Protocols (informally known as the Remain in Mexico program), which forced migrants to wait for their U.S. court hearings in Mexico;⁵² and DHS' exercise of prosecutorial discretion to prioritize certain migrants for removal and decline to prosecute others.

The attorney general, the head of the U.S. Department of Justice, also has the authority to issue precedent decisions for how USCIS and the immigration courts apply immigration law. These attorney general referral and review decisions have been influenced by political forces, with successive administrations issuing decisions overturning past ones—leading to inconsistency in adjudications.⁵³ Additionally, federal appellate courts have issued decisions that apply only to their jurisdictions, the result being a complex patchwork of applicable standards and considerations in asylum case law. The courts may consider the positions of the UN High Commissioner on Refugees (UNHCR) and international treaty bodies but assess the weight of submissions on a case-by-case basis.

In the absence of updates to U.S. immigration laws, the U.S. Supreme Court and lower-level courts have played an outsized role in deciding the legality of government actions relating to asylum, as well as interpreting existing laws.

The precedential decisions by the attorney general and the courts have become increasingly important not only due to the lack of congressional action, but also as the nature of asylum claims themselves have changed. The persecution claims long seen in the post-World War II era, which centered on state actors, today have significantly given way to claims of persecution by non-state actors, with Central Americans typically seeking asylum based on gang or gender-based violence under the protected ground of “particular social group.” During the Trump administration, Attorney General Jeff Sessions issued a decision known as *Matter of A-B-* that largely eliminated gang and domestic violence as reasons to grant protection. Attorney

51 DHS, “Asylum Processing Rule Cohort Reports,” accessed October 27, 2023.

52 The Migrant Protection Protocols began in January 2019 and required migrants, including asylum seekers, to wait in Mexico while their immigration cases were adjudicated. See Bolter, Israel, and Pierce, *Four Years of Profound Change*, 25, 34-35.

53 Sarah Pierce, *Obscure but Powerful: Shaping U.S. Immigration Policy through Attorney General Referral and Review* (Washington, DC: MPI, 2021).

General Merrick Garland, a Biden appointee, overturned that decision in 2021.⁵⁴ The Biden administration has also pledged to issue a rule defining particular social group, which would be an important step toward standardizing how such groups are defined across jurisdictions and speeding decisions. The rule had not been issued at this writing.

4 Border Management in Policy and Practice

To improve border management, the United States needs a functioning asylum system so that people eligible for protection can receive it, and those who are ineligible can be quickly removed after fair review of their claim. There is widespread recognition that the asylum system is being used by substantial numbers of people without meritorious protection claims because they have no other means by which to immigrate to the United States for work or the opportunity to join family members. In response, the Biden administration has used its parole authority to significantly expand lawful pathways to channel intending migrants through safe, orderly, and humane processes so that they do not seek to enter without authorization.⁵⁵ Presently, the arrival of record numbers of asylum seekers at the U.S.-Mexico border, the outdated legal framework for adjudicating their claims, and resource allocations that do not prioritize adjudications mean that the asylum system faces unprecedented strain. Since border officials are unable to quickly remove most border arrivals, nearly 2.5 million were released into the country to await immigration court proceedings between January 2021 and March 2023 and had no confirmed departure.⁵⁶

Against this backdrop, the Biden administration ushered in a new era of migration management policies in May 2023 when it lifted the Title 42 public health authority that the Trump administration imposed in March 2020, citing the COVID-19 pandemic. Title 42 had authorized quick expulsions of many arriving unauthorized migrants (there were almost 2.8 million expulsions during its 38-month use);⁵⁷ it effectively blocked access to territorial asylum while it was in use because migrants can only apply for asylum once they are on U.S. territory. The post-Title 42 strategy entails offering new lawful means of entry for asylum seekers through official crossing points and nationality-specific parole programs; restricting asylum eligibility and imposing consequences for migrants crossing the border without authorization; and launching a network of Safe Mobility Offices (SMOs) in countries in South and Central America to provide screening and information for intending migrants closer to their home countries.⁵⁸

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⁵⁴ *Matter of A-B-*, 28 I&N December 307 (Attorney General, June 16, 2021).

⁵⁵ Andrew Selee, "Regional Processing Centers: Can This Key Component of the Post-Title 42 U.S. Strategy Work?," MPI commentary, May 2023.

⁵⁶ U.S. House Judiciary Committee Subcommittee on Immigration, Integrity, Security, and Enforcement, *The Biden Border Crisis: New Data and Testimony Show How the Biden Administration Opened the Southwest Border and Abandoned Interior Enforcement* (Washington, DC: House Judiciary Committee Subcommittee on Immigration, Integrity, Security, and Enforcement, 2023).

⁵⁷ CBP, "Nationwide Encounters," accessed November 26, 2023.

⁵⁸ Selee, "Regional Processing Centers."

Still in its nascent stages and under legal challenge from liberal and Republican-affiliated groups, this new approach aims to create order and predictability at the border by incentivizing arrivals at ports of entry and disincentivizing irregular crossings in tandem with longer-term regional migration management coordination across the Western Hemisphere. For example, the Los Angeles Declaration on Migration and Protection, signed by the United States and 20 other countries, has set the framework to increase regional cooperation.⁵⁹ These policy changes represent a paradigm shift in the U.S. response to unprecedented new realities in irregular migration. But it remains a significant challenge to achieve a balance between expanding legal manners of entry and access to asylum, along with imposing additional consequences to deter irregular migration.

There were nearly 2.8 million encounters of migrants at all U.S. borders and ports of entries, including airports, in FY 2022. The number reached a record-breaking 3.2 million in FY 2023, though these figures include Title 42 expulsions, which had a high rate of repeated attempts by earlier-expelled migrants (and represent *events*, not individuals).⁶⁰ The United States encountered increasing numbers of families and

There were nearly 2.8 million encounters of migrants at all U.S. borders and ports of entries, including airports, in FY 2022. The number reached a record-breaking 3.2 million in FY 2023.

unaccompanied children, as well as a sharp diversification in nationalities from beyond Mexico and northern Central America. Together these shifts have caused significant strain on the U.S. immigration enforcement system. At the Southwest border, families and unaccompanied children increased to 29 percent of encounters in FY 2022, up from 21 percent in FY 2020.⁶¹ Additionally, there

were 571,000 unauthorized arrivals of Venezuelans, Cubans, and Nicaraguans in FY 2022. These numbers eclipsed the 521,000 arrivals of northern Central Americans, with El Salvador, Guatemala, and Honduras previously the top countries of irregular migration after Mexico.⁶² The record encounter numbers in part represent a change that began in 2014, when migrants went from largely trying to avoid U.S. border officials to turning themselves in so that they could seek protection.

The rapid increase of migrants traveling through the dangerous Darien Gap between Colombia and Panama en route to the United States illustrates the swiftly changing flows. Some 409,000 migrants had crossed the gap during the first nine months of 2023, surpassing the previous record of 250,000 crossings in 2022 and a far cry from 2019, when 22,000 migrants crossed.⁶³ While neighboring countries in Latin America and the Caribbean harbor approximately 6.5 million Venezuelans who have fled their country since 2015,⁶⁴ pandemic-related economic losses have caused hundreds of thousands of them and other nationalities

59 The White House, "Los Angeles Declaration on Migration and Protection," June 10, 2022.

60 "Nationwide encounters are the sum of CBP encounters across all areas of responsibility including Northern Land Border, Southwest Land Border, Office of Field Operations non-land border ports of entry (e.g., airports, seaports), and U.S. Border Patrol sectors that do not share a land border with Canada or Mexico (e.g., Miami Sector)." See CBP, "Nationwide Encounters."

61 CBP, "Nationwide Encounters."

62 Ariel G. Ruiz Soto, "Record-Breaking Migrant Encounters at the U.S.-Mexico Border Overlook the Bigger Story," MPI commentary, October 2022.

63 Caitlyn Yates and Juan Pappier, "How the Treacherous Darien Gap Became a Migration Crossroads of the Americas," *Migration Information Source*, September 20, 2023; UNHCR, "Darien Panama: Mixed Movements Protection Monitoring October 2023" (fact sheet, October 2023).

64 UNHCR, "Over 4 Million Venezuelan Refugees and Migrants Struggle to Meet Basic Needs Across the Americas" (press release, September 12, 2023).

such as Haitians to engage in secondary migration toward the United States at the same time as some Venezuelans and others leave directly from their countries of origin due to ongoing instability.⁶⁵ The real-time spread of information through social media and other platforms has helped facilitate and demystify aspects of the migration process, in addition to the professionalization (and control) of smuggling routes wielded by criminal organizations.⁶⁶

A. Border Agencies

U.S. border management policy focuses mainly on the border with Mexico, as the vast majority of encounters occur there as compared to the U.S.-Canada border and at sea. DHS is charged with border management through its CBP component; another component, the U.S. Coast Guard, conducts interdictions at sea. At land borders, CBP divisions manage different aspects of migrant arrivals. Ports of entry—the lawful access points for people and cargo to reach U.S. territory—are managed by CBP’s Office of Field Operations. Between ports of entry, the Border Patrol apprehends migrants attempting to enter without authorization. CBP works to quickly process migrants encountered at or between ports of entry and to hold people in its custody for no more than 72 hours.

Another component of DHS, U.S. Immigration and Customs Enforcement (ICE), manages the longer-term detention of migrants at facilities along the Southwest border and in the U.S. interior. ICE is also responsible for arresting unauthorized migrants living in the U.S. interior as well as noncitizens charged with criminal activities; it also manages removals and returns. Asylum officers from USCIS, also a component of DHS, conduct credible-fear screenings of migrants who are placed in expedited removal proceedings and express a fear of return to their home country.

B. Reception Process

To the greatest extent possible, DHS places migrants arriving without authorization into expedited removal, which allows for relatively quick removal without a court hearing.⁶⁷ During the expedited removal process, individuals who request asylum or otherwise express a fear of persecution are entitled to a credible-fear interview to determine whether there is a significant possibility that they will be able to establish eligibility for asylum or other form of protection under the Convention Against Torture in a later proceeding. If they pass this first step, they may be released into the U.S. interior to file an asylum application and await removal proceedings in immigration court.⁶⁸ Those who do not seek asylum protection or who are unable to establish a credible fear may be removed to their country of origin. Most asylum seekers pass this initial step; before the pandemic, about 85 percent of those screened were deemed to have a credible fear.⁶⁹

65 UNHCR, “Over 4 Million Venezuelan Refugees and Migrants Struggle to Meet Basic Needs Across the Americas.”

66 Julie Turkowitz, “A Girl Loses Her Mother in the Jungle, and a Migrant Dream Dies,” *The New York Times*, updated June 20, 2023.

67 The time to removal depends on nationality, available flights, travel documents, and other factors.

68 DHS determines whether to release noncitizens based on factors such as security concerns. Migrants processed under the asylum officer rule follow a different adjudication process.

69 Declaration of Blas Nuñez-Neto, Assistant Homeland Security Secretary, Border and Immigration Policy, *M.A. et al v. Alejandro Mayorkas* (U.S. District Court for the District of Columbia, October 2023), 8; On average, immigration judges overturn about 25 percent of asylum officers’ negative credible-fear determinations, leading to higher fear-found rates than those initially reported. See TRAC, *Immigration Judge Decisions Overturning Asylum Officer Findings in Credible Fear Cases* (Syracuse, NY: Syracuse University, 2023).

Resource capacity plays a major role in processing. At times of high border arrivals, DHS lacks sufficient holding capacity and personnel to place all eligible individuals into expedited removal. As a result, many border arrivals are released into the U.S. interior with a charging document known as a notice to appear (NTA) that schedules them for removal proceedings in immigration court. At times of exceptionally high border arrivals, DHS has resorted to issuing NTAs with placeholder information or has released people without NTAs but with instructions to report within a period of days or weeks to immigration enforcement personnel inside the country for further processing. The immigration court process typically takes years; some 2023 arrivals to New York City have been scheduled for initial hearings in 2027.⁷⁰

Humanitarian Parole

One of the most innovative and important aspects of the Biden administration's border management strategy has been its unprecedented use of humanitarian parole. DHS is authorized by statute to allow inadmissible noncitizens to enter the United States temporarily via parole, which permits them to remain in the country for a designated period. At the border, officials have used short grants of parole, up to 60 days, to alleviate overcrowding at border facilities during times of high encounters. From January 2021, when Biden took office, to June 2023, border authorities granted parole to about 718,000 individuals encountered between ports of entry.⁷¹

Litigation by Florida, a Republican-led state, has mostly halted these short-term parole grants, as a lower court judge found that officials had exceeded their statutory authority to release migrants rather than detain them. The Department of Justice appealed the decision, but pending resolution of the case, officials are forgoing short-term parole grants. Instead, they are issuing NTAs, which take one to two hours per person to process given legal requirements for proper service, versus 15 minutes to process someone using parole.⁷²

One of the most innovative and important aspects of the Biden administration's border management strategy has been its unprecedented use of humanitarian parole.

In addition to the significant rise in the use of parole, DHS has dramatically changed how the authority is operationalized. In January 2023, the department began incentivizing migrants to arrive at official ports of entry by allowing them to schedule appointments at certain ports through the CBP One mobile app. Unlike people encountered crossing irregularly, those who receive CBP One appointments generally are granted one to two years of parole. The number of scheduled appointments has increased to 1,450 per day, but demand continues to outstrip supply as thousands of migrants arrive at the U.S.-Mexico border per day, limiting the incentive power of the app. Nonetheless, DHS has been able to vastly expand processing capacity and the ports of entry can now process four to five times as many people as before the pandemic.⁷³

70 See, e.g., Elliot Spagat, "Immigrants Waiting 10 Years in US Just to Get a Court Date," Associated Press, April 26, 2023.

71 Muzaffar Chishti and Kathleen Bush-Joseph, "In the Twilight Zone: Record Number of U.S. Immigrants Are in Limbo Statuses," *Migration Information Source*, August 2, 2023.

72 Justice Action Center Litigation Tracker, "Florida v. Mayorkas (FL Detention II) – District Court," accessed November 25, 2023.

73 Comments by Blas Nuñez-Neto, Assistant Homeland Security Secretary, Border and Immigration Policy, at the Immigration Law and Policy Conference, "State of Play: Dynamism and Disorder" panel, September 18, 2023.

About 140,000 migrants had made appointments through June 30, with the largest numbers coming from Haitians, Venezuelans, and Mexicans.⁷⁴

Regardless of how migrants enter the United States, they still face removal proceedings and can be deported unless they have a basis to seek a more permanent lawful status, such as asylum. Migrants may choose where in the country they would like to go and notify border officials of their intended address, if any.

In April 2022, the governors of Texas and Arizona began busing recent border arrivals to immigrant-friendly jurisdictions (often labeled sanctuary cities) in the U.S. interior, citing a lack of federal coordination and the need for other states to share the costs of receiving migrants. As of October 2023, Texas had bused more than 50,000 migrants to cities run by Democratic elected officials.⁷⁵ This system supplemented the pre-existing process by which nonprofit organizations would help migrants arrange travel to their U.S. destinations, with many migrants paying for their own tickets.

C. *The Circumvention of Lawful Pathways Rule*

The Biden administration ended or significantly scaled back controversial border control measures imposed during the Trump era, such as the Migrant Protection Protocols, detention of families, and border wall construction.⁷⁶ But the administration continued to use the Title 42 border expulsions authority until May 2023 to manage ongoing high border arrivals, and a new rule includes aspects of Trump policies limiting access to asylum.

The circumvention of lawful pathways regulation, which went into effect in May 2023, incentivizes people to come to ports of entry after making CBP One appointments, and disincentivizes crossing between ports, with the intent of creating order and predictability. The rule declares that migrants (not including unaccompanied minors) who come

to a port of entry without an appointment or who cross irregularly will be presumed ineligible for asylum unless they applied for and were denied asylum in a transit country.⁷⁷ Such individuals can establish an exception to the presumption if they came to a port of entry without an appointment but can establish that it was impossible to use the CBP One app due to a language barrier, technical failure, illiteracy, or some other serious obstacle. Individuals also may be able to rebut the presumption of ineligibility for asylum by demonstrating exceptionally compelling circumstances pertaining to themselves or a traveling family

The Biden administration ended or significantly scaled back controversial border control measures imposed during the Trump era.

⁷⁴ Chishti and Bush-Joseph, “In the Twilight Zone.”

⁷⁵ Office of the Texas Governor, “[Operation Lone Star Buses Over 50,000 Migrants to Sanctuary Cities](#)” (press release, October 6, 2023).

⁷⁶ Other measures introduced by the Trump administration sought to deter migrants from crossing the Southwest border without authorization through a “zero-tolerance” approach, including by prosecuting first-time border crossers and asylum seekers for illegal entry into the United States. Children were separated from their parents when this policy was applied to families, leading to public backlash. The administration rescinded the policy and detained families together after a federal court order. See Meissner, Hipsman, and Aleinikoff, *The U.S. Asylum System in Crisis*, 1.

⁷⁷ DHS, “[Fact Sheet: Circumvention of Lawful Pathways Final Rule](#)” (fact sheet, May 2023).

member, such as a medical emergency, imminent and extreme threat to life and safety at the time of entry, or that they are a victim of a severe form of trafficking.

Migrants who cannot rebut the presumption of ineligibility may pursue a protection claim only if they can demonstrate a “reasonable” possibility of persecution or torture—the higher screening threshold that otherwise applies to people who are only allowed to access withholding of removal or protection under the Convention Against Torture, which are lesser forms of relief.⁷⁸ The circumvention of lawful pathways rule applies to people who are subject to its provisions regardless of whether they are processed through the expedited removal process at the border or are released into the country.

But DHS’s ability to implement the new asylum rule—much like its ability to implement the earlier asylum officer rule—is hampered by longstanding capacity constraints both at and between lawful points of entry. The ports of entry lack the physical space and personnel to process the current level of migrant arrivals. Individuals with CBP One appointments are screened only for security concerns in connection with the parole determination and quickly released into the country with two years of parole and a notice to appear in immigration court for removal proceedings. Migrants who arrive without an appointment may also be issued parole and an NTA, though if ICE or Border Patrol have capacity, individuals deemed threats to national security or public safety could be placed into expedited removal. Therefore, officials are encouraging asylum seekers to arrive at ports of entry, but minimal processing occurs there.⁷⁹

To speed processing and increase the ability to return migrants quickly, DHS in April 2023 resumed conducting some credible-fear determinations in Border Patrol temporary facilities along the border, without first transferring the migrants to ICE detention. When the Trump administration used this faster process, just 23 percent of migrants met the credible-fear standard.⁸⁰ Initial data show that about 59 percent of the 58,000 migrants screened from May to September, since the new asylum rule went into effect, were deemed to have a credible fear of persecution.⁸¹

CBP’s short-term detention capacity remains well below present needs. When migrants rushed to enter before Title 42 ended, the Border Patrol held about 29,000 people at its soft-sided tent facilities, well above the capacity range of 18,000 to 20,000.⁸² ICE’s longer-term detention capacity was limited by pandemic-related measures to a daily average population of about 24,000. As of November 2023, the agency held thousands more, approximately 40,000 per day, including detainees from its interior enforcement operations.⁸³

The number of credible-fear interviews conducted per day is also limited by the number of asylum officers available. The government planned to have 1,100 asylum officers conduct interviews after Title 42 ended.⁸⁴

78 Those who meet this higher screening threshold under the rule are permitted to also seek asylum in immigration court.

79 Muzaffar Chishti and Kathleen Bush-Joseph, “U.S. Border Asylum Policy Enters New Territory Post-Title 42,” *Migration Information Source*, May 25, 2023.

80 Kate Huddleston, “Ending PACR/HARP: An Urgent Step Toward Restoring Humane Asylum Policy,” *Just Security*, February 16, 2021.

81 Declaration of Blas Nuñez-Neto, Assistant Homeland Security Secretary, Border and Immigration Policy, *M.A. et al v. Alejandro Mayorkas*.

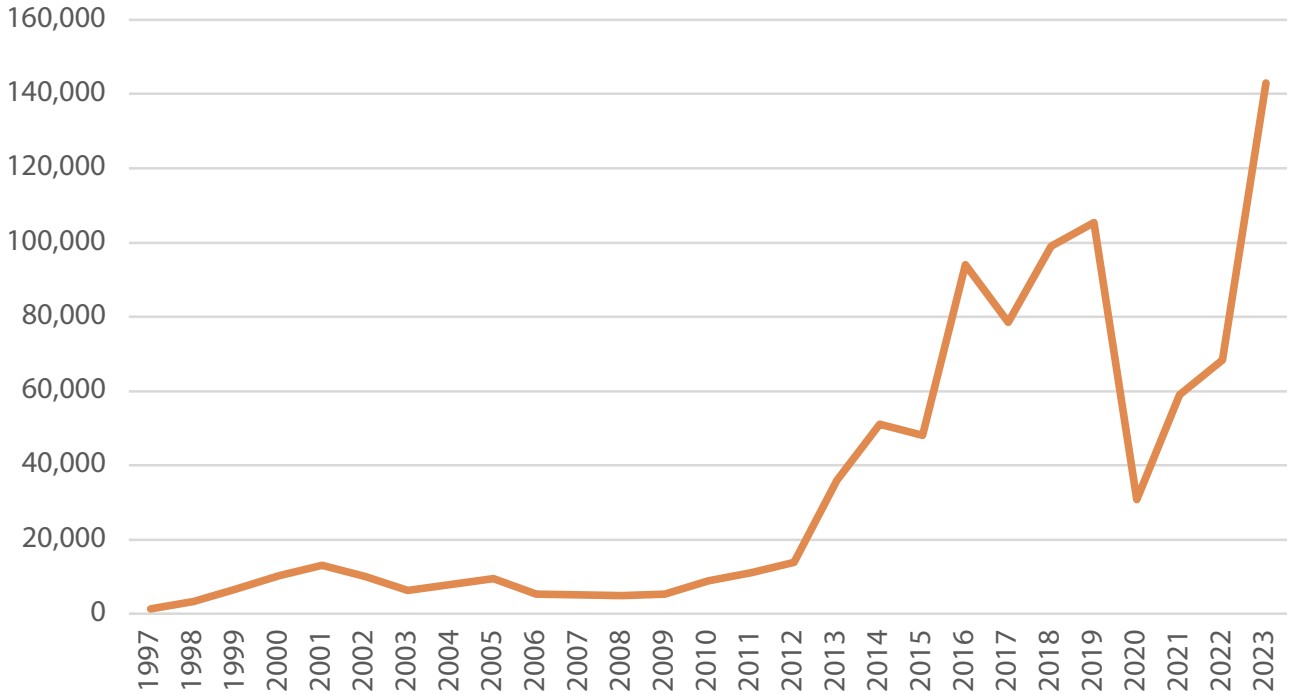
82 Chishti and Bush-Joseph, “U.S. Border Asylum Policy Enters New Territory Post-Title 42.”

83 TRAC Immigration, “Immigration Detention Quick Facts,” accessed November 27, 2023.

84 Chishti and Bush-Joseph, “U.S. Border Asylum Policy Enters New Territory Post-Title 42.”

Previously, the most credible-fear interviews DHS ever conducted was 103,000 in FY 2019.⁸⁵ In FY 2023, USCIS received a record 143,000 credible-fear interview referrals (see Figure 1).

FIGURE 1
Credible-Fear Interview Referrals to USCIS from CBP and ICE, by Fiscal Year, 1997-2023



Note: Data represent individuals.

Sources: Andorra Bruno, *Immigration: U.S. Asylum Policy* (Washington, DC: Congressional Research Service, 2019), 37; U.S. Citizenship and Immigration Services (USCIS), “Semi-Monthly Credible Fear and Reasonable Receipts and Decisions,” accessed November 1, 2023; USCIS, “Asylum Quarterly Engagement Fiscal Year 2023, Quarter 4, Presentation, September 19, 2023,” September 19, 2023.

Litigation has also threatened the administration’s post-Title 42 border plans. The American Civil Liberties Union (ACLU) and other immigrant-rights groups challenged the circumvention of lawful pathways rule, contending that it marks a return to the Trump administration’s practices, especially the restrictions on access to asylum and screenings in custody without legal counsel.⁸⁶ A federal judge found the rule unlawful, but it remains in place during appeal proceedings, which may ultimately reach the Supreme Court.⁸⁷

⁸⁵ DHS, Office of Homeland Security Statistics, “Credible Fear Cases Completed and Referrals for Credible Fear Interview,” accessed November 22, 2023.

⁸⁶ Priscilla Alvarez, “Federal Judge Blocks Biden’s Controversial Asylum Policy in a Major Blow to Administration,” CNN, July 26, 2023.

⁸⁷ Chishti and Bush-Joseph, “U.S. Border Asylum Policy Enters New Territory Post-Title 42.”

5 Access and National Asylum Procedures

The U.S. asylum adjudication system faces greater strain than at any time in its history. With each passing year, application filings break records as recent border arrivals seek asylum, in some cases to be able to obtain work permits. Adjudications cannot keep up with the rapidly increasing number of incoming cases, especially as resources are focused on border screenings to facilitate removals. In the 1990s, the immigration service tackled backlogs by scheduling cases on a “last-in, first-out” basis and by hiring more adjudicators. Today, however, USCIS and the immigration courts have not received adequate funding, nor can they hire quickly enough to deal with vastly different populations of asylum seekers and more complex asylum law. Various projections suggest it could take a decade or more for the courts to become current on their dockets, for example.⁸⁸ These delays mean that asylum seekers in need of protection do not receive it in a timely manner and the efficacy of border management policies is undermined, since asylum seekers cannot be removed until their applications are denied, which currently takes years. Delays also incentivize the use of the asylum pathway by individuals who may not have a protection need.

The pandemic and related shutdowns of government services exacerbated these long-standing issues and backlogs ballooned as a result. But the pandemic also accelerated the adoption of technology and has led to increased efficiencies, in particular at the immigration courts. The Biden administration has introduced reforms such as the asylum officer rule, which allows for faster, nonadversarial adjudication of asylum applications, as well as various court management procedures. But progress has been stymied by a singular focus on lowering border arrival numbers and the lack of congressional action.

A. *The U.S. Asylum System*

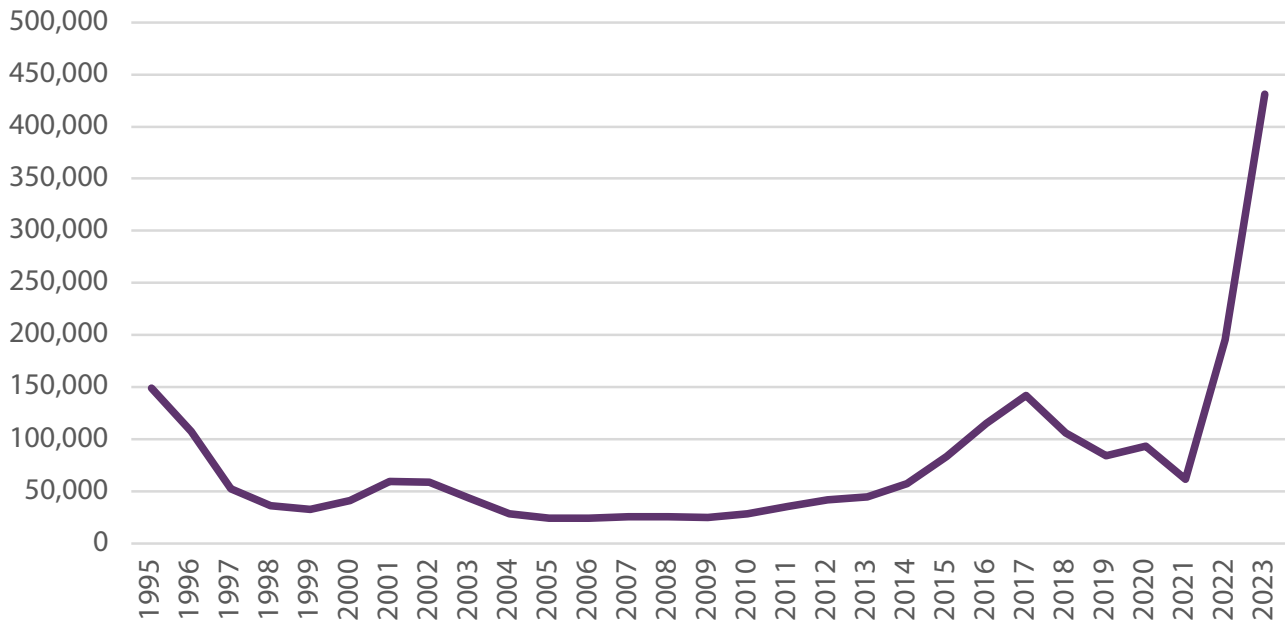
U.S. law provides that asylum may be granted to an asylum seeker who applies in accordance with applicable requirements and is determined to be a refugee. The law defines a refugee as a person who is outside their country of nationality and is unable or unwilling to return to, or avail themselves of the protection of, that country because of persecution or a well-founded fear of persecution based on one of five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion.⁸⁹ Asylum applications are decided on a case-by-case basis.

As was described in the legal framework section above, the evolution of U.S. asylum law through the issuance of regulations and court decisions has meant that cases are incredibly complex to prepare and adjudicate. Asylum applications are filed in the U.S. interior at USCIS asylum offices or EOIR, the immigration court system, depending on whether a noncitizen is in removal proceedings. There is no fee for applying for asylum and U.S. law states that cases are to be adjudicated within six months, though backlogs have prevented this from happening for years.

⁸⁸ Holly Straut-Eppsteiner, *Immigration Judge Hiring and Projected Impact on the Immigration Courts Backlog* (Washington, DC: CRS, 2023).

⁸⁹ *Immigration and Nationality Act*, Section 101(a)(42).

FIGURE 2
Affirmative Asylum Cases Filed at USCIS, by Fiscal Year, 1995-2023



Notes: Data represent applications, which can cover multiple individuals, and are limited to new filings. Reopened applications are not included.

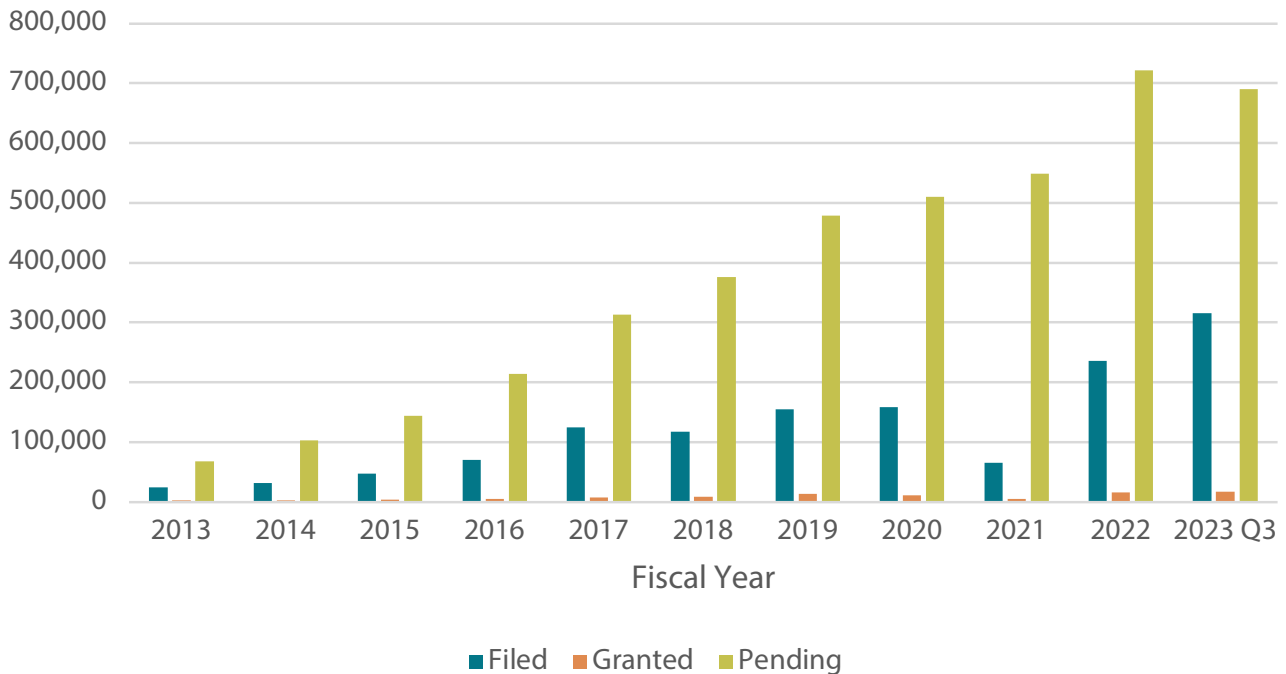
Sources: Bruno, *Immigration: U.S. Asylum Policy*, 33; USCIS, “Affirmative Asylum Statistics FY 2019,” accessed October 2, 2023; USCIS, “Number of Service-wide Forms Fiscal Year to Date by Quarter and Form Status Fiscal Year 2020,” accessed October 2, 2023; USCIS, “Number of Service-wide Forms Fiscal Year to Date by Quarter and Form Status Fiscal Year 2021,” accessed October 2, 2023; USCIS, “Number of Service-wide Forms By Quarter, Form Status, and Processing Time July 1, 2022 – September 30, 2022,” accessed November 27, 2023; USCIS, “Asylum Quarterly Engagement Fiscal Year 2023, Quarter 4, Presentation, September 19, 2023.”

Individuals already present in the United States who are not in removal proceedings in immigration court may apply for asylum affirmatively with USCIS, provided they do so within one year of U.S. entry. These cases are adjudicated by asylum officers who either grant the application or refer certain unsuccessful applicants to the immigration courts. Individuals whose cases are referred to the immigration courts then have their asylum claims heard anew by an immigration judge as a defence against removal.

Noncitizens who have been apprehended and placed in removal proceedings, and whose cases are thus already before an immigration judge, may apply for asylum defensively, as a defense against being removed. Immigration judges hear these cases and ICE attorneys generally prosecute the government case for removal.

FIGURE 3

Defensive Asylum Applications Filed, Granted, and Pending at U.S. Immigration Courts, FY 2013-23



Notes: Data for fiscal year (FY) 2023 are through the third quarter. These data represent defensive asylum applications filed in removal, exclusion, and asylum-only proceedings and are for U.S. federal government fiscal years, which run from October 1 to September 30. Sources: EOIR, “Executive Office for Immigration Review Adjudication Statistics: Defensive Asylum Applications,” accessed September 29, 2023.

Noncitizens who express a fear of return to their home country at or near the U.S. border may be placed in expedited removal and receive a credible-fear screening by USCIS asylum officers. The screening determines whether a migrant has a “significant” possibility of establishing eligibility for asylum, withholding of removal, or protection in the United States under the Convention Against Torture. Those who pass this credible-fear screening generally are placed in immigration removal proceedings and may apply for asylum defensively in court.

As described above, under the asylum officer rule that is being applied to a limited number of cases, certain applicants who are found to have demonstrated a credible fear of persecution are referred for a nonadversarial asylum merits interview with a USCIS asylum officer and may be granted asylum without ever being placed in removal proceedings. Also as described above, under the circumvention of lawful pathways rule, noncitizens who arrive without authorization are generally deemed ineligible for asylum. They are screened for fear of persecution under a higher standard than normal (reasonable fear) and may only be eligible for withholding of removal or protection under the Convention Against Torture.

Children under age 18 traveling without a parent or guardian are not subject to expedited removal and are instead processed in accordance with a special protective procedure established by the *William Wilberforce Trafficking Victims Protection Reauthorization Act* of 2008. Unaccompanied minors from countries other than Mexico or Canada are placed into immigration court proceedings, but may still apply

for asylum affirmatively at USCIS, which retains jurisdiction of their applications while they are deemed unaccompanied. Unaccompanied children from Mexico and Canada who are determined not to have been a victim of trafficking or have a fear of persecution in their home country and have the capacity to make an independent decision to withdraw their application for U.S. admission may be quickly returned.

Asylum applicants who are not otherwise eligible to work in the United States can be granted a work permit 180 days after filing their asylum application and are generally ineligible to receive federal public benefits. A migrant who has been granted asylum (an “asylee”) may work indefinitely and receive approval to travel abroad. An asylum grant does not expire, but it may be terminated under certain circumstances, such as if the asylee is determined to no longer meet the legal definition of a refugee. After one year as an asylee, an individual can apply to become a U.S. lawful permanent resident (refugees are required to apply for such status within a year of U.S. entry). Asylees and admitted refugees may petition for their spouse and/or unmarried children who are under age 21 to join them in the United States. Recipients of withholding and CAT protection may not petition for their family members.

B. Affirmative Asylum Application Process

At USCIS, migrants apply for asylum by filing a form online or by mail with supporting evidence, which may include written affidavits, country conditions evidence, and police or medical records from the country of origin. Applications can include spouses and minor children as derivative applicants.⁹⁰ Asylum applicants must be interviewed by asylum officers in a “nonadversarial” manner.⁹¹ During the pandemic, USCIS provided interpretation by phone, but as of September 2023, applicants must again provide their own in-person interpreter. USCIS policy is to schedule interviews on a “last-in, first-out” basis, to try to reduce the incentive to file an asylum application just to receive work authorization while the case is pending. Due to resource constraints discussed below, this scheduling policy has been ineffective recently, though it helped with backlog reduction in the 1990s.

Supervisors review asylum officers’ decisions on asylum applications and may refer them for additional review.⁹² If asylum is granted, USCIS issues the individual a letter and form documenting the grant. If the asylum officer determines that an applicant is not eligible for asylum or is not granted asylum based on discretion and the individual appears to be removable, USCIS refers the case to the immigration courts where the asylum application is assessed again during removal proceedings.⁹³ Asylum officers approved about 28 percent of asylum cases in FY 2020, though it is important to note that the immigration courts grant a high percentage of cases that USCIS does not approve.⁹⁴ In FY 2021, immigration judges granted two-thirds of cases that USCIS had referred.⁹⁵

⁹⁰ Dependents can also file their own applications as principals (as some may have independent bases for their claims to asylum).

⁹¹ Applicants may opt to waive their interview. This option has been offered to and exercised by applicants seeking a status called cancellation of removal, which requires being placed in removal proceedings. See Meissner, Hipsman, and Aleinikoff, *The U.S. Asylum System in Crisis*.

⁹² Bruno, *Immigration: U.S. Asylum Policy*, 4.

⁹³ Bruno, *Immigration: U.S. Asylum Policy*, 4.

⁹⁴ Human Rights First, “USCIS Records Reveal Systemic Disparities in Asylum Decisions” (fact sheet, May 2022).

⁹⁵ Human Rights First, “USCIS Records Reveal Systemic Disparities in Asylum Decisions.”

There are 11 asylum offices around the country and as of September 2023, USCIS had 760 asylum officers, with authorization to reach a total of 1,028.⁹⁶ In FY 2023, more than 431,000 affirmative asylum applications were filed at USCIS.⁹⁷ Given the fact that asylum officers adjudicated about 50,000 cases that year, the backlogs are only going to continue growing. As of September 19, 2023, there were more than 1 million pending affirmative asylum cases, a record.⁹⁸

Asylum officers must also handle asylum merits interviews for cases processed pursuant to the 2022 asylum officer rule, although few cases are being processed in that manner.⁹⁹ Asylum officers must also handle credible-fear screenings at the border, which are conducted remotely with officers calling into CBP and ICE facilities. Credible fear-receipts have reached unprecedented highs, with USCIS receiving 143,000 referrals in FY 2023.¹⁰⁰

Indeed, the Biden administration's focus on the border has meant that asylum officers have been redirected to conducting credible-fear interviews for recent arrivals, instead of asylum interviews for those with long-pending applications. Asylum interviews were cancelled in May 2023 as the government prepared for an influx of migrant arrivals with the end of the Title 42 expulsions policy. Given the competing demands for asylum officer time and resources, applicants can wait years for an asylum interview. Congress mandated deadlines for the adjudication of Afghan asylum cases after the emergency evacuation from Kabul in fall 2021, but USCIS has not met those deadlines and immigrant-rights advocates brought a lawsuit to try to speed adjudications.¹⁰¹

Funding for asylum processes has been insufficient.

Funding for asylum processes has been insufficient in recent years. USCIS is largely a fee-funded agency (unlike most agencies in the federal government), with fees from nonhumanitarian applications supporting the work of the humanitarian section, including for asylum adjudications. In the early 1990s, when the U.S. government decided to not require a fee for asylum applications, humanitarian case work represented a much smaller percentage of the caseload. Today, that portfolio has ballooned, and the humanitarian parole programs are also free for applicants. In FY 2022, Congress appropriated \$250 million to tackle the asylum backlog, but the mismatch between incoming cases and funding means that the pending caseload has continued to grow. In 2023, USCIS proposed funding asylum adjudications by levying a \$600 surcharge on the more than 700,000 employment-based visa petitioners and beneficiaries who apply each year.¹⁰² That proposal is part of a fee rule expected to be finalized within the next year.

⁹⁶ USCIS, "Asylum Quarterly Engagement Fiscal Year 2023, Quarter 4, Talking Points from September 19, 2023" (September 19, 2023).

⁹⁷ USCIS, "Asylum Quarterly Engagement Fiscal Year 2023, Quarter 4, Presentation, September 19, 2023."

⁹⁸ Comments made by a government official during USCIS Asylum Quarterly Engagement, Fiscal Year (FY) 2023 Quarter 4 conference call with nongovernmental representatives, September 19, 2023.

⁹⁹ As of June 2023, about 6,000 cases had been screened under the asylum officer rule. See DHS, "Asylum Processing Rule Cohort Reports," accessed October 27, 2023.

¹⁰⁰ USCIS, "Asylum Quarterly Engagement Fiscal Year 2023, Quarter 4, Presentation, September 19, 2023."

¹⁰¹ National Immigrant Justice Center, "Ahmed Et Al. V. DHS Et Al," September 11, 2023.

¹⁰² American Immigration Council (AIC), *Beyond a Border Solution: How to Build a Humanitarian System that Won't Break* (Washington, DC: AIC, May 2023), 22.

C. *Defensive Asylum Application Process and Appeals*

An asylum seeker applies in the immigration courts by filing an application form online or on paper. Asylum is a defense to removal, and proceedings in the courts are adversarial, with an ICE attorney generally prosecuting the case for removal. The migrant or their representative may present evidence and call witnesses. If the asylum application was referred from USCIS, the applicant may supplement the evidence filed. The immigration courts provide interpreters for court proceedings. An immigration judge decides whether to grant asylum or other form of relief, or orders the noncitizen removed.

During the proceedings, an ICE attorney can agree to exercise prosecutorial discretion and stipulate to a grant of asylum or other relief, or to particular aspects of the case. Prosecutorial discretion is used for reasons including the efficient allocation of limited resources and the sitting administration's priorities for removal. Similarly, immigration judges can decide to administratively close or terminate a case if they determine that a case is not ripe for adjudication—for example, because an unaccompanied child has a pending asylum application at USCIS that must be decided before a judge can order the child removed, or because ICE has agreed to exercise prosecutorial discretion in the case.

The exercise of prosecutorial discretion, termination of cases, and appeal rates mean that it is difficult to determine grant rates for relief from removal, especially since an individual's asylum application may not be adjudicated or even filed with the immigration courts before a case is closed. As of the third quarter of FY 2023, the immigration courts had granted 24,000 asylum applications, a rate of 15 percent; an additional 110,000 cases were not adjudicated or were administratively closed, among other options.¹⁰³

Within 30 days of an immigration judge's decision, the individual or ICE may appeal to the Board of Immigration Appeals, which is also housed within the Justice Department. The board generally does not require parties to appear, instead conducting paper reviews of cases. If the board affirms a removal order, the individual has 30 days to file a petition for review at a federal court of appeal, though there is no automatic stay of removal during the pendency of such an appeal absent a court-issued stay.¹⁰⁴ Finally, a case may be appealed to the Supreme Court, which has discretion to decide whether to hear such a request.

There are about 70 immigration courts nationwide and 660 immigration judges.¹⁰⁵ The Board of Immigration Appeals has 23 judges.¹⁰⁶ The immigration courts had 2.16 million removal cases pending as of July 2023, of which 851,000 were asylum cases, a number that is expected to rise as recent border arrivals file asylum applications.¹⁰⁷ As of July 2023, the Board of Immigration Appeals had 107,000 pending cases.¹⁰⁸ In FY 2020, more than one in five immigration court decisions were appealed to the Board of Immigration Appeals.¹⁰⁹ The enormous number of cases pending means that asylum seekers wait an average of four years for

103 EOIR, "Asylum Decision Rates" (fact sheet, July 2023).

104 Holly Straut-Eppsteiner, *U.S. Immigration Courts and the Pending Cases Backlog* (Washington, DC: CRS, 2022), 11.

105 EOIR, "Immigration Court List – Administrative Control," updated October 30, 2023; EOIR, "Immigration Judge (IJ) Hiring," July 2023.

106 EOIR, "Board of Immigration Appeals," updated September 7, 2023.

107 EOIR, "Executive Office for Immigration Review Adjudication Statistics: Pending Cases, New Cases, and Total Completions" (fact sheet, July 2023); EOIR, "Total Asylum Applications" (fact sheet, July 2023).

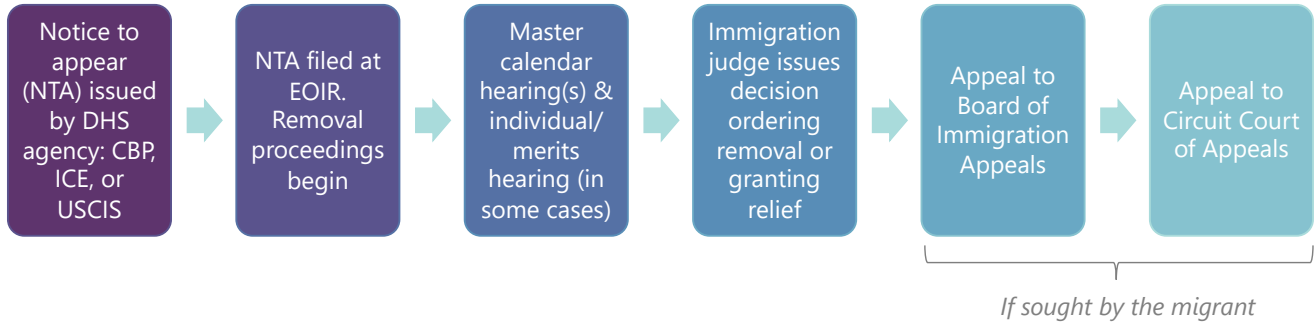
108 EOIR, "Case Appeals Filed, Completed and Pending" (fact sheet, July 2023).

109 Muzaffar Chishti et al., *At the Breaking Point: Rethinking the U.S. Immigration Court System* (Washington, DC: MPI, 2023).

their asylum merits hearing to be scheduled, and it can take years after that to reach a final decision given possible appeals.

FIGURE 4

Removal Proceeding Process for Asylum Cases in Immigration Court and Appeals



Source: Adapted from Muzaffar Chishti et al., *At the Breaking Point: Rethinking the U.S. Immigration Court System* (Washington, DC: MPI, 2023), based on Hillel R. Smith, “Formal Removal Proceedings: An Introduction” (In Focus Brief, Congressional Research Service, Washington, DC, June 2021).

During the pandemic, the immigration courts rapidly expanded the use of video teleconference and internet-based hearings so that proceedings could continue remotely, with parties being able to appear from different locations. Officials have indicated that this has made the courts more efficient, though due process concerns remain, particularly for vulnerable groups such as children.¹¹⁰ In FY 2022, 324,000 hearings were conducted by video teleconference and 339,000 via internet platform, up from 252,000 video teleconference and 75 internet-based hearings in 2019.¹¹¹ In combination with docket management strategies, these measures allowed judges to complete an estimated half a million cases in FY 2023— more cases than ever before.

EOIR’s budget has grown to \$860 million, up from \$188 million in 2003. This funding has not kept pace with the influx of new cases being filed by DHS’ enforcement components, which have received vast infusions of new resources over the past two decades.¹¹²

D. Standards for Granting Asylum and Limitations on Access

U.S. laws provide limitations on the ability to apply for asylum and the ability to be granted asylum.

Limitations on Applying for Asylum

Bars to applying for asylum include: not meeting the deadline to apply within one year of U.S. entry, previous denial of asylum in the United States, and when an individual may be removed pursuant to a safe third country agreement to a country where they would have “access to a full and fair procedure” for seeking

110 American Immigration Lawyers Association, “Use of Video Teleconferences During Immigration Hearings,” May 5, 2022.

111 EOIR, “Hearings Adjudgments by Medium and Fiscal Year” (fact sheet, July 2023).

112 DOJ, “Summary of Budget Authority by Appropriation, 2003-2005,” data tables, March 2004; EOIR, “FY 2024 Budget Request at a Glance” (fact sheet, March 2023).

asylum.¹¹³ The United States and Canada maintain a Safe Third Country Agreement that was recently upheld by the Supreme Court of Canada.¹¹⁴

Limitations on Grants of Asylum

A migrant who may otherwise be eligible for asylum could still be barred if: they persecuted others, have been convicted of a particularly serious crime, there are “serious” reasons to believe that the individual committed a serious nonpolitical crime outside the United States, there are “reasonable grounds for regarding the alien as a danger to the security of the United States,” an applicant is subject to certain terrorism-related grounds of removability, or the individual was firmly resettled in another country prior to U.S. arrival.¹¹⁵ If the U.S. government presents evidence that a bar applies, the applicant must prove that it is more likely than not that the bar does not apply.¹¹⁶

U.S. law provides that the government may impose additional limitations and conditions under which an asylum seeker shall be ineligible for asylum, and both the Trump and Biden administrations cited this provision when promulgating regulations limiting access to asylum. Federal court orders blocked the Trump rules; court challenges to the Biden administration’s circumvention of lawful pathways rule, among others, are ongoing.¹¹⁷

E. *Withholding of Removal and Protection Under the Convention Against Torture*

Individuals barred from applying for or being granted asylum may seek protection in the form of withholding of removal, or under the Convention Against Torture. When filing for asylum, an applicant checks a box on the application form indicating that they also seek to be considered for subsidiary forms of protection: withholding of removal and Convention Against Torture protection. These statuses can be granted if the individual is found ineligible for or is deemed undeserving of a discretionary grant of asylum; USCIS has no authority to adjudicate such claims. Immigration judges decide whether to grant withholding or Convention Against Torture protection during removal proceedings, either after an applicant has been referred from USCIS following an affirmative asylum interview or asylum merits interview conducted pursuant to the asylum officer rule, or if the noncitizen applied defensively in the immigration courts.

Withholding requires showing that it is “more likely than not” that the applicant will be persecuted because of one of the five protected grounds, which is a higher burden of proof than the well-founded fear standard for asylum. There are also statutory bars to the grant of withholding, and some overlap with the asylum bars, including a conviction for a particularly serious crime.

113 Hillel R. Smith, *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part One)* (Washington, DC: CRS, 2022), 3.

114 Honorable Sean Fraser, Minister of Immigration, Refugees, and Citizenship, “Statement from Minister Fraser Concerning the Supreme Court’s Decision on the Safe Third Country Agreement” (news release, Government of Canada, June 16, 2023).

115 Hillel R. Smith, *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part Two)* (Washington, DC: CRS, 2022), 1-5.

116 Smith, *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part Two)*, 1.

117 Bolter, Israel, and Pierce, *Four Years of Profound Change*.

An individual ineligible for asylum may also seek protection under the Convention Against Torture—deferral of removal. The applicant must show that it is “more likely than not” that they will be tortured by a public official or other person acting with the consent or acquiescence of an official. The applicant need not show that the torture would be based on one of the five protected grounds for asylum or withholding.

Withholding and Convention Against Torture protection are mandatory forms of relief and may not be denied as a matter of discretion, unlike asylum (as was mentioned above, U.S. law varies from international law in that officials may deny asylum even for those who are found eligible). But these protections do not provide a path to lawful permanent residence, and only prevent return to the country where the noncitizen fears persecution or torture. U.S. officials could remove a grantee to a third country.¹¹⁸ In FY 2023, the immigration courts granted withholding to about 1,100 individuals and Convention Against Torture protection to about 200 noncitizens, though as with asylum cases, the exercise of prosecutorial discretion and administrative closure or termination of cases may mean that other eligible individuals’ claims were not adjudicated.¹¹⁹ Individuals who are granted withholding or protection under the Convention Against Torture are authorized by regulation to request work permits.

F. Other Protections for Unauthorized Migrants Already in the United States

In addition to asylum, withholding, and Convention Against Torture protection, U.S. immigration laws provide the executive branch the authority to grant temporary forms of protection for certain noncitizens already in the United States without authorization, as well as temporary lawful entrance into the country (see Extraterritorial Access to Asylum section below). The Biden administration’s embrace of these protections has resulted in a growing number of individuals who hold such temporary statuses; as of November 2023, there were about 2 million such migrants, including many who were already living in the United States without authorization.¹²⁰ These liminal (or “twilight”) immigration statuses do not confer a path to legal permanent residence, but temporarily shield recipients from deportation for at least one year, and in many cases, offer permission to work legally.

Temporary Protected Status and Deferred Enforced Departure

U.S. immigration laws grant the Homeland Security Secretary the authority to designate certain countries—or parts of countries—for Temporary Protected Status (TPS). Noncitizens who are nationals of a designated country—or stateless individuals who last habitually resided in a designated country—may be granted TPS depending upon when they arrived in the United States. TPS provides relief from deportation for up to 18 months at a time and eligibility to apply for work authorization. TPS can be offered to nationals of countries facing conditions that prevent their safe return, including natural disaster or war.

118 Smith, *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part One)*, 2.

119 EOIR, “FY 2023 Third Quarter Decision Outcomes” (fact sheet, July 2023).

120 It is likely that some of these individuals have switched between temporary statuses or been able to obtain a more permanent status, such as asylum. Updated from author’s calculations in Chishti and Bush-Joseph, “In the Twilight Zone.”

The TPS authority was first enacted in 1990 and every administration—Democratic and Republican alike—has granted and/or extended TPS designations. In total, 28 countries have at some point been designated for TPS. Hundreds of thousands of individuals from countries such as El Salvador, Somalia, and Nicaragua have had TPS for more than 20 years and a small number of Somali individuals have had TPS for more than 30 years.¹²¹ Approximately 611,000 immigrants held TPS as of March 2023, but hundreds of thousands more were eligible to apply as a result of recent redesignations for Afghanistan, Cameroon, South Sudan, Sudan, Ukraine and Venezuela, which allow individuals who arrived after the cutoff date for the previous designation to apply.¹²²

Under the Biden administration, new TPS designations have been issued for six countries (Afghanistan, Cameroon, Ethiopia, Myanmar [also known as Burma], Ukraine, and Venezuela), and extended for ten others (El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, and Yemen). The government has also granted or extended a similar protection, Deferred Enforced Departure (DED), for certain people from Hong Kong and Liberia, with an estimated 3,900 and 2,800 covered respectively. USCIS and the immigration courts can adjudicate TPS applications. Processing delays have significantly affected the issuance of TPS and associated work authorization, with wait times stretching to 20 months for USCIS to process an application for a Venezuelan national, a longer period than the status itself.¹²³

Deferred Action

Deferred action is another form of protection used to defer the removal of certain unauthorized migrants already in the United States. It is based on the executive branch's prosecutorial discretion authority and is granted by DHS. Among the most well-known deferred action initiatives is the Deferred Action for Childhood Arrivals (DACA) program, which was established in 2012. DACA was created to protect from deportation certain young adults who were brought to the United States as children and to provide them with work authorization for temporary, renewable periods. DACA has been the subject of litigation that has resulted in court orders keeping the program alive amid efforts by the Trump administration and Republican-led states to terminate it but blocking new applications. Approximately 800,000 people have benefitted from the program over its lifetime, and 579,000 were registered as of March 2023.¹²⁴

The government has granted deferred action to tens of thousands of other unauthorized immigrants, also protecting them from removal and allowing them to apply for work permits. As of August 2023, nearly 78,000 witnesses or victims of crimes with a U visa application that the government has deemed bona fide had received deferred action for four years, along with about 80,000 abused, abandoned, or neglected youth granted Special Immigrant Juvenile status (SIJS).¹²⁵ These programs address the waits migrants face due to annual numerical caps set by Congress—resulting visa backlogs can prevent migrants from obtaining lawful permanent residence for years.¹²⁶

121 Jill H. Wilson, *Temporary Protected Status and Deferred Enforced Departure* (Washington, DC: CRS, 2023).

122 Chishti and Bush-Joseph, "In the Twilight Zone."

123 Chishti and Bush-Joseph, "In the Twilight Zone."

124 USCIS, "Count of Active DACA Recipients," various dates.

125 Chishti and Bush-Joseph, "In the Twilight Zone."

126 Chishti and Bush-Joseph, "In the Twilight Zone."

G. Legal Representation

The lack of legal representation is a critical issue plaguing the U.S. asylum system and other forms of protection. Immigration proceedings are civil in nature and most noncitizens are not entitled to government-provided legal counsel, as defendants in criminal proceedings are. Nonetheless, migrants can face life-threatening circumstances upon being ordered removed. Repeatedly, studies have found that representation in immigration proceedings improves due process and fair outcomes.¹²⁷ Representation also increases efficiency as migrants with counsel move more quickly through immigration court. Lawyers, accredited representatives, immigration help desks, and legal orientation programs aid some noncitizens. However, many migrants are unable to obtain or afford counsel. The lack of access to counsel and case management assistance means that many eligible migrants do not apply for the various forms of protection and/or work permits.¹²⁸

The lack of legal representation is a critical issue plaguing the U.S. asylum system and other forms of protection.

Legislation effectively barred federal funding for representation of individuals in removal proceedings, though at state and local levels, public funding has increased the availability of representation for some. Nonprofit legal services organizations and pro bono law firm resources provide representation to some migrants. Yet given the scale of the need, representation remains fragmented and insufficient.¹²⁹

Significant disparities between outcomes for represented and unrepresented respondents demonstrate the need for increased access to legal representation. Of noncitizens who were granted relief in immigration court cases started between FY 2011 and FY 2019, 92.8 percent were represented, and 7.1 percent were not. Of those who were ordered removed during the same timeframe, 18.8 percent were represented and 81.1 percent were not.¹³⁰ Since FY 2018, the proportion of respondents who were represented at some point in the immigration court process has generally decreased.¹³¹ As of July 2023, 43 percent of respondents in pending removal proceedings were represented.¹³² Data on the rate of representation at USCIS are not available.

Increasingly, experts recognize the ability of non-lawyer legal service providers to increase access to justice, and the Biden administration has taken measures to increase the number of accredited representatives available to assist individuals in proceedings. Accredited representatives are non-lawyers authorized by EOIR's Office of Legal Access Programs to represent noncitizens who are unable to afford a lawyer in deportation proceedings and other immigration matters. However, more efforts will be needed to expand

127 Studies from 2015 and 2018 found that legal representation led to more efficiency in immigration proceedings. Migrants with representation sought fewer unmeritorious claims, had a greater chance of being released from detention, and were more likely to appear at hearings following release. See Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164, no. 1 (2015): 59–75; Emily Ryo, "Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings," *Law and Society Review* 52, no. 2 (2018): 503–31.

128 Chishti et al., *Rethinking the U.S. Immigration Court System*, 2–3.

129 Chishti et al., *Rethinking the U.S. Immigration Court System*, 3.

130 TRAC Immigration, "Details on Deportation Proceedings in Immigration Court," accessed June 14, 2023.

131 EOIR, "Current Representation Rates" (fact sheet, July 2023).

132 EOIR, "Current Representation Rates."

access to legal representation, including through the expanded use of technology and public-private partnerships.

6 Extraterritorial Access to Asylum

Extraterritorial access to protection in the United States has historically come primarily through humanitarian parole and the refugee resettlement program. Under the Biden administration, DHS and the State Department have launched innovative programs to increase access to protection closer to home, targeting groups from Latin America and the Caribbean that are likely to attempt the often-dangerous journey to the United States. For the first time, migration to the United States is truly hemispheric in nature and the U.S. government is reinforcing commitments made in support of the Los Angeles Declaration on Migration and Protection with other governments in the region. To this end, the United States has expanded labor migration options for Central Americans in the few ways possible without congressional action, with seasonal agricultural and nonagricultural employment visas increasing from 275,000 in 2020 to more than 422,000 in 2022.¹³³

The largest expansion of options for entry has come through various sponsorship-based parole initiatives. These programs allow U.S. citizens and lawful permanent residents to request entry for certain migrants, provided they sponsor them financially; these have resulted in the arrival of hundreds of thousands of individuals. Newly established Safe Mobility Offices in Colombia, Costa Rica, Ecuador, and Guatemala, with future ones planned in other parts of Latin America, are also part of the strategy to reach migrants in their countries of origin to screen them for protection, employment, and other pathways to the United States, Canada, and Spain, though the initiative remains in the early stages.¹³⁴

A. Refugee Resettlement Program and Humanitarian Parole Authority

The United States does not conduct pre-screening for asylum outside the country, but the *Immigration and Nationality Act* allows the government to grant parole to migrants facing urgent humanitarian concerns or for significant U.S. public benefit. Parole provides lawful entrance to the United States and eligibility to request work authorization. Before the establishment of a formal refugee resettlement system in the 1980s, the government granted parole to large numbers of people fleeing conflict or persecution, including to 30,000 Hungarians in the 1950s, 15,000 Chinese in the 1960s, and more than 120,000 Vietnamese in the 1970s.¹³⁵

Congress passed the *Refugee Act* in 1980 partly in response to those situations, recognizing the growing need for a more routinized process to provide protection to refugees and other displaced people, particularly those fleeing communism. Since 1980, the United States has admitted more than 3 million

¹³³ Andrew Selee, “The Border Crisis That Wasn’t: Washington Has Found a Formula for Managing Migration—and Now Must Build on It,” *Foreign Affairs*, August 9, 2023.

¹³⁴ DHS, “U.S. Government Announces Sweeping New Actions to Manage Regional Migration” (fact sheet, April 2023).

¹³⁵ Chishti and Bush-Joseph, “In the Twilight Zone.”

refugees.¹³⁶ Under U.S. law, the president sets an annual cap on the number of refugees who may be admitted following a required consultation with Congress. The Biden administration set a cap of 125,000 refugees for FY 2023, but admitted just 60,000, partly due to Trump-era actions that dramatically reduced resettlement capacity.¹³⁷ Under the Trump administration, just 11,411 refugees were admitted in FY 2021—the lowest level in the resettlement program’s four decades.¹³⁸

The Western Hemisphere has not historically been a priority region for refugee processing and the Biden administration announced plans in 2023 to double the number of refugees admitted from the region, up to 40,000, in conjunction with its other efforts to manage migration in the region, including the Safe Mobility Offices.¹³⁹ The FY 2024 refugee resettlement allocation included a further increase to 50,000 slots for refugees from the hemisphere.¹⁴⁰

The administration has undertaken efforts to rebuild and modernize the refugee resettlement system that have resulted in higher admissions and much faster processing than before. USCIS and the State Department’s Bureau of Population, Refugees, and Migration (PRM) work together to adjudicate refugee applications, which are now processed online. PRM typically arranges for U.S. embassy contractors and nonprofit or international organizations such as the United Nations High Commissioner for Refugees (UNHCR) to refer applicants and manage resettlement support centers that assist in refugee processing.¹⁴¹ An important difference between asylum and refugee processing is that refugee applicants do not face the same evidentiary requirements. Asylum seekers are expected to produce “corroborating evidence,” while the refugee process relies on the screening and referrals done by support centers to identify potential applicants, which takes place before interviews with USCIS refugee officers.¹⁴²

Another important advance in U.S. refugee admissions has been the introduction and expansion of concurrent processing, which is now taking place at sites in 14 countries. With concurrent processing, steps such as application review and medical evaluations, which would normally be done consecutively, are done at the same time. This has sped up processing times to as short as three months in some cases, down from a year or more.

In 2023, the Biden administration launched the Welcome Corps initiative, which is modeled after Canadian refugee sponsorship programs and allows groups to sponsor refugees if they raise \$2,425 per refugee, pass background checks, and submit an assistance plan.¹⁴³ The sponsors agree to take on the role of traditional

136 State Department, “[The Presidential Determination on Refugee Admissions for Fiscal Year 2024](#)” (press release, September 29, 2023).

137 Comments made by government official during USCIS and State Department Quarterly Refugee Processing Engagement conference call with nongovernmental representatives, September 20, 2023.

138 Camilo Montoya-Galvez, “[U.S. Aims to Resettle up to 50,000 Refugees from Latin America in 2024 under Biden Plan](#),” CBS News, September 20, 2021.

139 Montoya-Galvez, “U.S. Aims to Resettle up to 50,000 Refugees from Latin America.”

140 Montoya-Galvez, “U.S. Aims to Resettle up to 50,000 Refugees from Latin America.”

141 Name redacted, *Refugee Admissions and Resettlement Policy* (Washington, DC: CRS, 2018).

142 The REAL ID Act of 2005 established a requirement for corroborating evidence that applies to asylum seekers’ interviews at USCIS asylum offices and in immigration court. Regardless of whether an asylum seeker testifies credibly, “an adjudicator may deny the application simply because the applicant did not supply sufficient corroboration.” See Philip G. Schrag, Jaya Ramji-Nogales, and Andrew I. Schoenholtz, “[The New Border Asylum Adjudication System: Speed, Fairness, and the Representation Problem](#),” forthcoming, *Howard Law Journal* 66, no. 3, (2023), Temple University Legal Studies Research Paper No. 2022-25, 43-44.

143 State Department, “[Fact Sheet—Launch of Welcome Corps-Private Sponsorship of Refugees](#)” (fact sheet, January 2023).

resettlement agencies for at least 90 days after a refugee arrives and help with accessing housing, food, medical services, education, and public benefits. The initiative is beginning with refugees already in the pipeline, but there are plans to allow sponsors to identify individuals. The State Department aimed to recruit 10,000 private sponsors to resettle 5,000 refugees in the first year of the program.¹⁴⁴

USCIS hired and trained many new refugee officers in FY 2023 and there were 370 refugee officers as of September 2023.¹⁴⁵ Despite these improvements, a backlog remains. Some 50,000 refugee applications filed before 2018 were pending as of September 2023.¹⁴⁶ While complementary pathways for admission have been considered alongside resettlement, labor and education visas available in the United States are not suited for many refugees due to barriers such as the requirement for applicants to prove they intend to return to their home country and limited access to permanent residency.¹⁴⁷ Instead, the government has allowed for the admission of refugees who qualify for education and work opportunities under the Welcome Corps program, in the resettlement stream.

Although the refugee resettlement system has improved since reaching a resettlement low in FY 2021, the Biden administration has turned to humanitarian parole to much more quickly process the entry of people who might otherwise be admitted as refugees and/or face an urgent need for protection, such as some Afghans and Ukrainians fleeing war.¹⁴⁸ Additionally, DHS has used parole to reduce the number of unauthorized crossings and increase order, with it serving as an alternative for some migrants. As such, the government's use of parole under the Biden administration has vastly outstripped past practice.¹⁴⁹

B. *Parole Programs for Certain Nationalities*

New nationality-based parole programs have resulted in hundreds of thousands of migrants entering the United States legally via flights. These processes began in October 2022 for Venezuelans and in January 2023 for Cubans, Haitians, and Nicaraguans.¹⁵⁰ All four of these countries are experiencing severe political or economic turmoil and the U.S. government has been sharply constrained in its ability to remove nationals to these countries. In April 2023, a limited number of removals to Cuba resumed for the first time since 2020, and in October 2023 a limited number of removals to Venezuela also resumed. Removals to Haiti have taken place haltingly, given conditions on the ground in that country, but remain relatively low.

New nationality-based parole programs have resulted in hundreds of thousands of migrants entering the United States legally via flights.

144 Camilo Montoya-Galvez, "U.S. Launches Pilot Program to Allow Private Sponsorship of Refugees from around the World," CBS News, January 19, 2023.

145 Comments made by government official during USCIS and State Department Quarterly Refugee Processing Engagement, September 20, 2023.

146 Comments made by government official during USCIS and State Department Quarterly Refugee Processing Engagement, September 20, 2023.

147 Susan Fratzke et al., *Refugee Resettlement and Complementary Pathways: Opportunities for Growth* (Geneva and Brussels: UNHCR and Migration Policy Institute Europe, 2021).

148 Chishti and Bush-Joseph, "In the Twilight Zone."

149 Chishti and Bush-Joseph, "In the Twilight Zone."

150 DHS, "Data From First Six Months of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans Shows That Lawful Pathways Work" (fact sheet, DHS, July 25, 2023).

Under these parole processes for the four nationalities (known as the CHNV program), more than 168,000 people had been vetted and approved for travel to the United States as of mid-July.¹⁵¹ Migrants who cross the U.S.-Mexico border without authorization are generally barred from the program, which allows the entry of up to 30,000 of the four nationalities collectively each month. An equivalent number found to have crossed the border without authorization may be expelled to Mexico, which has initially resulted in decreases of encounters with the program nationalities at the U.S.-Mexico border, except for Venezuelans who reportedly lack the required sponsors and valid passports.

After the withdrawal of the U.S. military from Afghanistan and fall of Kabul to the Taliban, Operation Allies Welcome evacuated and paroled in 76,200 Afghans from August 2021 to September 2022.¹⁵² The U.S. government also paroled in more than 141,000 Ukrainians from April 2022 to July 2023 through Uniting for Ukraine, which was set up to receive individuals who fled Russia's invasion in February 2022.¹⁵³

Migrants arriving through these programs typically receive two years of parole and can apply for work permits, but they must seek another avenue to become lawful permanent residents. DHS has discretion to extend parole repeatedly, and USCIS has allowed Afghans and Ukrainians to temporarily extend their parole, but extensions have not been announced for other nationalities.¹⁵⁴

While the above parole programs do not provide a direct path to lawful permanent residence, the administration has restarted family reunification programs for certain migrants from Cuba and Haiti who are the beneficiaries of approved family-based immigrant visa petitions but who would otherwise be forced to wait abroad for a visa to become immediately available. The Biden administration has also recently created new family reunification programs modeled on these earlier ones for certain nationals from Colombia, Ecuador, El Salvador, Guatemala, and Honduras. The programs will allow more than 70,000 people to be considered for parole, letting them enter and remain in the United States while their application is processed.¹⁵⁵ The family reunification programs grant three years of parole while applicants await processing of their application for lawful permanent residence.¹⁵⁶ In October 2023, the administration announced the Ecuador program shortly before the country agreed to open Safe Mobility Offices, suggesting a *quid pro quo* arrangement.¹⁵⁷

151 Camilo Montoya-Galvez, "U.S. Has Welcomed More than 500,000 Migrants as Part of Historic Expansion of Legal Immigration Under Biden," CBS News, July 18, 2023.

152 Montoya-Galvez, "U.S. Has Welcomed More than 500,000 Migrants."

153 Montoya-Galvez, "U.S. Has Welcomed More than 500,000 Migrants."

154 Chishti and Bush-Joseph, "In the Twilight Zone."

155 DHS, "DHS Announces Family Reunification Parole Processes for Colombia, El Salvador, Guatemala, and Honduras" (press release, July 7, 2023).

156 Several other smaller programs have also provided parole for certain groups, including the Central American Minors program, an initiative for veterans who were previously deported, and an initiative to reunite separated families. Noncitizens can also request that DHS grant them parole or deferred action on an individual basis.

157 "As part of ongoing negotiations over the establishment of Safe Mobility Offices (SMOs) in Ecuador, the Government of Ecuador has repeatedly emphasized the critical importance of lawful pathways to the United States for Ecuadorians, including labor and family reunification pathways"; see DHS, "Implementation of a Family Reunification Parole Process for Ecuadorians," *Federal Register* 88, no. 220 (November 16, 2023): 78767; DHS, "DHS Announces Family Reunification Parole Process for Ecuador" (press release, October 18, 2023); State Department, "Announcement of Safe Mobility Office in Ecuador" (press release, October 19, 2023).

C. *Safe Mobility Offices*

As part of its effort to screen migrants for protection closer to home, the administration announced its intention to open Safe Mobility Offices¹⁵⁸ (SMOs) in countries throughout Latin America to vet possible candidates for refugee resettlement as well as other existing lawful pathways, such as parole programs and employment or family-based visas. Presently, offices with a limited set of services are open in Colombia, Costa Rica, Ecuador, and Guatemala. The offices are run by the International Organization for Migration (IOM) and UNHCR, with State Department and USCIS personnel assisting. The administration plans to open more offices in the hemisphere, and the Canadian and Spanish governments have joined the initiative and offer screening for refugee resettlement and employment-based visas.¹⁵⁹

SMOs do not in and of themselves increase the number of visas available to migrants—only Congress can do that. Therefore, the primary function of the offices at present is to provide information about the visa options and other pathways that are available to migrants, and to refer those in need of protection for screening by UNHCR.

Noncitizens access the SMOs via an online platform—walk-ins are not permitted and the offices' addresses are not publicly available, likely to prevent people from gathering outside them as has happened at regular visa processing facilities in Mexico.¹⁶⁰ While the U.S. parole programs offer a new manner of entry, they require that migrants have sponsors, valid passports, and pay for flights to the United States, limiting them to migrants with connections and resources. SMOs are not doing asylum pre-screening, likely due to legal limitations. Currently, specific penalties are not being imposed on migrants who visit the offices and then later travel to the U.S.-Mexico border without authorization. However, the circumvention of lawful pathways rule and pre-existing U.S. immigration laws mean that these migrants face removal proceedings and potential ineligibility for asylum.

Host countries have expressed concerns that SMOs could generate expectations about migration that cannot be met, and initial reporting indicates that the offices' capacity is limited. As of August 2023, 260 of the 29,000 applicants to the Colombian SMOs entered the U.S. refugee program.¹⁶¹ To avoid the presence of an SMO incentivizing additional people to migrate to the country where the office is located, host countries have set criteria making the offices available only to migrants who were already present at the time of the offices' announcement. Each country also has limited the nationalities that may access the SMOs, with most barring their own nationals from using them, Guatemala being the exception.¹⁶²

Capacity and migrant expectations are critical issues in Latin America and the Caribbean, where most of the 7.7 million Venezuelans displaced from their country remain, with many of the host countries having

158 UNHCR, "General Information on the 'Safe Mobility' Initiative," accessed November 24, 2023.

159 Selee, "The Border Crisis That Wasn't"; DHS, "United States and Canada Announce Efforts to Expand Lawful Migration Processes and Reduce Irregular Migration" (press release, March 24, 2023).

160 Jules Ownby, "A Three-Month Wait: New US Immigration Plan Marred by Secrecy and Uncertainty," *El Pais*, October 2, 2023.

161 Ownby, "New US Immigration Plan Marred by Secrecy and Uncertainty."

162 UNHCR, "General Information on the 'Safe Mobility' Initiative"; see, for example, "During its initial phase, Ecuador's SMO services will prioritize Cuban, Haitian, Nicaraguan, Venezuelan, and Colombian nationals present in Ecuador as of October 18 and who qualify as asylum petitioners or have registered with Ecuador's Ministry of Interior for a Certificate of Migratory Permanence." See also State Department, "Announcement of Safe Mobility Office in Ecuador" (press release, October 19, 2023).

made substantial efforts to integrate them into schools, labor markets, and local communities.¹⁶³ To effectively target groups in the region who seek to migrate to the United States, the Biden administration is considering building up the capacity of SMOs and the participation of destination countries in addition to Canada and Spain could also expand the legal pathways available to applicants.

D. *Central American Minors Program*

In 2014, the Central American Minors (CAM) program was created to allow certain children from El Salvador, Guatemala, and Honduras to enter the United States as refugees or parolees to join their U.S.-based parents.¹⁶⁴ Created during an era of rising arrivals of unaccompanied children, in particular from northern Central America, the program seeks to provide a safer pathway for children who might otherwise seek to travel to the United States unaccompanied. The Biden administration relaunched the program with expanded eligibility in 2021, after the Trump administration had halted it in 2017.¹⁶⁵

CAM allows certain parents in the United States to request that their child, who may be up to 21 years old, be considered for refugee status, or if ineligible, to be considered for humanitarian parole. Parents are eligible to request consideration for their children if they hold lawful permanent resident status, Temporary Protected Status, parole, Deferred Action for Childhood Arrivals, other form of deferred action, Deferred Enforced Departure, or withholding of removal. In 2023, the Biden administration expanded the criteria to include certain parents with pending applications for asylum, U visas (for victims or witnesses to certain serious crimes), or T visas (for victims of trafficking).¹⁶⁶ To begin the process, a parent contacts a designated refugee resettlement agency. Children are processed in-country and undergo interviews and DNA testing to verify their relationship with the applicant. Under CAM, USCIS generally grants parole for a three-year period and working-age recipients may apply for work authorization.¹⁶⁷

Republican-led states have challenged the program in the courts, alleging that officials have exceeded their statutory parole authority. Only small numbers of children have benefitted from the program. In FY 2023, USCIS interviewed 600 new CAM applicants; most approved for travel were recommended for parole, not admission as refugees.¹⁶⁸ Therefore, CAM recipients face the same challenges as other parolees: a grant of temporary status that does not open the door to legal permanent residence.

7 *Return in the Context of Migration Cooperation*

The COVID-19 pandemic fundamentally changed how the United States conducted removals and returns. The Trump administration activated the Title 42 public health policy to block access to asylum by allowing for the rapid expulsion of border arrivals to Mexico or to their home country. Under Title 42, border officials

¹⁶³ Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela, “Key Figures,” August 5, 2023.

¹⁶⁴ DHS, “Departments of Homeland Security and State Announce Enhancements to the Central American Minors Program” (press release, April 12, 2023).

¹⁶⁵ Mark Greenberg et al., *Relaunching the Central American Minors Program: Opportunities to Enhance Child Safety and Family Reunification* (Washington, DC: MPI, 2021).

¹⁶⁶ DHS, “Departments of Homeland Security and State Announce Enhancements to the Central American Minors Program.”

¹⁶⁷ USCIS, “Central American Minors (CAM) Program,” updated June 23, 2023.

¹⁶⁸ USCIS and State Department Quarterly Refugee Processing Engagement call, September 20, 2023.

expelled individuals 2.7 million times at the Southwest border from FY 2021 to FY 2023.¹⁶⁹ Never before had Mexico accepted the return of so many third-country nationals.

Upon taking office, the Biden administration faced immediate calls to lift Title 42; it left the policy in place due to high border arrivals and litigation that reached the Supreme Court. When it ended Title 42 expulsions in May 2023, the U.S. government negotiated with Mexico to continue accepting the returns or removals of Cubans, Haitians, Nicaraguans, and Venezuelans under standard U.S. immigration laws. Overall, though, the Biden administration has not carried out as many removals as past administrations, and the inability to return certain nationalities to their countries of origin continues to limit removal numbers.¹⁷⁰ This matters because data have shown that if a noncitizen is not removed within a year of arrival, it is unlikely that they will be removed later.¹⁷¹

A. *International Agreements to Accept Returns*

The United States has returned noncitizens to more than 150 countries based on negotiations and agreements with other governments.¹⁷² Many countries accept return of their nationals, but others have been considered “noncompliant,” such as Venezuela and Nicaragua. However, Venezuela began accepting limited returns in October 2023 in return for the lifting of certain sanctions.¹⁷³ The United States and Cuba have a complex diplomatic history, but there have been various periods of agreement to accept returns in exchange for allowing Cubans to come to the United States legally.¹⁷⁴ Other countries, including China, India, and Nigeria, are technically compliant, but have been slow at accepting returns in the past.¹⁷⁵

The conditions that countries require for establishing the nationality of would-be returnees is a critical aspect of conducting returns. In the 1990s, for example, many asylum seekers destroyed their identification documents during their journeys so that U.S. officials could not prove their nationality and swiftly return them. The United States now collects biometric data and shares information with countries such as Mexico, Guatemala, Honduras, and El Salvador to identify migrants who present security concerns.¹⁷⁶

¹⁶⁹ CBP, “Nationwide Encounters.”

¹⁷⁰ Muzaffar Chishti and Kathleen Bush-Joseph, “Biden at the Two-Year Mark: Significant Immigration Actions Eclipsed by Record Border Numbers,” *Migration Information Source*, January 26, 2023.

¹⁷¹ Nadwa Mossaad, Sean Leong, Ryan Baugh, and Marc Rosenblum, *Fiscal Year 2021 Enforcement Lifecycle Report* (Washington, DC: DHS Office of Immigration Statistics, 2022), 2-5. “[N]oncitizens who are not repatriated within 12 months of being encountered are rarely repatriated after that. For individuals encountered in 2013 to 2016 who had been repatriated at any point within five years of an encounter, 95 percent of those repatriations occurred within the first 12 months of apprehension.”

¹⁷² Mossaad, Leong, Baugh, and Rosenblum, *Fiscal Year 2021 Enforcement Lifecycle Report*, 2-5. “As of the latest data available for this report, 60 percent of all Southwest border enforcement encounters from 2013 to 2021 resulted in expulsions or repatriations, 28 percent were still being processed pursuant to the immigration enforcement provisions in Title 8 of the U.S. Code, 6 percent had resulted in unexecuted removal orders or grants of voluntary departure, and 5 percent had been granted relief or other protection from removal.”

¹⁷³ Eileen Sullivan and Frances Robles, “First Venezuelans Sent Back Under New U.S. Policy Arrive in Caracas,” *The New York Times*, October 18, 2023.

¹⁷⁴ Governments of the United States and Cuba, “Joint Statement between Government of the United States and Cuba,” January 12, 2017.

¹⁷⁵ See, e.g., Mark Hosenball and Tim Reid, “Exclusive - U.S. to China: Take Back Your Undocumented Immigrants,” Reuters, September 11, 2015.

¹⁷⁶ Lauren Burke, Anastasia Strouboulis, Erok Yayboke, and Marti Flacks, “Tracked: Stories at the Intersection of Migration, Technology, and Human Rights,” Center for Strategic and International Studies feature, accessed November 24, 2023.

The United States and Canada also have a Safe Third Country Agreement, as discussed earlier. In conjunction with the March 2023 agreement update to also cover migrants arriving between ports of entry, Canada agreed to accept 15,000 migrants from Latin America and the Caribbean (using the Safe Mobility Offices to identify some of them). Initial reporting suggests that since the Safe Third Country Agreement updates, some asylum seekers are seeking to cross into Canada in more dangerous areas to avoid detection.¹⁷⁷

Previously, the Trump administration signed safe third country agreements (referred to as Asylum Cooperative Agreements) with Guatemala, Honduras, and El Salvador. These accords enabled DHS to transfer asylum seekers to those countries rather than assess their claims for protection in the United States.¹⁷⁸ The agreement with Guatemala was the only one implemented, and the Biden administration suspended all three accords in 2021.¹⁷⁹

Countries that accept the return of their nationals (or others) can face political difficulties, as has been seen with the Mexican government receiving backlash for accepting the return of third-country nationals. Nonprofit organizations brought suit in Mexico over the government's cooperation with the U.S. Migrant Protection Protocols program. The Mexican Foreign Ministry announced in October 2022 that it was ending its participation in the program and Mexico's Supreme Court found that the government acted unlawfully in not issuing regulations to provide for migrants' rights.¹⁸⁰ Colombia also halted return flights temporarily due to allegations of "degrading treatment" of returnees by ICE.¹⁸¹

Regarding Mexico's latest agreement to accept the return of up to 30,000 Cubans, Haitians, Nicaraguans, and Venezuelans monthly, the government has explicitly conditioned its cooperation on the continuation of U.S. parole processes for an equivalent number of the same nationalities. The U.S. parole processes are being challenged in U.S. courts and could be blocked. It remains to be seen how Mexico would react.

The U.S. government's ability to physically remove individuals has its own resource constraints, as DHS lacks the necessary capacity to return all removable noncitizens.

The U.S. government's ability to physically remove individuals has its own resource constraints, as DHS lacks the necessary capacity to return all removable noncitizens. It has increased the number of removal flights conducted post-Title 42 to increase deterrence,¹⁸² and from May to September 2023 removed or

177 Isabelle Steiner, "Safe Third Country Agreement Expansion Causes Asylum Seekers to Explore New Routes," Wilson Center blog post, September 14, 2023.

178 DHS, "DHS Announces Guatemala, El Salvador, and Honduras Have Signed Asylum Cooperation Agreement," December 29, 2020.

179 Bolter, Israel, and Pierce, *Four Years of Profound Change*.

180 Secretaría de Relaciones Exteriores, "Finaliza el Programa de Estancias Migratorias en México bajo la Sección 235 (b)(2)(C) de la Ley de Inmigración y Nacionalidad de EE. UU., Comunicado No. 401," October 25, 2022; Suprema Corte de Justicia de la Nación, "La Primera Sala Ordena Publicar los Lineamientos para la Atención de las Personas Migrantes que Se Encuentran Temporalmente en Nuestro País, Bajo El Programa 'Quedate en México,'" October 26, 2022.

181 Al Jazeera, "Colombia Resumes 'Removal' Flights Repatriating Citizens from US," Al Jazeera, May 5, 2023.

182 For the first 11 months of fiscal 2023, ICE Air Operations had completed 4,282 commercial airline removals, an 85 percent increase from the same period in FY 2022. See Testimony by Daniel Bible, Deputy Executive Associate Director, Enforcement and Removal Operations, ICE, "After Apprehension: Tracing DHS Responsibilities after Title 42," before the Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Government Operations and Border Management, 118th Cong., 1st sess., September 6, 2023.

returned 253,000 individuals.¹⁸³ The United States also does not have sufficient detention capacity to hold all removable noncitizens, and it is much harder to arrest and remove people once they are released into the interior.¹⁸⁴ ICE has a daily holding capacity of approximately 40,000, and Border Patrol facilities, which are designed for short-term detention, can now hold about 23,000.¹⁸⁵ In August 2023 alone, border officials encountered noncitizens 230,000 times.¹⁸⁶

In 2021, the Biden administration ended the practice of detaining families that had begun under previous administrations.¹⁸⁷ In light of increasing family arrivals, the Biden administration began a program in May 2023 called Family Expedited Removal Management (FERM), wherein families are released into the U.S. interior and the head of household is placed on an ankle monitoring device and given a nightly curfew.¹⁸⁸ The families are screened for credible fear of persecution within six to 12 days of their arrival, and if no credible fear is found, they are quickly removed, the goal being removal within 30 days of their arrival. If credible fear is found, families may proceed with filing asylum applications, though the circumvention of lawful pathways regulation and its presumption of ineligibility for asylum applies, so they may only be eligible for withholding or Convention Against Torture protection. The FERM program is operational in 40 cities. As of September 2023, DHS had processed 1,600 families, with plans to continue scaling up the program.¹⁸⁹

B. Statistics

President Barack Obama inherited a better resourced immigration enforcement regime than his predecessors and focused on removing from the U.S. interior noncitizens who had been convicted of serious crimes and recent arrivals, earning the nickname “deporter in chief.”¹⁹⁰ His administration conducted a record number of removals, averaging 344,000 per year. Despite broadening the scope of migrants prioritized for enforcement, the Trump administration deported fewer total migrants, averaging 233,000 per year, partly because local jurisdictions pulled out of or limited their participation in information sharing and immigration enforcement cooperation agreements with ICE.¹⁹¹ Starting in March 2020, U.S. officials used the Title 42 public health policy to carry out more than 2.8 million expulsions, and ICE officers were diverted from interior removal operations to assist CBP at the border.

183 DHS, “Fact Sheet: The Biden-Harris Administration Takes New Actions.”

184 For more on the detention of noncitizens, see Randy Capps and Doris Meissner, *From Jailers to Case Managers: Redesigning the U.S. Immigration Detention System to be Effective and Fair* (Washington, DC: MPI, 2021); Straut-Eppsteiner, *U.S. Immigration Courts and the Pending Cases Backlog*.

185 TRAC Immigration, “Immigration Detention Quick Facts,” accessed November 27, 2023; DHS, “Fact Sheet: The Biden-Harris Administration Takes New Actions.”

186 CBP, “CBP Releases August 2023 Monthly Update,” September 22, 2023.

187 Court orders set forth standards of care for migrant children held in immigration facilities, including those who are held with adult family members, and prohibit the detention of children for more than 20 days. See John Sciamanna, “History and Update on Flores Settlement” (fact sheet, Child Welfare League of America, n.d.).

188 ICE, “ICE Announces New Process for Placing Family Units in Expedited Removal,” May 10, 2023.

189 DHS, “Fact Sheet: The Biden-Harris Administration Takes New Actions.”

190 Muzaffar Chishti, Sarah Pierce, and Jessica Bolter, “The Obama Record on Deportations: Deporter in Chief or Not?,” *Migration Information Source*, January 26, 2017.

191 Muzaffar Chishti and Kathleen Bush-Joseph, “Biden at the Two-Year Mark: Significant Immigration Actions Eclipsed by Record Border Numbers,” *Migration Information Source*, January 26, 2023.

Since the Title 42 policy ended in May 2023, DHS has returned more than 300,000 noncitizens (that figure includes migrants who opted to voluntarily return to their home country or to Mexico).¹⁹² Voluntary return allows an individual to avoid the five-year bar on re-entry associated with an unlawful entry into the United States and was used extensively from the 1980s well into the early 2000s for Mexican migrants. DHS doubled ICE international removal flights from the first half to the second half of FY 2023 and formed new agreements with countries to streamline returns. DHS has removed 17,000 third-country nationals to Mexico since May 2023, and stated that this was a critical deterrent for hard-to-remove nationalities.¹⁹³

C. *Interdictions*

While the primary challenges that the United States faces today concern unauthorized land arrivals, increased border enforcement in prior periods has led to more migration at sea and the trend may be repeating. Recent maritime flows of Cubans and Haitians to the United States have reached the highest levels since the 1990s. In FY 2022, 7,000 Haitians and 6,000 Cubans were interdicted at sea by U.S. officials, and initial data show similar numbers in FY 2023.¹⁹⁴ The U.S. Coast Guard estimated its interdiction success rate was 56.6 percent in FY 2022, meaning thousands of people likely reached U.S. shores without being intercepted.¹⁹⁵ The Coast Guard is a sub-agency of DHS, and its sister agency CBP assists with interdictions.

U.S. interdictions of migrants arriving on small boats began in force in the 1980s and were bolstered by a 1981 agreement between Haitian President Jean-Claude Duvalier and U.S. President Ronald Reagan. Agreements such as this were the forerunner of today's multilateral pacts, which typically do not provide interdicted migrants access to asylum in the United States.

As with migration on land, the Biden administration has increased regional cooperation in the Caribbean to return migrants intercepted at sea. The Bahamas and Turks and Caicos are key U.S. partners for maritime enforcement and as part of the partnership, these countries provide real-time operational intelligence to the Coast Guard. Since 1982, the United States, The Bahamas, and Turks and Caicos have had a trilateral agreement called Operation Bahamas, Turks and Caicos (OPBAT). Initially focused on narcotics interdiction, the operation in 2004 grew to incorporate coordination on interdicting migrants at sea.

OPBAT allows the Coast Guard, the Royal Bahamas Police Force (RBPF), and the Royal Turks and Caicos Police Force (RTCPF) to enter each other's territorial waters to enable coordination and information sharing. These agencies share navigational software and work together on search and rescue, migrant interdictions, and anti-smuggling operations. The Coast Guard also offers training and resources such as ships to the RBPF and RTCPF. Because of this cooperation, many interdictions occur in Bahamian waters, and migrants are transferred to Bahamian authorities for repatriation to their country of origin.

¹⁹² DHS, "DHS Continues Direct Repatriations of Venezuelan Nationals" (press release, October 24, 2023).

¹⁹³ DHS, "Fact Sheet: The Biden-Harris Administration Takes New Actions."

¹⁹⁴ Authorities interdicting migrants include the U.S. Coast Guard, CBP, and foreign navies. See Muzaffar Chishti, Kathleen Bush-Joseph, and Colleen Putzel-Kavanaugh, "Can the Biden Immigration Playbook Be Effective for Managing Arrivals via Sea?" *Migration Information Source*, October 25, 2023; Muzaffar Chishti and Jessica Bolter, "Rise in Maritime Migration to the United States Is a Reminder of Chapters Past," *Migration Information Source*, May 25, 2022.

¹⁹⁵ DHS, *U.S. Coast Guard Budget Overview: Fiscal Year 2024 Congressional Justification* (Washington DC: DHS, n.d.).

Regional pacts such as OPBAT allow authorities to carry out interdictions in other countries' waters, so migrants can be returned as close as possible to where they are encountered. If held by the U.S. Coast Guard, interdicted migrants are typically kept on deck, separated by gender. Coast Guard personnel visually assess maritime arrivals for protection needs. For example, if migrants appear to be in distress or they assert fear of return to their home country, they will be screened for humanitarian protection. As with migrants encountered on land, USCIS asylum officers conduct interviews (by phone or in person) to determine whether migrants have a credible fear of persecution or torture in their origin country; if so, they may be processed for resettlement in a third country. The rest are summarily returned.

For more than 30 years, DHS and the State Department have used the Migrant Operations Center located on a U.S. naval base at Guantanamo, Cuba to process individuals interdicted at sea. In anticipation of a possible new upswing of Haitian arrivals, the Biden administration in 2022 reportedly considered doubling the migrant holding capacity at Guantanamo to 400 beds. ICE is responsible for caring for maritime arrivals awaiting USCIS screenings as well as those found ineligible for protection who are awaiting repatriation. The State Department is responsible for the care of migrants eligible for refugee resettlement abroad.

Only about 1 percent of people interdicted are found eligible for protection, according to the Coast Guard, though immigrant-rights advocates have long claimed the lack of systematic screening and access to asylum violate international law.¹⁹⁶ In January, the DHS Office for Civil Rights and Civil Liberties opened an investigation into interdiction practices, protection screening, and migrant care, after almost 300 nonprofit organizations alleged that U.S. operations discriminated against migrants traveling at sea and create a dangerous precedent for other countries.

Despite decades of increased budgets for migration enforcement on land, the U.S. government has been less willing to significantly increase spending on maritime interdiction. For example, the total Coast Guard budget went from \$11 billion in FY 2013 to \$13.9 billion in FY 2023, meanwhile CBP's budget increased from \$11.7 billion in FY 2013 to \$20.9 billion in FY 2023, and ICE's increased from \$5.6 billion in FY 2013 to \$9.1 billion in FY 2023.¹⁹⁷

Monitoring and Compliance with International Standards

The United States does not conduct extensive monitoring of the situation of returnees or compliance with international standards. Country-of-origin information factors into the adjudication of asylum applications though and the United States maintains a physical presence of 173 embassies and 88 consulates that monitor country conditions.¹⁹⁸ The development of Safe Mobility Offices in countries of origin and associated networks of local civil-society organizations may bolster the ability to monitor the situation of returnees.

¹⁹⁶ Comments made by U.S. Coast Guard officials during July 2023 meeting with nonprofit organizations.

¹⁹⁷ Chishti, Bush-Joseph, and Putzel-Kavanaugh, "Can the Biden Immigration Playbook Be Effective for Managing Arrivals via Sea?"

¹⁹⁸ VisaPlace, "US Embassy and US Consulate Listings for Immigration and Visas to the United States," accessed November 24, 2023.

8 Conclusion

By most measures, the U.S. asylum system does not meet its objectives. Those eligible for asylum do not receive it in a timely manner, and migrants deemed ineligible are not returned to their countries of origin. Increasing arrivals at the U.S.-Mexico border continue to overwhelm enforcement and protection screening capacity, and asylum adjudications cannot keep up with new filings. Although the immigration courts completed an estimated record half a million cases in FY 2023, more than 1 million new cases were funnelled onto a docket that now exceeds 2 million cases. Thus, many migrants in need of protection will continue to face years of uncertainty. Nor can U.S. officials remove most migrants found ineligible for asylum, despite returning record numbers in FY 2023. Experience shows migrants who are not removed within one year of arrival are not likely to be removed at all, and this systemic failure serves as a strong pull factor for continuing irregular migration.

In responding to these challenges, the Biden administration has issued the circumvention of lawful pathways rule, which establishes a presumption of ineligibility for asylum for those entering the country illegally between ports of entry, while officials are also providing humanitarian parole and two-year stays in the United States for asylum seekers who enter the country using the CBP One app. Critics have charged that the new rule's limitations on long-established territorial asylum practices violate international law and principles; lawsuits challenging the rule are moving through the federal court system.

Alongside the circumvention of lawful pathways rule, the administration has rebuilt and modernized aspects of the U.S. protection system. Migrants can now file applications for asylum and work permits online, and U.S. Citizenship and Immigration Services quickly processes requests for humanitarian parole, allowing hundreds of thousands of migrants to enter the country on temporary status. The administration has also vastly expanded access to Temporary Protected Status (TPS), permitting hundreds of thousands of migrants already in the country without authorization to stay and work. But TPS does not come with a pathway to permanent residence, which only Congress can provide.

Adopting a cooperative approach to migration in the Western Hemisphere, the administration has pressed neighboring nations to collaborate in developing a new regional migration management system that includes a network of Safe Mobility Offices (SMOs) throughout the hemisphere. The goal is to provide intending migrants with opportunities to apply for refugee processing closer to their home countries and get accurate information on other migration pathways to the United States, Canada, and Spain. The SMOs are a work in progress that can, in the near term, address only a fraction of the need, but that represent an element of a longer-term vision for regionwide shared responsibility.

The administration has also sought to expand pathways by restoring the refugee resettlement system, which had been largely dismantled under the prior administration. The refugee resettlement program is on track to reach the target of 125,000 refugee admissions in FY 2024 through the digitization of applications and concurrent processing, which allows officers to conduct multiple parts of the screening process simultaneously. The immigration courts also now utilize technology to conduct hundreds of thousands of remote videoconference and internet-based hearings.

Nonetheless, the government's efforts are insufficient to meet the scale of the challenge. A new era of global displacement is underway that includes major movements within the Western Hemisphere. Insufficient resources and litigation largely dictate policy on the ground, and the pressures on destination cities that are receiving tens of thousands of migrants for which they have not been prepared has shifted public opinion even among strongly pro-immigration elected leaders, who are calling for more effective border enforcement measures, reduced numbers of asylum seekers, and increased federal funding to support migrant services.

Looking ahead, only Congress can update U.S. immigration laws and more lastingly fortify steps that the executive branch has made, including providing immigration pathways apart from applying for asylum. In the near term, congressional approval of a \$13.6 billion appropriations request the administration made in October 2023 would generate the massive infusion of resources needed to properly support the asylum system across all its elements. That would, in turn, provide the necessary foundation for increased regional cooperation that is essential to manage migration over the longer term, given that the phenomenon of large-scale movements within the Western Hemisphere are unlikely to end soon.

Looking ahead, only Congress can update U.S. immigration laws and more lastingly fortify steps that the executive branch has made, including providing immigration pathways apart from applying for asylum.

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