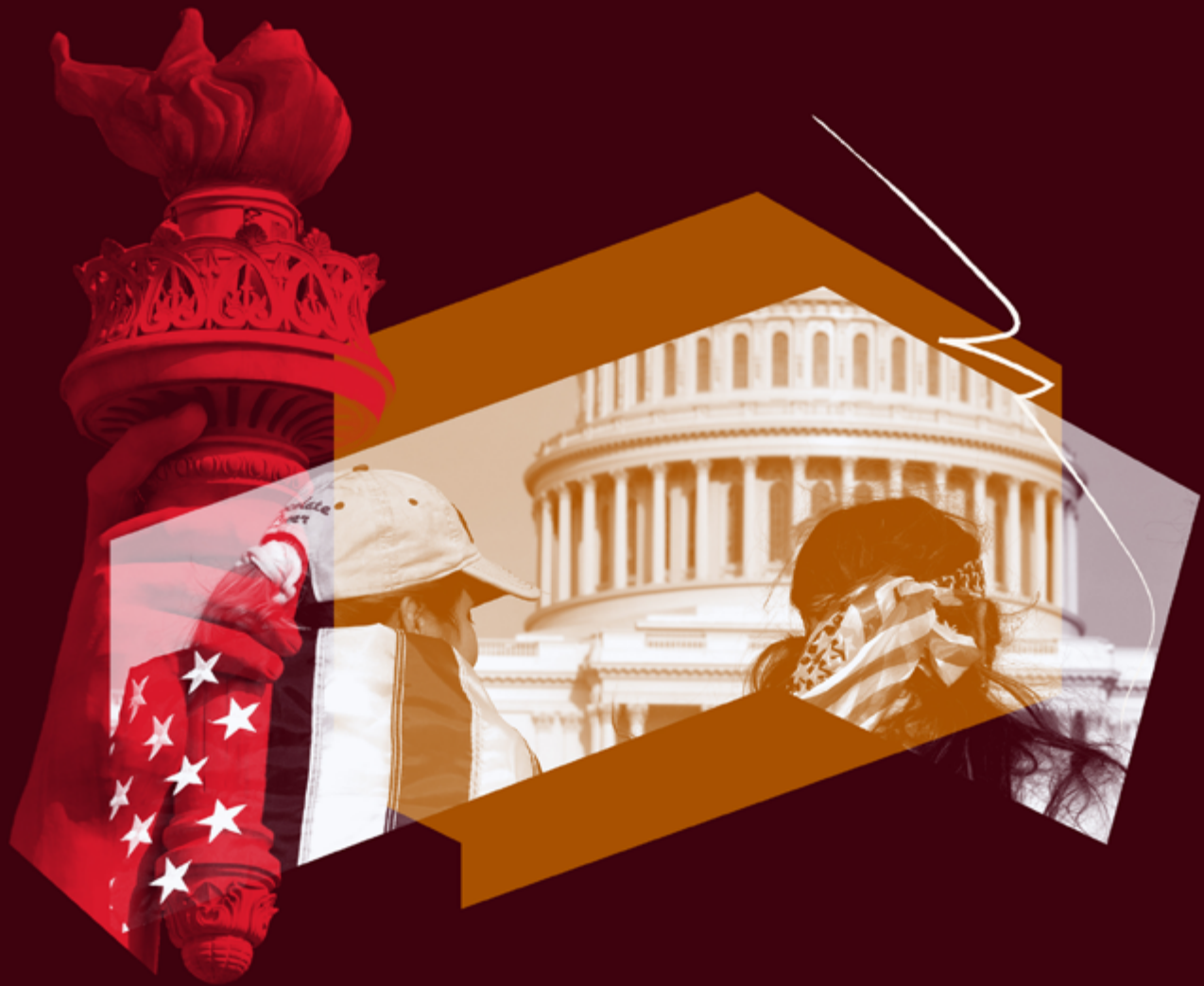




Improving Asylum at and Beyond the U.S. Border

*The Case for a Fair and Effective Protection Framework
With a Modern Border and Reception System*

ACLU

Acknowledgments

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Introduction

The least controversial statement about our modern U.S. asylum system is that it is in crisis. A nation state that was built on the promise of freedom and safety for political dissidents and religious minorities, the United States has been rolling back access to protection for people fleeing persecution and violence, now at breakneck speed — and not because the world around us is a safer or more just place. The U.S. protection system is not just collapsing; it is being attacked, systematically, by an administration that is willing to send people to be tortured in a foreign prison and to mass deport children to danger, alone, and without legal support. But the attack on asylum began long before the Trump administration and, unless addressed and reversed, will continue with the next administration — assuming any part of our protection system outlasts Stephen Miller.

Nearly 25 years since the Department of Homeland Security (DHS) was created, it is time for a restart. This is the second in a series of papers and reports through which the American Civil Liberties Union (ACLU) is sharing our affirmative vision and building the case for transformative change to our immigration and border system.

In recent years, successive administrations have taken steps that restrict entry and access to the United States, leaving people with few if any lawful pathways to arrive and contribute to the country — even when they have strong claims for protection or bring skills our nation needs. Recent proposals suggest that policymakers who generally support immigrants' rights should embrace further restrictions on asylum. Some argue that doing so is necessary operationally — to stall border arrivals — and politically, both to recapture public support and as a precondition to a legislative deal that would secure legalization for long-standing residents who are undocumented. Even former champions

of asylum have recast more open access to asylum protections as a pull factor for mass migration and attacked asylum as a system that has been abused and weakened by fraudulent claims. This paper rebuts these presumptions while offering a vision for an asylum and humanitarian protection system that is an integrated part of managing our borders safely, efficiently, and lawfully and that serves its enduring purpose of providing safety to those fleeing persecution.

The False and Short-Term “Solution” of Restricting Asylum

The primary “solution” advanced by these proposals is to restrict asylum to (the very few) ports of entry, make asylum claims even harder to prove, and limit the categories of people who can even apply and qualify for asylum. Two assumptions underpin these various and combined proposals: first, if you restrict asylum access between ports, fewer people will cross the border without authorization, and second, if fewer people can apply for asylum, fewer people can get it.

Lost in this view is the fact that it isn't just people who are ineligible for asylum, but people with strong and urgent protection needs, who are sacrificed, arbitrarily, to bring a pretense of order to the border. These proposals are misguided and, in some cases, disingenuous. They would not reform and update the asylum system, create a workable border processing and triage system, or address the court backlog; they are merely proposals to limit the number of people who can lawfully enter the United States and access protection.

We need to revitalize and modernize our asylum, refugee, and humanitarian protection system in ways that create a workable border entry

process, address the case backlogs, and ensure that vulnerable people can get protection and an opportunity to rebuild their lives. We will not get that by ending any meaningful and lawful way for vulnerable people to reach safety. And meanwhile, if critics of the asylum system are concerned that asylum has been misused by people who do not have protection claims as a way to enter the United States, then the response is to create alternate, lawful, durable pathways for people to come to the United States—not to eliminate asylum for those who qualify.

Time to Recommit — Not Abandon — Humanitarian Protection

Decades of experimentation with asylum restrictions have proved ineffective in the long run, and the rush to support them now is actively harmful. The administration's narrative has transformed access to asylum from a lawful pathway and a long-recognized legal right into a loophole. This reframing, though a part of the Trump team's xenophobic attack on legal immigration, human rights, and the rule of law, has also infected proposals from mainstream liberal thinkers.

Asylum, like parole, has become the scapegoat for all the other failures of our outdated immigration system — in particular, the failure to create other durable pathways for people to come and build their lives in the United States. And meanwhile, the need for a meaningful asylum and humanitarian protection system is clearer than ever. Right now, the Trump administration is arresting even people who “followed the rules” and went to ports of entry to request asylum; attempting to strip resettled refugees of their status; threatening to send Afghani families who helped the United States back to the danger they fled or else to the Democratic Republic of the Congo (which is dealing with an Ebola outbreak as of May 2026); and deporting people who won protection in court off to third countries where they have been detained, tortured, and/or sent onwards to the country they originally fled. In May 2026, a young woman who fled female genital mutilation (FGM) in Togo and was found

credible by U.S. asylum officials and an immigration court was deported to Ghana via one of the recent third-country agreements; Ghana promptly dropped her back in Togo. The United States, at one point claimed its war against Iran was in defense of human rights protests but then deported people seeking protection from Iranian regime back to the dangers they fled. This summer, we have seen Iranian opposition leaders, Afghans, and others removed to third countries like Central African Republic, one of the most dangerous places in the world and the site of an ongoing civil war.

Stephen Miller, the architect of the Trump administration's mass deportation strategy, is trying to shut down asylum as part of an overall agenda to limit all forms of legal immigration for those seeking to enter the United States as well as those already here. For Miller and his followers, there is no asylum system that appears to be acceptable — other than the resettlement of Afrikaner “refugees” from South Africa, which fits his white nationalist agenda.

The Case for Real Reform and Expanded Pathways

Despite the Trump administration's escalating attack on our humanitarian protection system and the harm it is wreaking, too many voices continue to suggest that we need to further gut the asylum system as a matter of national security, law enforcement, and immigration “reform.” Not only does this response abandon people to incredible harm, but it also does nothing about the fact that people will continue to come to the United States to seek a better life, as people have for generations — but right now, they are without a viable path to come and contribute lawfully to a country that needs them. People seeking asylum have been attacked both for “actually” being economic migrants and as a potential drain and burden on the communities that receive them.

The reality is that people who flee tremendous violence are yes, seeking protection, but they also do want and expect to support themselves and their families when they come to the United States. That is not a fact to be apologetic about. In fact,

hundreds of thousands of people with humanitarian protection and/or who are applying for asylum are working in key industries in our communities and contributing billions to our economy while supporting their families. Like refugees, asylees, and people with temporary protected status (TPS) who came before them, these individuals are not just looking for protection but for opportunity, and they need a viable legal pathway to do so.

It is true that not everyone who seeks entry at the U.S. border is an asylum seeker or meets the legal standard to claim protection, which is why we have a screening system. Some people come to the border, not to “game the system” but because they know of no other way to come to the United States to try to reunite with family and find work. That some people show up at the border even without an urgent need for protection is, right now, inevitable. Ultimately, it is a reflection of the fact that we have not built lawful and durable pathways for people to come to the United States that people can access and apply for remotely. Our immigration system—including our protection system—has not kept up with the developing reasons that people migrate (like climate change) nor has it expanded to accommodate the immigration pathways that many voters support, including for family reunification and employment.

Rebutting Claims That Shutting Down the Border Is a “Success”

The current policies in place may have — temporarily and artificially — deflated the number of people arriving at the southern U.S. border. But that doesn’t mean we have a functioning, fair, or legally compliant system, nor does it mean this system is without chaos. Indeed, three things about the current administration’s policies on asylum and the border are increasingly true:

1. **A “closed border” is an unsustainable fiction, and it does not end migration.** Whenever the U.S. government has closed its border, it has not eliminated people’s desire to come; it has just created a pent-up demand — as we saw at the

end of the COVID-19 pandemic — that a future administration will have to deal with. We are not seeing the daily thousands of arrivals that provoked so much anxiety during some months of the Biden administration — although people are still coming via increasingly deadly routes — but months before Biden left office, the numbers were dropping at the border, in part due to the actions of the Panamanian government in closing the Darien Gap route as well as actions of the Mexican government. But these are not durable solutions that respond to the global rise in migration, and at some point, the demand for border access will likely grow — absent other pathways and given the mounting international conflicts and instability.

2. **The administration’s policies are making the asylum system increasingly lawless and chaotic.** Because this administration routinely arrests people at court hearings and check-ins, and is trying to terminate parole for people who came with permission to the United States, it is not only upending the rule of law but is also disincentivizing people to follow any rules. People whom courts have found eligible for protection from persecution and torture are now being threatened with a third-country removal. Families who have been checking in and going to their asylum proceedings are being detained — in many cases with no possibility of bond or independent court review. Families arriving at airports and requesting protection are spending weeks in small rooms at the airport with limited food, medical care, or sanitation because the government is refusing to transfer them into the country to proceed with their claims. People are afraid to go to their check-ins and court hearings and are losing work authorization to support themselves and their families. This does not build a credible or effective system; it has only created widespread fear and unpredictability.
3. **The administration’s policies are accelerating a global refugee crisis — one that will come back to our border.** U.S. foreign policy has often been a key reason people have had to flee

their homes, and this administration's actions in Latin America and Iran are no exception. But our increasingly aggressive and inhumane policies — deporting people to places where they could be tortured or subject to “chain refoulement,” stripping refugees of their status, instituting travel bans, and ending protected status — do not end the need for humanitarian protection. In the short term, they pass on the responsibility of absorbing people seeking safety to other countries — often countries without the resources or systems in place to do so — hiding the crisis for U.S. residents for now but not for long. Other countries, including in Western Europe, have increasingly adopted ¹ the U.S. strategy at least in part, pushing off people seeking asylum to dangerous and less-resourced countries (as many countries are already doing). But as cruel as these policies are, they are also unsustainable. Countries that signed third-country agreements with the United States are already saying that this is a short-term plan and that these individuals will not be allowed to stay. And then where would they go? Some, especially those with ties to the United States or when a new administration comes in, may end up back at the U.S. border, folded in with the new populations seeking protection because of recent conflicts, climate change, and other humanitarian crises. For some, putting off the problem is a sufficient political solution. But at best, this is a short-sighted and unsustainable policy strategy; at worst, it is a deadly crisis waiting to unfold.

The choice is not between a completely open or a completely closed border. We can improve the border arrival triage system, create a fairer and more efficient adjudication system, and ensure that people who need humanitarian protection can get it.

This paper addresses:

- why the oft-repeated “compromises” are non-responsive and neither protect asylum nor address border management;

- why we need to improve and modernize key parts of the existing asylum framework even as we revamp our immigration system overall; and
- how we can build a better, sustainable system that honors our human rights commitments and improves border management for a fairer system.

Key Components of a Successful Border Management System

Creating a system that protects the most vulnerable people and ensures orderly border processing is possible, and it requires a long-term investment. Some of the key components of a successful system that addresses border management, as outlined in this report, are:

1. additional permanent lawful pathways — for workers, family reunification, humanitarian needs, and other needs not addressed by asylum;
2. a modern border reception system with improved triage processes (including in-country processing for non-asylum seekers), staffing, and ports of entry;
3. advance coordination between states and the federal government to ensure that new arrivals get to the communities that need and want them and are provided with the support to be successful; and
4. investments in our asylum and immigration court system to address backlogs, streamline bureaucratic processes, and enhance due process through legal representation.

We will always need a humanitarian protection system — not just for people fleeing wars or torture and arriving at our border, but also for longtime undocumented residents, visa holders, and others who cannot safely return to their countries of origin and should not have to put themselves and their families in danger. Right now, while our administration is also fueling a global humanitarian crisis that will result in migration, we should be building a better system. That doesn't mean an open border; it means a modern, functional arrival and court adjudication system.

The “No Asylum” Approach Is Not Only Cruel; It’s Ineffective

Over the last few years, several proposals and federal bills have been put forward aiming to reduce the number of people who can come to the United States and request asylum. These are often framed as efforts to reduce “fraud” and “chaos” and to ensure that the (apparently few) veritable asylum seekers can actually get into the system and have their cases swiftly resolved. There is absolutely a strong national interest in creating a safe border management system, addressing the ever-present court backlogs, and ensuring that the asylum system is not overwhelmed. But too many of the proposals being advanced have no meaningful way of filtering out “bad claims,” as they purport to do; instead, they end up reproducing the same short-term Band-Aid approach to asylum processing that we have seen for decades.

The Center for American Progress (CAP), for example, refers to asylum as a “backdoor” and suggests that Congress raise the evidentiary standard at the preliminary screening and exclude applicants from countries that are “functional democracies”² — even as traditional democracies like our own are under threat of losing that title right now. Moreover, democracies have never protected all people equally; vibrant electoral democracies like India, for example, continue to have documented human rights abuses against minorities³—which is why individualized assessments are so important.

In his role as a senior fellow at the Searchlight Institute, Blas Nuñez-Neto, former deputy assistant to President Biden and assistant secretary for border and immigration policy at DHS, has also put forward his vision that reads as removed from the violent reality of immigration enforcement

that we are living through. His proposals to move forward, moreover, recycle ideas that the Biden administration and others before it tried, and which failed to create lasting border management. These ideas include:

1. a continued reliance on detention, including for families;
2. building a wall and expanding invasive surveillance technology;
3. “saving” asylum by restricting access to it and removing due process guardrails;
4. sending people to third countries they have no relationship with; and
5. reducing the time people have to file an appeal, which expedites deportation but doesn’t improve the quality or integrity of asylum processing.

The Biden administration *reacted* to the arrival of larger numbers of people along the southern border but didn’t offer an early decisive vision of reform for the system, and some of its better policies to improve the system (like the asylum officer rule⁴) were put on hold or enjoined. Rather, it added piecemeal limits to asylum while completely ceding the narrative on “the border” to politicians like Texas Governor Greg Abbott. It used many of the policies that Mr. Nuñez-Neto advanced and is still supporting, bringing enormous harm to people deported to danger without impressing any political critics. In so doing, the Biden administration set the stage for the more extreme and outrageous actions under the Trump administration, some of which Mr. Nuñez-Neto also seems to find credible, if harmful in their execution.

Mr. Nuñez-Neto has, for example, pointed to the Trump administration's strategy of using leverage to push other countries to accept third-country removals — certainly acknowledging that we should not oppose lawless removals to places where people will be tortured — as a way to address national and border security through diplomatic channels. But what we are seeing right now is not a global migration solution; it is a cruel and deliberate ploy to terrify people into giving up their rights rather than face deportation to the unknown, to a war zone, even to their deaths. To date, many of the people being deported to third countries have already *won protection* from deportation on humanitarian grounds, including withholding of removal and under the Convention against Torture (CAT).⁵ These people are not border arrivals being turned away because they don't have a claim, nor are they people refusing to cooperate with a deportation order. Rather, they have included numerous individuals whom our courts found to be in need and deserving of international protection based on well-founded fears of persecution or other serious harms.⁶

There is a role for diplomacy in addressing migration — for example, by supporting other countries in their broader region in developing and strengthening their asylum systems for people fleeing danger who want to and can safely stay in the region. But the unfolding third-country removal strategy is not that, nor is it a limited plan to find alternate arrangements for people who have lost their cases but cannot return to their country of origin. It is a ploy to accelerate self-deportations, including for people who have valid protection claims.

The aforementioned proposals being offered for a new Democratic administration — limiting asylum eligibility, making the threshold screening harder, and punishing people for where they seek asylum — have been tried before and have not created a sustainable or more effective system for identifying valid cases. They have also proven to be cruel and dangerous, subjecting families and young kids with strong legal claims to abusive

detention and rapid deportation to places where they have faced torture, sexual assault, extortion, and even murder.

These proposals are also simply out of touch with the realities of what drives people to migrate. People do not flee political persecution in Russia or Iran or Cuba and show up at the border because they want to sneak into the United States; they come to the border, just as our asylum laws and system require, because it is too dangerous for them to stay at home, waiting for death.

Focusing on these cruel and failed policies right now makes no sense; they do not contribute to establishing a workable, fair, and modern immigration system and they are not responsive to the real and solvable issues that occur when large groups of people arrive without coordination or planned services. None of these solutions actually help to identify “valid” asylum claims; people who are vulnerable, exhausted, traumatized, and desperate when they arrive at the border may not be in the best position to understand the system and put forward a claim, but that doesn't mean their claims aren't valid. Deporting people to third countries with which they have no relationship and where they may face torture or be cycled through chain refoulement to the country they fled may terrify people into giving up their claims or staying away from the United States — but there is no reason to believe that only people with *nonviable* claims would be convinced to give up.

Similarly, speeding up the court and removal process and reducing appeals sounds effective if you assume it will “weed out” and quickly resolve nonviable claims. But if you accelerate the system so that people who qualify for asylum don't have time to get legal assistance and prepare evidence to be successful in presenting their claims, it means you are deporting asylum seekers to their deaths. There are ways to make the asylum process more organized and efficient — reducing backlogs — that do not sacrifice people's lives: for example, invest in asylum officers, court staff, and legal representation. The current — or, rather, recycled — proposals

may feel consequential because they are harsh and ostensibly simple fixes. In reality, they are not proposals based on evidence (to the contrary, past experience shows these options don't address the number of border arrivals), and they draw arbitrary lines around who is entitled to protection that have nothing to do with the merits of their claims.

We agree with CAP and Mr. Nuñez-Neto that we need legalization for the millions of our immigrant neighbors who have lived here for years and that the backlog in our immigration court and asylum systems — which have never really been funded or set up for success — is unacceptable. But the filters that these and many other proposals suggest to restrict asylum do not create a more functional or credible asylum system, nor do they address border management in a sustainable way.

Even moderate proposals are also in danger of relying on the same premise: that we just need fewer people to come to the U.S. border and once we “stop” arrivals, we can address other reforms. Some of this is probably motivated by the sense,

certainly under the Biden administration, that our federal institutions are overwhelmed. Under the Biden administration, for example, there was a failure to adequately respond and coordinate when immigrants were arriving along the southern border and were being bused by Governor Abbott to states that were not expecting or prepared for their arrival.

Moreover, as discussed below, people who come to and seek protection in the United States — just like people who come explicitly or solely to work here — are not supplicants seeking charity; they are critical contributors to our communities. Asylees, refugees, and TPS holders are also major contributors to our society and our economy. People may arrive with limited resources, but they bring varied and expansive skill sets⁷ and become contributing and valued members of our communities.

Why We Need to Protect — and Then Improve on — the Asylum Project

The U.S. asylum and refugee protection system has existed for over half a century, created in the wake of multiple atrocities in the world to which the global community and our country responded: Never Again. After World War II and the horrors of the Holocaust, the United States played a key role in the creation and adoption of international human rights protections, cemented by the CAT, the 1951 Refugee Convention, and later the 1967 Refugee Protocol. In 1980, the U.S. Refugee Act integrated these treaties into U.S. law. Both international law and U.S. law thus prohibit the expulsion of asylum seekers to places where they face persecution. Additionally, the principle of “non-refoulement” under Article 3 of the CAT and under Article 33 of the Refugee Convention is a legal requirement, binding on the United States through the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA). It requires that the U.S. government not expel, extradite, or involuntarily return a person to a country in which there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Refugee Convention also prohibits states from punishing people seeking asylum for attempting to enter or entering a country without authorization.

These binding legal obligations are not just ideals; they are rules that countries agreed to in the wake of enormous tragedies. In 1939, the United States refused to let a ship carrying hundreds of Jewish families from Europe dock in New York, ultimately forcing its return to Europe. Almost a third of the Jewish passengers on that ship, the *St. Louis*, were murdered in the Holocaust.

For years, the U.S. government chipped away at the asylum system, even before President Trump

took a sledgehammer to it. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)⁸ was the first dramatic change, creating new summary removal procedures like expedited removal and dramatically expanding preexisting ones.⁹ In so doing, IIRIRA established an administrative system that replaced judges with immigration officers — the same officers who arrest, detain, charge, and deport — allowing these officers to issue deportation orders without the kind of hearing that had always been afforded in the past. At the time IIRIRA was introduced, there was still bipartisan concern that people who would qualify for asylum would instead be erroneously turned away at the U.S. border.

Over the years, those fears proved to be completely justified. Since the first government study of expedited removal was conducted in 2005,¹⁰ studies have consistently found that people who come to seek protection in the United States have been turned away without the chance to explain why they need safety — even when they explicitly state a fear of torture or persecution. In many documented cases, these individuals have been assaulted or even killed after being turned away at the border or deported to the countries they fled. For example:

1. A Syrian Christian teenager, stabbed by Islamic extremists, tried to reunite with family but was deported at the border when he came to the United States to seek both medical care and protection from protection from violent extremists¹¹
2. An asylum seeker from Venezuela and his three-year-old son were kidnapped by the cartel after being returned to Mexico while the Remain in

Mexico program was in effect. He was forced to work long hours under threat of death. Cartel members also threatened to sell his son to organ traffickers.¹²

3. An asylum seeker from Honduras was turned away at the southern border during Remain in Mexico, then kidnapped and repeatedly gang-raped in front of her children, aged five and one, over several days. Barely one month later she was kidnapped again and again raped in front of her children.¹³

Too many people have been failed by this system, but in recent years, and particularly in response to the number of people who arrived during the Biden administration, politicians and even some civil society groups have argued that the asylum system is being abused. Its detractors refer to asylum as a “loophole” and pull factor for illegal immigration, and some supporters of asylum have even raised concerns that the most deserving cases cannot be identified without making the asylum process tougher. The changes that both these groups often point to include:

1. making the preliminary screening standard more challenging;
2. excluding certain groups — like individuals who live in a “democracy” or different social groups — from eligibility for asylum;
3. limiting appeals for people denied asylum; and
4. denying asylum to anyone who doesn’t enter at a port of entry.

These are not new ideas, and the U.S. government has experimented with each of these options over the years. Federal courts have repeatedly struck these policies down — and have repeatedly invalidated attempts to prohibit protection for people who cross between ports of entry and raise the asylum standard.¹⁴ These proposals, while they were in effect, did not achieve what the administration in charge wanted — to see fewer people arriving at the border — and they were never the only options. Policies like investing in neighboring countries’ asylum systems, bolstering regional and in-country

processing for other claims, and developing durable pathways to come to the U.S. can also reduce the number of people who come to the border, but they have never received the investment or longer-term commitment needed to be successful. More importantly, each policy limiting access has resulted in real harm for people with claims to protection. These changes make the asylum application process much more challenging for people in need of help who arrive at the border tired and without representation or interpretation, resulting in the erroneous denial of their claims for protection and, in some cases, deportation to their deaths.

Over the years, we have interviewed or represented numerous people who had strong claims but were only able to make them and get protection after arriving in the United States. This includes people who initially went to ports of entry and were turned away, through no fault of their own, by U.S. border agents. For example:

- Nydia R., a transgender woman from Mexico, was attacked by groups of men who tried to remove her breast implants and then beat and raped her. Nydia was robbed of her money and all her documents. Nydia went to the San Ysidro port of entry and told U.S. border officers that she was afraid to be in Mexico, as documented in her interview notes. According to the sworn statement, recorded during her interview with U.S. Customs and Border Protection (CBP), Nydia said she left Mexico because she was “discriminated against by my family and by people in the city. About a week and a half ago ... some gang members grabbed me in the street. They tried to stab me and take out my implants. ... They hit, beat, and raped me.” Close to 3 a.m., after hours of questioning, Nydia’s statement was read back to her in Spanish, and she signed it. Minutes later, Nydia says, the officer told her that seeing a judge would be useless; still, Nydia recalls, “I said I would rather see a judge and stay in detention.” At that point, she was brought more papers to sign — in English, which she could not read — and she signed them, assuming they were the same papers she had just

signed in Spanish. In fact, she had unknowingly signed an expedited removal order. According to the form, the officer wrote, “At approximately 0445 hours, [] admitted to not having a fear and concern and requested to be returned to Mexico.” Nydia, who was still bruised from her recent attack and rape, was placed in a van and dropped in Mexico, where she slept on the streets, afraid to go back to her hometown. She again went to the border and shared her fear with an officer but was given a reinstatement of removal order. Deported again to Mexico, and immediately in danger on the streets, Nydia looked for work along with another transgender woman but was kidnapped and put into sex trafficking by Los Zetas cartel. Finally, she escaped Los Zetas and entered into the United States without inspection, crossing between ports of entry and successfully applying for asylum.¹⁵

- Braulia A. is a mother of five (including four U.S. citizens) from Guatemala who entered the United States without inspection. She left Guatemala with her son, fleeing violence from both police and gangs: her father had been murdered, and she had been raped by police officers as a teenager. Years later, not realizing that she could not travel with her Employment Authorization Document (EAD) card, Braulia, who is not literate in Spanish or English, went to Tijuana for the day to visit a doctor. Around 2006, she was deported at the port of entry after attempting to return to the United States, even after she had explained her fear of returning to Guatemala. Braulia was deported to Guatemala, where she began to receive threats from gangs. Braulia’s U.S.-citizen children joined her in Guatemala when she was first deported, but it quickly became too dangerous, so she sent them home to California. Her oldest son, Wilmer, missed her too much and attempted to rejoin her in Guatemala. He was murdered in Guatemala not long after his arrival. Braulia says that the officers told her a police bullet killed her son and demanded money to investigate further. Days later, Braulia herself was kidnapped, shown

photos of her murdered son, gang-raped, her eyes and mouth taped, shot nine times, and left for dead. She later returned to the United States, entering without inspection. Years later, she was arrested for having a final removal order but was able to win relief under the CAT before an immigration judge.¹⁶

These women should have been screened in by border officials for an asylum interview in the first instance but were not, and it is only a matter of luck that they were able to get protection later on.

Two proposals that seem to have bipartisan support are making the burden of proof harder for arriving asylum seekers and excluding people who arrive between ports of entry from asylum.

Raising the Credible Fear Standard

Because people fleeing danger arrive at the border from abroad without an appointment, the system created by IIRIRA mandates that individuals claiming a fear of persecution or intent to apply for asylum must be referred for an interview — known as a credible fear interview (CFI) — with an asylum officer.

The current screening standard for “credible fear” was established by Congress in recognition of the fact that people arriving at the border are often fleeing immediate danger and are traumatized, overwhelmed, and unable to convey their asylum claim fully in the initial rushed interviews with border agents. It was established as an intentionally lower standard than the one that applies in future removal proceedings — where asylum seekers would be able to fully prepare and marshal legal arguments as well as factual evidence, including potential expert testimony, to support their claims for protection. When this standard was established as a compromise in 1996, Congress recognized that basic fairness and our non-refoulement obligations require that we provide people with a real opportunity to seek protection.¹⁷ A broader screening standard necessarily means

that a significant proportion of people who pass a screening interview will not prevail under the higher standards for actually granting asylum; critics have called this discrepancy a “loophole”, but it’s a predictable and necessary consequence of a system where the individual doesn’t receive a full hearing upon arrival, just a chance to be screened into the system for a future adjudication.

Raising the standard doesn’t automatically weed out insufficient claims; it just makes it harder for all people, *including those who qualify for asylum*, to be screened into the system to make their case. This matters because the high risk of error is high and comes with significant consequences. Erroneous denials of protection claims — including for mandatory relief under the CAT and withholding of removal — in expedited removal can never be reviewed and corrected by Article III courts under current law.

In 2022, the Biden administration rejected the use of a higher standard after an investigation found “no evidence” that applying a higher standard in CFIs “resulted in more successful screening out of non-meritorious claims while” safeguarding against *refoulement*.¹⁸ Nevertheless, in response to the rising numbers of border arrivals in 2023, the Biden administration made the political decision to subject arriving asylum seekers to a higher screening standard, adding collateral policies like requiring the interview within 24 hours of arrival — before many people had phone access. This resulted in a drop in the number of people passing their screening interviews but did not decrease the number of people attempting to find protection in the United States.¹⁹ Indeed, even after the Biden administration put in place its higher screening standard, along with the CBP One appointment system and other processes, the border arrival numbers continued to climb.²⁰ And meanwhile, amongst those screened out and unable to meet this more demanding standard upon arrival were, no doubt, individuals who did qualify for asylum but never got the chance to collect evidence and present their claims in a meaningful way — e.g., with legal assistance, interpretation, time, and preparation.

The Trump administration has since returned to using the “manifestation of fear” test, also known as the “shout test,”²¹ which the Biden administration also utilized during Title 42.²² Under this test, originally developed for use by the Coast Guard for interceptions at sea, a person seeking safety must affirmatively raise their fear of return to get any type of screening for protection.

Under its current application, very few people have been screened into the system to even present an initial claim for asylum; right now, the individuals and families seeking protection in the United States — including Iranian women,²³ Russian dissidents fleeing political persecution,²⁴ Afghans fleeing the Taliban,²⁵ and families seeking protection for their children with disabilities²⁶ — who may know nothing about the asylum system have to preemptively explain to armed border agents, without interpretation or legal assistance, their need for protection. Anti-immigrant voices may see the low number of people being referred into the United States for further asylum adjudication as a success of the Trump policies; but the reality is that the world is not a safer place right now, and if so few people are being referred for CFIs after meeting the “shout test,” that means many people have been turned back to danger.

Making the initial screening standard more difficult and adding the “manifestation of fear” test at the outset does *not* provide any meaningful system for distinguishing between valid claims and non-meritorious ones, as the federal government itself has previously found. While some argue this more demanding set of roadblocks will help the most deserving, that assumption is completely unsupported. If anything, this standard may benefit more sophisticated individuals seeking protection — those who know the system and what to say — while deeply harming the most vulnerable and desperate individuals who do not have the education, support, linguistic skills, and other resources to communicate their fears.

Eliminating Access to Asylum Between Ports of Entry

Many policymakers have suggested that one way to stop people without veritable asylum claims from “gaming the system” is to eliminate access to asylum for individuals who don’t go to a port of entry and cross the border without inspection. This “consequences” proposal is premised on the notion that negative consequences will always “deter” people despite all the evidence to the contrary and the harm caused. This ignores the lived realities of the people our asylum system was designed to protect — those who go to the few available ports and wait for appointments but cannot always wait indefinitely and in danger. In focusing so singularly on how to punish people without viable asylum claims, we have punished those who do qualify but can’t safely hold out for an appointment at a port. Moreover, this proposal ignores the fact that U.S. law already has criminal penalties for individuals who cross into the United States without authorization. Limiting access to asylum for people who cannot wait in danger doesn’t add an additional penalty to people without asylum claims; it strips people who do qualify for asylum of the chance to even be screened for it based on a completely unrelated factor.

It is also true that sometimes people go to ports of entry and are told there is no asylum in the United States or that their claims don’t count; some have been forced to sign forms they don’t understand saying they don’t have a fear of returning to their country. For those individuals, repeatedly returning to a port of entry in the hope of finding a more sympathetic officer might only expose them to another removal order and prosecution for illegal reentry; their choice to cross between ports may be one of desperation.

There are two main reasons why people who have strong claims for asylum would cross between ports of entry: (a) there aren’t enough ports along the border, and (b) waiting on the Mexican side of the southern U.S. border is extraordinarily dangerous for migrants.

(a) Limited Access to Ports of Entry

There are only around 26 ports of entry along the southern U.S. border, and some of them are hundreds of miles apart. During the Biden administration, only some of those ports of entry were used for asylum appointments through the CBP One application, through which asylum seekers had to book an appointment in advance through a mobile application. Thousands of people waited in Mexico *for months* without a way to support themselves and they were routinely targeted by organized criminal groups. A May 2024 Human Rights First report showed that in the first year that President Biden’s asylum ban was in effect, requiring people to request one of the rare appointments in advance via a mobile application, families were waiting up to seven months to get an appointment.

Creating scarcity through metering or an appointment system didn’t promote orderly border management; it only intensified corruption and made appointments harder to get for the most vulnerable people who do not have the resources to buy into this scheme. As the American Immigration Council recently wrote, policies like metering, which limits the number of available appointments per day at each port of entry, fed an underground market, used both by organized criminal groups and Mexican border officers, where appointments are essentially sold.²⁷ Moreover, because ports of entry are so few and spread so far apart in many parts of the southern border, and there is a metering system at the border, people cannot easily go to a port of entry with capacity to screen them. This means that people are stuck waiting in towns where they have been preyed upon by organized criminal gangs that know these vulnerable individuals are sitting ducks.

(b) People Cross Between Ports When the Alternative Is Violence, Even Death

When border access is limited or even completely shut off, as the Title 42 experience showed,²⁸ people desperate for protection will not wait in limbo for the unpredictable date when the border or port

appointments may reopen. They are more likely to attempt to cross between ports and find what safety they can. Ending access to asylum and other protections between ports of entry punishes people for seeking immediate safety without in any way addressing the underlying reasons why people cannot go to a port of entry or wait in the proverbial line. If people cross between ports of entry because they are being threatened with sexual assault or murder in Mexico, denying them access to asylum because they aren't willing to put themselves or their families in danger is nothing more than blaming the victim. Too often, even when people have compelling reasons not to wait for a port appointment, they are ignored or unable to explain the reasons to Border Patrol; excluding these individuals from humanitarian protection would not address that problem or the shortage of ports and appointments.

The most extreme policies limiting asylum at the border have put people in even greater danger and compelled many to cross between ports of entry. Two of the most dramatic and harmful policies include the Migration Protection Protocols (MPP), better known as the Remain in Mexico program, and Title 42.

When implemented, Remain in Mexico requires noncitizens seeking admission at the U.S.-Mexico border without authorization to be “returned to Mexico for the duration of their immigration proceedings.”²⁹ According to DHS, the policy was supposed to address the problem of noncitizens who allegedly “game the system” and “disappear into the United States,” and deter migrants from making “false” asylum claims at the border “while ensuring that vulnerable populations receive the protections they need.”³⁰

There is no evidence that leaving people in Mexico, in limbo, created a more credible system or limited unviable claims. In fact, during the two and a half years that Remain in Mexico was in operation, it created a human rights disaster at the border, exposing vulnerable asylum seekers to torture, kidnapping, rape, and murder, and

fueling organized crime on the Mexico side of the border. Human Rights First documented over 1,540 of cases of rape, kidnappings, torture and other violence against migrants waiting in Mexico for their protection claims to be heard, noting that this program “effectively delivers asylum seekers into the hands of cartels.”³¹

A 2021 memorandum from DHS, supporting the decision to end this program, observed that when MPP was in effect: “there were pervasive and widespread reports of MPP enrollees being exposed to extreme violence and insecurity at the hands of transnational criminal organizations that prey on vulnerable migrants as they waited in Mexico for their immigration court hearings in the United States.”³² DHS noted the rampant kidnapping of asylum seekers subject to MPP, referencing evidence from Médecins Sans Frontières (Doctors Without Borders) noting that 75% of its patients who were in Nuevo Laredo in October 2019 due to MPP reported having been kidnapped,³³ as well as evidence from a December 2019 U.N. High Commission for Refugees (UNHCR) Rapid Protection Assessment, which found that “children represented about half (48%) of targets for physical violence, and about half (48%) of kidnapping victims.”³⁴

In *Huisha-Huisha v. Mayorkas*, a case brought by the ACLU and partners challenging the exclusion of asylum seekers under Title 42, the Court of Appeals for the D.C. Circuit observed that asylum seekers faced horrible abuses when turned away at the U.S. border. Judge Walker, writing for the court, noted the uncontested evidence that families were clearly expelled to danger: “the record is replete with stomach-churning evidence of death, torture, and rape.”³⁵ Indeed, the Court noted that for those required to return across the bridge and back to Mexico, it was as if they were “forced to walk the plank into those places.”³⁶

When the Biden administration replaced Title 42 with its daily quota system in May 2023, families in Mexico waiting for a port of entry appointment continued to be subject to threats, extortion,

kidnapping, and sexual violence. As a November 2024 report from ProPublica documented, drug cartels are now kidnapping migrants in Mexico at an unprecedented scale:

[A] new phase of mass kidnapping for profit has emerged at the country's southern border that is different in character and scale than what has happened in the past, underscoring how effective Mexican cartels are in adapting their strategies to exploit new policies from Washington.³⁷

As the previous section notes, it is not safe for individuals seeking protection to wait indefinitely in Mexico or their countries of origin until given permission to arrive and apply for asylum. Even as we have some systems for remote and advanced applications for protection, which need to be bolstered and expanded, there will always be people who need to reach safety in the United States before they can apply for protection.

Restricting where and when people can apply for asylum not only ignores the reality of why people are fleeing but is also completely unrelated to the purported goal of ensuring that only people with meritorious claims get into the asylum system. People with protection claims want to present them; they want to go to ports of entry and have presented themselves at an authorized location when that is an option. Proposals to cut off protection or limit options for people who don't go to a port of entry, without exception, are an attempt to look tough without regard for the realities people face when fleeing danger, even in a world where we provide more access to asylum and other lawful pathways. Even if you think that our border security is enhanced when people go to ports of entry — as most asylum seekers want to do — it is a gratuitously punitive and inflexible policy to exclude people who cannot wait in danger for a port appointment. Our system does not benefit from denying people even the chance to apply for protection based on the unrelated factor of where they arrived and requested safety.

Asylum and Humanitarian Protections Are Under Threat: Now Is the Time to Recommit

Under the Trump administration, the federal government is in the process of dismantling our decades-old humanitarian protection system — not to rebuild it in a way that is responsive to current global migration and human rights developments, but to extinguish it. This has been an explicit part of the Trump-Miller agenda since Trump retook office in 2025, and it isn't just about ending the lawful asylum process at the border. This administration is working to strip people who were found, by courts, to have valid protection claims of their status and to deport them to countries where they face imprisonment, persecution, and/or transfer back to the countries they fled.

As early as March 2025, according to former and current DHS officials, the Trump administration was preparing to remove people with protection claims to countries with which they had no connection and where they would foreseeably be harmed or refouled to the countries they had fled. In an interview with *The New York Times*, Danny Chin, former associate counsel at U.S. Citizenship and Immigration Services (USCIS), warned that people would be sent to “countries with no real asylum process and rampant human rights violations,” and where “[a] lot of people will be detained indefinitely in these countries where they have no ties. The administration uses these removals to instill fear. They want people to self-deport.”³⁸

The entire strategy of this administration appears to be to make U.S. immigration policy so cruel, futile, and punitive that people will give up even strong and valid claims. There is no pretense

that this is about helping people who do deserve protection; it's entirely about forcing people to self-deport and avoid the United States. And that is what we have seen over the last 18 months. The Trump administration has moved to arrest asylum seekers as they show up for their court hearings; coerce unrepresented children to abandon protection claims with the promise of cash; terminate parole for people who entered with permission through a program for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV parole) and through CBP One appointments, and subject these individuals to expedited removal; put asylum seekers into expedited removal if they fail to pay the new asylum fees on time; and detain and deport abandoned and neglected children who received Special Immigrant Juvenile visas.

We have seen this administration argue repeatedly in court that it can now ignore anti-trafficking protections for unaccompanied children seeking protection in the United States, allowing the government to repatriate them without a hearing despite the Trafficking Victims Protection Reauthorization Act (TVPRA).³⁹ And while the Trump administration has repeatedly, without evidence, claimed to have found hundreds of thousands of “missing children,” it has not worked to give these vulnerable unaccompanied children trafficking and other protection screenings or expand visas or other protective services for vulnerable, unaccompanied children. To the contrary, the administration is attempting to end legal services for unaccompanied children, detaining these children in “secure” facilities, and working to expedite their deportations.⁴⁰

These policies aren't about creating an orderly or safe border; they are part of a broader, anti-immigrant agenda that scapegoats people seeking protection — including those who followed every possible rule — and uses them to test out other cruel policies, like third-country removals. This administration has coerced other countries to accept third-country removals by offering financial and other incentives; almost 20,000 people have been sent to countries they have no ties to, including many who won protection in the United States.⁴¹ The real price for this “collaboration” is not fully known — but what is obvious is that the Trump administration has not worked with other countries to improve asylum, reception, and other migration systems or made any serious investments in sustainable solutions to border management or global migration that improve safety. It has only created a horror show.

For pro-immigrant voices in Congress, this is not the moment to abandon humanitarian protection as a perceived necessity for supporting citizenship for longtime residents — as if these two communities are completely distinct and not overlapping. Many TPS holders, for example, have been in the United States for decades, and if their status is terminated, asylum may be their only remaining legal claim. In the weeks and months to come, we anticipate the federal government will move to put affirmative asylum seekers into removal proceedings, accelerate third-country removals, expand mandatory detention of asylum seekers, put refugees into expedited removal, and potentially mass deny claims for whole nationalities. This will have impacts far beyond the asylum system; our failure to bolster and defend the protection system will predictably open the door to an expansion of these same anti-due process, anti-human rights policies to apply to other immigrant communities in the U.S. — irrespective of the dangers they will be deported to. Further, if the United States shuts down its protection system, other countries will likely follow suit, creating a global humanitarian crisis with long-term ripple effects. This will not end migration; it will only push people to take more dangerous migration routes and to live

and work outside of domestic legal protections, further enriching the smuggling networks that governments ostensibly want to interrupt.

The Trump administration campaigned on a message of closing the border, conducting mass deportations, and ending the “invasion.” But we’ve seen that it quickly pivoted to attack due process and humanitarian protections for longtime residents; use the immigration system to censor dissenting voices; and threaten resettled refugees, naturalized citizens, unaccompanied children, and many more with the loss of their status. Abandoning asylum is not a necessary or defensible bargain to get real reforms for longtime residents — some of whom are also in need of protection — and giving up on our protection system in the face of an administration that is sending people to torture prisons, putting kids in mass removal proceedings, and sending political refugees to war zones is not a containable “border policy” but a broader attack on human rights, including within our borders. This is a key moment for political leaders to defend asylum and humanitarian protection, and to offer a better system that responds to the inevitable and cyclical rise in border arrivals by building out a real system that makes border management more organized, addresses the court backlogs, and builds out lawful pathways.

The Economic Case for Expanding Humanitarian Protection

Many of the arguments to close the border and the country to newcomers have focused on the need to provide for “our own” first before giving services and support to people with no connection to the United States. It is certainly true that we can and should better plan to support the communities that receive new immigrants — just as we can and should be deepening our social safety net for the millions of U.S. citizens and other residents. But people who come seeking safety — whether as refugees, asylum seekers, or otherwise — quickly become part of our communities and have contributed enormously to our country and its economy.

As a 2024 Department of Health and Human Services report found, asylees and refugees contributed an estimated \$581 billion in revenue to federal, state, and local governments over a 15-year period.⁴² Further, this study showed that asylees and refugees have contributed \$123.8 billion more than they cost in governmental expenditures. Even shorter-term reports like the Congressional Budget Office's research on the 2023 "surge" of immigration at the southern border showed that newly-arrived asylum seekers and other newcomers contributed over \$10 billion in 2023 in state and local revenues; they could have contributed more had work authorization come through more quickly for more people.⁴³

Around the country — and, increasingly, beyond coastal urban areas — new immigrant families and workers have quickly provided new services, skills, and opportunities to the communities they have joined. A 2024 [report](#) on the Great Lake states found that immigrants were responsible for 78.5% of the region's population growth between 2010 and 2022. They also took on hard-to-fill factory jobs (42.5% of meat processing jobs and 30.8% of hand-packer jobs) made up 27.8% of the region's physicians, 20.6% of its surgeons, and nearly 17% of both its dentists and personal care aides; and filled 16% of STEM jobs.⁴⁴ Studies show that, as immigrants move into rural communities, they

are reviving them, accepting jobs in struggling local industries, starting businesses, and buying homes. Refugees and other immigrants also help to mitigate and reverse population declines in rural areas, which helps keep local services like hospitals and schools open and available for all community members.⁴⁵ Mid-sized cities have seen similar benefits. For example, the arrival of more than 17,000 refugees from more than 40 countries over several decades reversed a downward population trend in Utica, NY.⁴⁶ Refugees now make up almost 25% of the population there, and many have bought vacant and deteriorating homes, fixing them up and increasing property value.⁴⁷

We shouldn't protect asylum and other lawful immigration pathways only or even primarily because doing so serves our national economic interest, but neither should we deny that people who come to the U.S. to seek protection are not asking for handouts but an opportunity and a safe place for their families and talents to grow. Expanding pathways for newcomers and making those pathways durable, predictable, and efficient is both a border management policy and a smart investment in a functioning immigration system.

The Way Forward

Our government has repeatedly introduced measures that limit access to protection and put people in incredible harm — and none of those measures have ever resulted in a sustained solution to border management. Indeed, even right now under some of the cruelest anti-protection policies, the number of people arriving at the southern border is on the rise, and people continue to request asylum at airports and other ports of entry.

There are some aspects of global migration that cannot be “solved” for U.S. policy; we are at a moment of historic global migration, and the escalating geopolitical conflicts, climate change, and shifting economic developments will continue to mean that people will migrate for a better future for themselves and their families, sometimes in a moment of crisis and without forewarning.

But we can build a system that anticipates continued migration to the U.S. and creates a better border management system without sacrificing protection for the most vulnerable people. The ACLU joins its partners in supporting proposals in “A Safe Path,”⁴⁸ which pushes for a modernized, balanced system that invests in border and court processing. It is true that many people who come to the border seeking entry to the U.S. do not come primarily to seek humanitarian protection but rather to work. It is also true that the U.S. needs immigrant workers, has failed to create lawful pathways for people to come and live and work in the U.S., and doesn’t need to jettison asylum in order to create those complementary paths.

To create a long-term functioning border and asylum system, the United States must:

- 1. Create additional lawful pathways for people to come to the U.S.** The U.S. needs to expand the number and range of family, employment,

and other humanitarian visas available so that people can apply and come to the U.S. with authorization to work and the opportunity to stay. People coming to work in key industries are not exploiting the system; they are contributing to our society and economy, bringing needed skills, and helping to address the affordability crisis in the U.S. We also need to invest in regional processing and rebuilding our refugee system so that people can arrive with a plan and pre-approval, helping them integrate into the communities that need and want them and the talent and skills they bring. Improving family reunification and other visa schemes will reduce the number of people coming to the border and ensure that people who may have claims beyond asylum can be processed without inundating the asylum system.

There are indeed many people who don’t want to make the dangerous journey to the U.S. and would prefer to stay in the region they are from. The U.S. can and should support countries in receiving immigrants in that situation for example, in Colombia, which has resettled large numbers of Venezuelans. These investments in regional asylum and resettlement systems must coexist with and not replace the U.S. asylum system, but they can help to address border management and create more sustainable options. Legislation to protect the refugee resettlement system, like the Guaranteed Refugee Admission Ceiling Enhancement (GRACE) Act and Congressman Casar’s forthcoming bill to create new immigration pathways for individuals facing extraordinary conditions in their home countries, would ensure that people can lawfully apply for and receive permission to come to the United States, consistent with our humanitarian obligations and without burdening the border arrival system.

2. Invest in border processing and modernize the arrival triage system. Over the years, the U.S. government has funneled billions of dollars into border security, including a border wall that has destroyed our environment and national lands, invasive border surveillance that millions of U.S. citizens are subject to every day, and border patrol agents that have been allowed to act with impunity. But it has not invested in the services and staffing that would improve border processing and help to manage large group arrivals. This investment would entail a major upgrade of the nation's ports of entry and expanding the Office of Field Operations (OFO) workforce. There must be more ports where people can present themselves and present claims in a timely fashion rather than waiting in danger on the Mexico side of the border. And these ports must be staffed by trained professionals, including agents trained in a trauma-informed approach to correctly screen people seeking protection. This doesn't mean that everyone encountered at a port of entry will be allowed to enter and stay in the U.S., but it does mean that people with asylum claims will have a meaningful chance to present them.

Certainly, not every asylum claim is made at the border, but for those that are, we can improve our screening and reception system to be more fair, effective, and professional. There are precedents and operational systems to triage and process claims so that some *prima facie* protection claims can be expedited and approved without a full, multi-month process — and so that nonviable claims can also be identified and adjudicated.⁴⁹ This requires an investment in staffing and other operational needs at ports of entry, but it would be a meaningful investment in operational improvements that could be piloted immediately, like creating different processing pathways depending on the type of claim a person raises.

And, beyond the border, for people who are not raising asylum and other imminent harm claims, the U.S. can invest in in-country processing so that people's claims are adjudicated and people

can arrive with planning and permission, rather than coming to the U.S. border to seek an initial review.

3. Support states and localities in welcoming newcomers. One of the primary complaints from states and localities receiving new arrivals during the Biden administration was the lack of coordination and support from the federal government to ensure that people could receive services and go to communities that were ready to receive them. People seeking asylum were, in the short term, pitted against both citizens and longer-term immigrants and accused of taking services denied to people who are already members of our communities. We can certainly do better, at the local, state, and federal level, to ensure that all members of our communities are getting the quality services they need. This includes new arrivals, who quickly contribute their talent, skills, and energy to working in our cities where work permit regulations allow. Their contributions are perhaps most evidenced in rural communities where the local economy is suffering, in part because of the loss of residents. As we've seen time and time again, when newcomers — including asylum seekers and refugees — have arrived in rural areas, they have helped American farmers and revitalized towns and communities.

There is a longstanding disconnect between our legal obligation to provide protection to people seeking safety and our own national interest in having more workers join communities that need them and are ready to receive their talent. A better, coordinated arrival and reception system could ensure that people can come to the U.S. with prior approval, through initiatives like the Heartland visa program,⁵⁰ and help people who show up at the border in search of protection reach the communities that want them with the services and support to facilitate their initial months in the United States. There are legislative proposals, like the Destination Reception Assistance Act, that would improve this coordination between arriving immigrants and the communities receiving them to ensure that humanitarian needs

and services are met and that communities have the support they need.

4. **Fund and bolster the immigration court and asylum processing system.** Everyone wants a fair system where people who qualify for asylum can get their case presented and resolved quickly. Without a fair screening system, where people have access to legal advice and interpretation, we cannot ensure that people with strong asylum claims get into the system. Our system needs to invest in staffing and training for USCIS and immigration courts so that cases are handled more fairly, and people are not in limbo for months or years. It also needs to allow asylum officers to grant clearcut asylum cases without necessitating an immigration court referral, which would address the backlog and ensure that cases can be resolved promptly. There are plenty of examples of dockets that the federal government has set up to expedite the processing of certain communities, like the docket for Ukrainians during the Biden administration, and we can expand and improve these systems so that cases are resolved and the backlogs are addressed. Further, the government can invest in legal services for people in the interior and arriving at the U.S. border to advise people on whether they have claims to pursue and, if not, help them figure out the best options. We also must ensure that vulnerable populations like children have lawyers and are given anti-trafficking screenings, services, and protections — reversing the trend under the current administration to cut legal services and create logistical, financial, and ethical obstacles for attorneys who are ready to represent children and others in need of protection.

For too long, our government has looked at people fleeing violence and arriving desperate for safety as the problem with our border policy; the reality is that these individuals are its casualties. Our government's consistent failure to develop durable and lawful immigration pathways and to invest in a modern border arrival and triage system has resulted in a system that no one is satisfied with, and which has punished vulnerable people seeking protection for inefficiencies in a system they did not create.

We need an approach that anticipates and responds to people seeking protection at our borders, delivers fair and predictable adjudication for them, and creates legal and accessible immigration pathways beyond the border.

The policies we propose will not completely eliminate the presence of people seeking protection at the southern border, as is permitted under U.S. law — and for the Stephen Miller camp, that will not be enough. But they are investments and policies that respond to the reality on the ground and which attempt, finally and for once, to actually address the reasons we have a non-functional border reception system: the absence of other adequate lawful pathways, the need to invest in and staff our immigration and asylum systems, and the lack, to date, of a coordinated strategy and communication across localities, states, and the federal government so that newcomers can get to the communities that want them and access to transitional services they need. These are not insurmountable obstacles, but they require long-term investment, political commitment, and experimentation to ensure that the most vulnerable people get the protection they need and that the U.S. has a functioning, modern, and predictable border and asylum system.

We are at a dangerous political moment where the Trump administration is rapidly dismantling our protection system — from the refugee resettlement program to anti-trafficking protections for unaccompanied children to the core principle of *non-refoulement*. Over the last 18 months, we have seen an unprecedented and lawless campaign to deport children, political dissidents, LGBTQ+ persons, and many others to places where they are in immediate harm. The response to this unapologetic assault on due process, human rights, and our most vulnerable neighbors cannot be to sacrifice our protection system and cross our fingers for a better interior enforcement system as the tradeoff. Instead, politicians and policymakers who care about the rule of law and want to defend a lawful immigration system have to reject the Trump administration's disastrous trajectory and plan a rights-centered immigration, border, and asylum system that is forward-looking, evidence-based, and worthy of our nation.

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