

Fixing US Immigration and Asylum Policy: Making Roof Repairs during a Hurricane

by **Wayne A. Cornelius***

The hurricane in my subtitle alludes to the surge in asylum seekers who have been making their dangerous way through Central America and Mexico to the US-Mexican border since the November 2020 US election. Unaccompanied children and families traveling with children under 18 have attracted most of the attention, but single adults constituted over two-thirds of migrant encounters with the Border Patrol during the first quarter of 2021 (American Immigration Council 2021).

We can argue about what is causing it. How much is seasonal? How much is due to changes in policy and rhetoric from the Trump to the Biden administration? How much to the severe damage to the economies of Central American countries caused by the pandemic and by natural disasters? We lack the direct evidence, from face-to-face interviews with migrants participating in the surge, that would enable us to sort out and weight these various explanations.

The numbers are inflated by a high rate of recidivism among migrants who are being encountered by the Border Patrol and immediately tossed back into Mexico, without a deportation order. Because most of them have family members already living in the United States, their goal is to reunite with those relatives. They keep trying—and getting caught—until they succeed.

The United States also experienced large Central American migration surges in 2014, under Obama, and in 2019, under Trump. But the current one has

been intense enough to cause policy paralysis on immigration in Washington, and there is no end in sight.

Continuing my metaphor, the challenge of repairing the roof is huge. Donald Trump and Stephen Miller, the chief architect of Trump's immigration policies, left about a thousand holes in the roof. That is the most authoritative tally of anti-immigrant policy changes, new regulations, and legal reinterpretations that the Trump administration made during just four years (Hausman 2021).

Trump and Miller's overall goal was to reduce all forms of immigration to as close to zero as possible, including permanent legal immigration with green cards. In fact, Trump's most consequential changes were those made in the legal immigration system—not in enforcement against undocumented migrants inside the country or at the border. Some of the most significant changes were in the area of asylum and refugee resettlement. Donald Trump essentially shut down the US asylum system. Using a slew of regulations and policy changes, the Trump administration made it virtually impossible to get asylum protection. Refugee admissions plummeted from over 100,000 in Obama's final year to fewer than 15,000 in Trump's last year. The Trump administration justified the dismantling of asylum by citing the public health laws being used to protect Americans from COVID-19. But that public health shield was basically the cover for an ideological and racially driven assault on asylum. Stephen Miller has deep roots in the white nationalist movement. The changes in

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immigration regulations that he pushed through were deliberately designed to reduce the entry of low-income immigrants and people of color.

The Trump administration also forced asylum-seekers who presented themselves at ports of entry to go back to Mexico, to wait indefinitely for their day in US immigration court. They were deposited in squalid camps in dangerous Mexican border cities, where conditions were often as bad as in refugee camps in places like Syria. The approximately 62,000 migrants returned to Mexico were highly exposed to criminal violence. According to recently collected data from the Mexican Migration Field Research Program at UC San Diego, nearly one out of five migrants had suffered physical violence at the hands of Mexican authorities in Tijuana—about the same percentage who reported that they had experienced violence from drug cartels.

Joe Biden quickly ended the notorious “Remain in Mexico” program. Ending it probably encouraged some Northern Triangle families with children to try their luck at the US-Mexico border, along with Biden’s more welcoming rhetoric about immigration. There is no direct evidence of this effect, but the policy shift under Biden is likely to have emboldened more parents to send their unaccompanied children to Mexico and northward to the US border. This component of the current surge represents pent-up demand for protection that was blocked for four years by the Trump administration.

Conservative politicians and media like to paint what is going on as “human trafficking”: greedy, reckless people-smugglers taking chances with children’s lives and collecting thousands in fees from the parents and relatives in the United States. The reality is that the people-smugglers are mainly the instrument, not the driver, of the migration. The goal of the vast majority of people who hire them is to get themselves or their unaccompanied children into the hands of US-based relatives as quickly as possible. The coyotes are the most efficient—and often the safest—way of accomplishing that.

Yes, there is more demand for smugglers’ services when there is some prospect of success in getting asylum—not a door slammed shut, as it was under Trump. But the true drivers of Central American migration to the US border today are the ones that the same ones that have driven it for decades: extreme poverty, high levels of violence from criminal gangs, and weak rule of law. In addition, recent years have brought environmental disasters related to climate change: severe drought that impacted agricultural production and increased food insecurity, and mega-hurricanes like the two that decimated Honduras and El Salvador in November 2020. People in these countries are not calmly “deciding to migrate”; they are desperate people, fleeing intolerable conditions.

President Biden has some options for dealing with this mess that are theoretically available, but most of them are politically unpalatable. Take, for example, the so-called “root causes” approach, which Biden championed during his presidential campaign. It focuses on reducing the push factors in Northern Triangle countries, by investing in development assistance, antiviolenence, and rule-of-law programs. Biden proposed investing \$4 billion in these types of programs during his first term. Trump had cut off all assistance to these countries as punishment for failing to prevent emigration. All independent experts on migration agree that reducing push factors in Central America—and Mexico, for that matter—will be essential to gaining control of these migration flows. The problem is that these kinds of investments take considerable time to show results—probably at least five to ten years. That is a politically prohibitive time frame in Washington for just about any kind of policy intervention. But you have to start somewhere.

Another eminently sensible approach would be to increase the number of legal-entry opportunities that the United States offers to would-be migrants who do not qualify for asylum under the strict US legal standard: being a victim of “well-founded persecution” based on race, religion, or group identity. A large proportion of the people leaving Northern Triangle countries today are mainly economic migrants: they just cannot earn enough to feed and shelter their families. Providing

opportunities for them to enter the US legally will require new legislation, probably as part of a comprehensive immigration reform bill.

Biden rolled out a comprehensive immigration reform plan during his presidential campaign. He announced a more fully elaborated legislative proposal on his first day in office. It is a bold, progressive plan, including a generous program to legalize most of the roughly 11 million undocumented immigrants already in the United States, as well as major increases in the number of green cards and other types of visas. Republicans in Congress immediately called the plan “dead on arrival.” It may not be dead, but it seems to be on life support.

How did increasing the number of legal entry tickets get to be a politically toxic idea? Because historically, immigrants have been demonized as threats to jobs, lower taxes, public health, and all manner of other good things. Trump and his minions took the level of demonization to new heights. Meanwhile, the United States has not adjusted its visa ceilings since the 1990s. Lack of effort to enforce penalties against employers who knowingly hire undocumented workers—penalties included in the immigration reform bill passed by Congress in 1986—allowed the undocumented population to regrow after the legalization programs of the late 1980s. Border enforcement schemes since the early 1990s created a more formidable physical obstacle course, but fences and vehicle barriers failed to keep determined migrants out of the country.

Politicians have also convinced themselves that the United States has no need for additional, so-called low-skilled immigrants in the age of high tech—even if the productivity and incomes of high-skilled, native-born workers depend on their having access to low-skilled labor (East and Velásquez 2020). Consider the young professional woman with small children, or the grocery store clerk who has children at home. Access to affordable childcare (and often elder care) is a necessity for them. There are strong economic and social equity arguments for increasing legal immigration all along the skill distribution—not just at the high end.

On a per capita basis, the United States has one of the lowest immigration rates in the developed world. It is experiencing a demographic implosion, not the “population explosion” driven by immigration that conservatives decry. In the last decade, the US population grew at the slowest rate since the 1930s, due to a historically low birth rate and reduced immigration. The working-age population is shrinking even faster, as baby boomers age out of the labor force. Depletion of the economically active population is collapsing public finances in small cities and rural counties, which no longer have enough taxpayers to support essential services. In this context, more generous immigration and asylum policies could come to the rescue. If you have taken an economics course, you probably learned that an expanding labor force is needed to support economic growth. Without that, businesses wanting to grow will not be able to find the workers they need.

Why, then, is sensible immigration reform such a heavy lift? Congress has failed repeatedly since 2006 to pass comprehensive immigration reform bills. The last time it succeeded, Ronald Reagan was in the White House! National-level polling data, including some gathered since the pandemic started, consistently reveal that large majorities of Americans see immigrants as contributors to the country, not burdens. The research evidence strongly supports that widespread public perception. Why such a large disconnect with legislating?

Rahm Emanuel, the former mayor of Chicago and White House chief of staff under Barack Obama, used to call immigration the “third rail of American politics”—touch it at your peril. In Emanuel’s reckoning, whatever a politician does on immigration, they end up losing more votes than they gain. That kind of thinking is a sure prescription for congressional gridlock. Because of the disproportionate weight that the US electoral system gives to smaller, predominantly conservative states where immigrants are viewed more negatively, all those people who tell pollsters that immigration is a good thing do not translate into votes in Congress for immigration reform. Perhaps

the United States will need to tumble farther down the rabbit hole of population decline before that political calculus can change.

Where does all this leave Joe Biden? In a sense, he is paying the price for a half century of wrongheaded immigration policies. As of this writing, he and his allies in Congress can't even round up enough votes to get permanent protection for DACA recipients nor pass a narrowly drawn legalization program for undocumented farm workers—let alone for sweeping immigration reform legislation. Faced with the current migration surge, the Biden administration seems to be retreating into a bunker mentality, dragging its feet on various much-needed policy changes. For example, during the presidential campaign, Biden's immigration advisers recommended an immediate rollback of the Trump policy of requiring relatives and other potential sponsors of asylum seekers to disclose their own immigration status to government authorities. Of course, that is a powerful disincentive to come forward. The policy was ultimately reversed, but not before weeks of delay had contributed to a humanitarian disaster, with unaccompanied children piling up in federal detention centers never designed for them.

A similar pattern has been evident in Biden's hesitation on setting a more generous ceiling for refugee admissions. Candidate Biden promised that 125,000 refugees would be resettled in his first year. But once in office, Biden declined to quickly sign off on a new ceiling, leaving in place the 15,000-person cap set by Trump in his final year—a historic low for the US refugee program established in 1980. On May 3 Biden reversed himself again, setting an admission cap of 62,500 for the remainder of the fiscal year while cautioning that far fewer refugees were likely to be resettled. Administration officials blamed Trump's starving of the network of NGOs that traditionally worked with the federal Office of Refugee Resettlement, but broader political considerations reportedly influenced the back-and-forth (Shear and Kanno-Youngs 2021). Much of what needs to be fixed can only be achieved through new legislation. If legislative fixes are off the table, at least temporarily, then Biden can change things through executive orders and new regulations. To his credit, he

has issued a flurry of executive orders reversing Trump's worst nativist policies. But much remains to be done.

For example, back in 2018, Trump's attorney general Jeff Sessions "reinterpreted" US asylum law in a way that eliminated being a victim of most forms of violence as grounds for an asylum claim. Excluded as grounds were domestic violence and gang violence—huge problems in Central America. With the stroke of a pen, Sessions made nearly all Central Americans ineligible for asylum protection. US asylum law and the Constitution give the attorney general that kind of power; no congressional assent is required.

The obvious fix was for Biden's attorney general, Merrick Garland, to "re-reinterpret" asylum law to restore the status quo ante. It took until June 16 for that to happen. I suspect this was because the administration was concerned that any overt broadening of asylum opportunities would add to the ongoing surge of Central Americans to the border, which could undermine other Biden priorities, like passing major legislation on infrastructure and climate change. Moreover, Biden must use the 2022 elections to grow his razor-thin majorities in Congress. Anything that plays into a Republican election-year narrative that Biden is pursuing an "open borders" immigration policy could vastly complicate that goal.

This is a conundrum that must be solved, if the United States is going to start working its way out of the immigration mess that Trump and his minions left behind.

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