The Border and Beyond: Policy Recommendations to Rebuild a Fair, Secure, and Humane Border

Executive Summary

The United States’ asylum system faces near-total decimation after years of progressive dismantling across multiple administrations. The Biden administration's attempts to terminate two of the most harmful Trump-era policies—Migration Protection Protocols (MPP), also known as Remain in Mexico, and Title 42—have been systematically thwarted, and the country now finds itself at a crossroads. A fair, secure, and humane border is critical to US sovereignty and global leadership, yet division and partisan fearmongering have produced both an ineffective and unjust immigration system at our southern border—one that has failed to reduce apprehensions or increase orderly processing. The current system has also curtailed the legal right to seek asylum at the border, an essential protection mechanism established in the aftermath of World War II as a response to our previous failure to protect those seeking safety on our shores. This comes at the same time that the wider immigration system has been neglected and is in dire need of reform.

We believe it is not just possible to balance security and humanity, but that they go hand-in-hand. We believe this is possible through parallel efforts to rebuild pathways of protection for people escaping persecution, expand programs to facilitate family reunification, and work with Congress to secure resources and pass immigration bills with existing bipartisan support.

To that end, we recommend the following actions:

- Rebuild and improve the asylum system through (a) increased processing, legal, and adjudication capacity, (b) the institution of case management and community-based alternatives to detention, and (c) immediate access to work permits.
- Expand in-country regional capacity for adults and families by (a) expanding access to and streamlining the U.S. Refugee Admissions Program (USRAP) for Latin Americans by expediting processing through improved technology and increased resources, and (b) promptly restarting and expanding family reunification parole programs, particularly for Cuban and Haitian populations, that allow populations to safely process in-country and avoid the treacherous journey to the southern border.
- Expand in-country capacity to help children who would otherwise cross the southern border unaccompanied to reunify with family in the U.S. by expediting processing through the Central American Minors program.
- Fully utilize employment-based nonimmigrant and immigrant visa programs, increasing access and efficiency in processing visas while ensuring worker protections and providing much-needed workforce support for U.S. employers.
- Advance bipartisan solutions in Congress to (a) remove barriers to lawful permanent residency, (b) authorize visa recapture for unused visas, (c) improve border security using innovative technology, and (d) pass immigration bills with strong support (such as efforts to provide visas for doctors, nurses, and other medical personnel, recertify and employ immigrants with international degrees or credentials).
• Address drivers of displacement such as climate change through immediate- and long-term strategies and designate countries that have become unsafe for Temporary Protected Status and Deferred Enforced Departure.

These actionable solutions honor our moral and legal obligations to those seeking safety while strengthening the United States and streamlining our immigration system. The following pages outline concrete solutions that could produce real reforms and move us past the partisan politics that have plagued discussions of asylum and our southern border for too long.

Introduction

The United States is at a critical moment as a country that has, through its laws and values, promised to protect individuals who flee their country fearing persecution. After years of efforts by the previous administration to dismantle our asylum system, and just a little more than a year to try to rebuild it, the country is at a crossroads. Will we lean into this moment and bravely restate our values and recommit to meeting our moral and legal obligations, or will we shirk our responsibility and continue to use the false auspices of public health to avoid creating an orderly and secure border? At this moment, we are dangerously close to permanently ending asylum, a key protection mechanism that was established in the aftermath of World War II. What path should we choose to move forward?

Title 42 is dangerously close to becoming a permanent fixture if Congress acts to codify it. This is despite overwhelming evidence that the order offers no public health benefit. In fact, the Centers for Disease Control (CDC)'s own scientists disputed the merit of the order from the start and public health experts have repeatedly pointed out that it lacks a scientific public health rationale. Title 42 has not limited the spread of COVID-19, and it violates the United States government's commitment to the Convention Against Torture of 1984 and the Refugee Convention of 1951. Any legislative efforts designed to keep Title 42 in place—transparently misusing an increasing irrelevant public health order in order to block access to asylum—should be vigorously opposed.

Ineffective and dangerous Trump-era policies should be met with bold and courageous actions by the Biden administration to reinstitute and advance our nation’s laws and values. To that end, we urge the administration to pursue parallel efforts to rebuild and restore pathways of protection for people escaping persecution, while also offering migrants leaving their homeland for a mix of economic, climate, and protection reasons a legal means of entry.

I. Rebuilding and Restoring Protection Pathways

a. Asylum

The administration should restore access to asylum for those who seek safety and are in need of protection, consistent with U.S. codified law and international agreements. The administration must develop a safe, humane, and orderly process that honors the dignity of the protection-seeking migrant and their legal right to ask for protection at the southern border. To this end, we recommend the administration:
Drastically increase processing capacity at ports of entry by increasing resources such as CBP officers, transportation, and medical services while streamlining steps by digitizing and storing “A” files in a single portal so that the multiple agencies involved may access them, eliminating the need for paper files and reducing the time that individuals spend in government custody.

Process asylum-seekers at facilities that are safe, appropriately staffed, and avoid overcrowding.

Ensure resources and facilities at the border acknowledge and respect the dignity and diversity of people seeking safety and are equipped to provide culturally and linguistically appropriate information and services.

Increase access to legal services by building legal services capacity and expanding legal representation programs for immigrants in removal proceedings.

Expand capacity to adjudicate cases in the immigration system by increasing the number of asylum officers and immigration judges.

End the use of private prisons to detain people awaiting their asylum hearing and instead implement community-based models that are less expensive, safer, and more humane.

Coordinate with faith-based and nonprofit partners at the border and the interior who implement these more effective, community-based models.

Reinstitute a federally funded case management program for asylum seekers.

Ensure that asylum seekers have immediate access to work permits so that they may sustain themselves while their cases are being processed.

b. U.S. Refugee Admissions Program (USRAP) for Latin Americans

Some people arriving at the US Southern Border could be more humanely and effectively served through refugee resettlement, which is governed by U.S. law and international agreements and facilitated by the United Nations High Commissioner for Refugees (UNHCR). Recent trends and demographic shifts indicate certain groups could benefit from refugee processing in the region. For example, there has been an increase in Cubans and Venezuelans arriving at U.S. ports of entry who are fleeing political persecution and violence. Under the Immigration and Nationality Act (INA), a refugee is a person who, generally, has experienced past persecution or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Individuals who meet this definition may be considered for refugee status under Section 207 of the INA if they are outside the United States, or asylum if they are already within the territory.

Many Venezuelans and Colombians arriving at our southern border meet the definition of a refugee under U.S. law but are nonetheless often treated indistinguishably from other categories of migrants. Many are not in the U.S. refugee pipeline and are instead seeking asylum at the U.S. southern border. For those that do not qualify in the before-mentioned category, many would qualify under the Cartagena Declaration, an expanded grounds for refugee status adopted by 14 other nations that the U.S. has not adopted. Such regional instruments recognize the evolving dynamics which drive displacement, but the U.S. has thus far neglected to legislatively broaden its definition to provide protection from risks such as
generalized violence, foreign aggression, internal conflicts, or other circumstances that have seriously disturbed public order.

The administration should:

- **Re-open refugee pathways**: A primary pathway for refugees to be resettled to the U.S., known as Priority 1, depends on “referrals” to the U.S. Refugee Program by trusted institutions such as the UNHCR and non-governmental organizations with which the U.S. has worked closely (i.e. the International Organization on Migration [IOM]). UNHCR has historically referred the vast majority of Priority 1 cases; however, the USRAP no longer accepts referrals from UNHCR “except in categories listed in this year’s allocation in the Presidential Determination,” which means many refugees ordinarily prioritized for resettlement to the U.S. remain in limbo, often in dire conditions amid squalid refugee camps. The U.S. should resume accepting individual refugees referred by these trusted institutions, eliminating the current category restrictions laid out by recent administrations.

- **Expand access to protection pathways for vulnerable populations** that the U.S. government designates as “of special concern,” referred to as Priority 2 designation—such as Chinese Uyghurs—and refugee families seeking reunification (referred to as Priority 3 designations). Some of these populations may have challenges accessing UNHCR resettlement services. It is often difficult for individuals to reach a UNHCR office in their country of origin or travel to file their claim, making the required referral to USRAP for resettlement impossible. P-2 programs eliminate this referral requirement and allow individuals to access USRAP services directly. For example, in September 2021, the Biden administration discretionarily created a P-2 program for Afghan nationals, which created additional pathways for Afghans fleeing persecution from the Taliban. Similarly, the P-3 program provides access to USRAP based on a petition filed by a petitioner (parent, spouse, or unmarried child under 21 years old) who has been admitted as a refugee or granted asylum within five years of application submission.

- **Explore ways to safely restart refugee processing in locations where there is limited consular presence or capacity, such as Cuba.**

- Immediately **scale up overseas processing** to new locations where there are large groups of refugees in protracted situations (i.e. South American countries where Venezuelans have fled).

- Expand the use of **video interviewing** to avoid physical travel delays due to COVID-19 and to allow refugee officers to consistently interview refugees in places where circuit rides get canceled due to unrest and safety conditions (like Honduras and Cuba).

- Reduce processing times by **streamlining and expediting the vetting process** and curtailing bureaucratic delays. Ensure that all vetting agencies increase staff capacity to meet the new admissions goal and regional allocations.

- **Evaluate if there are disparities in the standards of USRAP** and address any differences in the treatment of and protections granted to nationals of certain countries that are fleeing similar contexts (e.g., forced recruitment and extortion).
II. Expand and Implement Administrative Programs to Facilitate Family Reunification and Stabilize Persons in Origin Countries

Protection-seeking persons arriving at the U.S. southern border often articulate multiple reasons for leaving their country of origin. Because of these multiple factors and the considerable barriers in accessing traditional protection pathways, the Biden administration should expand administrative programs that offer meaningful options for persons seeking entry to the United States from their current place of residence.

a. Restart and Expand Family Reunification Parole Programs

Family reunification parole programs allow eligible United States citizens and lawful permanent residents to apply for parole for their eligible family members. Through this process, family members of eligible United States citizens can enter the United States without waiting for immigrant visas to become available. The beneficiaries of this program may also receive work authorization while applying for permanent resident status in the United States. Historically, the U.S. has run two major Family Reunification Parole Programs: (1) the Cuban Family Reunification Parole Program (CFRP) and (2) the Haitian Family Reunification Parole (HFRP) Program. The CFRP Program was created in 2007 and allows certain eligible U.S. citizens and lawful permanent residents (LPRs) to apply for parole for their family members in Cuba to facilitate entry to the U.S. CFRP Program processing in Havana was suspended due to the significant drawdown in personnel from the U.S. Embassy in Cuba for security reasons in 2017 and the permanent closure of the USCIS field office in Havana on Dec. 10, 2018. On May 19, 2022, the Biden administration announced it would reinstate the CFRP Program and increase capacity for consular services. On June 9, 2022, the administration additionally announced that the CFRP Program will resume this summer and DHS will also resume the HFRP Program, starting this fall. We commend the administration for these decisions and urge prompt implementation and robust resourcing to ensure these programs achieve the protection goals.

The administration should work quickly to operationalize the reinstatement of the CFRP Program, clearing the backlog of over 20,000 cases that resulted from the suspension of processing, and the HFRP Program. The administration should also explore additional programs that will offer a safe process for families with pending and approved immigrant visa applications to reunify.

b. Expedite Processing and Expand Central American Minors Program

The Central American Minors (CAM) Program was created in 2014 in order to create a safe alternative for children from El Salvador, Guatemala, and Honduras to enter the United States as refugees or parolees and rejoin their parents. Under the first iteration of the CAM program, parents legally residing in the United States could apply for their children in El Salvador, Guatemala, and Honduras to re-join them in the United States as parolees. More than 4,000 children reunified with family as a result. The first iteration was terminated by the Trump administration in 2017, and the 2021 relaunch of the program by the Biden administration expanded the eligibility of applicants to include parents and legal guardians whose asylum or U visa applications are pending (if filed before May 15, 2021). CAM reopened cases for parents from Honduras, El Salvador, and Guatemala whose applications were interrupted during the
Trump administration, and the program has now started accepting new applications. **In 2022, the Biden administration should expedite the processing of new applications, as the process to date has been slow, and seek ways to expand the program.**

c. **Employment-based Nonimmigrant and Immigrant Visa Programs**

The H-2A and H-2B non-immigrant visa programs permit U.S.-based employers to fill labor shortages with foreign workers after engaging in a test of the U.S. labor market. The H-2A program, which provides temporary work authorization for agricultural workers, has expanded over the years to meet demand for farm labor. The Department of Labor (DOL) certified over 317,000 seasonal farm jobs to be filled by H-2A workers in Fiscal Year 2021 – a 15 percent increase over the previous year. The H-2B program usage depends upon state/regional labor needs and has been utilized by employers to fill a variety of positions such as groundskeepers/landscapers, forest and conservation workers, amusement and recreational workers, lifeguards, and meat/poultry/fish processers. There are 66,000 H-2B visas for non-agricultural temporary and seasonal workers made available each fiscal year, allocated in half for the summer season and half for the winter season. The Department of Homeland Security (DHS) made an additional 35,000 H-2B visas available for the remainder of FY22. DHS should continue to increase visa allocations to meet labor demands while enhancing the efficiency and integrity of the program and ensuring worker education and protection. **The administration should continue to increase access to and efficiently process nonimmigrant work visas while ensuring worker protections.**

In addition to non-immigrant or temporary work authorization, the administration should also maximize access to employment-based immigrant visa programs to facilitate access and transition to lawful permanent residency and self-determination through the ability to change employers more freely.

d. **Utilize Temporary Protected Status and Deferred Enforced Departure Authorities**

The Biden administration has used Temporary Protected Status (TPS) authorities to issue five new designations, bringing the total number of countries that are designated to 15 and the total number of persons potentially protected to over 1.6 million people. Designating Guatemala and redesignating other Central American countries would protect an estimated 750,000 more. **The Biden administration should expedite the process for reviewing TPS designations for countries recommended by the TPS-DED Administrative Advocacy Coalition, particularly those in Latin America, including the Caribbean.**

Countries in the region forced to accept large numbers of deportees from the U.S. may lack the capacity necessary to ensure that they will be smoothly reintegrated into their community. By reducing the number of individuals deported back to unsafe, unstable situations, the administration protects vulnerable individuals from being returned to unsafe conditions and protects countries of origin from a potentially destabilizing influx of migrants returning via deportation.
III. Work with Leaders in Congress to Remove Barriers to Lawful Permanent Residency, Increase Safety and Security, and Pass Immigration Bills with Existing, Robust Bipartisan Support

The Biden administration should also work with leaders in Congress to reduce barriers to lawful permanent residency for migrants seeking entry to the U.S. via the southern border that may qualify for multiple paths for protection. Excluding immediate relatives, family members sponsored for lawful permanent residency can wait up to 25 years for a visa to become available—and for many, the wait for this pathway becomes too long to bear. This is particularly acute for Mexican nationals who are the children of U.S. citizens and lawful permanent residents. Historically, there has been a higher demand for immigrant visas than the fiscal year supply of 226,000 family-based visas and 140,000 employment-based visas. In its 2010 Report to Congress, the Department of Homeland Security’s Citizenship and Immigration Service Ombudsman indicates that there were 241,928 family-based visas and 506,410 employment-based visas that were unused between 1992-2009. More recent reports estimate that there are currently over 5 million people waiting for an available immigrant visa number—among them some 3.7 million who are seeking family reunification. Recapturing unused visas will reduce waiting times and help families become whole again more quickly.

Reduced processing and consular closures due to COVID-19 significantly impacted visa processing, leaving tens of thousands of immigrant visas unused. Congress should authorize immigrant visa recapture to use those unused visas for current applications and reduce time spent waiting for green cards. A bipartisan bill to address visa recapture (detailed further below) sits in Congress, awaiting markup in committee and ultimately a vote.

a. Increase Safety and Security

The administration should also work with leaders in Congress to ensure there are appropriate resources to uphold and enforce the law, detect and address trafficking, and to treat people humanely. The issue of the U.S. southern border has become a politicized topic that has more often than not done a disservice to the practical goal of creating a fair, orderly, and humane protection process. In parts of Arizona, for example, border enforcement tactics that rely upon racial profiling have resulted in higher levels of apprehension of U.S. citizens than non-citizens. Communities of American citizens that span across our border are subject to unique and often unjust standards for search and detention, and the non-citizens that live there are often denied lawful due process. Reduced trust and cooperation between border communities and immigration enforcement undermines the government’s ability to secure the border.

While the border wall has been a public lightning rod in regard to its construction, the assessment of its efficacy, and in its costs to taxpayers, we seek to focus on practical policies that have a proven track record to ensure an orderly, secure, fair, and humane process at the border. Ensuring that there are legal pathways to the U.S. for individuals and families to apply is an integral part in achieving this. As the CATO Institute delineates in a 2019 report, “for every guest worker admitted legally from Mexico, there was a decline in two arrests of Mexicans crossing illegally.” This applies to asylum and the end of policies like Title 42 that suspend U.S. law assuring the right to seek asylum and be given due process. Border policy focused on keeping out asylum seekers results in higher numbers of irregular crossings. Legal
immigration pathways, such as expanded guest worker visa programs, reduce incentives for migrants to take the precarious journey to cross via the southern border. The ability to apply for asylum at ports of entry ensures that fewer people will attempt to enter the U.S. irregularly or between ports of entry.

Where congressional leaders have introduced thoughtful, bipartisan solutions for strategically and effectively achieving security goals, Congress should pursue them. One such example is the 2000 Trafficking Victims Protection Reauthorization Act (TVPRA), which was last renewed in January 2019 and ensures resources for anti-trafficking prevention strategies and expanded protections available with the T Visa. It regulates that all unaccompanied children arriving at the southern border are screened as potential victims of human trafficking. Other bipartisan efforts, such as the 2022 Integrating New Technologies to Empower Law Enforcement at Our Borders Act, attempt to analyze the current use of technology at U.S. borders and to utilize advanced technology along the northern and southern U.S. borders between ports of entry—including optical radar and automation—without further investing in the ineffective, costly, and inhumane industry of private immigration detention profiteering.

Thoughtful border security and enforcement not only seeks to prevent irregular crossings but addresses the issues of visa overstays, family separation, and the unique concerns of border communities. Americans expect that their immigration laws and law enforcement officers uphold basic American values, including justice and fairness, while ensuring public safety. Not only is the current system woefully ineffective, it violates both our laws and our values. Border security policies that incorporate cutting-edge technologies and thoughtful human monitoring while respecting migrants’ human rights and dignity serve to maintain order and security and simultaneously ensure a fair and humane process worthy of the U.S.

b. Pass Immigration Bills with Existing, Robust Bipartisan Support

The lack of immigration legislative reform over the last 28 years has led to deep dysfunction that no administration can resolve without serious action from Congress. Until practical immigration reform is enacted, the administration should work with leaders in Congress to support the following discrete legislative efforts that already have bipartisan support:

- **Preserving Employment Visas Act** (S.2828) recaptures unused employment-based green cards from FY20-21 due to bureaucratic inefficiencies and Covid-19 processing delays at USCIS. (Sponsors: 3 Republicans, 1 Democrat)
- **The Healthcare Workforce Resilience Act** (S.3599) makes previously unused immigrant visas available to 25,000 nurses and 15,000 physicians. (21 Ds, 18 Rs)
- **The Conrad State 30 and Physician Access Reauthorization Act** (S.948) increases the number of internationally educated doctors working in rural and medically underserved communities across the U.S. (9 Rs, 8 Ds)
- **Bridging the Gap for New Americans Act** (S.3157) directs the Secretary of Labor to conduct a study examining the barriers to employment opportunities for immigrants
and refugees in the United States who have international degrees or credentials. (3 Rs, 2 Ds)

- **America’s Children Act (S.2753)** prevents aging out by locking in the date minor children of long-term visa holders apply for a green card instead of the date the green card becomes available, preventing self-deportation for these “Documented Dreamers” who are stuck in green card backlogs. (4 Rs, 4Ds)

- **Eagle Act of 2021 (H.R. 3648)** increases the per-country cap on family-based immigrant visas (from 7% to 15%), eliminates the per-country cap for employment-based immigrant visas, and allots visas for professional nurses and physical therapists. It also implements transparency requirements to prevent employer fraud in work visa applications and recruitment. (8 Rs, 76 Ds)

- **Integrating New Technologies to Empower Law Enforcement at Our Borders Act (H.R. 6794)** requires the Department of Homeland Security to develop a comprehensive plan to identify, deploy, and integrate emerging technologies to achieve greater situational awareness along the northern and southern borders of the United States.

- **Farmworkers Modernization Act (H.R. 1603)** provides a path to lawful permanent residence and citizenship for undocumented agricultural workers and revises the H-2A program to address farmworker and employer concerns. (13 Rs, 49 Ds)

- **Trafficking Victims Protection Act (TVPA)**, first enacted in 2000, is the national framework for the federal response to human trafficking. The law has been reauthorized and updated, five times, most recently in January 2019 with strong bipartisan support. In FY19, Congress appropriated $250 million toward these efforts. The TVPA is based on a three-pronged “3P” approach to fighting sex trafficking and labor trafficking – prevention, prosecution, and protection.

Finally, elements of the failed congressional Build Back Better bill sought to recapture visas that went unused during the years 1992 to 2021, going further back than the above bills and expanding eligible visa recapture. LIRS holds sacred the preservation of the family unit and in this context, the reunification of separated families, including when they are separated by bureaucratic backlogs and family visa scarcity. Furthermore, given the incredible disparity between demands for work- and family-based versus U.S. supply – paired with record low U.S. unemployment and widely reported difficulty in U.S. firm talent recruitment – Congress should resurrect popular elements of this failed bill and combine them with the discrete efforts listed above to provide bipartisan immigration solutions that are widely popular with the American people.

**IV. Employ Long-term Strategies to Address Drivers of Displacement**

**a. Drivers of Displacement Such as Climate Change**

Hurricanes Eta and Iota are the latest examples of deadly storms that have become more intense and less predictable due to climate change. The storms affected over 11 million people in Central America, displaced 1.5 million, and caused billions of dollars in damage. In Honduras alone, the storms affected over 4 million people and caused $10 billion in damages. The storms leveled housing and infrastructure and exacerbated food insecurity throughout the region, forcing people to flee their homes.
DHS made an important contribution to climate change policy when it issued its Strategic Framework for Addressing Climate Migration in October 2021. The Framework confirms that tens of millions of people are likely to be displaced over the next two to three decades due to the effects of rising global temperatures (many experts, in fact, expect hundreds of millions to be displaced). Little has been done since that time to meaningfully address root causes. **The administration should reimagine and make substantial changes to our immigration system to protect these populations vulnerable to climate displacement.** LIRS’s recommendations for the Biden administration, Congress, and all our leaders in our Climate Displacement Report are [here](#).

**Conclusion**

Lutheran Immigration and Refugee Service believes the United States is capable of guaranteeing both a secure and sovereign border and a just, fair, and orderly humanitarian protection system. In addition to restoring asylum protections, the administration should pursue parallel efforts to rebuild and restore pathways of protection for people escaping persecution, expand and implement programs to facilitate family reunification and stability, and work with leaders in Congress to secure resources and pass immigration bills with existing bipartisan support. Such a system would honor the dignity and legal right of protection-seeking persons and reduce irregular and illegal crossings, while also protecting the sanctity of the family.