
From campaign to implementation: an overview of Biden's immigration policy

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Theme

President Biden entered office in January 2021 with ambitious plans to overhaul US immigration management policy at the US-Mexico border and reverse many of the controversial policies implemented by former President Trump. While Biden has made many noteworthy reforms to reshape US immigration policy, he has faced historic irregular immigration flows at the US-Mexico border, and immigration has emerged as one of the most important issues for voters leading up to the November 2024 presidential elections.

Summary

Candidate Joe Biden campaigned on reversing many of President Trump's controversial immigration policies leading up to the 2020 presidential election. After taking office in 2021 he sought to strike a balance of tough but fair policies, pursuing actions that encouraged individuals to engage in a safe and orderly immigration, restored legal immigration, opened new legal avenues for immigration and enhanced regional cooperation. However, he has been confronted by record levels of irregular immigration at the US-Mexico border, legal challenges to his policies and a sharply divided Congress that have stymied his ambitions to reform an outdated immigration system. In 2024, with voter discontent running high on immigration in an election year, President Biden has sought to address that perceived political vulnerability by implementing a strict, controversial border policy.

Analysis

1. Introduction

President Biden entered office in January 2021 after campaigning to reform the country's outdated immigration system, reverse many of former President Trump's more controversial immigration policies and promote safe, legal and orderly immigration. On his first day in office he sent Congress [legislation](#) that would regularise the status of millions of undocumented immigrants and overhaul the country's legal immigration system and border controls. Over the next several weeks, he signed a series of executive orders that directed his Administration to make immediate changes to certain immigration policies and review other policies to make sure they were consistent with his vision to update the US immigration system.

2. Border trends and policies

2.1. Reversing Trump's border policies

In early February 2021 President Biden followed through on one of his publicised immigration campaign promises and signed an executive order that established a task force to reunite immigrant families who were separated at the US-Mexico border under the Trump Administration. A June 2021 US government report estimated that at least 3,900 children were separated from their families from July 2017 to January 2021 due to the Trump Administration's implementation of the controversial 'zero-tolerance policy'.

The Biden Administration also [announced](#) in February 2021 that it would terminate the Asylum Cooperative Agreements (ACAs) signed with Guatemala, El Salvador and Honduras in 2019. Pursuant to the ACAs, the US government could transfer certain asylum-seekers to these countries to pursue their protection claims. The Administration then [publicised](#) its plans to terminate the Migrant Protection Protocols (MPP, also known as 'Remain in Mexico') programme in June 2021. Pursuant to this policy, certain immigrants seeking entry into the US could be returned to Mexico until their court cases were decided. Both programmes were heavily criticised by immigration advocates and some Democratic members of Congress for undermining the US asylum system and placing migrants at risk. After withstanding legal challenges, US courts permitted the government to terminate the MPP programme in August 2022.

Unlike the Administration's early moves to terminate the Trump-era ACAs and MPP, Biden relied longer than expected on Title 42, a public health authority invoked by the Trump Administration in 2020, to restrict irregular immigration to prevent the spread of COVID-19. Pursuant to Title 42, the US government could expel certain irregular immigrants who had crossed the US-Mexico border back to Mexico or their countries of origin without providing them access to the US asylum system or immigration proceedings.

Title 42 helped keep certain irregular immigrants arriving at the US-Mexico border out of the country. It allowed the government to rapidly process and remove arriving irregular migrants without allowing them to enter the backlogged asylum system. Still, Title 42 did not prove to be an effective deterrence tool, as many immigrants expelled to Mexico turned around and tried to cross again, often the same day. From March 2020 to March 2023 more than 2.8 million immigrants were expelled from the US pursuant to Title 42.

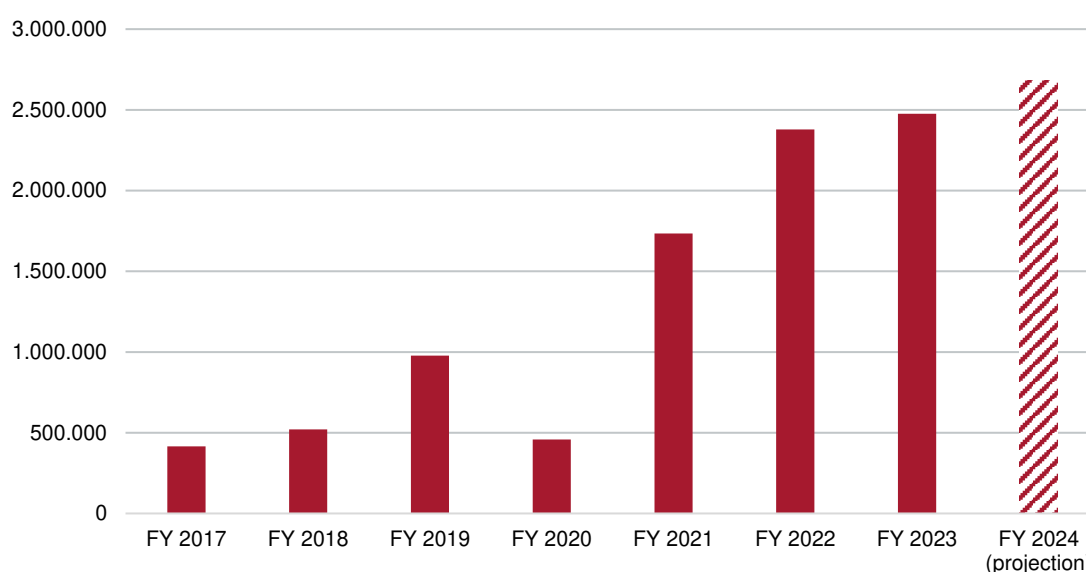
The Trump and Biden Administrations' use of Title 42 faced significant criticism from immigration advocates and some Democratic members of Congress for placing immigrants at risk by returning them to dangerous parts of Mexico and violating international law by denying immigrants the ability to seek asylum in the US. Nonetheless, the Administration viewed it as an imperfect tool to address irregular immigration flows while it worked to develop different border policies.

Despite concerns from Republican and some Democratic members of Congress that the end of the policy would result in a surge of immigration to the border, the Administration [determined](#) in April 2022 that there was no longer a public health basis for keeping Title 42 in place. It sought to lift the rule, but legal challenges delayed it until March 2023.

2.2. Recent border trends

As President Biden followed through on his campaign promise to dismantle many of President Trump's border immigration policies, his Administration faced a historic number of immigrants seeking to cross the US-Mexico border. The government apprehended an average of nearly 2.2 million immigrants annually at the US-Mexico border from fiscal years (FYs) 2021 to 2023, including a record total of 2.5 million in FY 2023 (US fiscal years are defined as October to September). This trend continues in FY 2024. In the first half of FY 2024 over 1.3 million immigrants were apprehended trying to cross the border. At this pace, FY 2024 border apprehensions will surpass the record level from FY 2023.

Figure 1. Immigrants apprehended at the US-Mexico border, FYs 2017-24 (projection)



Note: the FY 2024 projection is based on six months of available data and assumes the same number of apprehensions in the second half of the fiscal year. Source: Department of Homeland Security, US Customs and Border Protection data.

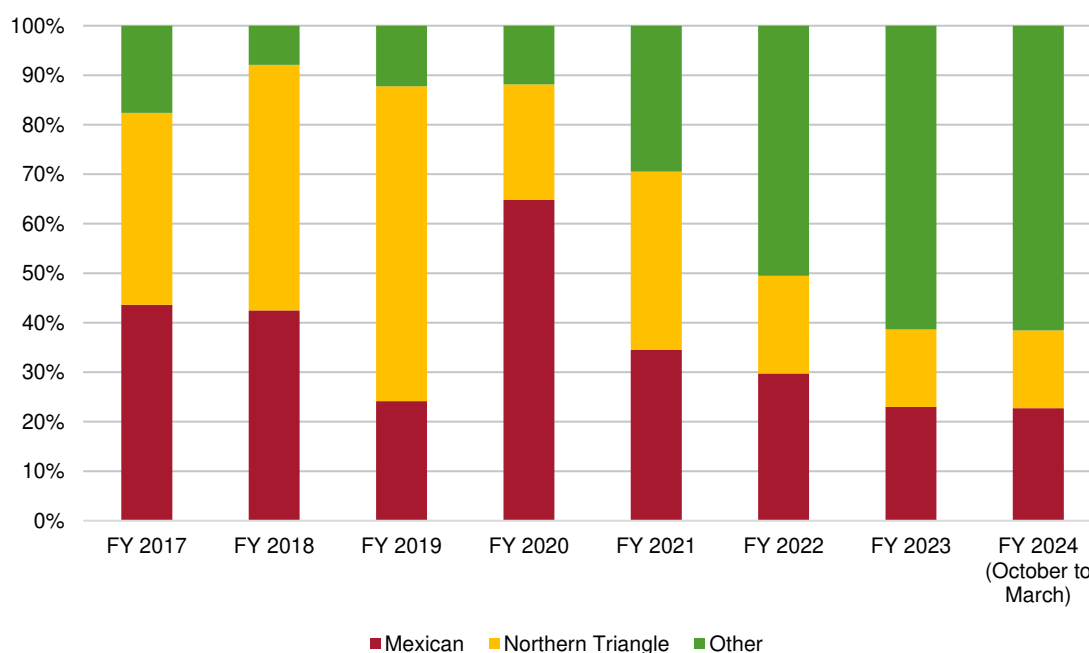
The uptick in irregular immigration in early 2021 was likely driven by many factors, including grinding economic conditions in countries of origin, robust labour demand in the US, the desire to reunify with US-based families, the easing of COVID-19-related border restrictions and the belief that it would be easier to enter and stay in the US under the Biden Administration.

Although many anticipated the increased irregular flows in 2021, the Biden Administration has been challenged to fulfil the President's initial vision of a more humane immigration system in the face of the historical arrival of immigrants crossing the border and an unprecedented diversity in immigrants' countries of origin. More immigrants are coming from countries outside of Mexico and Central America, more unaccompanied children and families are arriving, and more individuals are requesting asylum. These factors create a vicious circle: they complicate the government's ability to process cases quickly, contributing to the perception that immigrants can enter the US and stay, fuelling more irregular immigration.

In the past, most irregular border crossers were adult men from Mexico immigrating to find work. In FY 2014, for the first time, the US apprehended more immigrants from the Northern Triangle countries of El Salvador, Guatemala and Honduras than from Mexico. Moreover, many of these immigrants were unaccompanied children and family units – demographic groups that, by law and court rulings, are difficult to process expeditiously– in search of protection from crime, violence and persecution.

Then, in FY 2022, the range of nationalities of irregular immigrants arriving at the border increased dramatically. Immigrants from countries other than Mexico and the Northern Triangle accounted for more than half of border apprehensions –up from just 8% in FY 2018–. And thus far, in FY 2024, this trend continues to grow: 62% of immigrants apprehended were non-Mexican, non-Northern Triangle nationals. For instance, 25% of all border apprehensions in the first half of FY 2024 are nationals of Cuba, Haiti, Nicaragua and Venezuela. These flows also increasingly include nationals from countries outside the Western Hemisphere. The combined number of Chinese, Indian and Russian nationals encountered at the border grew from 7,000 in FY 2021 to over 109,000 in FY 2023, a 1,500% increase.

Figure 2. Proportion of immigrants apprehended at the US-Mexico border by nationality, FYs 2017-24 (FYTD)



Source: [Department of Homeland Security, US Customs and Border Protection](#) data.

Unaccompanied children and families have also grown as a portion of irregular immigration flows. In FY 2020 they comprised 23% of immigrant apprehensions. In the first half of FY 2024, 44% of apprehensions are unaccompanied children and family units.

Consistent with global displacement trends in recent years, more irregular immigrants are requesting asylum protection upon arrival in the US. This has led to an overall increase in the number of asylum requests –both defensive (generally applications filed

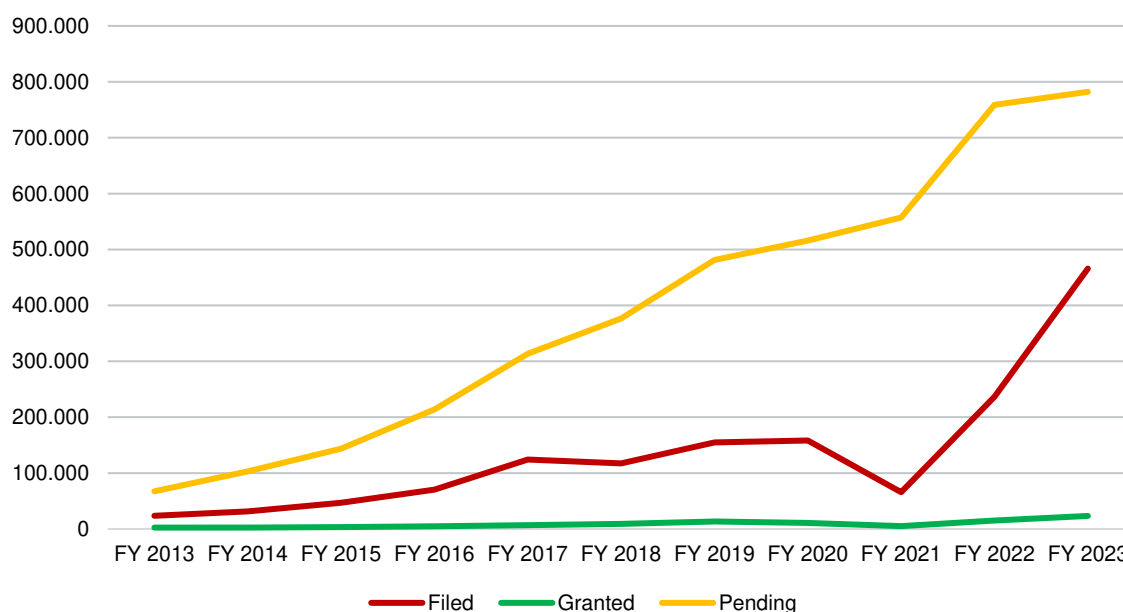
by immigrants in deportation proceedings seeking to prevent their removal) and affirmative (generally applications filed by immigrants who are not in deportation proceedings)– and a growing asylum backlog. The US government received 66,000 asylum applications in FY 2013; by FY 2023, the annual total jumped to 918,000 applications.

The dramatic increase in asylum requests, insufficient resources and staffing, and a slow and litigious process contributed to a backlog of over 2.2 million (1.3 million defensive applications and 975,000 affirmative applications) based on the most recent publicly available data. The top five nationalities filing affirmative applications in FY 2023 were Venezuelans (22%), Cubans (18%), Colombians (8%), Nicaraguans (8%) and Haitians (6%).

The government is now delivering asylum outcomes in years rather than months. Syracuse University's Transactional Records Access Clearinghouse [estimated](#) that in late 2022 the average waiting time from an asylum application to an immigration court hearing was 4.3 years. A separate June 2023 [report](#) from the American Immigration Lawyers Association concluded that the waiting time for an asylum applicant was more than six years.

Asylum applicants are allowed to remain in the US pending the resolution of their cases. They can apply for work authorisation after six months, incentivising many individuals to apply for asylum to remain in the US even if they do not have a strong protection claim. However, for individuals legitimately fleeing persecution, the backlog means years of legal limbo as they await a final adjudication. These growing waiting times also fuel the perception that individuals who request protection can remain in the US, which motivates more people to try to reach the country.

Figure 3. Defensive asylum applications filed, granted and pending, FYs 2013-23



Source: [US Department of Justice, Executive Office for Immigration Review](#) data.

2.3. Removals

Removals to Mexico and the Northern Triangle comprise the vast majority of US removals due to their large emigration totals, proximity to the US and strong bilateral cooperation to receive their returned citizens. In FY 2018 they comprised 92% of US removals. Yet, due to the changing composition of immigration flows to the US, their share dropped to 74% in FY 2023.

As noted earlier, irregular migration flows from countries such as China, Cuba, Haiti, Nicaragua, Russia and Venezuela have been growing dramatically. However, because of complicated bilateral relations or poor country conditions, it is difficult, and in many cases impossible, for the US to deport nationals who fail to qualify for immigration relief.

The inability of the government to remove certain groups of immigrants further contributes to the perception that these groups can stay if they make it to the US, motivating more to try to reach the US.

2.4. New border policies

As the COVID-19 pandemic eased, the Administration [announced](#) it would implement new measures to prepare for border processing once Title 42 was lifted. Its goal was to reduce irregular immigration and strengthen border security, create new legal pathways for certain nationalities seeking to cross the border in increasing numbers, promote legal immigration and speed up asylum processing. The government assessed that only pursuing deterrence policies had not worked to combat irregular migration flows and it could not completely eradicate irregular immigration; instead, it focused on implementing measures that encourage or incentivise individuals to pursue safe, legal and orderly immigration to reduce pressure on the US border and limit the impact on the asylum system.

In January 2023 the Administration [declared](#) that Cuban, Haitian, Nicaraguan and Venezuelan nationals who try to cross the US-Mexico border and fail to apply for a newly created parole programme would be returned to Mexico, pursuant to an agreement with the Mexican government (for more details see the 'Legal immigration' section below.)

Then, in May 2023, the Administration [launched](#) a new rule to incentivise immigrants seeking to cross the border irregularly to instead arrive at US ports of entry. The government reasoned that doing so would better utilise limited US border personnel on immigration processing at ports –not detection and apprehension– and encourage immigrants to seek asylum in the US without using human smugglers and thus expose themselves to risks.

Pursuant to the rule, immigrants would be considered ineligible for asylum unless they scheduled an appointment via CBP One, a US government app, had been denied protection in a third country, arrived through a parole programme or qualified for an exception covered under the rule. The US government would also expand the use of expedited removal to quickly remove immigrants without a court hearing if they did not seek asylum or failed to establish a credible fear of persecution. Elements of this rule were adopted from a rule initially adopted from a Trump-era policy, drawing a backlash

from immigration advocates and some Democratic members of Congress. In addition, the requirement to use CBP One has also been criticised for limiting immediate access to asylum protection, the long waiting times to receive appointments and placing immigrants at risk in Mexico while they wait for their appointments.

Thus far, these initiatives are successfully steering immigrant arrivals to US ports of entry and making it harder to pass the initial credible fear screening. In FY 2021, 4% of immigrants were encountered at US ports of entry, but in the first six months of FY 2024 the total had jumped to 23%. In addition, the rate of those passing the initial credible fear screening dropped from 89% in FY 2019 to 52% from May 2023 to March 2024.

However, the initiatives have yet to be successful in reducing irregular immigration. There were 2.5 million immigrant apprehensions along the US-Mexico border in FY 2023 –a record total– and apprehensions remain just as high in FY 2024. They did initially succeed in reducing border apprehensions of Cuban, Haitian, Nicaraguan and Venezuelan nationals, but apprehension totals of these nationals have since picked up in FY 2024.

3. Legal immigration

Candidate Joe Biden criticised President Trump's attempts to reduce legal immigration. Upon taking office, President Biden [issued](#) a proclamation that reversed the so-called Muslim ban and two executive orders: [one](#) to direct the government to review existing policies that limit legal immigration and [another](#) to rebuild and enhance the US refugee resettlement programme.

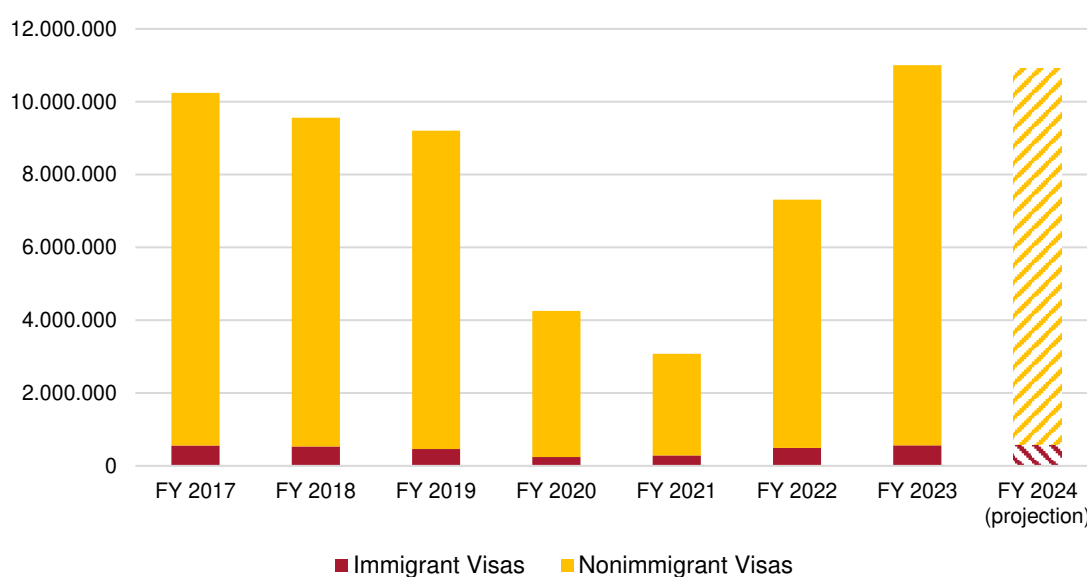
In February 2021 President Biden also [issued](#) an executive order that directed the government to identify and expand access to legal pathways for Northern Triangle nationals to encourage them to pursue legal pathways and discourage them from taking the dangerous journey to cross the border without authorisation. As increasing numbers of nationals of other countries were apprehended at the border, the Administration expanded eligible nationalities.

3.1. Restoring visa adjudications

In response to the COVID-19 pandemic, in March 2020 the Trump Administration [declared](#) that US Embassies would suspend routine visa services and provide only mission-critical and emergency services. Embassies could only resume limited services beginning in July 2020, as local conditions allowed. This significantly impacted the provision of services for immigrant visas (generally permanent visas for close family members and workers) and non-immigrant visas (temporary visas), severely reducing legal immigration. In FY 2019, the full fiscal year before the pandemic, the US issued nearly 9.2 million visas. This total dropped to 4.25 million in FY 2020 and then to 3.1 million in FY 2021.

The Biden Administration has taken steps to restore legal immigration and streamline visa processing. The government has resumed visa processing at US Embassies overseas and increased the types of applications that can be filed online, waived certain interviews and extended some document validity periods, among other measures. These steps have contributed to a notable increase in legal immigration to the US, surpassing pre-pandemic levels. In FY 2023 the government issued nearly 11 million visas and through the first half of FY 2024 it issued almost 5.5 million visas.

Figure 4. Immigrant and non-immigrant visas issued, FYs 2017-24 (projection)



Note: the FY 2024 projection is based on six months of available data and assumes the same number of visas issued in the second half of the fiscal year. Source: [US Department of State, Bureau of Consular Affairs](#) data.

3.2. Increasing and rebuilding refugee resettlement

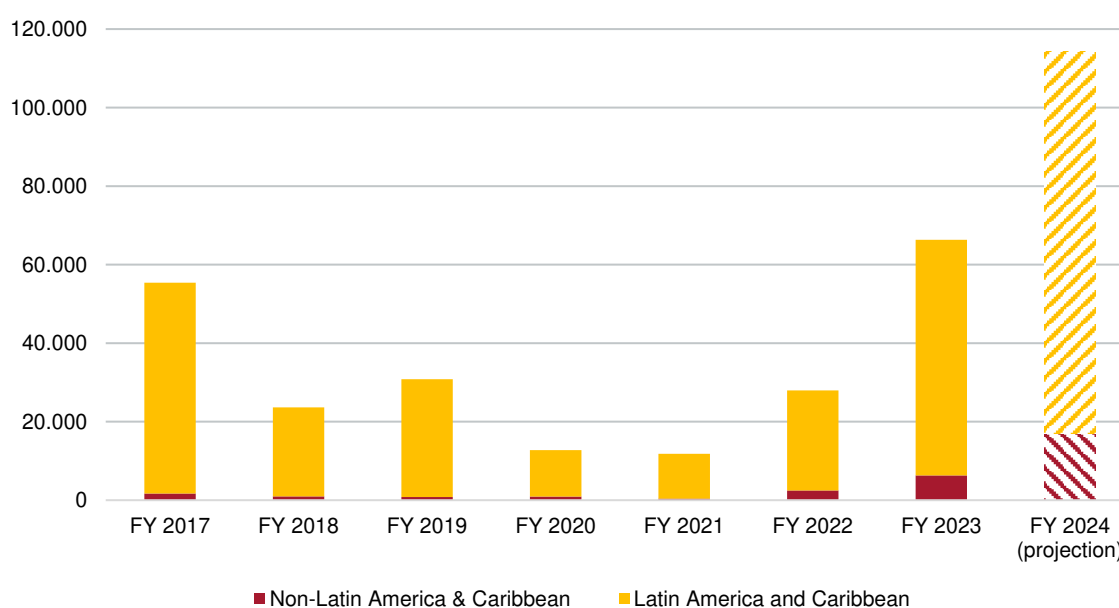
Since establishing the US refugee resettlement programme in 1975, the government has admitted, on average, 72,500 refugees per year. However, during the four years of the Trump Administration, the government admitted an average of fewer than 30,000 annually, including fewer than 12,000 in Trump's final year.

The Biden Administration's progress in restoring and reinforcing the refugee programme was initially slow, given the need to rebuild the national network of refugee resettlement partners following years of reduced arrivals under the Trump Administration. In FY 2022 only 25,465 refugees were admitted. However, the government has made steady progress and has set ambitious goals. In FY 2024 it [set](#) an annual refugee resettlement target of 125,000. And for the first half of the fiscal year over 48,500 refugees have been resettled, including nearly 18,000 in February and March. Currently, the government is on pace to resettle the largest number of refugees since the 1990s.

To increase access to refugee resettlement for at-risk individuals from Latin America and the Caribbean, the Administration [announced](#) in March 2021 that it was reopening and expanding the Central American Minors programme, an initiative terminated by the Trump Administration in 2018. The programme allows certain parents in the US to petition on behalf of their children to be considered for refugee status in their home countries of El Salvador, Guatemala or Honduras. The Administration also committed to increasing contributions to the UN High Commissioner for Refugees (UNHCR), to increase referrals and to prioritise cases from Latin America and the Caribbean for refugee interviews. Since early 2021, UNHCR has referred more than twice as many individuals from the hemisphere as in the previous three decades combined. Refugee resettlement is now taking place in 22 countries in the hemisphere; by comparison, at the start of the Administration, it was only operating in four countries.

These efforts have contributed to a significant increase in resettlement from Latin America and the Caribbean. Regional resettlement totals from Latin America and the Caribbean increased from 500 in FY 2021 to 6,300 in FY 2023. In the first half of FY 2024, over 8,500 refugees have been admitted, which is already the most ever resettled from the region in one fiscal year.

Figure 5. Refugees resettled to the US, FYs 2017-24 (projection)



Note: the FY 2024 projection is based on six months of available data and assumes the same number of refugees resettled in the second half of the fiscal year. Source: [Refugee Processing Center](#) data.

3.3. Parole

President Biden has significantly increased the use of parole to temporarily admit hundreds of thousands of immigrants fleeing armed conflicts or political and economic crises and reduce pressure on the US-Mexico border. Based on publicly available data, nearly 1.3 million immigrants have been paroled into the US under President Biden through various initiatives. Pursuant to existing law, the US may admit certain immigrants if they further a humanitarian cause or public benefit; however, the law does not give

beneficiaries permanent legal status. Instead, parolees are generally permitted to live and work in the US temporarily without fear of deportation.

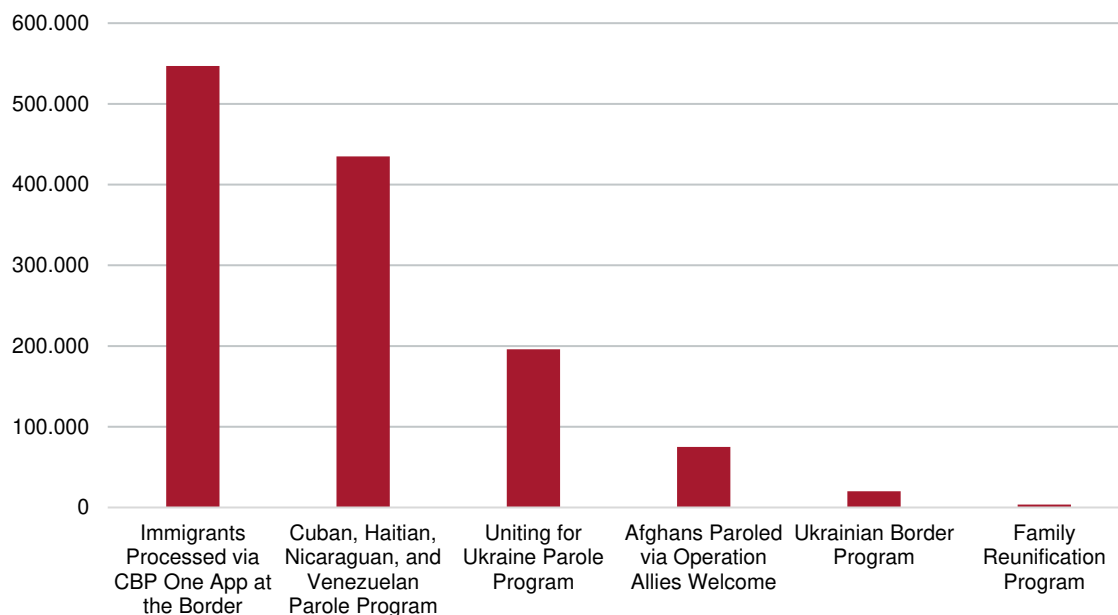
After the successful implementation of the Afghan and Ukrainian parole programmes in 2021 and 2022, which led to the admission of nearly 280,000 parolees, the Administration expanded the use of parole for certain Latin American and Caribbean populations and their immediate family members. It sought to target nationalities arriving at the US-Mexico border in large volumes by encouraging them to pursue a safe, legal and orderly immigration process.

In January 2023, the Administration [announced](#) a humanitarian parole programme for Cuban, Haitian and Nicaraguan nationals. Nationals of these countries who have a US sponsor and pass a background check are allowed to come to the US and work for a period of two years. Since then, more than 435,000 of these nationals have been paroled into the US.

In April 2023 the Administration also [created](#) a family reunification parole process for certain nationals from Colombia, Ecuador, El Salvador, Guatemala and Honduras, and their immediate family members who have approved family-based petitions. It also streamlined existing programmes for Cuban and Haitian nationals. The programme allows nationals from these countries with an approved family visa petition to be considered for parole in the US while they wait for their immigrant visa to become available. Thus far, only 3,600 immigrants have benefitted from this programme.

Lastly, since January 2023 the Administration has provided parole on a case-by-case basis to nearly 550,000 immigrants who used the CBP One app to schedule a time to be processed at a US port of entry along the US-Mexico border. Individuals are provided parole after the government places them into removal proceedings and issues them a notice to appear at a future immigration proceeding.

Figure 6. Immigrants paroled in the US since 2021



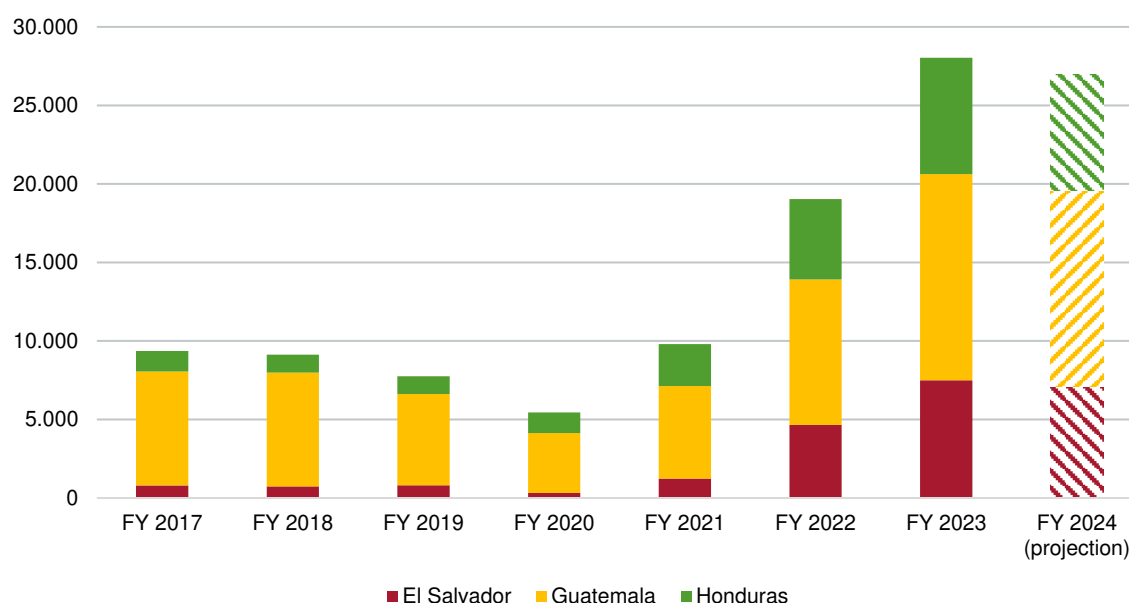
Sources: Department of Homeland Security, US Customs and Border Protection data and media reports.

3.4. Temporary worker programmes

The Administration also sought to increase access to two temporary worker programmes—the H-2A and the H-2B programmes—for Northern Triangle nationals to promote legal immigration. It has since expanded its focus to other high-sending countries in Latin America and the Caribbean (Colombia, Ecuador and Haiti). The H-2A programme is for temporary agricultural work and has no annual limit on the number of beneficiaries; therefore, it has the potential to grow if US employer demand for Northern Triangle workers increases. The H-2B programme, on the other hand, is for temporary non-agricultural seasonal work and is capped at 66,000 visas annually. The H-2B programme, however, allows the government to allocate supplemental visas for select countries under certain conditions.

From FY 2017 to 2020, the average number of Northern Triangle nationals admitted via these temporary worker programmes was just under 8,000. The Biden Administration enhanced engagement with foreign governments to increase the supply of potential Northern Triangle workers, conducted outreach to US employers to encourage increased demand for Northern Triangle workers and allocated more H-2B visas for Northern Triangle nationals. As a result, the total number of Salvadorean, Guatemalan and Honduran workers admitted via the H-2A and H-2B programmes grew to 28,033 in FY 2023, with 83% (23,219) coming from the H-2B programme.

Figure 7. H-2 non-immigrant visas issued to Northern Triangle nationals, FYs 2017-2024 (projection)



Note: the FY 2024 projection is based on six months of available data and assumes the same number of visas issued in the second half of the fiscal year. Source: [US Department of State, Bureau of Consular Affairs](#) data.

3.5. Safe mobility offices

The Administration [previewed](#) in April 2023 that it would open Safe Mobility Offices (SMOs) to provide access to lawful pathways to certain individuals and discourage dangerous immigration and irregular arrivals to the US border. In partnership with UNHCR, the International Organisation for Migration, and partner governments in Central and South America, a total of four SMOs have been opened in Colombia, Costa Rica, Ecuador and Guatemala.

The SMOs provide access to the US for refugees, individuals eligible for parole, certain immigrants with family members in the US and individuals eligible for seasonal or temporary employment pathways. The offices also provide access to legal pathways to Spain and Canada, with media reports that Greece and Italy may also participate in the future.

The programme has since received nearly 190,000 applications, with almost 27,000 being admitted to the US: 8,800 as refugees and 18,100 through other legal channels. Spain has admitted approximately 300 Nicaraguan and Venezuelan refugees via the SMO in Costa Rica.

4. Regional cooperation

President Biden promised to enhance diplomatic engagement with governments in the Western Hemisphere to promote more regional cooperation to manage immigration and increase investments in US programmes and initiatives to address immigration. Upon

taking office, he issued an executive order which directed the development of two regional immigration strategies.

4.1. Regional strategies

In July 2021 the Administration unveiled the two strategies –the [US Strategy for Addressing the Root Causes of Migration in Central America](#) and the [Collaborative Migration Management Strategy](#)– to give US departments and agencies clear guidance on how to pursue development and immigration management policies in the Western Hemisphere to reduce irregular immigration to the US.

Vice President Harris launched the Root Causes Strategy to align US government efforts to address the economic, governance, and security drivers of irregular immigration from Central America to the US. The Vice President led the development of the strategy in 2021 by travelling to Guatemala, Honduras and Mexico to meet with government leaders and by launching initiatives to address the root causes of immigration.

The Collaborative Migration Management Strategy identifies and prioritises actions to strengthen cooperative efforts to manage safe, orderly and humane immigration in North and Central America. The strategy aims to address urgent humanitarian needs, promote access to protection and legal pathways for immigration, and improve secure and humane border management, amongst other objectives.

4.2. Enhanced cooperation

Historically, the US preferred to engage bilaterally at senior levels on immigration with critical countries like Mexico or regionally with the Northern Triangle countries. However, considering the growing number and evolving profiles of immigrants reaching the US-Mexico border, the US led efforts at the June 2022 Summit for the Americas to promote consensus and political will around collaborative efforts to improve hemispheric immigration management. The US and 20 other countries, including Argentina, Brazil, Canada, Colombia and Mexico, signed the [Los Angeles Declaration on Migration and Protection](#). The declaration promotes a common understanding of regional immigration challenges and the shared commitments to stability and assistance, expansion of lawful pathways, access to international protection, humane immigration management and coordinated emergency response.

Since then, Suriname has joined as a signatory, three high-level meetings have been held and governments have taken many steps to implement the Los Angeles Declaration. Endorsing countries continue to convene through the framework and have committed to a range of [concrete actions](#).

Like any multilateral process, progress is rarely quick and participants' commitment levels are uneven. Still, the initiative has thus far proved to be a helpful tool for promoting a shared view around immigration management, advancing regional cooperation and responsibility sharing, and measuring progress.

4.3. Foreign assistance

In contrast with the Trump Administration, which cut foreign assistance to Central America, the Biden Administration sought robust funding support to address the root causes of immigration in Central America and to enhance immigration management in the hemisphere.

The US [reports](#) it is on track to meet its commitment to provide US\$4 billion over four years to implement the Root Causes Strategy. The government has also [provided](#) more than US\$3.9 billion in humanitarian assistance for the Western Hemisphere since FY 2021 to respond to the needs of refugees, vulnerable immigrants and other displaced persons and support the regional SMOs, among other objectives.

5. Impact of irregular immigration on US domestic politics

5.1. Stress on US cities and backlash from democratically elected leaders

As most irregular immigrants who cross the border end up moving to communities away from it, when large waves of immigrants cross the border, large US cities are often among the first to receive immigrants. Since 2023, elected leaders representing large cities such as New York, Chicago, Denver and Washington, DC have voiced their concerns about the large number of immigrant arrivals and the lack of federal support and coordination. This has been compounded by Texas and Florida, states that are currently led by Republican governors, to send recently arrived immigrants to cities led by Democratic politicians.

The result was awkward for President Biden as he was campaigning for re-election. Governors and mayors from his party publicly criticised him and pushed him to take more decisive action to stem irregular immigrant arrivals and provide work authorisation for asylum-seekers as they wait for their cases to be adjudicated.

President Biden has not yet acted on the recommendation to reduce the waiting time for work authorisation for asylum-seekers, though he has taken other decisions to assist recently arrived immigrants. His Administration's [decision](#) to redesignate and extend Venezuela for Temporary Protected Status (TPS), a programme that allows the US to permit eligible nationals of designated countries to live and work in the US temporarily if their country is experiencing natural disasters, protracted unrest or conflict, immediately made more than 470,000 Venezuelans nationals eligible for US work authorisation. This decision is consistent with the Administration's more generous approach to granting TPS, but it can also be interpreted as a response to officials pressing the government to provide recently arrived immigrants with work authorisation more quickly.

5.2. Immigration reform legislation and proposed executive action

In October 2023 Senate Republicans, backed by House Republicans, declared they would not consider a Ukraine foreign aid package unless it was coupled with measures to strengthen US border security. To the surprise of many, President Biden went along with the proposal, likely viewing it as an opportunity to achieve two legislative victories: passing funding to support Ukraine in its fight against Russia and adopting border and asylum reforms in response to record-level immigrant arrivals.

After four months of negotiations, a bipartisan group of Senators believed in early February that it had developed a strong but fair bill that could garner enough support from both parties to be signed into law. The bill would close the border if the average number of border apprehensions exceeded a certain threshold, enact stricter asylum policies, increase detention capacity and enhance removal policies. However, the bill only included some of the measures President Biden recommended to Congress in January 2021, notably resolving the status of the estimated 11 million immigrants in the US without legal status. Most Democrats in Congress embraced the relatively hard-nosed legislation, demonstrating how much the political ground has shifted over recent years and reflecting the Democrats' view they needed to respond to the border challenges. However, less than one week after the bill text was released, the bill collapsed under the weight of primarily Republican opposition. Former President Trump had asked Republican members of Congress to oppose the deal, partly because he did not want President Biden to achieve a legislative victory on his top priority issue in an election year.

Since the bill's failure, President Biden has identified a possible opening to turn the tables on former President Trump and Republican members of Congress. After suffering attacks for more than three years for being too soft on immigration, he criticised Republicans for backing away from legislation that would have delivered much-needed border security and asylum reforms.

On 4 June President Biden signed a proclamation that allows the government to shut down the US-Mexico border between ports of entry when there is an average of 2,500 irregular daily border crossings over a seven-day period. Once the shutdown is made, immigrants are generally ineligible for asylum. The government can reopen the border once the average number of daily crossings falls below 1,500 for seven consecutive days. For context, average daily border apprehensions were last below 2,500 in January 2021. Biden's executive action relies on the same legal statute that President Trump used when he sought to implement the so-called Muslim ban in 2017 and to shut down the border between ports of entry in 2018. Eight days after Biden signed the proclamation, the first lawsuit was filed to challenge the order for violating the rights of individuals seeking protection in the US.

An April [survey](#) from Gallup confirms why Biden is to flip the script on the issue of immigration. For the third consecutive month, nearly one-third (27%) of Americans say immigration is the most important problem facing the US. This is the longest stretch immigration has been a top voter concern in Gallup polls in the past 24 years. Moreover, Gallup [surveys](#) from February indicate that 67% of Americans disapproved of President Biden's handling of the issue. However, in taking this action, he angered progressives in his base by implementing a strict border measure that curtails the rights of asylum-seekers and places them further at risk by returning them to their countries of origin or parts of Mexico that are dangerous.

Two weeks after signing the border proclamation, President Biden [announced](#) on 18 June plans to implement a new programme that would allow spouses of US citizens living in the US without legal status for over 10 years to receive work permits and protection against deportation. This process would also allow them to apply for lawful permanent

residency in the US without having to leave the country and seek a waiver to re-enter. The government estimates it could benefit as many as 550,000 immigrants –500,000 spouses and 50,000 children–. The programme will certainly also be challenged in court, but for the time being, it allows the President to boast of his balanced approach to immigration by pursuing tough but fair policies.

Biden's change in posture is probably intended to show moderate and independent voters that he understands their frustration and is willing to take bold action to reduce the irregular flows. He sees an opening to show he is a leader of action while painting former President Trump and Republicans in Congress as standing in the way.

Conclusions

President Biden campaigned on pursuing a progressive, compassionate immigration agenda upon taking office. According to an [analysis](#) from the Migration Policy Institute, Biden implemented 535 immigration executive actions during his first three years in office, compared with 472 by Trump during his term of four years.

President Biden has had success incentivising more immigrants to seek entry at ports of entry, restoring legal immigration, increasing refugee resettlement, significantly expanding access to legal immigration pathways for Latin American and Caribbean nationals, and securing the cooperation of other countries to cooperate on immigration management. However, he has struggled to maintain control of the border as the number of irregular border crossings has grown to record levels, leading to a backlash across the political spectrum. To respond to these historic flows, he has sometimes drawn from the restrictive border policies of President Trump that he had previously campaigned against.

His Administration's executive actions thus far have made some noteworthy changes, but since they are not enacted into law, they are subject to reversal by future Administrations. Moreover, existing court mandates and the constant threat of litigation further limit the Administration's options to pursue other executive actions and its ability to fundamentally reshape US immigration policy.

Enduring immigration reform requires Congressional action. Priorities should include a modernisation of US border security and asylum laws accompanied by robust funding support to enable the US to adapt to the more diverse immigration flows and to deliver adjudications more quickly. Without a more updated and streamlined border management and asylum system, the US is likely to continue to struggle to respond to irregular migration flows crossing the US-Mexico border in the years to come.

Immigration, however, is a complicated, politically divisive issue defined by zero-sum politics on both sides of the aisle. This is one of the main reasons Congress has not passed a comprehensive immigration reform bill since 1986. During his time in office, President Biden has faced non-stop attacks from the right, alleging he was implementing 'open border' policies. But he also faced significant criticism from progressives in his base, who feel he has eroded the asylum system and has not done enough to protect immigrants in the US.

President Biden has not received credit for a number of reforms that have positively reshaped the US immigration system. Instead, immigration has emerged as a political vulnerability for the President and his party in an election year as border crossings have reached historic levels, and some cities away from the border have felt the impact of these new arrivals. As a result, President Biden has found himself facing significant voter frustration, forcing him to endorse tough immigration reform legislation and implement controversial border policies that candidate Biden in 2020 would have rejected. The willingness of President Biden and many Democratic members of Congress to endorse more hard-line border policies may just be a temporary move to try to win the 2024 elections, but it may also indicate the views of Congressional Democrats and Republicans are beginning to align more closely on immigration border management.