

SPECIAL REPORT

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BORDER SECURITY AND IMMIGRATION CENTER

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The U.S. refugee and asylum process was devised during a different era and no longer serves the national interest. Rather than adding to the already confusing law and procedures, the entire approach must be redesigned to preserve a credible refugee system while removing the possibility of gaming it to immigrate for purely economic purposes. Economic migration, as with family migration, remains a congressional duty to regulate. Once a new refugee and asylum regime that places American interests over globalism is enacted, the executive branch must enforce those laws without circumventing them to achieve political aims.

Introduction: Who Gets to Decide?

“Only suicidal civilizations would allow this to go on,” reads the title of a video posted to “X” in August 2023.¹ The clip seems to show dozens of illegal migrants hopping off a boat onto an English beach. They would have come from France, a short journey away across the English Channel. A month later, entrepreneur Elon Musk posted an X video clip from the city of Eagle Pass, Texas, one of many along the Southern border overrun with illegal aliens crossing unopposed into the United States.² These two social media posts symbolize the immigration conundrum facing developed countries today. The developed, or “first,” world³ has declining birth rates, high living standards, relatively stable governments, and relative physical security. The poorest parts of the world generally have high birth rates, low living standards, political instability, and violence. As nature abhors a vacuum, the security and prosperity of richer countries are a magnet for billions in poorer ones.

The question of this era is: Who gets to decide who is allowed to enter a country? Can sovereign nations enforce the immigration laws passed

by their elected legislators, or do the masses of the “global majority” get to choose, without challenge, where they want to live? In the United States, President Joe Biden’s answer was the latter, despite a majority of Americans disapproving of his open-border policies.⁴ In Europe, an unceasing sea-borne flow of illegal migrants is being met with confusion, political polarization, and, ultimately, government failure to deal with the problem.

With the election of Donald Trump to a second, non-consecutive term, the American people decisively rejected the policy of facilitating and accommodating mass illegal migration through fraud or abuse of the asylum process. As in Europe, the U.S. has allowed its asylum system to collapse due to overly generous interpretation of the U.N. Refugee Convention, fraudulent applications, meritless appeals, sclerotic case processing, and utterly inadequate follow-through to remove failed asylum claimants.

Completely and permanently fixing this disaster requires, first, that the U.S. withdraw from the 1967 Protocol Relating to the Status of Refugees, and, second, that Congress amend the Refugee Act of 1980 to place U.S. interests ahead of globalism. In particular, Congress must clarify that refugee protection (and its corollary, asylum) can only be granted to applicants claiming it on the basis of race, religion, political opinion, and nationality, not “membership of a particular social group,” the last of the five currently existing categories. Congress must also ensure that applicants apply through the U.S. Refugee Admissions Program (USRAP) overseas, and that migrants traveling by land must apply for asylum in the first safe country that they enter. They may not “country shop” to get to the United States. These steps are among others needed to rebuild “a more manageable immigration system that prioritizes America first and lawful immigrants second.”⁵ The Heritage Foundation’s *Backgrounder* “Rising from the Ashes: Principles and Policies for a New American Immigration System” of December 2024 sets the strategic framework for such a system.

In both the U.S. and Europe, national laws adopted to enact the Refugee Convention have tied the hands of governments trying to separate economic migrants from those qualifying based on genuine fear of persecution. Under the convention, nations that are targets of mass illegal migration have surrendered control over immigration policy to human traffickers and economic migrants. In the absence of serious reform of the international system, nations must act on their own. Ultimately, a sovereign nation must put its own national security, economy, and social cohesion before any imagined obligation to the world at large that is dictated by international organizations and global elites.

In the United States, Congress has the constitutional power to determine who is allowed to enter the country and on which terms. However, in recent decades, and most egregiously under the Biden presidency, the executive branch has usurped congressional prerogative through regulation, executive orders, lawsuits, and by twisting statutes beyond credible interpretation of their intended purpose.

Can sovereign nations enforce the immigration laws passed by their elected legislators, or do the masses of the “global majority” get to choose, without challenge, where they want to live?

There is a clear connection between a country’s border and asylum policy, how it is perceived abroad, and the flow of illegal migrants to that country. This *Special Report* draws lessons from U.S., Australian, British, and European asylum policies to propose how the U.S. can re-establish border integrity, the rule of law, and national security.

U.S. Asylum Law

The 1951 Geneva Refugee Convention is the basis for international refugee and asylum law for the U.S. and the European Union.⁶ The convention was created after World War II, with the recent persecution of Jews and the ongoing persecution of dissidents of communism in mind. It defined “refugee” as any person who

[a]s a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁷

The convention was never intended as a screening mechanism for mass economic migration in perpetuity. The 1967 United Nations Protocol

Relating to the Status of Refugees amended the convention, expanding its application beyond Europe to the rest of the world, eliminating the pre-1951 limitation, greatly expanding the rights of putative refugees, and adding onerous obligations to nations receiving them.⁸ The EU incorporated the convention and protocol into its Common European Asylum System.⁹

The U.S. was not a signatory to the 1951 convention but adopted its 1967 protocol, later using both as the basis of the Refugee Act of 1980. America's Immigration and Nationality Act (INA) of 1952 did not have refugee or asylum protections, and these were added in 1965 for aliens who demonstrated persecution on account of race, religion, or political opinion, and those who had fled a communist or communist-dominated country or any country in the Middle East.¹⁰ Under President Johnson, the U.S. Senate ratified the 1967 protocol.¹¹ The U.S. then statutorily adopted the principles of the convention and protocol through the Refugee Act of 1980. As former Senator Russ Feingold (D-WI) wrote in 2018, "the current weight of legal opinion holds that President Donald Trump has the power to withdraw the U.S. from this or any treaty without similar consultation with the legislative branch of government."¹² Congress should also repeal or amend the Refugee Act of 1980.

Although this is not explicit in U.S. law, courts have ruled that the claimed persecution necessary to qualify for refugee status must be at the hands of the applicant's government, not private actors. Later, administrative judges widened that principle to include "death squads" and other nongovernmental actors, when the government in question was unable or unwilling to control them.¹³

The "Membership of a Particular Social Group" Catch-All Loophole

In general, under U.S. law "any alien who is physically present in the United States or who arrives in the United States...may apply for asylum."¹⁴ The Secretary of Homeland Security can grant asylum if that alien meets the statutory definition of "refugee."¹⁵ There is fraud by applicants for asylum of each of the five categories, but the category of "membership of a particular social group (PSG)" has been particularly abused. The origins of the term are murky.¹⁶ The official guidance given to U.S. Citizenship and Immigration Services (USCIS) adjudicating officers on what the term encompasses is voluminous and the possible categories encompassed under PSG are extremely wide.¹⁷ As now-Supreme Court Justice Samuel Alito wrote in 1993, "virtually any set including more than one person could be described

as a ‘particular social group.’”¹⁸ If liberally interpreted, PSG could be applied to nearly everyone. The result has been the clogging of America’s refugee and asylum system with unfounded cases, to the detriment of the minority of meritorious cases.

In President Trump’s first term, Attorney General Jeff Sessions tried to rein in abuse of PSG by telling adjudicators not to consider victims of gangs or domestic violence as persecuted “members” of a PSG. This was immediately reversed by President Joe Biden’s Attorney General Merrick Garland. Even if President Trump’s current Attorney General Pam Bondi returns to the stricter standard, the PSG loophole requires a legislative fix, such as amending the Refugee Act to remove PSG as an acceptable ground for an asylum claim.

No Caps, No Downside, for Meritless Claims

Department of Homeland Security (DHS) life cycle enforcement reports show that though “most people processed for expedited removal...will likely establish credible fear and remain in the United States for the foreseeable future...many of them will not ultimately be granted asylum.”¹⁹ But there is no annual cap on asylum claims, no fee for the process, and applicants are able to get work authorization six months after they apply. All this encourages many aliens to submit fraudulent asylum claims because it allows them to remain in the U.S. and work for many years.

As Mark Krikorian of the Center for Immigration Studies argues, fraud, endless appeals, and utterly inadequate enforcement when asylum claims are denied have made the U.S. asylum system unfit for its purpose. By allowing unlimited foreign nationals to enter illegally and then claim asylum, coached by smugglers and then assisted by activists and immigration lawyers, he argues that the U.S. has surrendered its power of decision. Krikorian concludes that the U.S. should withdraw from the U.N. Refugee Convention and devise a new law that provides limited relief for foreign nationals while placing U.S. national interests first.²⁰

USRAP and the U.S. Asylum Process

One of many aspects of America’s confusing immigration law is the terminology of protection from persecution. Whether a foreigner is seeking refugee or asylum protection, he must prove the exact same eligibility elements—that he suffered past persecution or has a well-founded fear of future persecution on account of his race, religion, nationality, political

opinion, or membership of a particular social group. The difference is geography. A foreigner applying from outside the U.S. is seeking to be a refugee, while an alien at the border or inside the U.S. applies for asylum.

The difference in location means the same hypothetical applicant is subject to different processes for refugee and asylum protection. One—the U.S. Refugee Admissions Program (USRAP)—is much more beneficial to U.S. sovereignty and security and is more manageable for a lawful and orderly migration system than the other, the asylum process.

Under USRAP, the U.N. High Commissioner for Refugees (UNHCR), U.S. embassies, and U.S.-government-designated nongovernmental organizations (NGOs) can refer overseas individuals who appear to be qualified for refugee protection to the U.S. Department of State.²¹ The State Department and DHS then coordinate in adjudicating the refugee’s application and vetting the applicant through the intelligence community while the applicant is outside the U.S. The benefit of this process is that the applicant is closer to his home country, and more likely to be able to access his personal identity documents, criminal records, and immigration records, making it easier for U.S. government staff to vet and, if needed, investigate, applicants. In addition, distance from the U.S. provides adjudicators time to thoroughly adjudicate applications. Only after a refugee application is fully adjudicated and granted is the refugee then flown to the United States with the resettlement assistance provided by NGOs.

The United States has no annual cap on the number of asylum applicants or cases granted.

Notwithstanding the recommendations of referring entities, the U.S. makes the decision about whom to and how many to accept each year, per the annual numerical refugee admissions ceiling the President sets in consultation with Congress.

In contrast, aliens who appear at the U.S. border or are already inside the U.S. apply for asylum. There is no annual cap on the number of asylum applicants or cases granted. In addition, domestic case adjudicators lose both the time and distance advantage for vetting, investigating, and adjudicating applications that refugee adjudicators have overseas. Worse, current U.S. law allows aliens who cross the border illegally between ports of entry to apply for asylum, rather than restricting the ability to apply to those

who arrive at a port of entry. These elements mean that illegal migrants themselves (and the cartels that smuggle or traffic them) can drive the U.S. asylum system rather than the U.S. itself.

Biden Administration Sidelined USRAP in Favor of Asylum Claims.

Achieving an orderly and manageable immigration system would logically favor the overseas refugee process rather than encouraging unlimited numbers of migrants to travel to America’s doorstep to apply for asylum. Yet, the Biden Administration intentionally chose the latter approach. Worse, the Biden Administration enticed aliens to submit fraudulent asylum applications by ending successful anti-fraud policies and bilateral agreements, releasing asylum applicants into the U.S. without detaining them as required by law, and providing aliens expedited work authorization and other benefits.

Immediately upon taking office, President Biden stopped enrolling illegal-alien asylum applicants coming through Mexico into the Migrant Protection Protocols (MPP), better known as the “Remain in Mexico” program.

According to the Migration Policy Institute, 16.3 million migrants, that is, people living outside their home country, were living in Latin America and the Caribbean in 2022, up from 8.3 million in 2010. Some of this movement was voluntary and legal.²² The natural and man-made factors prompting this mass migration are nothing new: Most are ascribed to “a series of... crises, free-movement arrangements, and former emigrants returning with foreign-born children and spouses, among other trends.”²³ Reporters who have interviewed migrants between Panama and the Mexico–U.S. border conclude that the millions coming illegally to the U.S. from Latin America and all over the world in the past few years were chiefly intent on gaining entry to work, rather than fleeing persecution.²⁴ Asylum claims are an easy vehicle for millions of people to enter and stay in the U.S., despite the fact that the majority of such claims have historically been denied.²⁵ Even meritless claims buy time—many years, in most cases—in which the applicant can remain and work in the U.S., send money home, seek other means of gaining legal status, and hope for a mass amnesty.

“Asylum Shopping” in Latin America

Most Latin American emigrants find protection close to home. For example, of the nearly 8 million Venezuelans who left their country since 2015, 6.4 million remain in Latin America and the Caribbean, with nearly 3 million in neighboring Colombia. Still, though people fleeing persecution

are able to obtain refuge in a safe country, that does not preclude a second move for economic or personal reasons, such as the “appeal of the United States.”²⁶ Discarded identity documents at the U.S. border clearly show that many of those crossing illegally on the pretext of being “asylum seekers” have already obtained protection in third countries, including Mexico.²⁷ With knowledge of such protection in a third country, U.S. authorities would likely deny credible fear and asylum claims made by applicants seeking protection in the U.S.

The vulnerability of the U.S. to civilian invasion via asylum fraud has been exploited and weaponized by enemies of the United States, from Cuba to Venezuela.

The vulnerability of the U.S. to civilian invasion via asylum fraud has been exploited and weaponized by enemies of the United States, from Cuba to Venezuela.²⁸ Their continued success at undermining America’s borders and rule of law will only invite more such abuse.

Mexicans, Guatemalans, and Hondurans were three of the top four nationalities encountered in 2023 at the U.S. Southwest border. In 2019, the DHS reported that “approximately 9 out of 10 asylum claims from Northern Triangle countries [El Salvador, Guatemala, and Honduras] are ultimately found non-meritorious by federal immigration judges.”²⁹ The fourth-largest nationality encountered at the U.S. border was Venezuelans, many of whom crossed through the Darien Gap. The Gap, a roadless jungle between Colombia and Panama, was formerly considered impenetrable to mass movements of people. In the past few years, however, illegal migrants, the smugglers who profit from them, and NGOs have created tracks and logistical arrangements to make it easier.³⁰ Migrant traffic through the Gap was below 50,000 a year from 2010 to 2020. From 2014 to 2020, a total of 110,000 people crossed the Gap, mostly Cubans and Haitians. In 2021, the number crossing rose to 134,000, and in 2022, it was 248,000.³¹ In 2023, 520,000 people crossed,³² although in 2024, the estimated number of migrants crossing the Gap decreased to 300,000.³³ Africans and Asians made up 10 percent of those crossing through, showing that the Gap has become a route for both trafficking and self-guided illegal migration.³⁴ Haitians, many of whom were living in Chile, Peru, Venezuela, and other countries in South America with legal status, also crossed in high numbers during the Biden Administration.³⁵

Comparative Asylum Policies: What Works, What Does Not

Government-assisted and NGO-assisted mass illegal migration, feeding into inappropriate and overwhelmed asylum-processing systems, has been a common problem faced by desirable destination countries. To see how a revised U.S. approach might work, one can look to examples from Europe and Australia, following a brief outline of how the current U.S. approach has failed—deliberately—to reduce illegal immigration under the guise of asylum.

What Does Not Work: The U.S. Approach Under the Biden Administration. In 2021, though admitting that it reduced migratory flows, the Biden Administration ended the Migrant Protection Protocols (MPP) agreement with Mexico that was safely processing putative asylum cases outside the U.S.³⁶ Sometimes referred to as “Remain in Mexico,” MPP was authorized under the Immigration and Nationality Act, which, in brief, allows the Secretary of DHS, in lieu of detention, to return aliens to the contiguous country from which they arrived on land pending their removal proceedings.³⁷ Under MPP, certain aliens caught entering the U.S. illegally were returned to Mexico for the duration of their immigration proceedings.³⁸ MPP deterred economic migrants from filing fraudulent asylum claims by depriving them of the ability to enter, remain, or work in the U.S. pending the final resolution of their case. Removing the incentive of work authorization pending the period of application processing, whatever the result, has a deterrent effect on economic migrants seeking to use asylum as a pretext to enter the U.S.

The MPP with Mexico complemented the 2002 U.S.–Canada Safe Third Country Agreement (STCA), which provided for return of certain asylum seekers “to the country of last presence” to pursue asylum in the transited country. The STCA was expanded in 2023 to include illegal migrants crossing between ports of entry.³⁹ The asylum process is designed to protect individuals fleeing persecution that is life-threatening. Therefore, it presupposes that a person fleeing for his life will, and should, apply in the first safe country he enters. If a person instead “asylum shops” and transits a safe country to get to another he prefers for personal reasons, STCAs provide that he is sent back to that first safe country.

Additional STCAs were signed with Central American countries under the first Trump Administration, including in July 2019 with Guatemala.⁴⁰ With the right diplomatic and economic incentives, all these SCTAs can be revived by any U.S. Administration intent on enforcing border security and restoring integrity to the asylum system.

No part of the U.S. border and immigration structure, from the Border Patrol to immigration courts to USCIS, was able to cope with the flow of illegal aliens seeking asylum.

Predictably, flows of illegal migration increased once MPP and Central American SCTAs were no longer a deterrent. By (a) assuming *ab initio* that all illegal immigrants are seeking asylum, (b) releasing them into an immigration system that is backlogged many years,⁴¹ and (c) failing to deport those whose claims are ultimately refused,⁴² the U.S. created strong incentives for mass illegal entry and more fraudulent asylum claims. The greatest incentive was that migrants entering the U.S. during the Biden Administration could reliably assume they would be released into the interior. Hence, removing this assumption by reviving mechanisms to process all cases outside the country is of paramount importance in reducing future illegal arrivals at the land border.

No part of the U.S. border and immigration structure, from the Border Patrol to immigration courts to USCIS, was able to cope with the ensuing flow of illegal aliens seeking asylum. As of late 2024, nearly 1.7 million asylum cases were pending in the Department of Justice's immigration courts, of a total caseload exceeding 3.7 million.⁴³ In July 2024, the backlog of asylum cases pending with U.S. Citizenship and Immigration Services exceeded 1 million (of around 9 million total pending cases), more than a 10-fold increase in a decade.⁴⁴

Meanwhile, despite claiming an interest in a “safe, orderly, and humane” asylum process, the Biden Administration drained the proper avenue for refugee applications, USRAP, of staff and funds. In fiscal year 2022, the Administration set the USRAP annual admissions ceiling at 125,000 refugees but admitted only 25,000 from the entire world. With the same ceiling, that number rose to 60,050 admissions in 2023.⁴⁵ Further undermining USRAP, Biden's State Department opened regional Safe Mobility Offices (SMOs) in Guatemala and Colombia and was planning more had the Democrats won the November 2024 election. The SMOs offered migrants who did not qualify for USRAP other “temporary humanitarian programs” and “lawful pathways” created by exploiting loopholes in U.S. immigration law.⁴⁶ As of this writing, the Trump Administration appears to have closed the SMOs and may intend to repurpose them for helping to repatriate migrants.

Then–Secretary of Homeland Security Mayorkas described the Biden strategy as a way to “disincentivize irregular migration while incentivizing safe, orderly, and humane pathways...and achieve systemic change.”⁴⁷ The Biden Administration’s stated intention was to balance relatively open borders for “asylum seekers” with billions in aid to tackle the “root causes” of illegal migration in origin countries. The Los Angeles Declaration on Migration and Protection, signed by the United States and 20 countries in Latin America and the Caribbean, summed up this “root causes” plus “lawful pathways” approach.⁴⁸ If the goal was to reduce the numbers of illegal aliens entering the U.S., this strategy did not work. August 2023, more than a year after the U.S.-supported Los Angeles Declaration, set the monthly record for the highest number of illegal aliens encountered at the border in U.S. history, at 304,000.⁴⁹ That record was surpassed a few months later, in December 2023, with 370,883 encounters of inadmissible aliens.⁵⁰ Monthly encounters declined in the second half of 2024 for a variety of reasons, chiefly because in the months leading up to the U.S. presidential election of November 2024, the Biden team understood that the border was a liability and persuaded Mexico to impede the flow through its territory.⁵¹ The terms of this deal were not made public, and it is reasonable to suspect the Mexican tactics would have ended had Kamala Harris won the election.

What Does Not Work: The European Union. The countries of the EU combined received more than a million asylum applications in 2023; double the number received in 2021 and 10 times as many as in 2008. The EU’s 2023 total was almost as high as the levels seen in the Syrian crisis of 2015 and 2016.⁵² In 2023, Germany, Spain, Italy, and France, in that order, were the main destination countries for asylum applicants in the EU.⁵³ Cumulatively, EU member states eventually judge the majority of asylum applicants unqualified, as they are economic migrants. In 2022, the EU member states approved 40 percent of asylum applications.⁵⁴ However, of 400,000 deportation orders Europe-wide in 2023, only 65,000 (16.25 percent) were carried out.⁵⁵ In 2024, the overall “recognition rate” (approval rate) for EU member countries was 42 percent.⁵⁶ Standards for asylum vary by country in the EU. One French scholar describes how France’s grounds for granting asylum protection have grown far beyond the original aim of protecting political refugees, to now encompass, not exclusively,

Chechen Islamic militants, Turkish conscientious objectors, Nigerian ex-prostitutes, women belonging to African ethnic groups who practice female genital mutilation, gay people coming from a Muslim country, shopkeepers who got caught up in neighborhood conflicts and who cannot claim the support of the

authorities, stateless people, of course, as well as a large proportion of countries such as Sudan or Afghanistan.⁵⁷

The EU's Dublin Convention was adopted in 1990 to create a common asylum policy in Europe. In 2003, it was replaced by the Dublin II Regulation. Dublin II was adopted to prevent asylum shopping, by which illegal immigrants cross into frontier EU states like Greece and Italy with the intention of going north to countries with more generous public benefits—chiefly Germany.⁵⁸ Dublin II “establishes the principle that only one Member State is responsible for examining an asylum application,” which is the first EU member state which the asylum seeker enters. Dublin II provides that “[i]f a Member State to which an asylum application was submitted deems that another Member State is responsible, it can call on that Member State to take charge of the application,” which in practice means return the individual to that first country.⁵⁹ Dublin II is increasingly resented by the frontier countries, who are left with the greater burden of processing, absorbing, or perhaps expelling illegal migrants. Though the flow of illegal immigration is a major political issue in the EU, the refugee and asylee regime has been incapable of reducing it, even after Dublin II.

Though the flow of illegal immigration is a major political issue in the EU, the refugee and asylee regime has been incapable of reducing it.

Individual EU states have attempted to act on their own, without much success. In 2024, France's Minister of the Interior Gérard Darmanin went to the French town of Menton near the Italian border to announce new police efforts to prevent illegal migrants crossing from Italy into France. Germany has complained that Italy has not been taking back asylum seekers under the Dublin Regulations.⁶⁰ In the Mediterranean, to prevent activist NGOs from crossing the line between rescuing people from drowning and overtly facilitating illegal migration, the governments of France and Italy have impounded ships or blocked them from docking at their ports. NGO boats carrying illegal immigrants have been passed like hot potatoes back and forth between France⁶¹ and Italy.⁶²

To implement Dublin II, the EU spent years trying to force reluctant member countries to take in a share of the illegal migrants caught at the

bloc's frontiers. In June 2023, the EU's national leaders finally agreed to a new asylum system, pending approval by the EU parliament.⁶³ This new Asylum and Migration Management Regulation (sometimes known as Dublin III) creates a fast-track asylum process at the EU borders for applicants from countries whose nationals have been approved for asylum at rates below 20 percent,⁶⁴ meaning that the EU considers them to be relatively safe places to return illegal migrants. Under the fast-track system, all arrivals (adults and children) from those safer countries would be detained in processing centers at the border and only allowed to enter the EU if they qualified for asylum. If they did not, they would be deported to their home countries.

The existing asylum procedure, under which applicants remain in the EU while their cases are pending, would still be in effect for nationals of "unsafe" countries like Belarus, Eritrea, Mali, Syria, and Yemen, which, in 2022, had the highest rates of approved asylum cases. Although the new system is designed to spread the load of asylum applicants among member countries, relieving the most desirable states of some of the burden, EU members have the option to pay a fee of €20,000 (\$21,553) per migrant into an EU fund instead of taking them in for resettlement.⁶⁵ That pay-per-migrant fee would go to the country in which the asylum seeker remained.

Dublin III has been agreed to but will not be effective until 2026. Even then, critics doubt it will solve Europe's asylum problem. Hungarian migration researcher Viktor Marsai predicted that "the whole EU asylum system laws...even with the new asylum deal...will have [an] inadequate framework to stop the flow of people." His assessment was that the new EU Pact on Migration and Asylum offers "limited solution[s] for the problems of the past while keeping a lot of bad practices."⁶⁶ According to a report by Poland's Ordo Iuris Institute for Legal Culture, the revised European regulation "fails to address the main issue, which is the blurring of the distinction between refugees and economic migrants."⁶⁷

What Could Have Worked: Britain's Rwanda Offshore Plan. Britain has a political problem with *legal* migration and immigration, let alone illegal migration. In the past decade, nearly four million more people moved to the U.K. than left, and 80 percent of them were non-Europeans.⁶⁸ That staggering number is only a million fewer people than live in all of Scotland. Though the British Conservative Party candidates made successive election promises to reduce the annual flow to the tens of thousands, the U.K. saw net migration of more than 900,000 people in 2023 and about 750,000 in 2024.⁶⁹

Nigel Farage, who led the "Brexit" fight to get Britain out of the European Union, calls the Conservative Party's facilitation of mass migration,

despite promising to stop it, “one of the biggest betrayals in British political history.”⁷⁰ Farage now leads the Reform UK Party, which advocates limiting migration. Farage, and many British voters, now link mass migration—legal and illegal—to increased road traffic, crowded schools, delays in getting medical appointments, housing shortages, and social decay. Farage wants the U.K. to leave the European Court of Human Rights, pay zero welfare to new arrivals for at least five years, and limit government housing assistance.

Writing in *The Daily Telegraph*, columnist David Frost warns that “Britain cannot sustain these immigration levels,” and “[i]f mainstream politicians don’t rise to this mounting challenge, voters may find refuge in those who will.” As he argues, uncontrolled mass migration prevents wages and living standards from rising. The population increase from immigration also explains much of the shortfall in housing, and why prices for existing houses are unaffordable for young people. Frost advocates “decisive measures,” such as “an extremely low and rigorously enforced migration cap, proper border control, deterrence and deportation of illegal migrants and criminals, and a serious and assertive policy of integration for long-term migrants already here.”⁷¹

Tory candidates made successive election promises to reduce the annual migration flow into the U.K. to the tens of thousands—yet annual net migration remains close to one million.

In addition to legal migration and immigration, the U.K. has to contend with thousands of people claiming asylum after arriving illegally, including those arriving by small boat from France. In 2024, the U.K. spent £4.2 billion (\$5.3 billion) on housing and care for putative asylum seekers.⁷² Like those coming to the U.S., the vast majority of illegal entrants to Britain are seeking work. Britain’s asylum system has been swamped by demand, and also like the U.S., backlogs for processing cases stretch into years.

In 2018, only 300 people arrived illegally in the U.K. by small boat from France across the English Channel. In 2022, it was more than 45,000. In August 2023, the U.K. reluctantly received its 100,000th illegal boat-borne immigrant, one of 700 who arrived that day.⁷³ Nearly all 100,000 are still in Britain. Having left the EU, the British are unable to return asylum seekers

to the first safe country in the EU under the Dublin Regulations. By mid-2023, 96 percent of asylum seekers who arrived in 2021 had not received final decisions in their cases, and around 50,000 were being housed in hotels, costing the United Kingdom more than £7 million a day.⁷⁴

Using the widest definitions applied by the most liberal activists, the number of people “facing ‘war, persecution and violence’ are in the billions.”⁷⁵ The limitless liability of illegal immigration to the U.K. is an important electoral issue for Conservative voters.⁷⁶ In July 2023, Prime Minister Rishi Sunak’s government⁷⁷ passed the Illegal Migration Act 2023, which bans people who entered Britain illegally from applying for asylum. Inadmissible aliens could be deported without right of appeal. The act requires British officials to detain and deport people back to their birth country, if possible, or if not, to a safe third country to await their asylum decision. If denied, they would be barred from entering Britain again.⁷⁸

To implement the Illegal Migration Act, Britain needs a safe third country where asylum seekers can be sent pending British case processing. The previous Conservative government therefore struck a deal with Rwanda, which agreed to take up to 1,000 putative asylum applicants over five years. These people would have the option to return home or to be resettled in Rwanda as refugees any time.⁷⁹ The government fought a series of legal challenges to its policy. It had hoped to begin flights to Rwanda in early 2024, but failed to do so.⁸⁰ In July 2024, the Labour Party won a national election and formed a government. New Prime Minister Sir Keir Starmer terminated the Rwanda plan immediately upon taking office, calling it a “gimmick” that “was dead and buried before it started.”⁸¹

In 2018, only 300 people arrived illegally in the U.K. by small boat from France across the English Channel. In 2022, it was more than 45,000.

Through the Rwanda plan, Britain was attempting to regain control over its borders and national sovereignty. The goal of the plan was to prevent boat arrivals from applying for asylum, thus both destroying the business model of maritime smugglers and saving lives. Critics argue that if the U.K. were successful, it would set a “worrying precedent for dismantling asylum-related obligations that other countries, including in Europe, may be tempted to follow.”⁸² Such criticism reveals the realities of mass migration

and logical government responses to it. The alternative to firm action is to cede control over immigration to foreign actors in perpetuity.

What May Work: Italy’s Albania Plan. In 2022, Giorgia Meloni, a conservative, became Italy’s prime minister. Her party ran on a platform of stopping illegal migration. Yet in a single day in mid-September 2023, more than 100 small boats from Tunisia carried a total of nearly 7,000 illegal migrants to the Italian island of Lampedusa,⁸³ bringing more people than the island’s own population. That day pushed the total of illegal migrants who had reached Italy in 2023 to above 120,000. The top six source countries of illegal immigrants to Italy were in Africa and South Asia.⁸⁴

Meloni negotiated a deal with Albania to set up offshore processing centers. Albania has strong historical, economic, and population ties with Italy but it is not an EU member. Albanian Prime Minister Edi Rama told *The Washington Post* that his country was doing this for Italy, a close economic partner, but would not do it for other countries.⁸⁵

In October 2024, Italy sent an initial group of 16 illegal migrants intercepted at sea to a center in Gjader, Albania. They are to be detained there pending the adjudication of their asylum claims, which will be done using virtual communications with judges in Italy. The Albanian facility is budgeted to cost \$710 million over five years and can hold up to 3,000 migrants. The program is limited, however, to single male migrants, intercepted at sea, and from countries deemed “safe” by Italian authorities. Italy approves about 40 percent of asylum claims. It received 155,000 applications in the past year but deported only 3,300 of the asylum applicants whose claims were rejected, according to the *Post*. A member of Italy’s Democratic Party, which opposed the Meloni government, said that Albanian offshore processing program “is just propaganda and a waste of Italian taxpayers’ money.”⁸⁶

As columnist Nicholas Farrell writes in *The Spectator*, “[h]owever bogus the claims of migrants, once they’re in the EU, it’s virtually impossible to deport them”⁸⁷ because, as in the U.S., the lengthy court process with multiple appeals is stacked heavily in the migrants’ favor, and the capacity for physically removing them is limited. Farrel says Italians are paying \$1,000 a month to house each illegal migrant, and that 158,000 migrants arrived in Italy by sea last year. The biggest challenge to Meloni’s plan is a legal one. If European courts rule that poor countries cannot be safe countries—essentially the position of immigration activists and human rights groups in both Europe and the United States—then Italy’s Albania plan will not be possible. But if that obstacle is overcome, Italy’s combination of existing deals with North African countries⁸⁸ and the Albanian offshoring could have dramatic impact on arrivals by sea. Even without the plan, Italy intercepted

65 percent fewer illegal migrants at sea this calendar year so far than for the same period in 2024.⁸⁹

What Could Work: Germany's Africa Plan. Until now, Germany has given generous benefits to asylum applicants, but the country's second-most popular party, the Alternative for Germany, wants greater restrictions on migration and may have pulled other parties to the right on this issue.

In 2015, then-Chancellor Angela Merkel made possible the arrival of roughly a million migrants, mostly young men from developing Muslim countries, between September and the end of the year alone.⁹⁰ While that year was the high-water mark, arrivals of asylum seekers and those claiming to be refugees have continued to be high, with a majority being military-age men without families. Germany takes in nearly one-third of all asylum applicants in the EU—around 350,000 in 2023 and 250,000 in 2024.⁹¹ In 2013, around 67,000 Afghans lived in Germany;⁹² a decade later, that number had ballooned to 419,000, in a country the size of Montana.⁹³

One noticeable consequence of this migrant influx has been sharply rising crime, particularly sexual offences. As elsewhere in Europe, the rate of crime committed by migrants and asylum seekers from some countries is significantly higher than the rate among the native German population. Data from 2017 to 2021 found that Afghan and Pakistani men were 16 times more likely to be suspects in rape crimes than ethnic Germans.⁹⁴ *The Wall Street Journal* reported in January 2025 that “noncitizens commit more than 40% of crimes despite being 15% of the population” in Germany.⁹⁵ In 2021, 677 gang rapes were recorded in Germany, up from 300 in 2018.⁹⁶ Non-German citizens are 13.7 percent of the population—and were suspects in 42 percent of crimes involving sexual offences.⁹⁷ “[N]ationals from Turkey, Afghanistan, and Syria were the most commonly represented among alleged sexual offenders,”⁹⁸ while 75 percent of victims of all crimes are German citizens.⁹⁹

The past few years have seen a spate of stabbing and vehicle-ramming attacks in German cities committed by Muslim men who are mostly asylum seekers or failed asylum seekers. In February 2025, an Afghan asylum seeker ran over people in a crowd in Munich, injuring 30 and killing two.¹⁰⁰ A month earlier, another Afghan man killed two people in a German park with a knife.¹⁰¹ One victim was two years old. In August 2024, a Syrian man whose asylum claim had been rejected murdered three people in Solingen—at the town's 650th anniversary celebration, named Festival of Diversity—by slitting their throats with a knife and wounding several others;¹⁰² in May, an Afghan man stabbed several people in the city of Mannheim and killed a young police officer.¹⁰³

In addition to rising crime and lack of assimilation, there are substantial financial costs. German courts have ruled that asylum claimants and recipients in the country are entitled to the same welfare benefits as Germans. By 2023, Germany was spending €50 billion (\$54.5 billion) a year to process and support asylum applicants, roughly the size of the country's defense budget.¹⁰⁴

In response to public anger and with elections looming in February 2025, the German government announced that it would tighten its immigration and asylum policies. In May 2024, Germany limited cash payments to migrants.¹⁰⁵ In August, Germany began deporting Afghans whose asylum claims had been rejected but limited to those with criminal convictions.¹⁰⁶ In September, Germany expanded border controls “responding to irregular migration and to protect the country from extremist threats” at the land borders with Belgium, Denmark, France, Luxembourg, and the Netherlands for a period of six months.¹⁰⁷ Germany already had restrictions on the land borders with Austria, the Czech Republic, Poland, and Switzerland.

In 2023, Germany was considering an offshoring plan for asylum seekers, with Ghana, Kenya, Morocco, Senegal, and Turkey named as possible partner countries. The concept was the same offshoring as Italy had with Albania and Australia with Nauru: Asylum seekers arriving illegally in Germany would be sent to third countries to await their case processing instead of being admitted into Germany and given full welfare benefits. Those foreigners denied asylum could be resettled in the processing country or another receptive host country.¹⁰⁸

Germany spends \$54.5 billion a year to process and support asylum applicants—roughly as much as it spends on defense.

In the run-up to German parliamentary elections in early 2025, the Christian Democratic Union (CDU), the highest-polling party, promised stricter border controls, tighter asylum rules, and increased deportations.¹⁰⁹

The CDU, led by Friedrich Merz, won a plurality in the February 23 election, but not a majority. Due to his party's “firewall” policy of not cooperating with the Alternative for Germany (AfD), which calls for secured borders and mass deportation of migrants to their home countries (“remigration”), Merz instead negotiated with the recently ejected socialists, the Social Democratic Party (SPD).

What Works: The Australian Offshore Migrant Processing Model.

In 2001, Australia started turning back boats carrying illegal migrants. The idea was to give “no advantage” to asylum applicants arriving illegally by boat over those arriving by air. Australia set up detention and asylum processing centers on the island nation of Nauru, and on Manus Island, which is part of Papua New Guinea. Eventually, Australia adopted a strict rule that no asylum seeker arriving by boat and processed offshore would ever be resettled in Australia. The policy faced considerable political opposition but was highly effective in reducing demand.¹¹⁰

A successor Labour government closed the Manus and Nauru centers.¹¹¹ In 2012, more than 600 people drowned when boats carrying illegal migrants capsized. In response, Australia re-opened the Manus and Nauru centers, to which they resumed sending all illegal aliens who arrived or attempted to arrive in Australia by sea. As before, the putative asylum applicants remained in the offshore centers for the entire time that their asylum applications were pending adjudication.¹¹² The new policy was quickly understood by would-be boat migrants and migrant traffickers across Southeast Asia. “Arrival numbers went off a cliff once the Australians started to deport...because “news spreads like wildfire among refugees.”¹¹³

Through its offshoring policy, the Australian government, determined to control its own national immigration and asylum process, destroyed the market for maritime migrant smugglers.

Through its offshoring policy, an unbending Australian government, determined to control its own national immigration and asylum process, destroyed the market for maritime migrant smugglers. For example, in 2014, approximately 53,000 people attempted to leave Bangladesh and Burma by boat, but almost all went to Thailand or Malaysia.¹¹⁴ Very few attempted to reach Australia, and only a single boat made it. At its peak in 2014, Nauru’s camp had 1,233 putative asylum applicants. They were returned to their home countries or resettled in third countries willing to take them, and as illegal maritime arrivals dropped, Australia stopped sending them to Nauru.¹¹⁵ By June 2023, the camp was empty.

Australia's offshore policy has been highly effective.¹¹⁶ "Bipartisan support for the policy continues," because it works.¹¹⁷ Though the boat-borne illegal migration virtually stopped, Australia wisely retained a credible ability to re-start and ramp up offshore processing by paying \$350,000 a year to Nauru to keep the detention and processing center available. Indeed, several boats arrived in 2024,¹¹⁸ and, as of February 2025, a reported 93 "unauthorized maritime arrivals" were being held there.¹¹⁹

A Proposal for U.S. Asylum Reform

The United States must revise its asylum law and processing systems entirely. The U.S. should pull out of the international Geneva Convention and re-write U.S. immigration law to prioritize American, not globalist, interests and to eliminate loopholes that encourage frivolous and fraudulent asylum claims. In revising U.S. asylum law and process, the U.S. should return to protecting the truly persecuted at the hands of their government on account of immutable or objective traits and remove additions from the 1967 protocol. This would mean, *inter alia*, eliminating the catch-all and undefined category of "membership of a particular social group," the interpretation of which has allowed relentless expansion of asylum approvals far in excess of those approvable under the original convention.

Congress should end the ability of aliens crossing illegally between ports of entry from claiming credible fear or applying for asylum. Aliens seeking to enter the U.S. via land by claiming a fear of persecution should be required to do so at a port of entry. This is reasonable and not a hardship; tens of thousands of aliens traveled to land ports of entry each month during the Biden Administration, using the CBP Mobile One application, to obtain humanitarian parole into the U.S.

Congress should also require that anyone passing through a safe third country apply for asylum there first. Anyone who fails to do so should be sent back to that country. Likewise, if a U.S. asylum applicant was already able to safely resettle in another country, he should be returned there. And, if an asylum applicant can safely relocate to another part of his home country, such as in Brazil, India, or Nigeria, Congress should legislate that such an alien is not eligible for asylum in the U.S. Last, a functional reform would require the DHS to detain all inadmissible asylum seekers during their case processing, and to deport any whose cases were refused. In practice, this reformed approach could work as follows.

Congress should require that anyone passing through a safe third country apply for asylum there first. Anyone who fails to do so should be sent back to that country.

First, all intending immigrants via the refugee-asylee system should be channeled into the USRAP overseas. This allows for proper vetting of family relationships and criminal history and keeps applicants from obtaining the immigration benefits they seek until they have qualified for them. The President, in consultation with Congress, should set an annual cap that combines asylum and refugee applications. The total number should take into account the number of applications already pending (currently several million), vetting resources, and the nation's ability to assimilate new arrivals. In the event that the DHS releases asylum applicants into the country, the government should notify and coordinate with the states and localities where the aliens intend to go to ensure that jurisdictions have adequate housing, jobs, teachers, classrooms, medical care, law enforcement, and other resources to absorb and assimilate the additional population.

Second, at the U.S. border, the aim of a reformed process should be to discourage aliens from bypassing the USRAP by attempting to cross illegally into the U.S. and then claiming asylum. Congress should repeal the current provision of the INA that allows illegal aliens to apply for asylum when crossing into the U.S. between ports of entry. Only aliens who are physically present in the U.S. (for example, having arrived by air with a visa) or who arrive at a port of entry should be allowed to apply for asylum. This is far safer for them than attempting to cross between ports. Such a statutory change should eliminate the ability to apply for asylum (or the preliminary threshold of credible fear) if an alien seeks to cross or has crossed at a point other than a designated port of entry or after having been interdicted in international or U.S. waters.

The DHS should be authorized to establish and maintain adequate detention beds, in both family and individual settings, for any reasonable contingency. Any individual, including putative families, "encountered" at the border entering the U.S. illegally would be detained as already required under U.S. law. Once its maximum detention capacity was reached, the DHS would be authorized to expel all subsequent illegal arrivals back to Mexico until detention capacity was sufficient to receive them, in order of arrival. No asylum applicants should be paroled into the country, per current law.

Third, the United States should agree with Mexico and as many countries in Latin America as possible that they will accept the return of such aliens through STCAs or less formal bilateral agreements. In turn, Mexico could expect Belize and Guatemala to accept the return of aliens coming from their territory that were above Mexico's capacity to receive and process, and so on in a cascading effect down to Central America and South America.

Negotiating formal or informal STCAs will take diplomatic and economic leverage. To make an "offshore"¹²⁰ processing model work, the U.S. needs to assure the cooperation of key gateway countries like Guatemala, Mexico, and Panama that have a choice between either facilitating or deterring illegal immigration through their borders. The U.S. has done so successfully before: Just as the EU persuaded Serbia to begin requiring visas from countries with high rates of asylum claims elsewhere in the EU like Cuba and India,¹²¹ the U.S. likely pressured Belize to require visas from Venezuelans to close that route.¹²²

Where cooperation from Latin American neighbors is not forthcoming, Congress can cut or hold back assistance, as it did in 2024 with El Salvador, Guatemala, and Honduras "until the State Department certifies that each government is cooperating with the U.S. to counter drug trafficking and human smuggling, and working to facilitate the return, repatriation, and reintegration of migrants arriving at the U.S. southern border."¹²³ Just as the EU is giving hundreds of millions of euros to Tunisia and Libya to restrict illegal emigration from their territories, the U.S. should expect more cooperation from the billions it spends on aid and investment in Latin America.

If persuasion and economic assistance fail, tariffs on trade are another option. Visa sanctions can also be used as leverage to induce countries to take back their nationals who are already living illegally in the U.S.¹²⁴ Under the Immigration and Nationality Act, the Secretary of State can order consular officers to stop issuing visas to citizens of a country that "denies, or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country."¹²⁵

Recommendations for the Administration and Congress

To restore national sovereignty over immigration policy, the Administration should:

- **Pull out** of the international Geneva Convention on refugees and asylum and redesign U.S. immigration policies to prioritize U.S. interests, eliminating loopholes that encourage frivolous and fraudulent asylum claims.

- **Negotiate and implement** Safe Third Country Agreements with countries from Mexico to Colombia, creating an Americas version of the European Union’s Dublin Regulations. The government must enforce it through both foreign aid and, if necessary, sanctions.
- **Set** an annual combined cap of asylum and refugee applications, taking into account the number of pending applications, that achieves a manageable annual caseload. Factors to determine “manageable” should include thorough vetting, time for advance notice to state and local jurisdictions, and adequate infrastructure and ability to assimilate the new population.

To adapt asylum policy from the 1950s to the 21st century, Congress should:

- **Amend** immigration law to expressly state that refugee protection (and its corollary, asylum) can only be granted to applicants claiming persecution by their government on account of their race, religion, nationality, or political opinion, not “membership of a particular social group.”
- **Amend** immigration law to prohibit illegal border crossers from pursuing asylum. Limit such requests from land crossers to land ports of entry.
- **Pass** legislation stating that an alien is not eligible for U.S. asylum if he did not seek such protection in a traversed safe country, if he was already safely settled in a third country, or if he can safely relocate in his home country.

Conclusion

The U.S. refugee and asylum processes were created in a completely different era and no longer serves the national interest. Rather than adding to the already confusing law and procedure, the entire approach must be redesigned to create a credible refugee system that removes the possibility of gaming it to migrate for economic purposes. Economic migration, as with family migration, remains a congressional duty to regulate. Once a new refugee and asylum regime that places American interests over globalism is enacted, the executive branch must enforce those laws without circumventing them to achieve political aims.

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