

A New Immigration System to Safeguard America's Security, Expand Economic Growth, and Make Us Stronger

By Neera Tanden and Debu Gandhi July 2025



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Introduction and summary

America needs to fix its broken immigration system. Bipartisan reform attempts have repeatedly failed over more than three decades, as Congress has kicked the can down the road without solving fixable problems.¹ The existing, outdated system fails us all. We must make the immigration system work for America.

Our immigration system must protect America's national security, grow the economy, reflect our values, and benefit all Americans. We cannot have a workable system without securing our borders and reforming our broken asylum system. That system incentivizes illegal immigration by allowing migrants to enter the United States en masse and remain for many years while awaiting adjudications of their asylum claims, regardless of whether they have a viable persecution claim. The American public deserves a modern immigration system that respects the rule of law and delivers swift consequences for people who cross the border illegally while also genuinely respecting the rights of people legally here; expands legal immigration; and opens legal pathways to longtime immigrants who have helped grow our economy and contribute to our rich social fabric.

To better serve our national interest, the Center for American Progress' plan to fix the broken immigration system:

- Strengthens border security to stop the unlawful entry of people
- Fixes the asylum system by ending its misuse
- Expands legal immigration to reduce unauthorized migration and strengthen America's economy
- Creates a secure, earned path to citizenship for people here more than a decade and who are contributing to their communities and the country

Leaders of goodwill can both support a fix to the broken immigration system and the due process rights of immigrants. There's no contradiction—indeed, both ensure we respect the rule of law.

The wanton cruelty America is currently witnessing is not an actual solution. We can fix our broken system without deporting people who are here legally simply because they say things we disagree with or railroading people into foreign gulags who have legitimate refugee claims. A long-dormant wartime law has been inappropriately and unconstitutionally resurrected to illegally disappear people to a notorious foreign prison without any due process, apparently based at times on little more than misinterpreted tattoos and clothing choices.² None of this addresses what ails our immigration system—but the harm it does to the people affected, to the larger community, and to the rule of law is incalculable. As J. Harvie Wilkinson, a conservative 4th Circuit judge, observed in a recent judicial ruling, “The government is asserting a right to stash away residents of this country in foreign prisons without the semblance of due process that is the foundation of our constitutional order.”³

Americans deserve a secure immigration system that stems illegal border flows and fosters economic growth and prosperity. There is a big difference between acknowledging that the current system is broken and offering solutions versus conducting extrajudicial terror tactics that the current administration has unleashed on migrants who are here legally. That is a betrayal of American values and will make us less safe and less prosperous.

Congress can help right the ship both by holding the executive branch to account and by making our laws better for the American people. Congress should conduct robust oversight of the executive branch’s reckless and indiscriminate actions in carrying out immigration policy—including the extralegal use of wartime authorities to disappear people without due process or accountability.⁴

Congress must also author new legislation to make our immigration system work better. Creating new immigration policies that truly serve everyone in our communities is not just an essential task—it’s a strategic necessity. A new immigration system must ensure that our laws are followed by—and administered fairly for—everyone who enters the country. It must secure our borders and curtail illegal migration while providing more legal options for people to come here the right way. A modern, secure, orderly, and fully functional immigration system will provide greater opportunities for American families, ensuring that the American dream continues to live on for U.S. citizens and new immigrants alike. The truth is America needs more legal immigration to strengthen our economy and increase prosperity for all Americans. Providing safe, orderly, and legal avenues for migrants to come to the United States and work will enable the United States to continue to grow, unlike so many other developed countries struggling with stagnant economies.⁵

Secure and control the border and prevent illegal immigration

Security at the border is nonnegotiable and must include border barriers, more border agents, and technology to stop illegal immigration

We must ensure that the entry of people into the United States is safe, lawful, and orderly and prevent unauthorized or unvetted entries. A secure border should deter and prevent illegal border crossings, fully vet all people entering the United States, and smoothly facilitate lawful trade and travel. Any person not authorized to enter the United States should not be able to enter, and criminal activity at the border must be swiftly addressed with the full force of the law.

The United States must continue to invest in infrastructure, technology, and personnel at the border to prevent and deter illegal border crossings and quickly identify individuals who are not authorized to enter the United States. This includes deploying the appropriate mix of border barriers, surveillance technology, and nonintrusive inspection systems for any given location at the border as determined by on-the-ground operational assessments.

Strengthen border security to prevent unlawful crossings, sufficiently vet all entries, and crack down on smuggling networks

Build barriers, deploy technology, and hire more agents between ports of entry

- Enhance border security and enforcement between ports of entry to detect and block unauthorized crossings.
 - Provide sufficient staffing, training, and resources for Border Patrol to prevent illegal border crossings and ensure that no dangerous individuals enter the country in between ports of entry.
 - Deploy additional technology and infrastructure to better detect and prevent unauthorized crossings:
 - › Expand funding for border security infrastructure that is appropriate for different geographic locations and terrain—including border barriers, lights and sensors, and patrol roads—and increase funding for maintenance of existing infrastructure.

- › Expand the use of innovative fixed and mobile surveillance capabilities such as drones and embedded sensors that can detect unauthorized crossings in remote areas where patrols are difficult.
- › Update Border Patrol’s communications equipment to ensure better dissemination of data gathered from modernized surveillance technology and more quickly respond to incursions.

Invest in modernizing ports of entry to ensure secure processing of all entries

- Invest in border security infrastructure, staffing, and training to sufficiently vet all people entering the United States, intercept contraband entering or leaving the country, and prevent the entry of dangerous individuals.
 - Hire sufficient Customs and Border Protection officers to ensure capacity to thoroughly screen all people entering the United States and prevent the entry of individuals who pose credible threats to national security.
 - Modernize surveillance and increase screening technology—such as nonintrusive inspection systems—and ramp up inbound and outbound inspections to intercept and seize contraband entering the United States and guns flowing south that fuel cartel violence.
 - Modernize ports of entry and increase their capacity to expeditiously and safely facilitate greater levels of lawful trade, travel, and immigration processing to bring more order at the border and enhance security.

Support efforts in other countries in North and South America to crack down on illegal immigration, smugglers, and traffickers

- Create a regional Interpol of the Americas to share more intelligence and increase enforcement efforts with other countries to crack down on transnational smugglers, traffickers, and other criminal organizations.⁶
 - Partner with countries in North and South America to share information amongst police forces to track down, arrest, and prosecute members of smuggling networks to prevent them from continuing to exploit vulnerable migrants and endanger Americans’ security.
 - Partner with countries in North and South America to strengthen and modernize their border security, immigration enforcement agencies, and processes to help other countries respond to unlawful migration to reduce pressures on the U.S. border.

Fix the asylum system by ending its misuse

End the misuse of asylum, bring order to the border, and better protect vulnerable victims of persecution

The asylum system has, over time, been abused by human smuggling networks.⁷ It has become a backdoor way for people to come to the United States and work without valid asylum claims while it takes far too long to render decisions.⁸ At the same time, Americans must not abandon people with true asylum claims to face death or torture because of who they are or what they believe. Our asylum laws must be modernized, and the system appropriately resourced, so final decisions are rendered in weeks—not years. This will reform the system to meet the original purpose of asylum in international law: to provide legal protections to people who are truly persecuted for who they are, their minority status, or what they believe—their political views or religion—while quickly repatriating individuals at the border who do not qualify.

We can do this by completely closing the southern border to those without a viable persecution claim or other legal avenues to enter the United States while still maintaining access to the lifesaving protection of asylum under a secure system that quickly processes all border asylum cases at the border itself. A reformed system would end the misuse of the asylum system by nonqualified applicants while maintaining protections for those who truly qualify. It would distinguish between those fleeing autocracies that persecute individuals and minority groups and those making nonviable claims from democratic countries that do not persecute their citizens. It would raise the bar for asylum cases adjudicated at the border and end the release of applicants with pending cases into the interior of the country.

A new system for asylum at the border

Presume migrants from democracies with no patterns of persecution are ineligible for asylum at the border

The State Department would maintain a regularly updated list of normally functioning democracies with no patterns of persecution, and a second, smaller list of 1) countries with despotic regimes that are known to commit acts of persecution as well as 2) known groups that are persecuted in specific countries. Other

countries such as the United Kingdom and Germany² also have lists of safe countries from which asylum seekers are presumed to be ineligible, and many EU member states have procedures to decide asylum cases directly at their border in certain situations.¹⁰

- Asylum applicants from a normally functioning democracy without a pattern of persecution would be presumed ineligible for asylum at the border and, in the vast majority of cases, would be immediately repatriated.¹¹

Raise the legal standard to secure asylum at the border for all applicants

Congress should raise the legal standard for asylum claims at the border by requiring that all successful applicants who express a fear of persecution must establish by a preponderance of the evidence—a higher standard than in existing law—that they will be persecuted if forced to return.¹²

- Asylum applicants from a country that has been demonstrated to persecute and/or torture their citizens must demonstrate that they have a valid asylum claim under this higher evidentiary standard in place at the border.

Establish a fast, fair, and effective process to adjudicate asylum claims at the border, and require applicants seeking asylum at the border to apply at ports of entry

Congress should make it feasible for victims of persecution to lawfully apply for asylum in an orderly way at ports of entry and bar prospective asylum seekers who cross the border unlawfully from the asylum process unless they faced an acute medical emergency or some other imminent threat to their life at the border.

- Applicants seeking asylum at the border would be required to remain proximate to the border while their claims are adjudicated. The United States should create facilities to appropriately house families temporarily at the border, which do not currently exist. Safe, humane, custodial Border Processing Centers (BPCs) would be established to temporarily house asylum seekers accepted for processing, staffed with appropriate personnel to provide access to necessary services, such as emergency medical care. Asylum seekers accepted for processing at BPCs will have congressionally funded access to counsel and translation services to ensure due process and efficient, fair outcomes. This will both facilitate efficient adjudication and end travel to the interior of the country while claims are pending and applicants await a final outcome.

Make the asylum and appeals process expeditious and final—completed within 30 days—and with quick, humane repatriation for unsuccessful applicants

A fair and functioning asylum process at the border must be conducted as expeditiously as possible to minimize the time that individuals and families must be held in a custodial setting.

- After an applicant is sent to a BPC from a port of entry, they should be provided three days to rest and recover and then moved directly into a merits hearing conducted at the BPC by an asylum officer within 10 days. The government will ensure that individuals have access to counsel and can secure necessary documentation while in custody. If an asylum officer denies a case, the applicant may receive a single appeal to an immigration judge to be filed within seven days. That decision to affirm or overturn the asylum officer's decision will be rendered within seven days of filing and be final. The asylum process at the border would be completed within 30 days, absent emergency circumstances.¹³
- Any unsuccessful applicants will be quickly repatriated from the BPC to their home countries or to a safe third country.

Eliminate the current backlog in pending asylum cases at USCIS and in the immigration courts

In addition to creating a better system for future border cases, the United States must also address the current backlog of asylum cases pending at U.S. Citizenship and Immigration Services (USCIS) and in the immigration courts by surging resources to clear the existing asylum backlog. This can be achieved by hiring more asylum officers and immigration judges; enhancing case processing technology and digitization; and filling other system staffing needs to rapidly and accurately adjudicate previously filed asylum claims.

Strengthen the refugee program

The U.S. refugee admissions program should be the primary avenue for admitting victims of persecution. The United States should strengthen and modernize the refugee admissions program to protect more victims of persecution—and redirect them from placing their lives in the hands of smugglers to come to the border—by taking the following measures:

- Enable increased regional processing of refugee cases to ensure the most vulnerable victims of persecution are identified closer to their place of residence and more quickly processed.¹⁴
- Expand access to direct submissions of applications by refugees at U.S. embassies and consulates and expand referrals for resettlement.
- Provide more robust, consistent funding for resettlement and expand private sponsorship programs such as Welcome Corps.¹⁵
- Support international partners to offer additional pathways to safety for people who are fleeing persecution, so that more people can receive protection closer to their homes.

Fix legal immigration

Fix the legal immigration system to strengthen the economy, better protect workers, and preserve family unity

The vitality of immigration has strengthened America for centuries. What separates the United States from other nations is our sustained growth fueled by immigration. The United States has stood in contrast to other developed countries that have closed their doors to legal immigration and are facing an aging workforce, growing labor shortages, falling birth rates, and stagnating economies.¹⁶ Immigration is projected to play a central role in our future economic growth, innovation, and prosperity.¹⁷

However, America's legal immigration system remains frozen in time since 1990 and must be updated to better serve America's interests.¹⁸ Current temporary work visa programs provide no security to immigrant workers; are inflexible and cumbersome for employers; and fail to protect the jobs, wages, and working conditions of American workers. Additionally, the permanent immigration system is also stuck in the past, leaving millions of immigrant workers and Americans' family members stuck waiting in line for an immigrant visa (green card).¹⁹ Many endure being separated from family or remain on restrictive visas limiting their ability to fully contribute to U.S. society.

Done right, our legal immigration system can benefit all Americans by growing our economy with new businesses and innovation, meeting labor demands, and supporting America's aging population including by strengthening the social safety net through tax contributions.²⁰ The current system fails to harness this potential. America needs to modernize the immigration system to provide strong safeguards for American workers, ensure that families can stay together, and deliver more certainty and security for American employers and immigrant workers alike. Additionally, creating more orderly, lawful pathways will also help reduce unauthorized migration to the United States.²¹

Increase legal immigration opportunities, reform visa programs, and protect American workers

Increase legal immigration for workers and Americans' immediate family members

- Expand immigration opportunities for innovators and entrepreneurs to start or run businesses to spur job growth in the United States and for workers in shortage occupations, such as caregiving and primary care medicine.²²
- Make it easier for the United States to retain graduates of U.S. colleges and universities in STEM fields to increase American competitiveness and foster innovation.
- Preserve family unity by exempting spouses and children of lawful permanent residents and adult children of American citizens from annual green card limits last updated in 1990.
- Reform the annual country-specific limits on green cards in the family-based and employment-based visa categories to limit future backlogs and ensure consistent immigrant visa availability regardless of country of birth.
- Authorize sufficient additional immigrant visas to clear the backlog for immigrant workers and Americans' family members who qualify for lawful permanent residence and have waited in line for five or more years.²³
- Supplement the existing family-and employment-based system with a new, targeted points-based system driven directly by the labor demands of the U.S. economy.
 - Allocate additional visas based on a regularly updated Department of Labor assessment of shortage occupations and high demand occupations.²⁴ Other countries, such as Australia and Canada,²⁵ regularly assess their labor markets and allow applicants to qualify using a points-based system.
 - Award points to applicants according to key characteristics including work experience, occupation, entrepreneurship experience, English language proficiency, and family ties in the United States with a priority given to individuals with a confirmed job offer in the United States.
 - Create a program for states and cities to identify worker shortages in their communities and directly petition for more labor visas.

Create a safe, orderly alternative legal migration pathway for crime victims

- Create a new safe, orderly legal pathway for crime victims similar to the refugee admissions program that allows the United States to accept the most vulnerable victims of domestic violence and other crimes each year who are referred by U.S. embassies and victims' rights organizations and via direct application. Harness private sponsorship programs to help these vulnerable immigrants thrive in the United States after they arrive.

Reform visa programs and increase enforcement to ensure that American workers are not displaced and immigrant workers are not exploited

- End the abuses of existing temporary work visa programs that undermine the wages and working conditions of U.S. and immigrant workers.²⁶
- Hold employers accountable that exploit the outdated immigration system to increase their profits against the interests of American workers.
- Accompany any expansion of temporary work visas with robust labor market tests to protect U.S. workers from displacement, improve working conditions, create clear accountability measures for employers, and invest in training and education of American workers.
- Any expansion of existing temporary visas or creation of new temporary visas should include an opportunity for visa holders to earn a pathway to permanent residency.

Fully resource the entire legal immigration system

A fully functioning system will enhance security and reduce needless delays that separate families and harm the economy. The system must actually work as intended to efficiently adjudicate applications and prevent any permanent or temporary visa program from being abused or workers exploited.

- Congress must enhance the capacity of the entire legal immigration system by providing sufficient resources and staffing capacity so that USCIS can efficiently and securely adjudicate applications; the Department of Labor can effectively protect workers and hold abusive employers accountable; the Department of State can process visas without needless delays; and the Department of Health and Human Services can support refugees to quickly become self-sufficient.

Enhance U.S. economic growth and keep families together by creating a secure, earned path to citizenship for hardworking, longtime undocumented immigrants

The reality of America today is that people who have come to this country undocumented one, two, or even three decades ago without being able to earn a path to citizenship are playing vital roles in their neighborhoods, communities, and in the economy. These longtime undocumented residents—including Dreamers, farm-workers, and immigrants in mixed-status families—contribute to their communities and local economies and support the social safety net with tax payments.²⁷ Creating an earned, secure, and fair pathway to citizenship for undocumented immigrants who have contributed to their communities for a decade or more will ensure they have the opportunity to fully participate in society and contribute to the regular economy. However, despite these advantages and Americans' support for providing a pathway to citizenship, Congress has not created a similar earned path for undocumented immigrants since 1986.²⁸

Even today, Americans recognize that people who have been contributing to their community, paying taxes, and raising their children for decades in this country should be treated with dignity by the law.

Create a secure, earned pathway to citizenship for longtime undocumented immigrants

- Establish a secure, fair, workable pathway for longtime undocumented immigrants who have lived in the United States for more than ten years—more than five years for Dreamers—to obtain lawful permanent residence, followed by eligibility to receive citizenship in the future.
- Bar eligibility for anyone who has committed a serious crime or is a security threat in order to ensure public safety.
- To qualify for an earned pathway to citizenship, undocumented immigrants must:
 - Pass a thorough criminal and national security background check
 - Demonstrate continuous presence in the country
 - Prove economic self-sufficiency
 - Pay any taxes owed
 - Pay a fine

Conclusion

Americans deserve a modern immigration system that makes the country safer and more prosperous. Congress's failure to update our immigration statutes has created a dysfunctional system that makes us less safe and less prosperous, creating chaos and disorder, failing the American people and harming our interests. Because the immigration system has been so broken for so long, an entire extralegal system exists in parallel, which undermines the wages and working conditions of Americans and exploits undocumented workers. Our immigration system must be updated to assure America's security, promote compliance with the law, boost the economy for all, and reflect our values. The system must also be more flexible to adapt to the country's changing economic needs so that migration happens in an orderly manner within the law rather than outside of it. However, policies that target immigrants legally in the United States—or policies that are so arbitrary and punitive that they push away talented students, researchers, and entrepreneurs while leading to a decline in tourism to our country—are both morally wrong and economically stupid.

Americans deserve actual solutions to modernize the badly outdated current system. Through constructive policies that fix the broken immigration system, we can embrace the spirit of the American Dream and ensure the opportunity to contribute, thrive, and build a stronger America.

Endnotes

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