



Advocacy for Human Rights in the Americas

Testimony of

Adam Isacson
Director for Defense Oversight
Washington Office on Latin America

Before the

U.S. House of Representatives
Committee on Foreign Affairs

Hearing: “The U.S. Border Crisis and the American Solution to an International Problem”

Washington, DC
November 30, 2023

The world is in a historic moment of migration, with more people on the move than at any time since World War II. In the Western Hemisphere, migration is a region-wide phenomenon affecting nearly every country. In the United States, we are seeing unusually high levels of migration at our southwest border, but this is not a challenge unique to us. It is widely shared.

Numbers

The UN Refugee Agency [estimates](#) that 22.1 million people are currently on the move throughout the Americas. Of these, [less than 2.5 million](#) came to the U.S.-Mexico border in fiscal 2023.

Even if you add parolees and what Border Patrol calls “got-aways,” subtracting migrants apprehended more than once, that’s perhaps 3 million people coming to the U.S. southwest border from or through the Americas—and many of them were expelled or deported. That total of attempts to migrate to the United States is less than one-seventh of everyone who is currently on the move in the Western Hemisphere.

Other countries are taking in many of these fleeing migrants. It’s absolutely not just the United States—a fact recognized by 21 countries that signed the June 2022 Los Angeles [Declaration](#) on Migration and Protection.

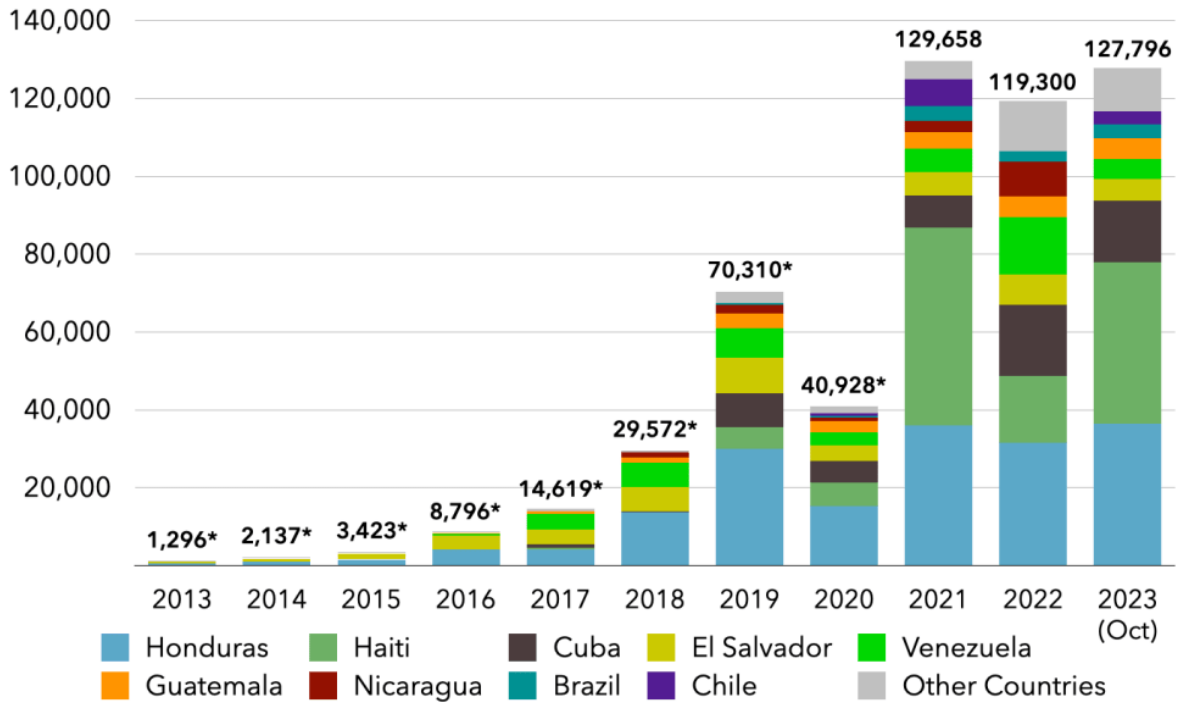
- More than [7.7 million](#) people have left Venezuela: one quarter of the population. More than 4 out of 5—over 6.5 million—now live elsewhere in Latin America and the Caribbean. Colombia alone has received over 2.89 million: about 5 percent of its current population came from Venezuela just since the mid-2010s. (During that period, less than 600,000 Venezuelan people have come to the United States.)
- Between 2021 and October 2023, over 376,000 people had requested asylum in [Mexico](#). Most are [from](#) Honduras, Haiti, Cuba, El Salvador, and Venezuela. Mexico will reach

150,000 asylum applications by the end of this year, and it is adjusting to being a destination country for the first time. Although the country continues to be impacted by high levels of violence and insecurity, with a population of 130 million, a 1.2 trillion-dollar economy, and 85 percent of manufacturers [saying](#) they can't get enough workers, Mexico could be a [partner](#) for protection and integration of migrants, but not for deterrence of people who need protection.

- [About 15 percent](#) of Costa Rica's population is foreign-born; most of them are Nicaraguans who have recently fled the Ortega regime.
- The Haitian diaspora has established communities in Brazil, Chile, the Dominican Republic, and Mexico.

Asylum Requests in Mexico by Nationality

2023: Haiti 32%, Honduras 29%, Cuba 12%, El Salvador 4.3%, Guatemala 4.2%, Venezuela 4.0%, All others <4%
Since 2013: Honduras 32%, Haiti 22%, Cuba 11%, El Salvador 8.8%, Venezuela 8.7%, All others <5%



Source: Mexican Refugee Aid Commission COMAR <https://bit.ly/3EnLETH>; <https://bit.ly/3opOluw>; <https://bit.ly/3IDTpGY>; <https://bit.ly/401OJIU>; <https://bit.ly/3pfzJ68>; <https://bit.ly/3R4qXn1>



* COMAR has slightly revised its full-year total for this year, but is no longer providing country-by-country totals for this year.
 ** Most asylum seekers listed as "Brazil" or "Chile" are children born in those countries to parents who are citizens of Haiti.

Why it is happening

Push factors

Nobody takes lightly the decision to leave their home and community and journey to an unfamiliar place. Strong factors are pushing people in Latin America to migrate. People are fleeing:

- Authoritarian governments.

- Targeted or generalized violence committed by organized crime, with governments unable to protect citizens, and sometimes co-opted and unwilling to protect citizens.
- Poverty, including food insecurity and lack of basic educational opportunities. Many nations' economies, still yet to recover from the pandemic, are in a "lost half-decade."
- Systematic racial or ethnic discrimination.
- Gender-based violence.
- Storms, droughts, crop failures, rising sea levels, and other natural disasters, increasingly caused by climate change.
- An inability to integrate and prosper after migrating elsewhere in the region.

These factors are real and they are severe. Just in the past two years at the U.S.-Mexico border, and on field research trips to Honduras and Colombia, I've talked to Mexican people who've had close relatives murdered by cartels and Honduran small businesspeople who've been extorted out of existence, with no response from their governments. I've talked to Nicaraguan dissidents who are desperately homesick but cannot return to their homelands without being killed or jailed. I've talked to Salvadoran and Honduran parents who left their homes in the middle of the night with their teenage kids whom gangs were threatening to recruit. I've talked to Indigenous people who never wanted to leave their ancestral communities but were forced out by violent criminals, with no state response. I've talked to Haitian migrants who were made to feel deeply unwelcome in South America. I've talked to women fleeing abusive partners who pursued them across two countries. I've talked to Venezuelans forced to put their kids to bed hungry each night after one or two meals per day. I've heard from professionals who've shared a grim view: "I have a future, but I fear that my country doesn't."

Often, the same person may be migrating for a few of these reasons. Some of these reasons meet the definition of asylum in U.S. law, others might not. For now, though, there is no reason to predict that push factors like authoritarian governments, political persecution, organized crime and gang related violence, crippling poverty, or climate change might ease anytime soon. This is the reality for the foreseeable future.

Pull factors

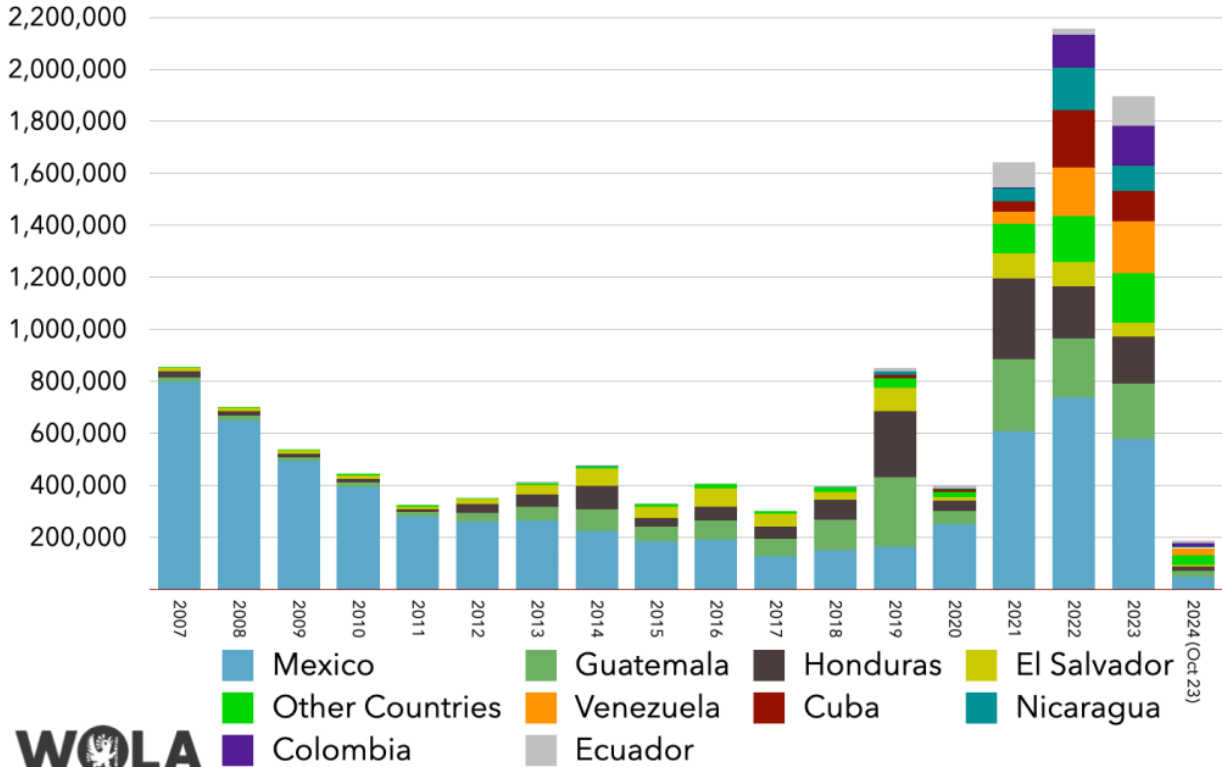
There are pull factors, too. The main factor is not "permissive U.S. laws" because many countries have these laws, and in fact many countries have broader asylum definitions. Many, in fact, *are* accommodating asylum seekers and other migrants.

Instead, a big factor is our relatively strong economy. At 3.9 percent, the U.S. unemployment rate is near its lowest point in our lifetimes. Especially since the pandemic ended, we've all seen stories about employers in many sectors unable to find workers. Meanwhile with low birthrates and baby boomers leaving the workforce, demographic factors are also creating a strong economic pull.

Another pull factor is the opening up of new migration routes that make our border more accessible from outside Mexico and Central America. As recently as 2020, 89 percent of migrants at the U.S.-Mexico border came from Mexico, El Salvador, Guatemala, or Honduras. By 2023, those four countries made up just 50 percent of the total. Four countries from South America are now in the "top ten," and India, China, Turkey, and Russia are not far behind.

Annual Border Patrol Migrant Encounters by Country at the U.S.-Mexico Border

2023: Mexico 31%, Guatemala 11.2%, Venezuela 10.6%, Mexico 20%, Honduras 10%, Colombia 8%, Cuba 6.1%, Ecuador 6.0%, All Others <6%
Since 2007: Mexico 51%, Guatemala 13%, Honduras 11%, El Salvador 6%, Venezuela 4%, Cuba 3.2%, All Others <3%



Source: CBP - <https://bit.ly/3j3tP2l>, <https://bit.ly/3lA4wyX>

Migration has been made possible by greater use of dangerous land routes like the once almost impassable Darién Gap; aerial routes to Ecuador, Nicaragua and elsewhere; and maritime routes in the Caribbean. The push factors are so strong that geography will never be a barrier: it can be overcome, often at the initiative of organized crime groups that operate with little pushback from states.

This is not the border situation the U.S. government prepared for

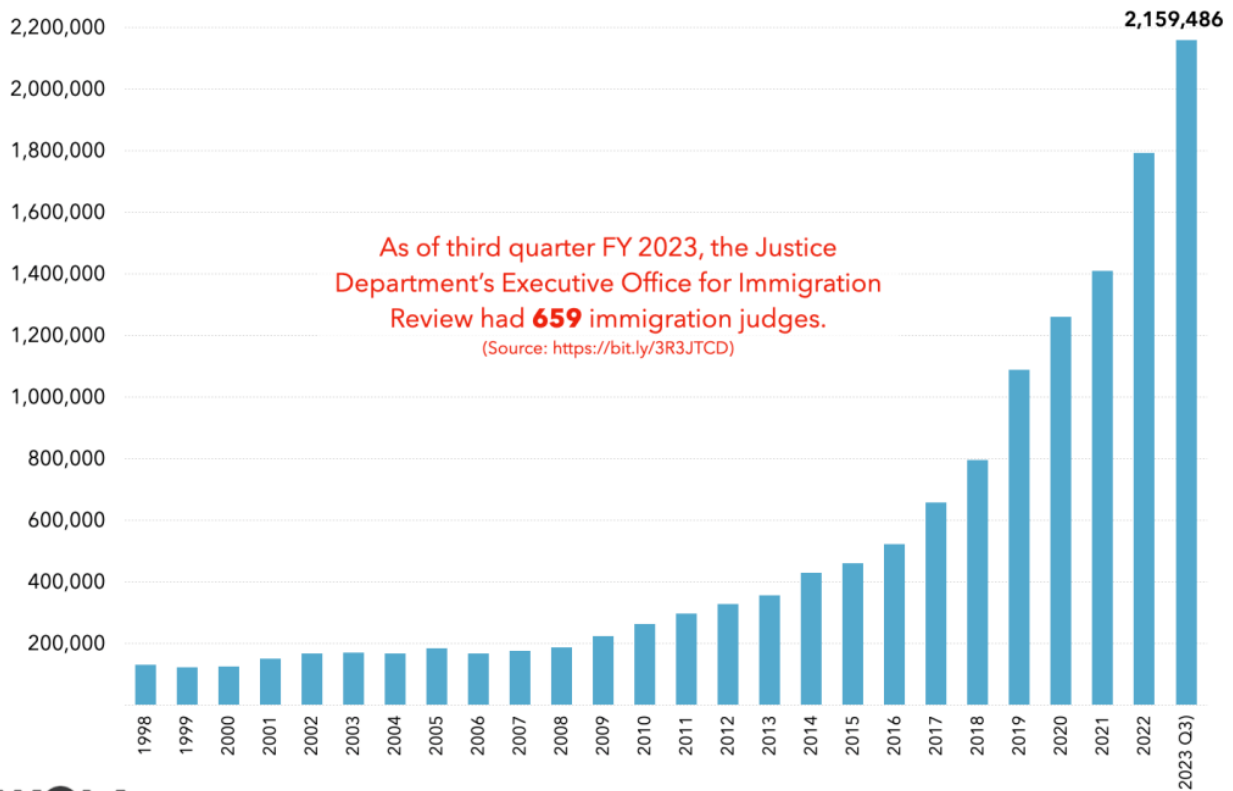
Until about 2013 or 2014, most migrants apprehended at the U.S.-Mexico border were single adults, usually Mexican, who sought to evade capture. It is hard to underestimate how radically that profile has changed, starting with an initial early 2014 wave of asylum-seeking families and unaccompanied children from Central America. In October 2023, half of all migrants at the border were traveling as families or as unaccompanied children. Just 26 percent were from Mexico. A strong majority were seeking to turn themselves in to U.S. authorities and petition for protection in the United States.

One reason this seems chaotic is that the U.S. border and immigration apparatus was not set up to handle this profile of migrant. During the 1990s and 2000s and especially during the post-September 11, 2001 period, when Border Patrol quintupled in size, demand for asylum was a slim fraction of what it is now.

As a result, Border Patrol agents are processing asylum applications—once a marginal task—instead of being on the line carrying out law enforcement duties, because DHS, particularly CBP, lack sufficient personnel, like processing coordinators, who can do this instead. The Biden administration has hired about 1,000 processing coordinators, but needs many more in order to free up agents to do what they were trained to do.

The U.S. immigration court system has 659 judges to handle a backlog of nearly 2.2 million cases: a wildly unrealistic 3,277 cases per judge. These courts handed down 71,000 asylum decisions in 2023, but that’s nowhere near enough to meet the current need. (Of those decisions, [49 percent](#) were grants of asylum or other protection in the United States. That is 34,000 people who were judged to face imminent threats to their lives or freedom had the United States deported them.)

Backlog of Pending Cases in Immigration Courts



Sources: TRAC Immigration <https://bit.ly/3DjA0Yi>; Justice Department <https://bit.ly/47X2aaX>

Deterrence or Governance

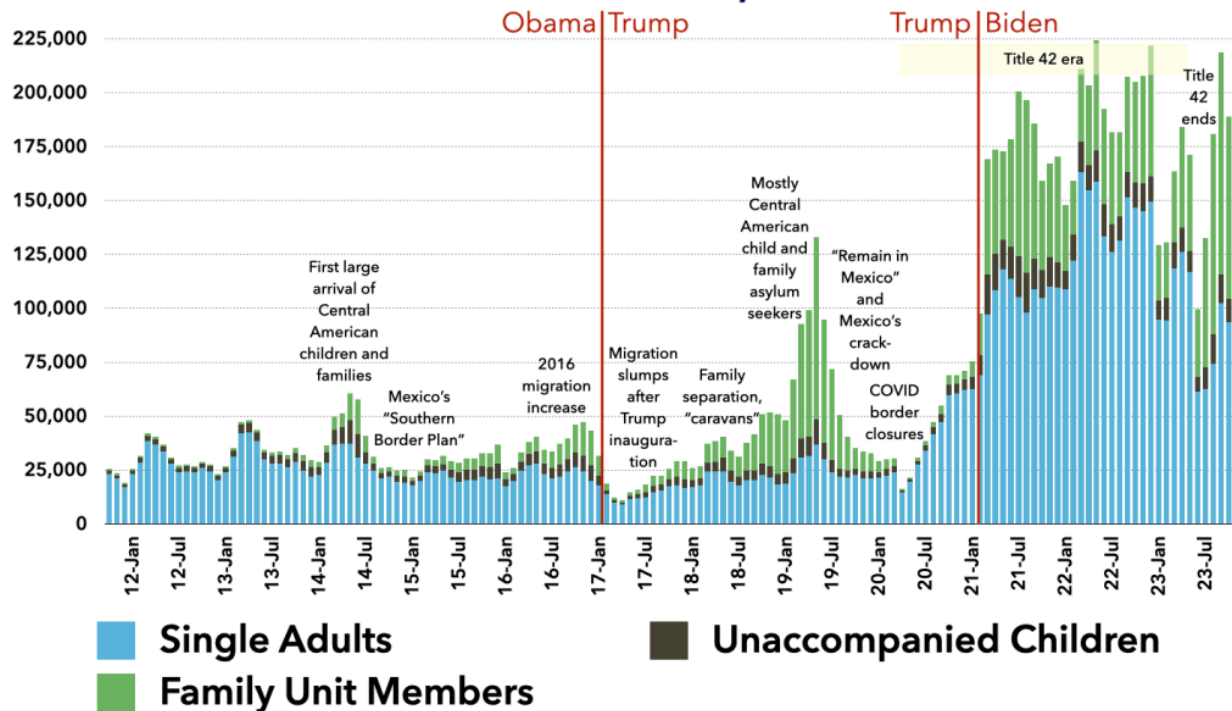
The United States faces an urgent need to adjust to this new, hemisphere-wide and indeed global, reality. There are a spectrum of possible responses, but we can broadly categorize them as “deterrence” or “governance.”

Option 1: Deterrence

Much U.S. border policy over the years has assumed that by increasing obstacles to reaching the United States, or by making the journey too difficult, would-be migrants can be deterred from coming here. The evidence is in: even after the historic border security buildup of the 1990s and 2000s, migration has kept increasing.

At most, efforts to deter migrants have pushed the numbers down for a matter of months or even a year or two. Migration always recovers, though. We’ve even seen that this year: the Biden administration May 2023 post-Title 42 asylum rule brought a dip in migration, as did the October 2023 decision to resume deportations to Venezuela. In both cases, migration appears to have recovered after those dips.

Border Patrol Migrant Apprehensions and Encounters at the U.S.-Mexico Border, October 2011-



Source: CBP - <https://bit.ly/3sTjLwD> <https://bit.ly/3v1Y9Rr> <https://bit.ly/3LMNYWJ>

This should not surprise us: there is little that the United States can or should do to make the experience at the border more miserable than the conditions that people are fleeing in the first place.

We have seen proposals to “deter” asylum seekers by locking them up, finding ways to remove them from the United States without a hearing, or with hearings postponed amid miserable and dangerous conditions, as was the case with the Remain in Mexico policy. This is what H.R. 2, the “Secure the

Border Act,” [would do](#): set up a series of obstacles to the U.S. asylum system that would prevent all but a tiny trickle of threatened people from accessing it.

Such obstacles to asylum, including a renewed “Remain in Mexico,” would endanger many people. The Trump-era Remain in Mexico policy forced [71,068](#) asylum seekers from third countries to await their U.S. immigration court dates inside Mexico—mainly in Mexican border cities with some of the country’s highest violent crime rates—in 2019 and 2020.

At least 1,500 asylum seekers suffered violent attacks, including murder, rape, and kidnapping, after being made to remain in Mexico, according to information [compiled](#) by Human Rights First. During those years, I spoke to dozens of Central American families stuck in Mexican border towns, living in meager shelters, afraid even to walk around their marginal neighborhoods, while they awaited U.S. court dates that were months away—and then, after the pandemic began, years away.

These individuals had a very hard time defending their cases in the video courts set up by the Remain in Mexico program: by January 2021, only about 2 percent of asylum cases were resolved in their favor, a tiny fraction of the asylum grant rate in regular U.S. immigration courts. This raises urgent questions about due process.

As with any effort to remove asylum seekers across the land border, a revived Remain in Mexico program, or a revived “Title 42,” would depend on Mexico’s government agreeing to take back large numbers of other countries’ citizens. That would be less likely to happen now, as Mexico’s Supreme Court has placed important legal obstacles in the way of a renewed program.

There is also the question of scale. During the first “Remain in Mexico” period, Mexico agreed to take back about 71,000 citizens of other countries, mostly in the 9 months before the pandemic. That number is equivalent to a couple of weeks of non-Mexican, asylum-seeking migration today.

The Trump administration had also convinced Guatemala, Honduras, and El Salvador to sign “safe third country” agreements, under which asylum seekers of other nationalities, flown from the U.S.-Mexico border, would seek asylum in these countries’ systems. These three nations are hardly viewed as countries of refuge: with high poverty rates, high violent crime rates, and governments that, in some cases, persecute the free press, human rights activists, and anti-corruption advocates, they are second, third, and eighth among countries most often sending migrants to the United States since 2020. The only Trump-era “safe third country” agreement to operate was in Guatemala: DHS sent 945 migrants from other countries to seek asylum in Guatemala City; [none were granted protection](#).

Migration from targeted countries did decrease somewhat in the months after the Remain in Mexico program was ramped up in 2019. As with most deterrence policies, though, the effect was limited: numbers of Central American asylum seekers remained historically high during the second half of 2019, and by early 2020 the decline had leveled off. Then came the pandemic, the closure of borders throughout the world, and the Title 42 policy, which made the long-term deterrent impact of Remain in Mexico impossible to measure.

We do know, though, that Title 42 had no deterrent impact, while, between 2021 and 2022, at least [13,480](#) migrants or asylum seekers blocked or expelled to Mexico under Title 42 were victims of murder, torture, kidnapping, rape or other violent crimes. Even during the Trump administration, the second half of 2020 was a period of sharply increased migration, despite the threat of expulsion into Mexico. The rate of increase continued to accelerate even as the Biden administration robustly

enforced Title 42. The policy was cruel as it denied access to asylum for people who faced real threats. But the numbers make clear that it did not deter people from coming.

Experience shows that this “Option 1” is a dead end. Trying to deter protection-seeking migrants is nearly impossible, but you can lose your national soul trying to do it. There’s no suffering we can or should inflict that is worse than what people are fleeing. Parents with children will crawl through concertina wire, or walk through the desert or the Darién Gap jungles for days, because their daily lives are that hard or the threats they face are that serious.

Option 2: Border governance with due process

If deterrence doesn’t work, the alternative isn’t to “open the border” but to be realistic about push and pull factors, giving due process to people who need protection, expanding legal pathways to migration, and working with our neighbors to do more hemisphere-wide.

As much as possible, make the journey unnecessary

The current migration situation in Latin America and the Caribbean is unacceptable. In the first place, people who need protection should not have to risk a terrible journey that enriches organized crime (smugglers and extortionists) and corrupt officials all along the way.

I’ve been to the border dozens of times; this year I’ve spent two weeks each in Honduras and Colombia. It’s heartbreaking to see entire families, with tiny kids, getting on boats to go walk through the Darién Gap. It’s devastating to see people from China crossing the border from Ecuador into Colombia, with no idea what lies ahead for them all the way north. It is alarming to hear about all the criminal groups and corrupt cops preying on them every step of the way.

There are ways to ease this humanitarian crisis, and they involve making the journey unnecessary in the first place.

First, we must encourage states to do more to integrate migrants, refugees, and asylum seekers who don’t feel they need to come to the United States.

Nobody wants to leave their home. And even when they do, the United States—a very foreign country that speaks a different language—is not always their first choice. Often, people’s first move is to displace internally: to move from the country to the city, or from one region to another. Then, many try to live in a country elsewhere in the Americas—a very common step for Venezuelans, Haitians, and Nicaraguans. But then too many fail to integrate, suffer persecution, violence, and discrimination, and they keep moving.

We have to help people avoid having to be displaced. And we have to continue helping other countries in the region integrate people who’ve fled there.

Since taking office, the Biden administration has recognized the need to address the [root causes](#) driving migration, particularly from Central America, and the need to guarantee a regional response to migration, as was first laid out in the 2021 [collaborative migration management strategy](#). At the Summit of the Americas in June 2022, the Biden administration led efforts to develop the [Los Angeles Declaration on Migration and Protection](#), in which 21 countries committed to respond to regional migration flows and to strengthen frameworks for international protection. This includes efforts to promote stability and assistance in destination, origin, transit and return communities;

expanding legal pathways of migration, including access to asylum; humane migration management and protection-sensitive border management, as well as to “cooperate in emergency response and humanitarian assistance in situations of mass migration and refugee movements.”

Beyond the declaration itself, since 2021, the U.S. government has provided over [\\$2.4 billion](#) in humanitarian assistance across the Western Hemisphere, which has included support for refugees and migrants and host communities. In FY 2022 alone, the Biden administration [allocated](#) at least \$704.9 million to support the implementation of the root causes strategy in Central America, \$295.6 million in humanitarian assistance to respond to the needs of vulnerable populations in Central America and Mexico, and \$656.3 million in humanitarian assistance to countries hosting the more than 6.5 million Venezuelan migrants and refugees in the Western Hemisphere.

As the budget discussions move forward for fiscal year 2024, Congress should allocate robust support for the integration of migrants and refugees, humanitarian assistance, as well as expanded access to protection in Latin American countries. Strengthening regional governments’ ability to adjudicate asylum claims is in line with advancing a regional response to historic migration flows.

Second, there need to be legal pathways for the many migrants who believe that they can only gain protection and support their families in the United States. These pathways should allow them to avoid the harrowing overland, organized crime-influenced journey to the U.S.-Mexico border.

The Biden administration has expanded some of these pathways. They include invoking a humanitarian parole authority, which dates back to the 1950s, allowing the entry of up to 30,000 people per month from Venezuela, Haiti, Nicaragua and Cuba who meet certain criteria. Other measures include modernized Cuban and Haitian family reunification parole programs; new family reunification parole programs for Colombia, El Salvador, Guatemala, Honduras, and Ecuador; the Central America Minors Program, and the opening of Safe Mobility Offices in Colombia, Costa Rica, Guatemala, and Ecuador which streamline access to lawful pathways to the United States and other countries. These efforts, as well as the use of temporary protective status designations, are important tools that can provide legal status to millions of migrants and asylum seekers in need of protection and support.

At the border, adjust our border governance apparatus to today’s reality

Our southwest border must adapt to today’s reality of large-scale protection-seeking migration. Before explaining what that would look like, it is important to recall why asylum is necessary, and an important American value.

The idea of asylum as an international standard came out of the years after World War II. The world had just come out of the war with the largest number of civilian deaths ever, with a historic genocide, and the free world realized that many of those lives could have been saved. The new standard, in the 1951 Refugee Convention, was that if someone is on another country’s soil and says “I’m afraid to return to my country, because I could die or be imprisoned on account of my race, religion, nationality, membership in a particular social group, or political opinion,” then one must not force that person to return to their country without first giving them due process. To kick them out without due process is called “refoulement,” a fundamental human rights violation.

The United States ratified the Refugee Convention in 1968 and passed the Refugee Act in 1980. The idea was that we would do our best not to repeat the horrors of World War II, by setting new international standards. Those standards were not meant to be observed only in the breach, to be

abandoned when the asylum seekers' numbers got larger or when they started to come from new parts of the world.

There are efforts afoot to turn back the clock. We hear open discussion of pulling out of the Refugee Convention. H.R. 2 doesn't exactly do that, but it sets so many barriers in the way of asylum that almost nobody who faces threats would be able to get a hearing in the United States.

According to the latest asylum data, 49 percent of those seeking protection in the United States whose cases reached a decision received asylum or another form of relief during fiscal 2023. If we count cases that were otherwise closed, the number who qualify for protection could be closer to 25 percent, DHS Secretary Mayorkas [said](#) in a recent Senate hearing.

That is fewer, but it is still way larger than a needle in a haystack: for every 100,000 people coming to the United States asking for asylum, our rigorous adjudication process determines that *at least 25,000* could have been killed, tortured, imprisoned or suffered other serious human rights violations had we returned them, for reasons of race, religion, nationality, membership in a particular social group, or political opinion.

That is a sobering reality, and it demands that we invest heavily in due process. It also demands that we avoid watering down this post-World War II “never again” principle just because the asylum-seeking population is larger and less European than before.

It is crucial, then, that we adjust our border and migration apparatus to respond to this population, and to do it without years-long delays that become their own “pull factors.” A lot of this response is beyond the scope of the Foreign Affairs Committee’s oversight because it is domestic. But let’s imagine what a better system could look like.

First, imagine that there is far more capacity at the border to process protection-seeking migrants. Border Patrol agents can return to defending against threats, leaving the paperwork up to others. People can show up at a land-border port of entry, be taken to a nearby processing center with just a few armed, uniformed CBP personnel, and trained processing coordinators can take it from there. There would be enough throughput that protection-seeking migrants can just come to the port of entry and not even consider climbing the wall or crossing the river and turning themselves in to Border Patrol, resulting in far fewer opportunities for migrant smugglers, and far fewer dangers of being forced to wait in Mexico.

Second, imagine that after being processed, there is a robust case management system, operating at a fraction of the cost of detention. As a result, DHS knows where migrants are, case managers are able to make sure everyone meets their court dates. At the same time, imagine that asylum seekers have assistance, including access to legal counsel, so that they don't have to face the labyrinth of U.S. asylum law by themselves. About two-thirds [fewer](#) asylum seekers gain asylum or other forms of relief when they don't have a lawyer. Imagine that, while they await decisions, asylum seekers can work and contribute to our economy.

Third, though, imagine that the time they are here awaiting those decisions is short, because we have a well-resourced immigration court system with enough judges or asylum officers and support staff to hear and decide cases. They'd have small dockets, and thus minimal wait times. If cases are decided without long wait times, in as little time as due process requires—that's often just a few months—then people with dubious asylum cases won't bother to seek asylum because even if they get a fair day in court, they don't get to be here for very long with legal status.

This is not a wild utopian vision for the border. It's just processing, case management, and adjudication. It is within our reach, and probably costs less than trying to deter asylum seekers. We should have started building it in 2014, but it is never too late.

Conclusion

Migration and border governance are polarized issues in the United States right now. Still, I think we largely agree on the root causes of today's region-wide jump in migration, and about what must happen in the long term to address those causes. We agree that a dangerous journey across the Americas to set foot on U.S. soil is not a proper pathway to protection-seeking migration. We agree that in the short term, the United States and other countries around the region must do far more to manage these migration flows humanely.

We disagree, though, about whether such migration can be deterred, and whether in fact people who fear return to their country should *ever* be deterred. We disagree about whether it's possible or desirable to shut the border down, and whether we could ever make the migration experience more miserable than life in a dictatorship or in a gang-dominated slum. And we appear to disagree on the centrality of asylum as a human right and a global standard.

Some of these disagreements are philosophical: we're placing different emphases on different values. The only way we can get past that and move toward solutions, then, is to be pragmatic. We need to take a hard view of what the current reality of push and pull factors is, how we can manage that reality in the most orderly and humane way, what our laws and long-held international standards commit us to, and how our diplomacy can encourage shared responsibility for a shared challenge.

The issue of region-wide migration is not going away, and none of us has a magic wand to solve it in the short term. We hope that, despite the pressures of an election year, this Congress can lay the foundations for some rights respecting, pragmatic, practical, and dignified changes like those we lay out here: at home, at our southwest border, and throughout the Americas.