

NEW JERSEY BUSINESS IMMIGRATION COALITION

BORDER MANAGEMENT REALITIES AND REFORM STRATEGIES

As many Americans are concerned about border management problems, and as border issues seem to crowd out consideration of other immigration policy questions, it is important to craft solutions to border problems in order to advance general immigration reform. It is for this reason that the New Jersey Business Immigration Coalition has decided to provide a set of suggestions for our elected leaders in how to develop an effective system of border management. We offer these suggestions as a starting point for discussion and remain open to other ideas and perspectives. We also hope that these suggestions will lead to the development of a new bipartisan consensus on border management.

In developing an effective border management policy, the Coalition believes that officials should be attentive to the following realities:

REALITY 1

Cross-border mobility is increasing due to a variety of factors, including climate change, war and civil conflict, lack of employment, as well as modern modes of transportation and communication. According to the International Organization for Migration, the number of international migrants grew from 84.5 million in 1970 to 281 million in 2020, or from 2.35 percent to 3.65 percent of the Earth's population, with greater concentrations of migrants in developed countries. A growing percentage of this movement has been irregular in nature.

REALITY 2

Long-term migration trends are uncertain. As birth rates plummet, even in developing countries, and as global population plateaus by the end of the century, migration rates may eventually fall. However, in the short-term, we are likely to see further increases in migration.

REALITY 3

The composition of the migrant flow across the southern border of the U.S. has changed dramatically in recent years. Flows from Central America are now outpacing those from Mexico. In addition, migrants from other Western Hemisphere countries, such as Ecuador, Haiti, and Venezuela, are showing up in increasing numbers. Moreover, there are many young families or unaccompanied children seeking protection through the asylum system.

REALITY 4

Steps taken by the federal government to strengthen border enforcement, including greatly increasing the number of Border Patrol agents during the Bush administration, combined with improvements in border technology and infrastructure, have greatly reduced the number of successful unlawful entries. Many recent apprehensions are of those who are repeat crossers. In addition, as border crossing became more difficult, significant numbers of undocumented immigrants in the U.S. have returned to their home countries in order to reunite with their families. Others who might have only stayed seasonally in the U.S. are choosing to remain permanently in order not to run the border gauntlet every year.

REALITY 5

It is important to remember that the majority of new undocumented immigrants in the U.S. are “visa overstays,” i.e. people who entered the U.S. legally with a tourist, student, or other visa and remained in the country after the expiration of their visas. The class and ethnic background of these people is somewhat different than the predominantly Latino origins of those crossing the southern border without permission. Because overstays entered the country legally, they are not subject to the same penalties imposed on illegal southern border crossers. One can argue that the latter are being treated more harshly than the former.

REALITY 6

The United States and other countries cannot effectively manage migration at their borders alone. Borders have been described as “the last line of defense rather than the first.” As migration management is a shared concern of countries around the world, international cooperation on migration policy could produce significant gains, both for countries of intended destination and migrants themselves. However, up to this point in time, such collaboration has been largely weak and ineffective.

REALITY 7

The size of irregular migrant flows has much to do with the availability of legal channels for migration. If sufficient temporary or permanent resident visas for employment are not available, and if labor shortages exist, migrants will continue to find alternative ways to enter the country to find work. If family reunion visa channels are closed or clogged, separated family members will also find extra-legal ways to unify with loved ones, and if slots for refugee admissions are overly restricted in number, refugees will find extra-legal ways to survive. General immigration reform in the United States may be an important prerequisite for effective border management.

REALITY 8

Human smuggling networks often grow more innovative and flourish in a restrictive migration environment. When legal pathways for migration are realistic and available, the demand for clandestine migration assistance shrinks.

REALITY 9

As a signatory to the 1967 U.N. Protocol Relating to the Status of Refugees-- the provisions of which were incorporated into U.S. law through the Refugee Act of 1980 -- the United States is obligated not send asylum-seekers back to places where they would face the risk of persecution. The asylum system was devised to ensure fairness in processing such claims. The framers, however, never intended for the Act to be used to legalize mass movements of people, nor that the Act would be chronically abused by those making false claims of persecution. The growing number of people granted asylum (46,508 in FY 2019) suggests the need for a new and more creative policy response.

REALITY 10

Social media messaging regarding the receptivity of countries to new arrivals is a powerful independent force, even if the messaging doesn't accord with the reality. For example, a grant of Temporary Protected Status, however justified by conditions in sending countries, could easily be misconstrued as a grant of permanent residence, prompting people to journey to the U.S. with unrealistic expectations. Human smugglers are often the first ones to manufacture and disseminate misleading information.

BORDER MANAGEMENT STRATEGIES

Mindful of the above realities, the New Jersey Business Immigration Coalition urges consideration of the following strategies for border management:

STRATEGY 1

The refugee and asylee application processing systems should be merged because both refugees and legitimate asylum applicants are fleeing similar dangers and seeking similar legal status. According to the UN High Commissioner for Refugees (UNHCR), there are 4.1 million asylum-seekers worldwide. Efforts by UNHCR to screen these individuals for refugee status, or to grant blanket refugee status to certain groups, e.g. Venezuelans, would ease the burden placed on the U.S. and other countries to conduct independent screening.

STRATEGY 2

In the absence of UNHCR involvement, the U.S. government should enlist the help of other Western Hemisphere nations and create a network “safe zone” processing centers for asylum applicants close to countries of origin. Such centers for the adjudication of asylum petitions – similar to refugee processing centers – would enable people in need of protection to apply closer to their countries of origin, weaken human smuggling networks, and decrease congestion at the border.

STRATEGY 3

Multi-national agreements should dictate where people granted asylum would eventually resettle. Just as refugees are assigned to specific countries based on numerical caps, similar protocols could govern where asylees are resettled. Countries in the western hemisphere, e.g. U.S., Canada, Mexico, Columbia, Chile, Peru, etc., might take special responsibility for asylees fleeing oppressive conditions in the region. Internally, the federal government might also allow individual states, especially those with declining populations, to request larger numbers of asylees.

STRATEGY 4

Efforts should be undertaken to address the root causes of displacement and where possible, to encourage the integration of asylum-seekers in countries of first asylum. Although third-country resettlement and/or repatriation are options for some, most displaced people will stay within countries of first asylum. Over 80 percent of displaced people worldwide are living in developing countries. Granting them employment and education rights within countries of first asylum will likely work to the ultimate benefit of both migrants and host country nationals.

STRATEGY 5

The United States should maintain a network of specialized migrant processing centers along the southern border and avoid releasing asylum applicants into the interior for later court appointments. Such facilities should include separate spaces for families, unaccompanied children, and single adults. Play and recreational areas should also be provided. Residents should have access to assistance to meet their basic needs, including food, clothing, accommodation, and medical care, with due respect for their privacy. Specialized positions should be created to staff these centers, including persons with training in caring for children and trauma victims. All personnel involved in asylum adjudication (such as asylum officers, judges, government attorneys and interpreters) would be co-located in these centers to permit rapid adjudication of claims.

STRATEGY 6

Extended stays in the United States while asylum claims are pending, combined with the infrequency of deportations when cases are denied, invite continued large-scale flows. Final decisions on asylum applications, including any appeals of negative decisions, should occur within a six-month maximum time frame. Asylum officers stationed at the border should be empowered to decide initial asylum claims, with the right of an expedited appeal of a negative decision by an immigration court. The Justice Department should expand the number of immigration judges, assigning sufficient number of judges (without preexisting caseloads) to locations at or near the migrant processing centers. Free legal counsel should be provided to asylum applicants in immigration court proceedings.

STRATEGY 7

The federal government should have the capacity to surge resources on the border in the event of a migration emergency. Given the likelihood of such emergencies in the future, the U.S. should have a standing reserve fund that could be accessed in these circumstances. This would obviate the need to seek supplemental funding from Congress. Additionally, officials should be allowed to use existing government facilities, including military bases if necessary. These temporary influx facilities would operate like disaster relief facilities providing residents with food and shelter and medical care, if necessary. As space becomes available at migrant processing centers, people would be moved to these locations.

STRATEGY 8

Congress should reexamine the existing system for funding immigration-related services. Heavy reliance on a fee-based system privileges more affluent immigrants, places a disproportionate burden on those with limited resources, and may block the implementation of internal reforms.

STRATEGY 9

Illicit migration flourishes when immigration systems are slow, cumbersome, and divorced from the needs of the economy. Efforts to counter illicit migration must include policy reforms to provide sufficient opportunities for employment-based migration, either temporary or permanent, as well as efforts to clear existing backlogs in family preference categories. One option would be to expand the H-2A and H-2B seasonal worker programs to people in Central American countries. In the case of Mexico, these programs contributed to the sharp reduction in unauthorized immigration from Mexico in recent years.

STRATEGY 10

Improvements in border infrastructure to deter illegal crossings should be part of an overall plan of action. Such improvements might include: roads to improve access to remote parts of the border, removal of invasive species of plants that obscure views of river shores, creation of forward operating bases, construction of levee walls, improved lighting, additional cameras and surveillance equipment, and physical barriers such as fencing. Fencing is generally not cost-effective in remote areas where smugglers usually have plenty of time to breach such barriers.