





TRUMP'S LEGACY IN MIGRATION POLICY  
AND POSTPANDEMIC CHALLENGES FOR BIDEN

UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO  
CENTRO DE INVESTIGACIONES SOBRE AMÉRICA DEL NORTE  
COORDINACIÓN DE HUMANIDADES

# **TRUMP'S LEGACY IN MIGRATION POLICY AND POSTPANDEMIC CHALLENGES FOR BIDEN**

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Centro de Investigaciones sobre América del Norte

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México, 2022



Primera edición, 15 de agosto de 2022

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ISBN 978-607-30-6331-9

Diseño de la portada / Cover Design: Patricia Pérez Ramírez  
Fotos de portada / Cover Photos: Gage Skidmore/Wikimedia Commons

Traducción / Translation: Heather Dashner Monk  
Corrección de estilo y lectura de pruebas/ Copyediting and proofreading:  
Contexto Académico

Este libro fue dictaminado con el método de doble ciego y ha seguido lineamientos rigurosos de edición académica. Para mayor información sobre nuestros procesos y nuestro comité editorial, véase <http://www.cisan.unam.mx/publicaciones.php> o escriba a [publicacionescisan@gmail.com](mailto:publicacionescisan@gmail.com).

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Impreso en México / Printed in Mexico

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## INTRODUCTION

This book belongs to the analytical tradition of comparison and prospective of U.S. presidents' first three months in office, which has been conducted by the media and academics for almost a century. The tradition of analyzing the first hundred days began in 1933 with Franklin D. Roosevelt, in an attempt to measure the New Deal's effectiveness at alleviating poverty and improving finances.

At the beginning of 2021, many universities, think tanks, and international scholars organized research seminars and articles on the topic of Joe Biden's first actions on migration policy, but few have turned their reflections into policy papers and much less into collective volumes such as this one. In particular, among other institutions, the University of Illinois, the Migration Policy Institute, and the Zolberg Institute have conducted research on this issue.

Most of the U.S. media have continued the tradition of analyzing presidential success, comparing campaign promises with early actions. In the first three months, "a new president is usually still popular with the public, and lawmakers often have incentives to cooperate with a new leader, creating opportunities for a president to pass major legislation" (Kelly, 2021). For this reason, the first hundred days is a media catchphrase that may be translated into a useful period of analysis. In media research as well as in the social sciences, we use prospective techniques based on political speeches and initial executive orders that may serve as early warning signals for presidential policies in the United States and elsewhere.

Biden's first actions should be interpreted in historical context. In what follows, we briefly analyze some of the most relevant executive initiatives in terms of the history of migration to the United States and the personal priorities that motivated U.S. presidents to support bills in Congress, sign executive orders, or create new migration policies during their administrations.

Franklin D. Roosevelt created the Bracero program through a bilateral agreement in 1942 amid anticipation of a labor shortage during World War II. The Bracero program provided contracts for Mexican agricultural workers in the United States until 1964. After Roosevelt's sudden death, Harry Truman focused on the final battles of World War II, with Germany's surrender occurring less than one month after he assumed the presidency. In such a context, migrants were not a state priority. Subsequent administrations included different approaches to migration, but they always sought to maximize the economic utility of migrant workers in a restrictive system that carefully selected migrants based on their abilities, or at times for humanitarian reasons. Dwight Eisenhower (1953-1961) was worried about the Soviet Union and how to end the Korean War. After the World War II, there was a growing flow of unauthorized migrants coming from Mexico. Eisenhower established the famous Operation Wetback in 1954 to apprehend and deport migrants quickly.

The following president, John F. Kennedy, is remembered for the disastrous Bay of Pigs invasion of Cuba, as well as for creating the Cuban Refugee Program in 1962. His successor Lyndon B. Johnson was anxious to pass civil rights legislation, and he supported the Immigration Act of 1965, which replaced a system that explicitly discriminated against immigrants who were not from the Western Hemisphere with one that provided for an equal number of immigrant visas for each country. Johnson paid special attention to family reunification, and this significantly benefited migrants from Mexico.

Richard Nixon prioritized an agreement with Cambodia in 1969, but he also launched Operation Intercept to force Mexico to collaborate more with drug control operations. Gerald Ford pardoned Nixon for the crimes he committed, and he paid special attention to the political turmoil in Southeast Asia. As the Vietnam War was slowing, Ford supported the Indochina Migration and Refugee Act (Abrams, 2021). The next president, Jimmy Carter, promised to end America's dependence on foreign oil and signed the Refugee Act of 1980, which raised quotas for refugees and provided them with residence and work permits (Verea, 2005). Ronald Reagan promoted an agenda of tax and spending cuts. During his second term he supported the Immigration Reform and Control Act (IRCA) of 1986.<sup>1</sup>

<sup>1</sup> IRCA legalized around three million undocumented migrants, approximately two million of whom were Mexican. It also included an employer sanction for those who knowingly hired undocumented persons, which has been very laxly applied since then.

George H. W. Bush's first hundred days as president were largely a continuation of the policies of the Reagan presidency, but he approved the Immigration Act of 1990 and incentivized a better educated and more skilled migrant labor pool.<sup>2</sup> During Bill Clinton's first hundred days the debate was over gays in the military and health care. The North American Free Trade Agreement went into effect in 1994. Clinton established Operation Gatekeeper in California; Blockade and Hold the Line in Texas and New Mexico; and Safeguard in Arizona, as part of the new border reinforcement policy he gradually put into place. He also approved the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, which controlled irregular migration more severely, reduced access to welfare programs, and abolished the deportation hearing procedure. Simultaneously, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was approved, prohibiting certain social benefits even for legal immigrants.

During the twenty-first century, George W. Bush's major legislative proposals involved tax cuts and education reform. In response to September 11, 2001, he made border security a top priority by reviewing the guidelines for immigration policy. Congress passed the Homeland Security Act of 2002, which overhauled the organization of the federal government's immigration functions mainly to strengthen border surveillance. He created the Department of Homeland Security as part of a major project called National Strategy for Territorial Security. Bush also promoted the U.S.A. Patriot Act to control terrorists, unauthorized immigrants, drug traffickers, and money laundering, along with the Enhanced Border Security and Visa Entry Reform Act (EBSVERA) of 2002 (Verea, 2014).

Barack Obama's first hundred days in office were dominated by the economic crisis, so he was compelled to establish economic stimulus programs. During his first administration, the Obamacare program demanded a lot of attention and energy, leaving aside the long-promised comprehensive immigration reform. Obama used an "enforcement only" approach—with congressionally approved resources—similar to, or even more severe than, those applied by the Clinton and Bush administrations. Thus, by achieving the

<sup>2</sup> With complex formulas, limits were set on the categories for family reunification, establishing priorities for the most immediate relatives: children and parents. The proportion of employment-based visas increased by 70 percent—from 54,000 to 140,000—granted to highly trained professionals with advanced academic degrees as well as investors.

most reinforced and guarded border, President Barak Obama was also known as “deporter-in-chief.” In his two terms in office, he deported over 2.7 million undocumented immigrants, which is more than the approximately 2 million who were deported during George W. Bush’s two-term presidency. The Deferred Action for Childhood Arrivals program (DACA), created in June 2012, was Obama’s response to the refusal of the House of Representatives—which had a Republican majority—to pass comprehensive immigration reform (Verea, 2014). Obama extended the Secure Communities Program, initiated by Bush in 2008, which targets undocumented criminals by allowing local law enforcement to share data with the Immigration and Customs Enforcement agency, a very controversial program that eroded trust within local communities.

Donald Trump applied an unprecedented hardline stance on immigration during his presidency. Starting with the 2016 presidential race, he used destructive and violent anti-immigrant rhetoric to justify the establishment of highly punitive directives, multiple executive orders, and federal regulations. His main objective was to enhance border security through the acceleration of apprehensions and deportations, and interior enforcement. Trump ended Temporary Protected Status (TPS) and suspended DACA. He imposed a travel ban, mainly for Muslims, limited refugee admissions, established an asylum ban, and restrained legal immigration, among other measures. Furthermore, the COVID-19 pandemic gave him the excuse to increase apprehensions, separate families, abandon migrants and asylum seekers in Mexican border towns, and end the right to asylum in order to “protect” the border. Trump ordered broad shutdowns of the legal immigration system, including applications for permanent residence, blocking the entry of a range of temporary foreign workers, and temporarily closing offices that process immigration applications.

In the middle of a terrible COVID-19 pandemic, Biden took office on January 20, 2021, a time with a high number of deaths in the United States. A media content analysis of his first months in power, issued by Argentino, et al. (2021) revealed “a number of common narratives under which previously distinct groups have begun to converge, including anti-government ideologies, COVID conspiracy theories, election misinformation, racism, antisemitism, misogyny and transphobia.”

Despite this context of political unrest that included an assault on the Capitol, Biden brought the United States back into the World Health Orga-

nization and the Paris Agreement on climate change, and ordered the use of masks in the White House and on federal properties. Biden implemented a rescue plan, started to revoke several of Trump's anti-immigrant measures, and dealt with an increasing flow of asylum seekers and undocumented migrants at the U.S.-Mexico border. He declared that science would be at the core of his decisions, as opposed to his predecessor, Donald Trump, who inspired more mistrust than cooperation with scientific institutions. By his hundredth day, Biden managed to secure an average approval rating of 53.8 percent, compared to just 42 percent for Trump, according to a study by Seddiq et al. (2021) for Business Insider.

In his first hundred days, Biden has signed fewer executive orders than other presidents, but cancelled the Muslim travel ban and promoted economic rescue measures in a context of global pandemic. In symbolic terms, one of his major challenges was to restore the U.S. image abroad and attract investors. Compared to Obama, he is believed to be in a better situation, at least in terms of the financial crisis (Tepper, 2021).

At beginning of his term in January 2021, Biden was portrayed by the international media as a decent president who tried to re-humanize migrants and reestablish national honor by restoring the asylum system. His personal image was enhanced by his wife's efforts to rescue migrants and his commitment to reopening legal paths for Central American migrants and asylum seekers. He promised to put an end to discriminatory deportations and protect migrant children by reuniting them with their families.

As time went on, he was accused of a self-inflicted migration crisis, because there was a perception of friendlier circumstances and better opportunities to migrate, and "a catch-and-release" political game that increased the number of migrants and displaced people in the informal camps along the Mexican side of the border. Biden's humanitarian discourse showed his limitations as part of a system that is not, and has not been, prepared to take in a great number of migrants and refugees.

There are important discursive differences in Biden's approach to migration when compared to Donald Trump: Biden promotes more justice for migrants as "essential workers" in a pandemic context, the final outcome of his migrant friendlier stance may in fact be limited by strict federal management of immigration laws, previously characterized as "the machinery" of the U.S. immigration system (Meissner et al., 2013).

Based on Pécoud's recent classification of migration governance (2021a: 103), we believe Biden may combine at least four types of governance: first, he takes migration to be a matter of state sovereignty; second, he tries to control migration in an environment that Pécoud is theorizing as a global governance of forced immobility that exploits migrant labor; third, Biden has a friendly discourse on human rights governance. Finally, there is cooperation between the state and companies for managerial/developmental global migration governance, aimed at optimizing the utility of existing migration flows, especially undocumented ones.

The image of the United States as a gatekeeper state, repeatedly reinforced during Trump's presidency, provides a dim perspective for what Biden may have to offer in terms of a change. The United States has withdrawn from the negotiations for the Global Compact for Migration and the Global Compact for Refugees (GCM and GCR, respectively) since 2017, and even tried to convince other countries to do the same, based on arguments of sovereignty and lack of consistency with U.S. immigration policies and principles (Margesson, 2021; Pantuliano et al., 2021).

Even when the GCM has been severely criticized for its normative limitations regarding what should be done to govern migration (Pécoud, 2021a), especially due to its non-binding role, the U.S. absence from the agreement reveals a lot about its position in opposition to the ideal that migration should be managed in a more orderly way. In fact, Pécoud (2021a: 18) even believes that cooperation and migration serve very different purposes: "Western states [...] work with sending and transit countries to externalize border control and implement strategies of remote control (Zaiotti, 2016); this entails cooperation, but towards an objective –the surveillance of human mobility– that is not exactly what the GCM advocates: [...] the GCM calls rather for 'facilitating' migration" (Pécoud, 2021a: 18). From this perspective, it comes as no surprise that the United States, a country with a long history of restrictive migration policy, has withdrawn from the compacts.

Despite arguments that U.S. participation in the GCM and GCR may enhance leadership in global migration affairs, the Biden administration has not yet made a statement regarding the possible return of the United States to these agreements, as it has done with other accords such as the climate change agreement. Reports from international think tanks such as the Overseas Development Institute (ODI) have urged Biden to adopt the GCM. The ODI Report

assesses that the return of the United States “would encourage other states to follow suit, like Switzerland, Italy and others who have been on the fence about the GCM, pointing to their own short-term domestic political pressures” (Pantuliano et al., 2021). These actions would complement other more positive initiatives such as the cancellation of the travel ban, a more friendly discursive approach to Central American migrant children and several pathways to reinstate the asylum system ruined by Biden’s predecessor.

According to Pécoud’s abstract model (2021b: 106), U.S. migration policy, both under Trump and Biden, is part of a “global anti-migrant governance system” that tries to control large flows from poor to rich countries by enhancing border control and border externalization, and expelling unwanted migrants. As the chapters included in this book will analyze, most migrants are unaware of the political maneuvers used to manage migration, becoming victims of an economic system that exploits labor at the expense of human rights.

In this respect, it is pertinent to recall a previous argument by Carens (2013: 226), stating that “citizenship in Western democracies is the modern equivalent of feudal class privilege—an inherited status that greatly increases one’s life chances.” In this way, citizens from Latin American countries may be interpreted as second-class citizens (equivalent to peasants in the Middle Ages, according to Carens’s metaphorical comparison) knocking at the door of more privileged nations such as the United States.

## **Book Genesis and Structure**

At the end of 2020, we decided to organize a multidisciplinary seminar that would bring together scholars who analyzed the anti-immigrant policy Donald Trump left as a legacy and the challenges Joe Biden has faced as president since January 2021. We invited academics from Argentina, Chile, Mexico, and the United States to present innovative interpretations of U.S. migration policies in the context of the reorganization caused by presidential succession. The chapters included in this book were initially presented in the seminar organized by the Center for Research on North America, National Autonomous University of Mexico (Centro de Investigaciones sobre América del Norte, Universidad Nacional Autónoma de México [CISAN-UNAM]) on May 19, 2021.

In general terms, our collective work explores the historically asymmetrical relations that the United States has had with Central America and Mexico, and that may be reproduced in terms of migration cooperation under President Joe Biden. One of our objectives is to culturally translate U.S. tradition into a more regional reading of what Biden has achieved for migrants in general, and Latin Americans in particular, in his first three months as president. The book is based on two complementary types of logic: a comparative one (Biden vs. previous presidents, and in particular, Biden vs. Trump) and a prospective analysis (what next?) that allows for a constructive critique and policy proposals.

The book is divided into two main parts, with three chapters each: a) general implications of migration policy changes and ideological perspectives in the United States; and b) specific anti-immigrant policies in the following areas: *DACA*, asylum policies, public services, and imaginaries.

In the opening chapter, “The Legacy of Trump’s Anti-Immigrant Agenda: Actions and Challenges for Biden,” Mónica Vereá illustrates how Trump adopted an unprecedented hardline stance on immigration during his presidency, which toughened U.S. immigration policy. The destructive anti-immigrant rhetoric he used following his presidential campaign was the common denominator employed to justify the imposition of his anti-immigrant policies, achieved through establishing highly punitive directives, multiple executive orders and federal regulations. His main objective was to enhance border security through the acceleration of apprehensions and deportations, and interior enforcement. He ended the *TPS* granted by previous administrations and suspended *DACA*. He imposed a travel ban aimed mainly at Muslims. He also limited refugee admissions, established an asylum ban, and limited legal migration, among other actions. Furthermore, the *COVID-19* pandemic gave President Trump an excuse to increase apprehensions, separating families, and abandoning migrants and asylum seekers in Mexican border towns, effectively ending the right of asylum in order to “protect” the border. He was responsible for a shutdown of the legal immigration system, thereby affecting some applicants for permanent residence and blocking the entry of a range of temporary foreign workers, by temporarily closing offices that process immigration applications. President Biden promised that in the first hundred days of his presidency he would send proposals to Congress for sweeping immigration reform and relief for *DACA* beneficiaries. This created high expectations



among many citizens, organizations, and, in particular, undocumented migrants and their families, which are carefully analyzed throughout this essay.

The second chapter of the book, “As Luck Would Have It: Immigration Policy and Opportunistic Behavior in U.S. Border Bureaucracies,” by Tony Payan, examines the bureaucratic behavior of recent U.S. administrations and the consequences this has had on immigration policies. Payan builds on the relationship between the field environment created by an elected principal (political leadership) and enacted by the supervisor (political appointee) and the interpretation of such an environment by the collective agent (a bureaucracy) as an opportunity to advance its organizational interests. This results in a collusion between principal, supervisor, and agent, with the last of these aligning his or her behavior with politicians and supervisors, engaging in noxious behavior to advance its organizational interests (Vafai, 2010), even well after the supervisor and the principal are gone. When this occurs, this behavioral alignment represents a kind of group opportunism, where bureaucracies know that the field environment may change and move quickly to assert their organizational interests, regardless of the consequences for public life. Payan focuses on the dynamics of immigration policy under the Trump administration as a case study in these opportunistic bureaucratic dynamics, at the expense of good policy, a dearth of accountability, and even abuse of power and authority to the point of cruel field behavior. In this regard, the author examines the behavior of Customs and Border Protection, the Border Patrol, and Immigration and Customs Enforcement in search of signs that the theory of opportunistic behavior can help explain what happened in the area of immigration policy between 2017 and 2021.

The third chapter, “Friends on Other Continents: Representations of Biden’s Migration Diplomacy Outside the Americas,” by Camelia Tigau, analyzes the media representations of Biden’s executive actions on migration during his first three months in power, including his actions to promote the United States as a welcoming country and a leader in attracting talent. It is based on a combined pragmatic analysis of Biden’s speeches compared to the political context and media representations in regions other than the Americas: Asia, Europe, and the Middle East. Tigau claims that the actions undertaken by Joe Biden in his first three months as president were an attempt to reposition the United States as a multilateral partner and to deprovincialize the American perspective on immigration. The article finds that

at the beginning of his term, Biden sought not only to promote his country as a moral, cultural, and scientific power, but also to reestablish broken relations with Muslim countries, Central America, and India, which had been damaged by the restrictions imposed by his predecessor, Donald Trump. Biden's approach to migration is analyzed from the theoretical perspective of the "country of origin," a communication strategy to reposition the U.S. image, rather than a genuine attempt to achieve migration reform. The main findings describe Biden's migration diplomacy as intentional discourse and a political strategy to promote the U.S. image, and also to differentiate himself from Donald Trump's administration. Results rest on the differences of representation of policies for skilled and unskilled migration, but also on more technical aspects such as the use of secondary sources and mutual quoting between U.S. sources and non-American media.

The second part of the book addresses specific anti-immigrant measures applied in relation to policies such as *DACA*, asylum policies, and *TPS*. In the fourth chapter, "DACA, Dreamers and Other Migrants after Trump," Jorge Santibáñez and Arcelia Serrano recall Donald Trump's anti-immigrant positions, particularly regarding Mexico and Central America, starting with his campaign and throughout his entire administration. The authors focus on the *DACA* program, an executive order signed by President Obama in 2012 that granted temporary permission for certain unauthorized immigrants, who were brought to the United States by their parents when they were children (under 16 years of age), to stay, work, and be assigned a social security number. Towards the end of his administration, Obama proposed expanding the program's coverage to include undocumented immigrants who have children who are U.S. citizens or legal permanent residents, but the action was blocked by state courts and the U.S. Supreme Court. Legal challenges to Trump's actions stopped the full cancellation of the *DACA* program. In practice, however, new permits and applications for *DACA* were stopped after September 2017. In turn, the new government headed by Joe Biden declared intentions to reinstate and expand the *DACA* program. Santibáñez and Serrano conclude with an analysis of possible and probable scenarios for a broader immigration reform.

The fifth chapter, authored by Nicole Hallett and Angela Remus, is a reflection on asylum adjudication and refugee resettlement in the context of Central American migration. Hallett and Remus describe how former

President Donald Trump rose to power by demonizing and dehumanizing asylum-seekers at the U.S.-Mexico border. President Joe Biden promised to restore the right to asylum, but a refugee crisis continues to grip the U.S.-Mexico border, despite the fact that the Trump administration has ended. While Biden has reversed some of Trump's policies, returning the asylum system to its previous state will not solve the crisis. The authors trace the development of the U.S. asylum system and contrast it with the U.S. refugee resettlement system, arguing that the asylum system has always been, and will continue to be, ill-equipped to manage the Central American migration crisis. This chapter concludes that Biden must adapt the asylum system to respond to the particular situation in Central America and at the U.S.-Mexico border, rather than return to old policies. The authors propose reforms that fall into four general categories: making changes to U.S. asylum law that would broaden who is eligible for asylum; expanding resettlement for refugees from Central America; implementing burden-sharing with Mexico; and reimagining other forms of humanitarian protection under U.S. law.

The closing chapter, "A Just Public Charge Rule," takes a philosophical approach to migration. Author Enrique Camacho Beltrán examines how the public charge rule (PCR) poses a threat to the immigration status of those foreigners who require the support of public services. He argues that President Trump's public charge rule was unjust, but also analyzes some conditions under which the PCR could be made more compatible with standards of justice. Camacho Beltrán unpacks the concept of a fair public charge rule, to accurately assess the full normative panorama of immigrants. He finds instances of PCR-grounded exclusion where a complete analysis of the elements that are supposed to be the basis for applying the PCR would, in fact, justify more inclusion. Based on the case of U.S.-El Salvador, the chapter claims that we should present a more complete picture of relevant obligations and rights in order to better understand the role that "charge" or burden ought to play in rights of exclusion. This could, in turn, create the conditions for a fairer implementation of the public charge rule.

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## **Part I**

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### **General Implications of the Migration Policy Change and Ideological Perspectives in the United States**





# THE LEGACY OF TRUMP'S ANTI-IMMIGRANT AGENDA: ACTIONS AND CHALLENGES FOR BIDEN

*Mónica Vereza*

## Introduction

Historically, presidents in the United States have had a broad legal authority over immigration policies through administrative procedures. Nevertheless, Congress is the legal institution responsible for the nation's immigration laws. The executive branch can reinterpret immigration laws, exercise discretionary actions, and establish priorities according to its own interests. Courts have overturned executive initiatives on immigration, particularly those that interfere with national security.

In his four years as president, Trump enjoyed unlimited discretion to restrict immigration without congressional approval, which enabled him to rapidly implement new policies, mostly through executive orders (EOs),<sup>1</sup> as well as new regulations for federal agencies, in the hope that some of them would survive judicial review (Narea, 2020). Through these EOs, Trump established several directives to strengthen and toughen U.S. migration policy.

Since his presidential campaign in 2016, Donald Trump characterized himself as a xenophobe with a destructive, anti-immigrant, and pro-white nationalist rhetoric that became his signature. Going beyond his rhetoric, Trump took a highly hostile approach to unauthorized as well as legal migration. As part of his hard-line immigration policy, he established actions such as calling excessive attention to the pool of “deportable” migrants, and threatening them with separation from their families and the fear of returning to a country almost unknown to them; significantly increasing detentions of non-criminal undocumented migrants; reinforcing the U.S.-Mexico border by deploying thousands of troops; implementing a “zero-tolerance”

<sup>1</sup> Executive actions are issued by the president, usually through the following vehicles: Executive Orders (EOs), Presidential Proclamations, and Presidential Memoranda.

policy that resulted in the cruel separation of families, a clear violation of their elemental human rights; prosecuting asylum seekers and forcing them to apply only at points of entry; coercing Mexico to formally accept the “Remain in Mexico” policy; responding aggressively to sanctuary policies; establishing a travel ban targeting Muslims; ending Temporary Protected Status (TPS) for over a million migrants; significantly decreasing refugee admissions; curbing and slowing the admission of legal immigrants, especially highly-skilled workers; and making life hard for many immigrants already in the United States, among many other actions. Objections from several U.S. courts were crucial for stopping these harsh anti-immigrant policies (Verea, 2020).

Furthermore, the COVID-19 pandemic gave President Trump a perfect excuse to establish even harsher immigration policies as part of his anti-immigrant agenda. In 2020, Trump pressed to increase apprehensions; separate families; abandon migrants and asylum seekers in Mexican border towns; end the right to asylum in order to “protect” the border; promote general shut-downs of the legal immigration system for some permanent residence applicants; and block the entry of a range of temporary foreign workers, policies that will be analyzed throughout this essay.

President Biden has changed the official narrative on immigration through a more humane perception. He has signed several EOs with the intention of reversing many of the anti-immigrant policies established by Trump, a difficult task that requires substantial structural changes. The new administration is focusing extensively on issues related to entry into the United States through new directives and regulations. During his first six months in power, he established limits and better management for the construction of new segments of the border wall; promoted family reunification by ending the “zero tolerance” policy; ended the Muslim ban; revoked punishments to sanctuary cities; increased inclusion efforts for new Americans, incentivizing them to become citizens in an effort toward reducing anti-immigrant sentiment across the country; established a hundred-day moratorium on deportation, a decision banned by a Federal District Court; stopped the expulsion of unaccompanied children (UCS) under Title 42; phased out the Migrant Protection Protocols (MPP), better known as the Remain in Mexico program. He has preserved and strengthened the Deferred Action for Childhood Arrivals (DACA) initiative as well as the TPS; he has rescinded the “Muslim ban” and is pushing to modernize the immigration system. In the long run, he has focused on the

existing root causes that push migrants out of their countries of origin, and he has proposed to invest in the Central America region to fight the hunger and violence that drive immigrants north. A list of President Biden's immigration-related EOs and administrative policy changes is provided in Table 1.

TABLE 1  
PRESIDENT BIDEN'S IMMIGRATION-RELATED EXECUTIVE ORDERS  
AND ADMINISTRATIVE POLICY CHANGES  
(January-May 2021)

<i>Name</i>	<i>Content</i>	<i>Date issued</i>
Executive Order: Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census	Revoke order that aims to exclude undocumented immigrants from census	January 20, 2021
Memorandum. Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)	Preserve/fortify DACA, which helps "Dreamers"	January 20, 2021
Proclamation on the Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction	Stop construction of border wall	January 20, 2021
Executive Order: Revision of Civil Immigration Enforcement Policies and Priorities	End "harsh and extreme immigration enforcement"	January 20, 2021
Proclamation on Ending Discriminatory Bans on Entry to the United States	Ensure that pending visa and waiver applications from certain countries are not executive order prejudiced by the previous bans	January 20, 2021
Executive order: Revision of Civil Immigration Enforcement Policies and Priorities	Protect national and border security, address the humanitarian challenges at the southern border, and ensure public health and safety	January 20, 2021
Executive order: Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census	Ensure that undocumented migrants are included in the census and states will not lose congressional representation or federal funding due to an incomplete census count	January 20, 2021
U.S. Citizenship Act of 2021	President Biden endorsed the Act, memorializing his commitment to modernize the U.S. immigration system.	January 20, 2021

TABLE I  
PRESIDENT BIDEN'S IMMIGRATION-RELATED EXECUTIVE ORDERS  
(continuation)

<i>Name</i>	<i>Content</i>	<i>Date issued</i>
DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program	Suspending the Migrant Protection Protocols (MPP) or Remain in Mexico Agreement	January 20, 2021
Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease	Reinstated the restrictions to enter U.S. territory by migrants from certain countries	January 25, 2021
Executive Order: Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border	Begin ending "Remain in Mexico" program, restore U.S. asylum system	February 2, 2021
Executive Order: Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans	Start roll-back of "public charge rule" (which imposes a wealth test on would-be immigrants), review other recent barriers to legal immigration	February 2, 2021
Executive Order: Establishment of Interagency Task Force on the Reunification of Families	Create task force to reunite migrant families separated at the border	February 2, 2021
Executive Order: Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration	Rebuild U.S. refugee resettlement program Rebuild U.S. refugee resettlement program	February 4, 2021
A Proclamation on Revoking Proclamation 10014	Revoke Trump proclamations that aimed to suspend the entry of immigrants during the coronavirus crisis	February 24, 2021
Memorandum for the Secretary of State on the Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021	Keep in place the Trump administration's refugee admissions cap of 15,000 for FY 2021 but returned to allocating refugee admissions based on region	April 30, 2021
Memorandum for the Secretary of State on the Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021	Increased the refugee admissions ceiling for FY 2021 from 15,000 to 62,500, and to meet its 125,000 goal for FY 2022	May 3, 2021

SOURCE: CMS (2021).

Biden has demonstrated a significant involvement in the attempt to revert Trump's inhumane immigration policies. Simultaneously, he also has hinted at an "open door" migration policy amidst a pandemic. The aim of this essay is to contrast Trump's administration (2017-2021) with Biden's postures and actions during the first six months of his presidency. We will describe Biden's migration proposals, the majority of which aim to dismantle or reverse Trump's anti-immigrant agenda. This is a descriptive, non-theoretical essay, supported by statistics when needed. We have based our research mainly on media and the results of research by academics in think tanks and specialized research centers across different countries. This essay's analysis of Biden's executive actions and the dismantling of Trump's immigration policies is divided in six major sections: firstly, we examine Biden's border enforcement priorities, specifically initiatives toward stopping the building of the wall, the apprehension challenges that have emerged, and the initiatives toward family reunification. The second and third sections deal with Biden's interior enforcement priorities and the unfulfilled promise of a moratorium on deportations. The fourth section discusses the ending of the Migrant Protection Protocols; specifically, we examine the agreements entered into by Trump and Biden with Mexican president Andrés Manuel López Obrador (AMLO). The fifth and sixth sections deal with the lifting of the ban on the entry of immigrants, non-immigrants, and tourists, as well as refugee admissions. The final section is devoted to the analysis of the role that Democrats, supported by President Biden, have played in the multiple and recent congressional initiatives dealing directly with immigration. The final section includes reflections and proposals. All sections examine specific policies or directives as well as different actions and initiatives adopted by both the Trump and Biden administrations.

## **Border Enforcement Priorities**

### THE BUILDING OF THE WALL

One of the main objectives of the Trump administration was to enhance border security, and the border wall was an icon of its anti-immigrant rhetoric. The border wall was a non-negotiable issue for his base, which includes

nationalists and white supremacists who have not abandoned him. Trump constantly harassed and threatened the Mexican government to pay for the building of the wall through different mechanisms. In 2019, President Trump declared a national emergency to allow funds from the defense budget to be diverted toward the construction of the wall and to replace or reinforce segments of the existing wall. Without congressional approval, he ordered the transfer of US\$2.5 billion from the Pentagon budget for the border wall, a matter that reached the Supreme Court (Kanno-Youngs, 2020). Despite court challenges, Trump continued the construction of the wall in order to turn political attention to his re-election campaign.

Biden has opposed Trump's building of the wall since his presidential campaign. Along with many Democrats, Biden publicly voiced a compromised support for a "virtual wall" and "smart borders," deploying surveillance technologies, more hidden in terms of the abuses they perpetrate (Miller and Buxton, 2021). The executive suspended the building of the wall in January 2021, detonating new tensions as critics urged him to tear down portions of the wall and Republican leaders called on him to finish it, following a significant increase in migrant apprehensions at the border since the beginning of 2021 (Romero and Kanno-Youngs, 2021). Biden has proposed that the remaining US\$1.4 billion be invested to counter environmental damage. Furthermore, he eliminated US\$1.5 billion for the border wall in his budget proposal, stating he would "not to add another foot to Trump's signature project" (Miroff and Sacchetti, 2021a).

#### APPREHENSION CHALLENGES

It is true that the fear instilled by Trump's aggressive, anti-immigrant rhetoric since the beginning of his presidential campaign in 2016 decreased the number of border apprehensions during the first year of his administration in 2017. Table 2 illustrates how apprehensions decreased significantly to 646,822 in fiscal year 2020 due to the COVID-19 pandemic, compared to 1,048,024 in 2019 due to an increased number of migrants coming from Central America in caravans (CBP, 2020).

TABLE 2  
CBP ENFORCEMENT ACTIONS

	<i>FY17</i>	<i>FY18</i>	<i>FY19</i>	<i>FY20</i>	<i>FY21 October-June</i>
Office of Field Operations (OFO) Total Encounters <sup>1</sup>	216,370	281,881	288,523	241,786	232,396
U.S. Border Patrol Total Encounters <sup>2</sup>	310,531	404,142	859,501	405,036	1,278,376
Total Enforcement Actions	526,901	683,178	1,148,024	646,822	1,510,772

<sup>1</sup> Fiscal Year 2021 runs October 01, 2020–September 30, 2021. Beginning in March FY 20. Fiscal Year 2021 runs October 01, 2020–September 30, 2021. Beginning in March FY 20. OFO Encounters statistics include both Title 8 Inadmissibles, and Title 42 Expulsions. To learn more, visit CBP (2021: Title 8 and Title 42 Statistics). Inadmissibles refers to individuals encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe.

<sup>2</sup> Beginning in March FY 20, USBP Encounters statistics include both Title 8 Apprehensions and Title 42 Expulsions. To learn more, visit CBP (2021: Title 8 and Title 42 Statistics). Apprehensions refers to the physical control or temporary detention of a person who is not lawfully in the U.S. which may or may not result in an arrest.

SOURCE: CBP (2021).

Since the beginning of the Biden administration, the number of migrants traveling alone or with their families across the U.S.-Mexico border increased significantly. Apprehensions grew 62 percent between December 2020 and January 2021, one of the biggest month-to-month increases since 2014 (Chishti and Bolter, 2021). According to CBP data, apprehensions totaled 1,277,722 in just nine months—from October to June—almost equal to the 1,148,024 apprehensions made in all of 2019, and twice as many as in 2020 (see Table 2). This situation poses a great challenge for Biden.

Some of the pull factors that have influenced the significant increase in migrant flows and therefore apprehensions at the U.S.-Mexico border in recent months are seasonal migration and the feeling that pandemic risks in the U.S. are subsiding. Intentionally or not, Biden's promises and allegedly more humane migration policies and actions have increased the incentives to immigrate.

The push factors that have influenced Central American migrants to plan long and expensive journeys—at a time when human smugglers profit

by charging great fees—and make an infernal crossing through Mexican territory, exposing themselves to violence, robbery, rape, etc. for the sole purpose of surreptitiously crossing the U.S.-Mexico border or requesting asylum are: unstable and corrupt governments; fragile economies with zero growth; poverty and excessive violence from criminal gangs; and hurricanes—Eta and Iota for example—that have devastated their home countries. On the other hand, the push factors that explain the important increase of migrant flows from Mexico in recent years are:

- The consequences of a very serious global pandemic that has been managed poorly by AMLO's government since its beginning in March, 2020;
- The unprecedented 8.5 percent fall of the Mexican economy in 2020, coupled with zero growth during 2019, the first year of AMLO's government. Since the beginning of his presidency, AMLO made decisions that had a negative impact on the investment climate, promoting a lack of confidence and a significant fall in investments, which has cost thousands of jobs and caused an important increase in poverty, among other issues. The record high of US\$40.6 billion in remittances generated in 2020, according to data from Banco de México, has helped mitigate the blow to the Mexican economy.

It is important to mention that traditionally there has been a flow of Central American migrants crossing through Mexican territory toward the United States, a flow that has increased significantly in the last years,<sup>2</sup> along with a flow of Mexican migrants. Today, Mexico is a country of destination, transit, and emigration for migrants, having the greatest diaspora population in the United States. According to data from the U.S. Census Bureau, there were 38.5 million U.S. residents in 2018 who were either born in Mexico or of Mexican origin. In 2019, there were about 10.9 million Mexican-born individuals living in the United States, 51 percent of whom were unauthorized migrants in 2018, a 7 percent decline compared to the previous

<sup>2</sup> Apprehensions in the U.S. southern border amounted to 859,000 in 2019, twice as many as the previous year, with Mexicans accounting for 169,000 events, while migrants from other nationalities, including Central American residents, accounted for 689,995 apprehensions (Miroff and Sacchetti, 2021b).



decade, mainly due to increased immigration enforcement and deportations (Israel and Batalova, 2020). Today, the number of unauthorized migrants amounts to approximately 11 million.

Since the beginning of his administration, Biden has kept the Trump administration's border policies intact, permitting the apprehension and expulsion of almost all border crossers. The new Immigration and Customs Enforcement (ICE) guidelines established by the Biden administration state that fewer noncitizens will be apprehended and processed through the removal system, instead of simply focusing on removals.<sup>3</sup> Now, as mentioned before, the U.S. is facing increased arrivals, which Republicans describe as a "border crisis," driven by push and pull factors, which suggests a more humane migration policy than Trump's.

Biden has suggested that Trump's decision to cut funding for the region in 2019 was partly to blame for this situation. The new condition is that the vast majority of apprehended migrants, with a notable increase in the number of single adults, have been swiftly expelled under Title 42, a public health emergency order invoked by Trump during the pandemic which has had the effect of rejecting asylum seekers. This mechanism has provided Republican critics with ammunition, as it has helped to inflate the number of arrests.<sup>4</sup> Biden has been hesitant to revoke Title 42 because this decision could be interpreted as an incentive for more migrants to attempt crossing the border, and a decision of this nature might undermine public support for Biden's immigration agenda.

Biden's decision to exempt unaccompanied minors (UMs)<sup>5</sup> from instant expulsion under the health emergency order has had a boomerang effect, as

<sup>3</sup> These provisional guidelines represent the narrowest enforcement priorities that have been implemented in recent years. They ensure that the overwhelming majority of unauthorized immigrants are not a priority for arrest and removal, as was the case toward the end of the Obama administration: see Table 1. Interior Immigration Enforcement Priorities under Presidents Obama, Trump, and Biden (Chishti and Bolter, 2021).

<sup>4</sup> Due to the fact that migrants are simply expelled to Mexico and not sent back to their home countries, one person can be arrested for multiple crossings if they are tempted to try again, making it seem as if more people are attempting to cross the border than is the case.

<sup>5</sup> UMs are minors who arrive in the United States without a parent or legal guardian and who do not hold legal immigration status. They can't be deported immediately and instead are transferred to a network of government shelters run by the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services (HHS), where they must wait while immigration authorities look for suitable adult sponsors who can care for them until their immigration cases are resolved.

the increase in migrant influx is driven by the reasons I have already mentioned: poverty, violence, instability, and natural disasters south of the border; additionally, it is encouraged by the mixed messages of the Biden administration (Washington Post Editorial Board, 2021a). Shelter care providers offer temporary homes and services, including educational, medical, and mental health services, as well as case management to reunite children with their families (CRI, 2021). By June 2021, U.S. Customs and Border Protection (CBP) holding facilities and federal youth shelters were overflowing with migrant families and UMS, even after being expanded by the Biden administration.<sup>6</sup> Since the beginning of federal fiscal year (FY 2021) in October 2020, approximately 72,000 UMS had arrived in the United States for processing as of July 2021; 80 percent of them are waiting to be reunited with family members and only about 20 percent of them are from Mexico (CRI, 2021). Most of the UMS cross through Mexican territory, making a hellish trip, to reunite with family members or escape from poverty, which has worsened with the pandemic, and at a time when many believe the Biden administration will be more welcoming or less aggressive than the Trump administration was.

Republicans have blamed Biden for relaxing immigration policies, while some Democrats are concerned about facility conditions and the fact that children are being held for an extended period of time. Nevertheless, Biden was facing an emergent humanitarian and political crisis, with the highest number of migrants since 2019, before the pandemic aggravated the situation.

#### FAMILY REUNIFICATION VS. THE ZERO TOLERANCE POLICY

The arrival of several thousand migrants from Central America in caravans—a new form of collective organization—composed of 107,200 family units and 50,000 unaccompanied children, who were apprehended in 2018, intensified Trump’s anger (Batalova et al., 2021). In response to this situation, Trump established the “zero tolerance” policy. Through this policy, he started separating parents from their children when they attempted to

<sup>6</sup> The Federal Emergency Management Agency (FEMA)—which usually responds to floods, storms and other major disasters—was deployed in March 2021 to help shelter and transport children at least until early June (Hesson and Rosenberg, 2021).

cross the border “illegally” into the United States. The Family Reunification Task Force estimates that a total of 5,636 children were separated from their parents between July 2017 and January 2021—3,913 of them under the Trump administration (Monyak, 2021). They were placed in the custody of the Department of Homeland Security (DHS) while their parents were prosecuted, an eminently immoral and arbitrary decision, given that families are typically allowed to remain together while their cases are decided.

Fortunately, amidst national and international outcry, Trump was forced to sign an executive order (EO) reversing this highly controversial policy in June 2018 (Liptak and Shear, 2018). As of June 2021, there still were 1,723 children whose cases remained pending (Morin, 2021). Since one of the main causes of this situation is that a parent was removed from the United States, the task force has been working with groups that are in touch with families to carefully plan their return, taking into account previous trauma.

Fortunately, the Biden administration has revived the Central American Minors Program (CAM), rescinded by Trump in 2018, which allows children fleeing violence from the Northern Triangle of Central America to apply in their home countries to settle in the United States. The administration has begun accepting new applications offering an opportunity for Central American migrants to reunite with their children legally.

## **Interior Enforcement: The Moratorium on Deportations**

Deportation statistics can be confusing because they include both actions against immigrants living in the United States for many years and individuals stopped at the border. To get a clearer picture, it is helpful to look separately at enforcement actions initiated by Customs and Border Protection (CBP)—which are typically aimed at stemming entry—from those initiated by ICE, which are more likely to involve unauthorized immigrants who live in the country. Deportations or interior removals rose during the Trump administration compared to the immediately preceding years, but were fewer than during the Obama years of 2008-2012. Tara Watson (2021) states that the number of interior deportations fell from over 200,000 annually in 2008-2011 to under 70,000 by the end of Obama's presidency, and that

they were higher in 2017-2019 (the latest number available) but never exceeded 100,000.

The Trump administration continued deportation policies of the Obama era. Nevertheless, deportations were conducted with minimal screening and targeted all immigrants, not only criminals as the Obama administration did. Even worse, notwithstanding the pandemic, Trump continued to enforce raids within the country in order to deport Mexicans and some Central Americans, also with minimal screening, exposing migrants to COVID-19 infection, and sending them to dangerous Mexican border towns in the middle of the night.

On a different note, at the beginning of his administration, Biden established a hundredday moratorium on most deportations with final resolutions, except for criminals and those migrants who had engaged in suspected acts of terrorism, people who had not arrived in the U.S. before November 1, 2020, or those who had voluntarily waived any right to remain in the country. Nevertheless, Federal Judge Drew Tipton, appointed by Trump, indefinitely blocked Biden's initiative to continue with the moratorium on most deportations, since it violated administrative laws and the state of Texas, which had filed a lawsuit against the White House and adequately demonstrated it would face harm due to the higher numbers of detainees and greater public education costs (Aguilar, 2021). The Biden administration did not challenge this decision. As a result, the moratorium on deportations was never implemented. From January to June 2021, ICE agents have averaged around 2,300 arrests per month, a fifth of the monthly average in 2019, before the pandemic began (*The Economist*, 2021). These figures show that President Biden is more sensible than his predecessors regarding this issue, and also more cautious of both Democrat and Republican critics.

With respect to the 287(g) agreements<sup>7</sup> promoted by Trump, Biden has taken no action. Nevertheless, no major workplace raids have occurred. The Biden administration should fully rescind the Secure Communities Program<sup>8</sup> and take measures to prevent future administrations from restoring it. Also,

<sup>7</sup> Through the 287(g) program, state and local law enforcement officers collaborate with the federal government to enforce federal immigration laws. In the past, the 287(g) program has been costly for localities, has historically targeted individuals with little or no criminal history, and has harmed the relationship between police and local communities (AIC, 2021).

<sup>8</sup> A federal immigration enforcement program is being implemented by ICE. If an individual is arrested and booked into a local jail for any reason, his or her fingerprints are registered in ICE's immigration database. This situation allows ICE to identify people who may be lawful immigrants and permanent residents—and potentially to initiate deportation proceedings against them.

he should take steps to rebuild trust and roll back all of President Trump's sanctions on sanctuary cities that refused to cooperate with federal immigration authorities on interior enforcement (Loweree and Reichlin-Melnick, 2021).

## **Ending the Migrant Protection Protocols (MPP)**

### THE TRUMP-LÓPEZ OBRADOR AGREEMENTS

In response to the caravan from Central America, Trump implemented a program known as Remain in Mexico. The unconstitutional Third Country (Transit) Asylum Rules sends non-Mexican undocumented aliens and asylum seekers to border cities in Mexico that are not necessarily secure (Verea, 2020). In order to stop migrant flows, Trump first threatened AMLO with the closing of the U.S.-Mexico border and shortly after with an incremental five percent tariff on trade in May 2019. This caused the Mexican president to shift his humanitarian strategy and reverse his initial "open door" policy. Through the bilateral agreement signed in June 2019,<sup>9</sup> AMLO consented to asylum seekers being expelled without a hearing and/or access to an immigration lawyer, forcing them to live in dangerous conditions and subjecting them to the risk of rape, torture, and kidnapping.

The MPP included, among many other initiatives, the deployment of 27,000<sup>10</sup> troops of the Mexican National Guard to combat irregular migration at the southern and northern borders as well as within the interior, forcing them to operate as unexperienced border patrol agents and leaving states and municipalities in Mexico without the protection of the National Guard, whose presence is much needed, given Mexico's failed public security situation. This agreement provided Trump with shelters across Mexican border cities for approximately 67,000 asylum seekers (CMS, 2021), held in deplorable conditions and made to wait for months or even years at the expense of Mexico. Cynically, Trump tweeted: "I am using Mexico to protect our

<sup>9</sup> Marcelo Ebrard, the Mexican Secretary of State, flew to Washington, D.C. on May 31 to halt the imposition of five percent tariffs on all imports from Mexico, which would have otherwise come into effect on June 10, 2019.

<sup>10</sup> Ten thousand National Guard troops to patrol the Mexico-Guatemala border and 15,000 to patrol the U.S.-Mexico border (Verea, 2020).

border. . . . I want to thank Mexico. . . [for their] 27,000 soldiers. . . . We use Mexico because the Democrats won't fix our broken immigration system" (Ramos, 2019). During their stay in Mexico's precarious facilities, many migrants have been interviewed by Human Rights Watch and testified that they have suffered rape, sexual abuse, robbery, and other acts of violence (Krauze, 2021). Trump symbolically moved the U.S. border further south in order to dismantle the U.S. asylum system.

Because of the COVID-19 pandemic, the Trump administration announced in July 2020 an initiative that would allow immigration officials to turn away asylum seekers from countries with any active disease outbreak, even beyond the coronavirus pandemic, that posed a threat to public safety. Trump also proposed the increase of the U.S. attorney general's authority to intervene in immigration court cases, potentially politicizing the proceedings, and he proposed speeding up immigration court processing that could result in the deprivation of fair treatment to asylum seekers in court (Narea, 2020). Trump reshaped immigration courts, which are a branch of the Department of Justice, driving out long-serving judges and instead appointing anti-immigrant hard-liners to conform a powerful appellate board serving his interests.

#### NEW AGREEMENTS BETWEEN BIDEN AND AMLO

The Biden administration put an end to the MPP program and has begun a slow and gradual admission of asylum seekers into U.S. territory. Although this measure is humane and decent in principle, it has incentivized an increase in migrant flows without creating a dedicated system to diminish the backlog of vulnerable people. Biden has promised to expand the system's capacity to accommodate more than 3,700 beds and expedite the release of parents together with children within 72 hours (Miroff and Sacchetti 2021b). He has also promised to shorten the review process, which can take years before a final decision is reached. Biden is attempting to restore the human rights commitments that Trump overthrew and ensure that those with reasonable grounds to apply for asylum get a fair hearing, but not necessarily obtain permanent status. He has stated that no one should be under any illusion that the system will be transformed dramatically overnight (Sargent, 2021).

Biden and AMLO reached an agreement in March 2021 to curb the flow of Central American migrants; although not of a quid pro quo nature, it resulted in an exchange of:

- the supply of 2.7 million AstraZeneca vaccines;
- the closing of Mexico's southern border for non-essential travel;
- the dispatch of approximately 10,000 National Guard troops in addition to those already sent in response to Trump's pressure in 2019, at the expense of Mexico's economy and security; these troops, which are highly needed throughout Mexico, are serving as unexperienced border patrol officers.

With a Trumpism-containment view, Biden has reached similar agreements with Central American countries to establish greater surveillance at their respective borders. Unfortunately, the U.S. Supreme Court ruled in August 2021 that the Biden government must comply with a local court ruling seeking to reinstate the Remain in Mexico policy because no adequate reason was given to cancel the program. Biden has accepted the decision, while continuing "vigorously" with the appeals.

In an effort to deal with the situation, Biden appointed Vice President Kamala Harris to deal with border issues in order to reach a regional agreement, a vision contrasting with that of Trump, who drastically cut off the annual aid offered to Central American countries.

## **Lifting the Entry Ban on Immigrants and Non-Immigrants**

Trump's crusade against immigration brought down the number of foreign workers and immigrants without Congress's intervention or approval. The alarming number of rejections for the admission of new temporary workers quadrupled during the pandemic in 2020, while denial rates of visa extensions for skilled workers roughly tripled, a result of his xenophobic agenda. The Trump administration only issued visas to new students if their courses were onsite during the pandemic. U.S. schools saw a 72 percent decline in new international student enrollment in 2020 compared to 2019 (ICE, 2021).

Another decree announced at the end of the Trump era stated that most student visas would be limited to four years, rather than the specific duration of study programs. The actions of the Trump era badly damaged the government machinery necessary to screen and admit immigrants who wish to move to the United States. For instance, citizenship applications now take double the time (ten months) to be processed than they did years before the Trump administration. These arbitrary changes in policy and hateful rhetoric have driven away global talent and created uncertainty for immigrants and those considering emigration in the near future.

President Biden revoked the suspension of entry (Proclamation 10014) established by Trump in April 2020 and lifted the issuing ban on both immigrant and temporary worker visas, stating that it harmed the interests of his country.<sup>11</sup> During the pandemic, Trump halted the issuance of green cards until the end of 2020 in the name of protecting the coronavirus-wracked job market. For example, around 120,000 family preference visas were lost largely because of the pandemic-related freeze, which mainly affected Mexicans. With the alleged motivation of coronavirus safety and preserving jobs for Americans as unemployment spiked, Trump also blocked the entry of high- and low-skilled seasonal workers, with the exception of agricultural workers. In the case of Mexican temporary workers admitted to the U.S., the issuance of visas decreased by 11 percent from FY 2019 to FY 2020: for non-agricultural workers, the number decreased from 72,339 visas in 2019 to 46,201 in 2020; for highly-skilled workers, from 2,754 visas to 1,552; for intra-company employees, from 5,082 visas to 2,417; and for Trade NAFTA (TN) visas, from 21,122 to 13,735. The only increment was for agricultural workers with H2-A visas, which rose from 188,758 to 197,908 (see Table 3). The total of visas issued in 2019 to Mexican temporary workers under these categories was 297,778, compared to 265,333 in 2020, an 11 percent drop. For comparison purposes, Central Americans from the Northern Triangle (Guatemala, Honduras, and El Salvador) received a total of 5,811 temporary visas, while Mexicans received a total of 265,333 in 2020 (see Table 3). Biden has proposed to issue an additional 22,000 nonagricultural H2-B

<sup>11</sup> While Presidential Proclamation 10014 was rescinded by executive action on February 24, 2021, Presidential Proclamation 10052 remains in place, suspending entry to the United States of non-immigrant visa applicants “who present a risk to the U.S. labor market during the economic recovery following the novel coronavirus outbreak” (Libowsky and Oehlke, 2021).



visas in 2021 with respect to the 66,000 yearly cap; 6,000 of them will be granted to Central Americans, which is a good prospect.

TABLE 3  
SELECTED TEMPORARY VISAS ISSUED IN THE U.S. TO MEXICANS  
(VARIOUS YEARS DURING 2000-2020)

<i>Year</i>	<i>Total</i>	<i>E-1</i>	<i>H-1B</i>	<i>H-2A</i>	<i>H-2B</i>	<i>L-1</i>	<i>OPQR</i>	<i>TN</i>	<i>Total</i>
2000	332,082	331	2,404	28,442	27,648	2,290	7,174	878	69,177
2005	380,118	427	2,505	28,563	60,259	2,166	7,494	1,888	93,872
2010	359,680	593	2,494	52,317	33,375	1,976	6,112	3,376	100,243
2015	515,446	1,139	2,894	102,174	51,301	4,678	5,736	12,996	180,918
2016	573,526	1,130	2,540	123,231	61,128	4,856	6,373	14,646	213,904
2017	600,592	1,041	2,322	147,272	64,305	5,036	6,542	15,993	242,511
2018	633,361	1,097	2,524	180,420	62,162	4,951	6,841	17,859	275,854
2019	672,501	1,013	2,754	188,758	72,339	5,082	6,730	21,122	297,798
2020	488,113	400	1,552	197,908	46,201	2,417	3,120	13,735	265,333

SOURCE: DOS (2021).

In the case of permanent immigrants, the Biden administration is encouraging longtime residents to apply for U.S. citizenship and has launched a campaign to make some 9 million people eligible for becoming Americans. Furthermore, Biden has formed a working group with the purpose of reviewing the immigration process and integration mechanisms. They have proposed reducing the citizenship application fees from the US\$1,100 imposed by Trump, to US\$640. Nevertheless, the initiative has since been challenged in court.

### **Lifting the Travel Ban and the Cap on Refugee Admissions**

The travel ban imposed on citizens of Muslim-majority countries at the beginning of Trump's administration has had very negative consequences: more than 40,000 people were denied visas as a result of the ban, although it's difficult to know how many more were discouraged from applying once it went into effect.

Biden hasn't changed the Trump policy blocking the entry of fully-vaccinated travelers from many countries with much lower case rates than the United States, as is the case of Europeans. Restrictions for them remain unchanged; a decision highly affecting the transatlantic relations between two continents. For example, a Mexican can travel to the United States and to Europe as of September 2021 with proof of vaccination and a PCR test. However, a Mexican citizen has to wait in quarantine during 15 days in Mexico if he/she traveled to any country of the European Union.

With respect to refugees, Trump limited total admissions to 50,000 people annually at the beginning of his administration, greatly contrasting with the 110,000-limit established under the Obama administration for FY 2017. Admissions dropped to 16 percent in FY 2018 and only 22,491 refugees were resettled in FY 2018, the lowest figure since the resettlement program was created through the Refugee Act of 1980. Naturally, the steepest decline involves Muslims, who have been hurt enormously. According to data from the State Department, 38,900 Muslim refugees came to the United States in FY 2016, a number which fell to only 3,495 in 2018. For 2020, about 11,800 refugees resettled in the United States: six times less than in pre-Trump decades.

Biden has taken emergency action to quadruple the refugee restrictions for FY 2021 to 62,500,<sup>12</sup> compared to the record-low level of 15,000 under Trump. He has also promised to eliminate discriminatory eligibility criteria, which excluded most refugees from Muslim and African countries, as well as raise the admission ceiling to 125,000 in 2022 (Rampell, 2021).

The Biden administration announced the restarting of a program that allows certain Central American children with parents living legally in the United States to apply for refugee resettlement from their home countries (Hesson and Rosenberg, 2021). Meanwhile, Biden is looking for a way to temporarily care for those children arriving at the U.S. border without a legal guardian.<sup>13</sup>

<sup>12</sup> The allocations will create spots for 22,000 refugees from Africa, 6,000 from East Asia, 4,000 from Europe and Central Asia, 5,000 from Latin America and the Caribbean, and 13,000 from South Asia, and 12,500 to unallocated spots (Hesson and Dwyer, 2021).

<sup>13</sup> This includes expanding facilities where the children can be held legally for up to 72 hours under the custody of the Border Patrol; finding more residential sites where they can live for several months while the government searches for a relative or friend that can take care of them (Shear and Kanno-Youngs, 2021).

## **Biden's Support of Congress Initiatives on Immigration**

Immigration is currently at the center of debate on how to stop unauthorized flows and, at the same time, allow the entry of more permanent or temporary migrants necessary for the U.S. economy. Democrats have been pressing for immigration reform for many years. As of 2018, most unauthorized migrants—around 60 percent—had lived in the United States for ten years or more and developed deep roots in their communities; moreover, many of them have children who are U.S. citizens. There is an imminent need to reform the U.S. immigration system, mainly through a legalization process.<sup>14</sup> Congress has not passed a major immigration reform since 1996, but Democrats believe this year will be different, given the change in administration and the growing need for both parties to court Hispanic voters (Beitsch, 2021). We believe that after many years there is a possibility of carrying out the immigration reform that Mexicans on both sides of the border have been dreaming of.

With Democrats as the majority in the House of Representatives (HR) and with Biden's support, Senator B. Menendez (D-NJ) and Representative L. Sánchez (D-CA), daughter of Mexican migrants, introduced the U.S. Citizenship Act (HR 1177) on February 18, 2021 (White House, 2021). This bill would create an eight-year path to citizenship for most of the estimated 11 million unauthorized immigrants in the United States—60 percent of which have been in the United States for at least a decade and half of which are of Mexican origin—update border technology, eliminate visa backlogs and per-country visa caps, as well as discourage migration from Central American nations (Carney, 2021). TPS provisions could offer a direct path to legal permanent residence (obtaining a green card) for 1.85 million people—1,652,000 of which are Dreamers or TPS holders, and about 204,000 of which are unauthorized immigrants or their non-immigrant spouses or minor children. Democrats are still preparing Biden's U.S. Citizenship Act of 2021, which would reverse many EOS handed down by the Trump administration

<sup>14</sup> This could be accomplished in incremental steps and entail eligibility requirements such as a minimum length of residence in the United States, work history, payment of taxes and application fees, and absence of serious criminal history; the process should begin by addressing the challenge of the country's existing unauthorized immigrant population (Chishti, Gelatt, and Meissner, 2021).

Other bills that have been discussed at Congress are: the Farm Workforce Modernization Act, which would provide permanent residency to approximately 1.1 million undocumented agricultural workers, the majority of them of Mexican origin, if they can demonstrate that they have worked 400 days in the past five years;<sup>15</sup> the American Dream and Promise Act, introduced by Sens. Richard J. Durbin (D-III) and Lindsey O. Graham (R-SC), which would allow Dreamers and TPS holders and their families—about 1.85 million—to remain legally in the country and eventually apply for citizenship; this bill has been supported even by some Republicans who are more pragmatic and less nativist.<sup>16</sup> Both bills were approved by the House of Representatives with bipartisan support, but have not yet been considered by the Senate. Biden has definitely restored the program to cover new registrations and extensions of prior registrations for qualified individuals. President Biden signed a proclamation on January 20 directing DHS to “preserve and fortify DACA.” According to U.S. Citizenship and Immigration Services (USCIS) data, a total of 640,700 individuals had DACA status as of September 2020, around 520,000 of whom were from Mexico. The Supreme Court rejected the efforts of the Trump administration to terminate DACA in 2020 and ruled that the program must continue. However, the Trump administration issued a memo instructing the DHS not to process any new DACA applications.<sup>17</sup> Unfortunately, Judge Andrew Hanen ruled in July 2021 that the DHS violated the Administrative Procedure Act with the creation of DACA and its continued operation (Castronuovo, 2021). Biden condemned a federal judge’s decision and the Department of Justice (DOJ) plans to appeal it.

Trump also decided to abruptly end the TPS program, which benefited approximately 437,000 immigrants, most of them from Central America

<sup>15</sup> Measures to normalize their status have broad support from the public, who recognize that these migrants have become an integral part of the fabric of American society. This bill would allow legalized farmworkers to sponsor their spouses and minor children living in the United States for the obtention of a green card (Wagner et al., 2021).

<sup>16</sup> Requirements would include continuous residency in the United States; background checks; and college studies, work, or military service. The approach has broad support from business groups as well as the public (Washington Post Editorial Board, 2021a).

<sup>17</sup> In 2001, Congress introduced the Development, Relief, and Education for Alien Minors Act (DREAM Act) to address the situation of the estimated 2.1 million minors who were brought illegally to the U.S. as children, including a pathway to citizenship for them. The bill went through several revisions and languished in Congress in the following years. In 2021, President Biden barred this group from deportation, and pledges to make the DREAM Act a part of a comprehensive immigration reform.

and the Caribbean. The program offered a reprieve from deportation for those who fled specific nations due to war, hurricanes, earthquakes, or other extraordinary conditions that could make it dangerous for them to live there.<sup>18</sup> The deadlines for most groups were extended by the Trump administration. The Biden Administration and congressional Democrats have proposed under legislation that immigrants who have time-limited permission to live and work in the United States under TPS could be granted a pathway to citizenship if they met certain conditions.<sup>19</sup> It would allow TPS holders to apply for citizenship three years after receiving a green card, which is two years earlier than usual for green-card holders. The Migration Policy Institute (MPI) estimates that nearly 3.3 million unauthorized immigrants who are Dreamers, farmworkers or holders of TPS, as well as their spouses, minor children present in the United States, could gain an immediate path to a green card and a three-year track to citizenship under the White House-backed legislation introduced in Congress (MPI, 2021).

On the other hand, The Congressional Hispanic Caucus proposed the bicameral bill Citizenship for Essential Workers Act, introduced by Sen. A. Padilla and Rep. J. Castro, in order to create a pathway to citizenship for immigrant workers that were essential during the pandemic.

All of this is extraordinary news for Mexicans. However, without Republican support in Congress, the legislation will be very difficult to achieve. Some Democrats consider that a comprehensive immigration reform has little chance of being approved, although a piecemeal approach may be more feasible. After months of fruitless bipartisan talks, Democrats are turning their last hopes to achieve their goal through a reconciliation bill and a complex budget plan that has not been tested before. They are looking to designate US\$120 billion for a pathway to citizenship for recipients of DACA, TPS, and farm workers. The question is whether Republicans will allow the inclusion of immigration provisions in a reconciliation bill (Fox et al., 2021).

Senators at the center of immigration discussions have expressed their doubts about the viability to pass a comprehensive reform anytime soon and worry that the bills might become stuck in limbo for several months, as

<sup>18</sup> Federal immigration officials may grant TPS to immigrants for up to 18 months, initially based on the conditions in their home countries, and repeatedly extend eligibility if dangerous conditions persist (Cohn, 2021).

<sup>19</sup> Citizenship would be granted if they pass additional background checks and meet the usual naturalization criteria of knowledge of English and U.S. civics (Cohn, 2021).

has happened several times before. Politically, it is difficult to find the perfect time to pass an immigration reform because there is no quick and easy solution. Biden's great challenge is to achieve a bipartisan consensus on his immigration reform plan in parts or as a whole. The truth is that current immigration policies are mismatched with market forces and demographic realities. These mismatches have led to serious dysfunctions in the immigration system, as demonstrated by the 11 million undocumented migrants currently living in the United States, the tremendous backlog in the immigration court system, and the overflowing shelters, among other serious problems.

## **Final Reflections**

Since the beginning of his administration, President Biden has had a more positive attitude toward migration and has been trying to undo the damage caused by the Trump anti-immigrant policies. We hope that he can keep changing the anti-immigrant rhetoric that prevailed during the Trump era for a more humane, sensible, and realistic one which emphasizes the economic benefits that immigrants bring to the U.S. economy and society, as well as the predominant need for its workforce; that is, how to devise a change in the approach to this phenomenon from a negative, reactive rhetoric to a one that places the benefits of immigration into a long-term perspective.

It is true that nearly every major regulatory or processing change to the immigration system was challenged in court during the Trump era. But will it be easy for Biden to reverse the damage caused by Trump to the whole immigration system? One might assume that Trump's changes to the immigration system can be easily undone, particularly since most of his highly restrictive immigration directives were enforced unilaterally through EOs. It is also true that regulatory actions would likely be reversed by Biden, but such reversals are happening slowly, and we are not sure that immigration will be his top priority in the short run, due to midterm elections in 2023. Republicans have been highly critical of Biden's immigration stance, especially his handling of the flow of migrants and asylum seekers at the border, which has been characterized by restrictionists as a "border crisis." The fact is that, in the first six months of his presidency, Biden found the unwinding of restrictionism and Trump's anti-immigrant policies to be logistically and politically difficult.

So, the transition has been bumpy and challenging. Politically, it is difficult to find the perfect timing for an immigration reform because there is no quick and easy fix.

It is a fact that policies involving the expansion of walls, punishing nature of family separation, increase in removals and deportations, and limitation of the admission of refugees and temporary workers did not stop the flow of migrants and asylum seekers.

In a spirit of cooperation, Biden has recognized that shared problems need to be overcome together with his country's neighbors. He knows that the most effective and sustainable way to reduce migration from the Northern Triangle Central American countries is to address its root causes. We hope that the program headed by Vice President Kamala Harris, a four-year, US\$4 billion regional strategy of aid to the region, will prove effective in addressing the factors driving migration to the United States. Unfortunately, Biden has forced AMLO's government, as Trump did previously, to collaborate contentiously by assigning Mexican National Guard troops as border patrols at both borders to contain the growing number of migrants coming from Central America and Mexico as asylum seekers or undocumented migrants. It is essential to rescind the Remain in Mexico program, as Biden did at the beginning of his mandate. While the Biden administration is appealing the court decision, AMLO has to prepare a program of agreement with the Northern Triangle Countries to solve this inhumane situation. The opening of legal pathways in the U.S. market, meaning an extension of temporary agricultural and non-agricultural worker visas (H2-A and H2-B), is essential for the safe entry of Mexicans and Central Americans into the United States.

In the short run, it is necessary to institutionalize the return and integration of thousands of rejected and expelled migrants to root them in their towns or cities of destination, and to resolve the problem of the shelters that are in deplorable conditions on both Mexican borders. It should be noted that if it were not for the assistance of non-governmental and international organizations, these shelters would be in even more disastrous conditions. At a regional level, we need to explore the potential role that Canada could play in the acceptance of more refugees and temporary workers. We must think about a reality with post-COVID pandemic rules: remote jobs and education through digital mechanisms in order to support Mexicans and Central Americans. We hope that the Biden administration rescinds the decree forcing

migrants to wait in Mexico for asylum hearings through the Migration Protection Protocols, which poses a significant burden for Mexico, especially at border towns. Driving people back into their countries of origin fuels the criminal activity that plagues them even more.

President Biden has a hard job not only to dismantle Trump-era policies and actions, but also to raise awareness of the need to transform the immigration system either through a comprehensive immigration reform or a piecemeal approach against Trumpism and Republican conservative trends.

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# **AS LUCK WOULD HAVE IT: IMMIGRATION POLICY AND OPPORTUNISTIC BEHAVIOR IN U.S. BORDER BUREAUCRACIES**

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## **Introduction**

Although the citizens of a nation may prefer to think that government agencies are the neutral instruments of political power, where elected officials wield the decision-making authority and are directly responsible for policy outcomes while bureaucracies mostly implement their mandates, the literature on the autonomous behavior of bureaucracies has long established that government agencies are actors in their own right (Long, 1951). They in fact develop their own organizational interests, ideological preferences, and favored approaches to public issues, big and small, often well beyond those of their elected and appointed leaders. Holden (1966), for example, proposed that bureaucracies pursue and address themselves first and foremost to their vested interests regardless of whether these pursuits have an impact on the resolution of the problem they are charged to deal with. And they often engage in direct competition with other agencies for turf, influence, and resources (Kunioka and Rothenberg, 1993), and sometimes directly engage the policy making process to enhance these factors or advance their ideological predilections. Along those lines, in his 1969 essay “Conceptual Models and the Cuban Missile Crisis,” which he later turned into a book, *Essence of Decision: Explaining the Cuban Missile Crisis* (1971), Allison systematized three models to understand the purposive and even deviant behavior of government agencies. In these texts, Allison explains three major sources of bureaucratic behavior—first is the traditional rational action model, which he sets up as the straw man, and then the bureaucratic politics and organizational process models, both of which assume that bureaucracies are out for themselves.

The second and third proposed models take stabs at the patently falsifiable assumptions of the first model—the idea that bureaucracies are in effect mere instruments of policies which originate elsewhere. Later, in 1989, James Q. Wilson explored what bureaucracies do and why they do it, emphasizing that agencies cannot often be controlled because, as they grow and mature, they develop their own interests and defend them, even against their principals—such as the elected members of the executive or Congress and sometimes against the designs of their appointed masters. Clearly, bureaucracies and bureaucrats have choices—they can work, that is, follow the directions and wishes of their masters; they can shirk, that is, neglect their job in resistance, even if they feign obedience; or they can outright sabotage the designs of their chiefs and principals (Brehm and Gates, 1999). Also in 1989, Peters gave a comprehensive assessment of how bureaucracies shape policy by the power of implementation, a process where they combine their own political and policy interests. By 2004, Gormley and Balla explain the advantages that bureaucracies have over their political masters, as they concentrate institutional memory, deep expertise, and privileged information over their political masters. And in 2007, Payan explored the selective and often opportunistic behavior of bureaucracies in acquiring new missions, such as the war on drugs, to shape preferred policy tools and outcomes or enhance their status. Similarly, in a 2020 edited volume, Dupeyron, Noferini, and Payan further illustrate the way incumbent bureaucracies, specifically in border contexts, take advantage of external shocks to assert their interests in each policy field or advance into other policy fields, seeking to capture the governance units and exclude others from influence on issue governance as much as they can.

In general, over some seventy years, the literature exploring the role that bureaucracies play in setting policy, shaping political preferences, and even impeding certain public choices is extensive and continues to grow. The instances cited above are but a small sample of how the robust literature on the subject of bureaucratic behavior has advanced over time and enabled us to understand the strategic behavior of government agencies and how policy is often shaped by their own interests and preferences. Along this line of argument, this essay seeks to examine whether the bureaucracies in charge of immigration along the United States-Mexico border, specifically when it comes to the role of the border in controlling unauthorized

population flows, have sought 1) to define the problem in the direction of their preferred views of it; 2) to push for preferred instruments of policy such as the border wall as a useful tool to do their job; and 3) to shape policy by employing the kinds of facilitation, delay, or obstruction tools at their disposal in the direction of their definition of the problem, organizational interests, and preferred policy approaches. There is plenty of evidence that border agencies have become drivers of policy, and from their own rhetoric and behavior, it should be possible to discern their purposive actions on such an important and controversial policy issue as immigration on the southwest border. As there is little space here to examine all the agencies that might have influence over the policy space, this essay examines the behavior of the Border Patrol (BP), the agency most at the center of the border-centered immigration debate.

## **The Border Patrol and the Border Immigration Saga**

Immigration has always been controversial in the United States, among the public in general and among politicians, who have often used it as a political platform for their own interests (Thompson, 2018). Some of the earliest nativist movements in fact date back as far back as the 1820s. In the last three decades, since the 1990s, however, three issues have been conflated into a single problem, to the detriment of progress on immigration reform. At one level, authorized and unauthorized immigration are often treated as the same problem, and then sometimes bundled with xenophobic feelings that periodically burst into the public sphere. At another level, immigration has become closely associated with the country's borders, especially the U.S.-Mexico border (Payan, 2016; Hollifield, 2016). Linking these policy issues (authorized immigration, undocumented migrants, and border management) has prevented progress on legal immigration reform. It has also created a space of contention, where many different actors move quickly to shape policy according to their interests and preferences. The advent of Donald J. Trump to the Oval Office was one such case—he practically rode into the U.S. presidency on toxic rhetoric that treated legal and unauthorized migration and the border as a single policy problem. He understood the value of doing so as he roiled much of the American public for his political

profit—even when most Americans support additional immigration to the country (NIF, 2020). Consequently, nowhere have ambivalent feelings toward immigration played more intensely than at the U.S.-Mexico border, especially because that region has been and continues to be the staging area for much of the undocumented migration toward the United States. Moreover, over the last three decades the public debate on the border has been accompanied by an increasingly acrimonious rhetoric about the border itself as many politicians have managed to portray it as a lawless, chaotic, and uncontrolled space (Tancredo and Dougherty, 2006). Some academics have also contributed to placing the border in that light; *Patrolling Chaos* is an example (2004).

The result of all this is that there has been much confusion on the best ways to deal with these key policy issues and the United States government has reacted mostly by steadily growing the resources dedicated to stemming the flow of migrants across the borderline—especially undocumented immigrants (American Immigration Council [AIC], 2021), with a clear impact on legal and legitimate trade and travel. The border, some have argued, has become significant in the growth of the governmental apparatus dedicated to stem the flow of immigrants at the southwest boundary has been the Border Patrol (BP). Although the agency was created in 1924, and their initial mission was to prevent illegal entries between ports of entry, it never had the kind of resources that it acquired in the years since the mid-1990s and especially after the terrorist attacks of September 11, 2001 on New York and Washington, D.C. In 1994, under the leadership of Silvestre Reyes, the El Paso sector chief patrol agent, BP undertook a program titled “Operation Hold the Line,” by which agents were forwardly deployed to the borderline spaced along in a military-style operation that remade border enforcement (Dunn, 2009). Between 1994 and 2001, BP’s budget went from US\$400 million to US\$1.146 billion and from 2001 to 2021 it went from US\$1.146 billion to US\$4.869 billion. And between 2003 and 2019, BP’s workforce went from 10,700 to 19,600 (AIC, 2021). This kind of growth, necessarily, placed the agency not only in the middle of a thorny public policy issue but it also gave it added incentives to articulate its views and position vis-à-vis the problem of undocumented migration and the U.S.-Mexico border. BP went from a small agency, largely running around along the border to a huge bureaucracy with its own wellbeing at stake in the way the issue was conceived

and dealt with in Washington, D.C. BP had become a big player in the field, with the implication that it must now think about its own interests and not just those of the democratic public it purports to serve. Hence the necessity to look at how they interact with the issue they are charged to resolve.

The numbers are clear. Over the last nearly three decades since 1994, BP has expanded considerably, acquiring more resources and personnel and relying on a greater variety of methods and technological equipment to detect, detain, and deport undocumented migrants at the U.S.-Mexico border. In addition to the nearly 20,000 agents, BP has vehicles of all kinds, flood lights, heat and motion sensors, cameras and watchtowers connected to hi-tech control centers, manned and unmanned aerial vehicles, drones, and numerous kinds of physical barriers, including the controversial but ever-growing border wall of different dimensions depending on the stretch of the border. Additionally, BP agent training is increasingly militaristic, as are their uniforms and weapons (Lyttle Hernández, 2010). Moreover, under a rhetorical stance that resembles the state of exception argument, they also enjoy increasing immunity regarding their operations and actions, as demonstrated by the judicial decision on qualified immunity in the Jesus Mesa Jr. case—where Mesa was exonerated of all responsibility after having shot and killed Sergio Adrián Hernández, a Mexican teenager across the borderline on the other wide of the river (U.S. Supreme Court, 2020). BP has become therefore a major policy actor, and not simply a smallish agency at the beck and call of its principals.

Given the central role that BP has taken as the premier agency dealing with undocumented migration issues at the southwest border, its organizational growth in the context of the controversial nature of undocumented immigration among the public and politicians, the positions and actions of the agency vis-à-vis this central role over the last quarter century give us an opportunity to examine how the BP has sought to define the problem of undocumented migration at the border in the public agenda, leveraged it to build itself up and grow, and pursued its preferred instruments in the matter. Because of the single focus of the agency and the vividness of the issue in the public mind, BP's maneuvering in the field of undocumented migration is a case that presents sufficient evidence to determine whether the agency has developed its own vision of undocumented immigration as a policy issue, and whether and how it has taken its central role as an opportunity to

shape the wishes of its principals—the political leadership and even its appointed leadership.

## **Methodology**

To examine whether the U.S. Border Patrol, currently located within Customs and Border Protection (CBP), has exhibited a penchant for pushing its organizational interests and its preferred methods of solving the issue of undocumented immigrants at the U.S.-Mexico border, this paper relies on a textual analysis methodology. It examines public statements made by the BP appointed leadership, the National Border Patrol Council (NBPC or BP agents union), as well as members of the rank and file, in relation to immigration and the U.S.-Mexico border, the nature of the public policy issue at hand, the potential solutions that should be pursued in dealing with it, and their own ways of dealing with the problems they are charged to help resolve. In reading such statements, much of the exercise will focus on the intentions and assumptions behind the written/spoken lines.

It would be impossible, however, to encompass the organizational behavior of the BP appointed leaders, union leaders, and rank and file members, during nearly thirty years and in relation to the evolving debates regarding the border and its multiple immigration issues. So, to focus this text, the analysis of BP's organizational behavior will be centered specifically on the border wall, a highly controversial but important way in which the U.S. government has sought to stem the flow of undocumented migrants—and an important piece of infrastructure with which BP has enormous interaction. Specifically, this essay will gather statements by the agency's leadership and rank regarding the border wall since 2006 —when congress passed the Secure Fence Act, authorizing the construction of some 700 miles or 1,135 kilometers of fencing on the U.S.-Mexico border. The border wall as such is older, as there were some portions of it already in place in the San Diego sector, but it was the first time that it was systematically legislated and funded by the U.S. government.

## Hypotheses

To guide the examination of the public statements of these three BP actors—the appointed leadership, the NBPC, and some members of the rank and file sufficiently representative of the overall BP membership—two competing hypotheses are set forth. On the one hand, it is possible that they might see the border wall as an additional or auxiliary tactical instrument at their disposal to carry out their job more effectively, in addition to other resources—despite evidence that it may not be as effective in stemming the flow of undocumented migrants (Dear, 2013; Jones, 2016). This would, for example, lead them to advocate for it to be built where they think it might make a difference and to argue that at some other point it may not be as useful. In other words, the first hypothesis would predict that their position is relatively nuanced when it comes to the border wall utility in the arsenal of their tools.

On the other hand, they may argue that it is necessary to do their job and to advocate for a wall that will cover the entire 2,000-mile border, with no considerations for the important differences in the terrain or the problem. They may in fact portray it as a substitute for the work of their agents, as vital to their performance, as a protection shield for their own, and necessary to increasing support for other instruments such as additional personnel or technology. In other words, they may portray the wall as a way to advance their vision of the problem and their preferred solution—a closing of the border with physical barriers for absolute and total control. In the process, they would make themselves not only protectors of the border but also protectors of the border wall. Both positions toward the border wall and relationship to their organization interests would be plausible. This is possible because there is very little a priori indication that the Border Patrol would be a firm advocate for the wall or a strong opponent of it. In fact, as we will see, there was initial hesitance regarding the border wall, and only over time did BP come to see physical barriers as vital to their mission.

Additionally, it is important to distinguish the positions of three different organizational layer actors situated directly in relation to the wall: political appointees, union leaders, and BP rank and file. It is entirely possible that the first group might be more in line with its principals (elected leadership) than the other two groups—union leaders and rank and file. The organization's leaders, after all, are named to follow the general vision of the elected politicians

who appointed them and their statements should reflect the policy established in Washington, D.C. At the same time, the other two groups are primarily on the ground, closer to the border and its dynamics, and have a longer-term vision of both the historical evolution of the issue and the various policies implemented over time and the agency's role in them.

## **Discussing the Wall**

This section breaks down the major positions of these three actors in relation to the wall and related subjects with an eye to understanding how the BP has conceptualized the wall in light of its own organizational interests. The first subsection includes some citations from political appointees, a group of particular interest, as they are often caught between the instrumental view of the elected officials and the interests of the agency they are meant to lead. The second subsection deals with the union, where there is a single and often consolidated voice on behalf of the interests of the agency's workforce. And the third subsection gathers expressions from the rank and file, where uncoordinated positions are stated by different agents, based on their own perspectives on the ground. After gathering a few statements on the border wall and unrelated subjects, the next section of the paper discusses their content based on the hypotheses presented above.

### POLITICAL APPOINTEES

Regarding the border wall, and reflecting the fact that political appointees often take their cues from the elected officials who designate them to their posts, and therefore their views depend on the political leanings of the elected leaders, here is the position of former BP and Trump-appointee Chief Rodney Scott:

I would argue that reason for RGVs [Rio Grande Valley's] most apprehensions in the nation has been successes in our border wall infrastructure and our entire strategy in other sectors. . . . We have been building out this border wall system and the border patrol strategy to secure the border to create operational control of our border, for many, many years across multiple administrations, but



we have never had this much infrastructure and this much investment from Congress and administration in the past. Every mile of the border wall system allows the agents that are out here every day to cover more area. . . . When we say wall system, and I apologize if I just say wall, it is a wall system; it not [*sic*] just a physical barrier, it is exactly that, the access to roads, technology, lighting where appropriate, that mix that allows us to effectively operate (Ortiz, 2021).

Scott's position was already in play earlier on when he met with President Trump in 2018. He attributed order to the wall, even though there is little evidence linking immigration flows with the wall, even as other evidence supports the idea that flows simply shift around to other places of less resistance—going from California to Arizona and now to Texas and even going from above ground to underground (Jones, 2016; Schon and Leblang, 2021). When President Trump asked Scott, a veteran agent who was in the same area more than 25 years ago, about the situation before the existing walls were constructed, he responded: “There was effectively no border in San Diego. It was a chaotic situation. Adding the current fence, made of scrap metal, has at least helped in deterrence.” Scott went on to say: “It changed our environment. We decreased illegal cross-border traffic by 95 percent.” President Trump said the new wall would improve the Border Patrol's ability to secure the border even further. “When we put up the real wall, we'll stop 99 percent, maybe more than that.” Interestingly, Scott added the current barrier has also helped economic development on both sides of the border, an odd claim (CBP, 2018).

The alignment of the elected leadership and the appointed leadership of an agency is interesting to observe as it seems to prevail throughout. This is also seen in the testimony by Carla L. Provost, Chief of the U.S. Border Patrol in 2019. She said:

We must invest in border security, including a modern border wall system. Since the first barriers were constructed in San Diego Sector in 1991, U.S. Border Patrol field commanders have continued to advocate for border wall because of the enduring capability it creates to impede and/or deny attempted illegal entries and because it gives us additional time to carry out successful law enforcement resolutions. CBP and its legacy agencies have invested in border barriers throughout the last three decades, and these historic investments—most significantly the bipartisan passage of the Secure Fence Act in 2006—have received broad support. Today, CBP is constructing a border wall system that includes a combination of various types of infrastructure such as an internally hardened

steel bollard wall, all-weather roads, lighting, enforcement cameras and other related technology. While anchored by the border wall and the impedance and denial capability it brings, the wall system's complementary investments in roads, lighting, and technology address domain awareness, access, and mobility needs as well (DHS, 2019).

However, the vision of the elected leadership and appointed leadership are not always flawlessly aligned. Reinforcing the idea that appointed leaders are sometimes in a difficult position having to juggle the position of the elected leadership and the vision and interests of the agency and its members is the position of Del Rio Border Patrol Sector Deputy Chief Raul Ortiz and Del Rio Sector Chief Patrol Agent Austin Skero, who argued that the border wall is helping to stem the flow of undocumented immigrants, but it need not be everywhere. In the meeting, they show statistics on apprehensions and border seizures to make the case that the border wall does help, even though the border wall appears to have no effect on the number of apprehensions by BP along the border. Still the statement, toward the end of the event, is that the wall is useful in certain areas but not in others, so building the wall should be a more targeted effort (Del Rio Border Patrol, 2021). BP Deputy Chief Raul Ortiz also stated on June 26, 2021 that “another change for the Border Patrol under the new administration is the shift away from deploying security infrastructure, including anything that resembles a wall, and instead, a renewed focus on increasing the speed and efficiency of migrant processing.”

Interestingly, and given the Biden administration policy, he goes on to say: “We got to get better at processing people. We gotta get faster at processing people. We got to get faster at transferring those individuals over to the other agencies,” implying that their job is to catch people, with or without a wall. Ortiz's position is interesting in its nuance as he came to replace Chief Rodney Scott, named to the post during the Trump administration and “forced out of his role under the new administration. Scott oversaw the implementation of a controversial public health order known as Title 42 shortly after he assumed the top role in February 2020 and supported Trump's border wall” (Owen, 2021).

## UNION LEADERSHIP

The ambivalent position of the appointed leadership, which is caught between the directives of the elected politicians and the vision and interests of the agency contrasts with the more unified position of the union leadership. Brandon Judd, the leader of the NBPC stated in January 2021 that “President Joe Biden’s proclamation to stop work on the border wall between the United States and Mexico could come back to haunt him.” He went on to say: “These are actions that don’t seem like he’s interested in a second term because it’s going to hurt him down the road” (Hammond, 2021).

Judd’s position is much less indecisive and clearly in support of the border wall. He lamented the directive assessing the legality of the funding and contracting methods used to construct the wall; exploring the administrative and contractual consequences of ceasing each wall project; and to “the extent permitted by law” immediately pausing the obligation of funds related to its construction (Hammond, 2021). This was fairly consistent with his own position just a couple of years earlier when, in a congressional hearing, he said:

As an agent who has extensive experience working with and without border barriers, and as the person elected to represent rank-and-file Border Patrol Agents nationwide, I can personally attest to how effective physical barriers are. A wall in strategic locations will ultimately lead to far greater effectiveness and allow us to direct our very limited manpower resources to areas without barriers and where illegal crossings are more likely to take place. I implore the subcommittee, as well as CBP, to follow through with these proposed investments and actually build walls in strategic locations. Regardless of the amount of funding being appropriated to CBP for tactical infrastructure or emerging technologies being deployed to the border, the fact remains that the most crucial asset that the Border Patrol has is its agents (House of Representatives, 2018).

Interestingly, BP’s union has not always had a clear position. Their movement toward unconditional support for the border wall evolved over time. In a 2012 posting on its website, since deleted, for example, the union expressed that “building walls and fences along the border to stop illegal immigration would be ‘wasting taxpayer money.’” It also stated that “border barriers don’t tackle the root causes of migration—and could potentially encourage more migrants to enter the U.S. fraudulently or overstay visas.”

“Walls and fences are temporary solutions that focus on the symptom (illegal immigration) rather than the problem (employers who knowingly hire illegal aliens),” the union wrote in a media FAQ. But the webpage was taken down after the union’s president endorsed the wall at a White House news briefing (Hesson, 2019). It is ultimately not clear why they moved toward support for the border wall as a central instrument in dealing with undocumented migration, but it may have to do with the rhetorical shift that came with the asylum crises that began in the summer of 2012 and have continued to this day and the increasingly aggressive rhetoric against migrants during the 2015-2016 presidential campaign.

The BP union’s activism toward the border wall and draconian policies toward undocumented migration did not stop with overt support for physical barriers at the border. They politicized their position by actively endorsing Donald J. Trump both in 2016 and in 2020. This took the union well beyond a mere consideration of the border wall as an instrument for effectively performing their job into outright political terrain. The NBPC, for example, made this statement in its endorsement of the candidacy of Trump for the U.S. presidency:

There is no greater physical or economic threat to Americans today than our open border. And there is no greater political threat than the control of Washington by special interests. In view of these threats, the National Border Patrol Council endorses Donald J. Trump for President—and asks the American people to support Mr. Trump in his mission to finally secure the border of the United States of America, before it is too late.

Clearly, this statement goes well beyond a consideration that they are an instrument at the disposal of the president and into a clear manifestation of a preferred policy—an anti-immigration policy with all the auxiliary rhetoric and policies that Trump proposed to put “America First.” This constituted, in a way, an endorsement of certain policies toward the border and immigration, and an active positioning of preferred policies in managing America’s immigration and border security (NBPC, 2015).

## RANK AND FILE

As soon as he took office, President Joseph R. Biden halted the construction of the border wall. Soon after, on February 3, 2021, the Center for Immigration Studies, a notoriously anti-immigration think tank, published a piece by Todd Bensman, containing some statements by the rank and file of the border patrol. The statements are striking for their advocacy of the border wall by agents on the ground. The article immediately begins with an agent criticizing the “experts” who argue that border walls do not work. The unknown agent interviewed by Bensman says: “You hear TV, and they would say, ‘well the experts say the wall isn’t effective,’ and I never understood who these experts were”. . . . “Because all of *our* data says, you know, 90 percent effective rate . . . dropping of crossings . . . increased apprehensions and all of that. And it’s like, well, who are these experts to say it wasn’t effective and what are they basing that on? You know, they never really specify” (Bensman, 2021). The agent himself never specified his data either but asserts that the border wall is effective. But what is striking is the faith that the interviewees expressed regarding the border wall as an instrument that can help stem the immigration flow. The same article clearly states that “CIS is withholding their identities” because they are “not allowed to speak to the media without permission.” This clearly indicates that these agents feel strongly about the border wall as they are willing to speak to the media without permission, albeit in anonymity.

Two other agents are also interviewed for the same article—one in Deming, NM and another in El Paso, TX. Their long citations are as follows:

That was always a fallacy that “well, they can dig under. . . . They can climb over or they even have those gliders that come over,” and it’s like yeaahhh nothing’s 100 percent. It [a wall] was always something we wanted. It was always something we wanted more of. Every administration gave it to us. It always was proven effective. . . . It’s all a question of how much more security do you receive for your output and what you invest. And I just think this is going to be a hundred-year investment. This is going to last a hundred years easy, you know with maintenance and all that. And so the effectiveness of that and what it costs us to apprehend somebody and the deaths that we get out here because of you know . . . them crossing and that being reduced. And so, what’s the value of all that? To me I always thought it made sense.

And the second agent argues that:

As much as people like to let their gums flap about things they don't know what they're talking about . . . a wall is a *great deterrent*. *That whole tall-wall-taller-ladder thing? Haha, fine, let them lug a 45-foot ladder out there in the middle of the desert. I don't care.* It's a deterrent. It's not a one hundred percent guarantee, but it [a wall] stops most of the people who are mediocrerly [*sic*] going to commit a crime. A lot of people have no interest in risking their lives to climb that high or lug a band-saw and cutting tools out to the middle of nowhere. A lot of people are deterred by just the idea of all that. Nothing will stop everybody, of course, but for a lot of people? They're not honestly that motivated to go through all of what it takes. Most people are not willing to risk their lives to the extent people think they are.

The agents interviewed clearly view their mission as stemming the flow of undocumented immigrants at the border, with little or no thought to a different way of managing immigration to the United States. Their mission is narrow, and they understand it that way. Two other agents are also cited extensively, one in the El Paso sector and a second in the Big Bend sector. Their statements are also telling. The first states that:

Honestly, when they started putting this one over there, it's like everything's down. Everything's better. It's a good bit easier. Everything's moving to other areas where there isn't any. Obviously it's easier for us. From here I can see people start coming this way (pointing to a rugged desert area beyond the wall), and by the time they get up on the wall, like, they have to go around to the back end (to a point where the wall gives way to an open mountainside). So it's like, when there's not anything, it's like "We're here. We'll just cross." It's kind of like nothing.

And the second argues:

The wall starts and then it ends a few miles down, and in that area where the wall's at, we never have any problems. It was a pretty awesome thing because, before that, our guys were getting into gunfights with drug runners who were driving through the river. It [a wall] makes it hard to drive a packed drug vehicle through the water. But where it ends? We've seen things where along the river they bring people down there by the truckload and they drop as many off as they can because they know we can only catch one or two out of ten. They get picked up and go into the interior of the country to go live as illegal immigrants. Many areas here are very undermanned. At most we might catch three

or four out of ten. . . . With the wall not being finished . . . there's really no threat to the ASOS [Alien Smuggling Organizations]. We have five miles of finished wall and a hundred miles of porous border. They've got plenty of places they can go. That's the sad part. There's a wall that just sort of stands there doing nothing to the ASOS . . . . When there was a commitment to building fences and walls, there had to be a commitment to finish. Without committing and completing it, it's really just a wall that only sort of makes people go around it. It's really no sweat to the ASOS.

## Analysis

Although the citations above are not comprehensive of all members of the three tiers of BP-related actors—the political appointees, the union, and the rank and file agents—they nevertheless are sufficient to draw several important conclusions. This section does just that.

First, support for the wall, although somewhat uneven in the beginning, grew steadily over time. In the first few years of its construction, as evidenced by the deleted post on the BP union's website, there were some doubts about its utility and impact on the organization. There was by no means a consensus on its desirability. But overtime, they came to see it as useful to their mission, despite evidence that it has a rather complicated relationship with undocumented migration and nearly zero impact on the repeated asylum crises that began in 2012. The rank and file also came to support the wall almost unconditionally, providing greater detail as to how the wall helped their day-to-day activities. It was only the political appointees who appeared to be more attuned to the relationship between the Washington, D.C. elected leadership and the wall as a means to address undocumented immigration. They may, deep down, support it, but their statements, such as those by Ortiz, show more nuances than those of the union and a different take than that of the rank and file.

Absent in the statements, however, were any considerations of how the wall fit in dealing with undocumented migration as a policy problem. It was dealt with mostly as a tactical solution, sometimes placed within a larger set of tools, but with hardly any regard to its relationship to U.S. immigration policy. Nonetheless, over time, its support came to be politicized, as Trump entered the national scene and members of the BP saw themselves freer to

pursue a stronger rhetorical stance toward migrants, immigration, the border, and the border wall. Clearly, the more permissive environment allowed them to show their preferences more overtly in terms of how they define the problem and how they prefer to deal with it. That permissive rhetorical environment also allowed them to radicalize their position vis-à-vis the wall as a symbol of policy and of course policy failure, as seen in the endorsement of Trump as a candidate. Equally striking is the single-minded focus on the utility of the wall, with hardly any mention of the multiple criticisms against such infrastructure project, such as the impact on the environment and animal species that straddle the borderline. And there was no mention of the fact that most drugs are smuggled at ports of entry and not between ports of entry or that walls are often circumvented by tunnels and recently by drones. It is likely that such considerations would create dissonance among BP-related actors and they might have to consider the limitations of the wall itself. Such dissonant information is often discounted when it creates uncertainty, ambivalence, or muddled arguments. Most agents prefer clear arguments for or against a preferred definition of a policy problem, set of instruments, etc., and ignore the potential evidence that may contradict the set course.

This is further reinforced by the fact that agents on the ground appear to prefer to heighten the threats they face. They speak of organized crime and conflate the issues of undocumented migration and drug smuggling. They portray the border as a chaotic space, where there is a conflict going on, with them at the front lines. By saying this, they clearly are making the argument that the border wall is absolutely required and that it helps them stem not only the flow of undocumented migrants but also the activities of drug cartels. Of course, there is hardly any mention that drug cartels have found effective ways to work under, over, and around the wall, and it is migrants who are forced to move to walls that present less of a barrier to cross into the United States (dying in the process) or, more recently, have opted for turning themselves in and asking for asylum. That is where the wall becomes perhaps useful, but only in shifting the problem to other areas, not in resolving it. That, however, is not something that BP actors would acknowledge.



## Conclusion

The Border Patrol and its diverse actors are not a monolith, of course. They are a diverse set of actors, with many different backgrounds and individual positions on key public policy issues. Even so, one thing emerges from reviewing dozens of statements by the three types of actors that compose the community: They increasingly support building the border wall. It was not always so, but they have come to see it as vital to dealing with the issue they are charged with—ensuring that the border is not breached by undocumented migrants (and drug smugglers). In the beginning they thought that the border wall was a “waste of taxpayers’ money” and that it was a “mere speed bump” in the march of crime. Over time, however, most changed their mind and moved in the direction of nearly complete support of the border wall. By 2020, the Department of Homeland Security was arguing that the border wall was “effective, and disrupting criminals and smugglers” (DHS, 2020). In fact, in an earlier survey, published by *The Washington Times*, 89 percent of agents in the BP rank and file supported the border wall and only seven percent thought it was not useful. All nuanced understanding of the undocumented migration problem was lost in the process. Few speak of the entire chain of migration, the role of organized crime, or the potential to solve the problem in ways that are different to deterrence at the borderline. The border wall fits well within that two-dimensional view of dealing with migration—at the borderline. The border wall became a symbol of their work, a structure that supports more than their mission. It supports their basic organizational orientation to undocumented migration—dealing with it at the borderline.

There are also few considerations regarding the impact of the border wall on the environment, the species that straddle the borderline, or the damage done to communities throughout. The border wall is now more than an instrument. It is a symbol of their entire strategic approach to the border. It is also a way to simplify the definition of a problem that is likely to require a more comprehensive view, perhaps even a regional view—unauthorized and disorderly migration toward the United States. In fact, the failure of the border wall to deter migrants, especially those who are now presenting themselves and requesting asylum at the border, is lost on the Border Patrol by now. There is nearly a sense of betrayal among border agents. Bensman’s work, cited above,

is clear: There is widespread lament among BP agents over the Biden administration's halting the building of the wall. Their disappointment in the Biden administration's willingness to stop the border wall construction, although not necessarily dismantling what is already built, is evident.

In the end, BP has come to bestow over the border wall a meaning that matches its understanding of the immigration problem. The border wall returns a simple understanding of their mission and a material correlative of the way the problem should be dealt with—deterrence at the borderline, as that is the ultimate object of their focus and the physical place of their day-to-day work. In that sense, there is hardly any surprise that they have come to support the border wall. It advances their organizational interests and their preferred method in dealing with the issues of undocumented migration; it provides political support for their material prosperity; and it enhances their indispensability—this time as protectors and guardians of the wall itself. At the end of the day, BP and its allies have defined the wall as useful to themselves, and if politicians like Trump are willing to support it, the better for them—in effect, they could say, we are in luck.

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# **FRIENDS ON OTHER CONTINENTS: REPRESENTATIONS OF BIDEN'S MIGRATION DIPLOMACY OUTSIDE THE AMERICAS\***

*Camelia Tigau*

## **Introduction**

A report released by the Institute for National Security Studies before Biden took over as president anticipated that “most of the focus and resources, at least early in the new administration’s term and possibly throughout 2021, will be invested in the effort to ‘heal America’s soul’” (Shavit, 2020).

According to other authors such as the London School of Economics economist Van Reenen, this measure would include a boost in the size of the science, technology, engineering and mathematics (STEM) workforce, including an emphasis on talent attraction through immigration and an increase in education investment. This could benefit kids from low-income backgrounds, minorities and women, helping them to become innovators. Finally, Van Reenen wrote about the crisis as a learning opportunity for the new president and his administration:

History teaches that crises can be moments of great political and social change. We are at such a historical conjuncture when reset button can be hit on the model of growth. After the Second World War, the West re-invented itself; we realized our deep interdependence and the necessity of investing substantially in what Vannevar Bush called (in 1945) the Endless Frontier of science (Van Reenen, 2020).

President Biden did indeed put an emphasis on raising levels for skilled migration, but that was not the main migration issue in the media in general, neither in the U.S. nor abroad. In turn, migration from Central America was one of Biden’s hot potatoes during the first three months as a president,

\* Special thanks to research assistant Abril Aguilar for her help with media monitoring.

along with vaccines and the COVID-19 pandemic. His actions to help migrants during COVID-19, accept more refugees, increase the levels of skilled immigration at levels equal to the ones that existed during the Obama administration, and allow work permits to skilled immigrants' spouses are all efforts with a direct economic impact on the recovery of the country from the pandemic. However, they also have a broader meaning of a complex migration diplomacy, based on philanthropy and the logic of R&D investment. Migration diplomacy is thereby understood as a set of actions meant to advance migration as a humanitarian issue, rather than a political crisis.

This chapter analyzes the media representations of Biden's executive actions on migration in his first three months in power, including his actions to promote the United States as a welcoming country and a leader in talent attraction. While media from countries directly involved in the Central American crisis (El Salvador, Honduras, Guatemala, Mexico and the United States) have extensively published on the issue (a humanitarian crisis but not necessarily a migration one), this chapter explores media from regions that are not directly involved in the issue. In this way, our analysis is based on a combined pragmatic analysis of Biden's speeches compared to the political context and media representations in regions other than the Americas: Asia, Europe, and the Middle East.

Some of the first actions undertaken by Joe Biden in his first three months as a president may be analyzed as an effort to reposition the United States as a multilateral partner and to deprovincialize the American perspective on immigration. In this way, Biden sought to promote his country as a moral, cultural and scientific power, but also to reestablish broken relations with Muslim countries, Central America and India that had been damaged by previous restrictions imposed by Donald Trump. As a Reuters title states, " 'America Is Back': Biden Touts Muscular Foreign Policy in First Diplomatic Speech" (Holland and Alper, 2021). Biden has positioned himself as a migration president and a president who repairs damage done by his predecessor.

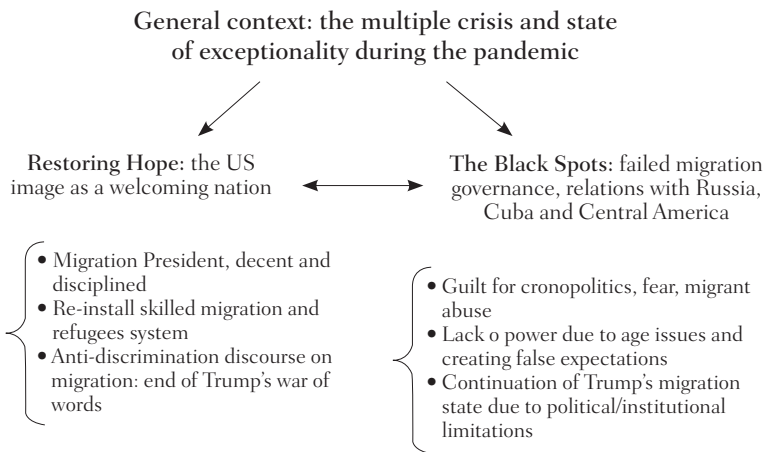
The hypothesis that sustains this study is that Biden's approach to migration may be considered in terms of a "country of origin" strategy to reposition the U.S. image, rather than a genuine attempt for a migration reform. His migration diplomacy was intentional and planned as a political strategy to promote the image of the United States, but also differentiate himself

from the previous Donald Trump administration. This chapter has a classical structure in three main parts: the first one proposes an interdisciplinary theoretical background based on international communication, diplomacy and migration studies; the second one explains the method for media analysis; and the third one discusses results from newspapers monitored in Europe, Asia and the Middle East.

### Theoretical Background: From Country Image to Sovereignty Defense

We propose an original model of analysis for the representation of Biden’s migration policy in non-American media, which may be interpreted in a general context of the multiple crises and state of exceptionality during the pandemic that overshadowed the first part of his presidency (see figure 1). In line with this model, two general trends may be identified in media discourses on Biden’s migration policy: a) restoring hope: the U.S. as a welcoming nation and b) “black spots”: failed migration governance and failed relations with Russia, Cuba, and Central America.

FIGURE 1  
 REPRESENTATIONS OF BIDEN’S MIGRATION DIPLOMACY  
 IN NON-AMERICAN MEDIA



SOURCE: Developed by the author.

The first framing, of restoring hope, is more evident soon after Biden won the election and in his first month in power following his inauguration on January 20, 2021. This first general framing pictures Biden as an “immigration president,” decent and disciplined, who tries to restore the image of the United States as a welcoming country, reinstall a refugee system and the attraction of skilled immigration. In this way, his anti-discrimination discourse on immigration is reproduced as a way to put an end to Trump’s war of words. This framing is generally more present in European media and some Asian journals, but is soon criticized through a second opposed trend: the one that outlines “the black spots,” or foreign policy challenges regarding his tense relations with Russia, adding Cuba on the terrorist list, and failed migration governance towards Central America. To illustrate this second, more pessimistic approach, certain general threads are recurrent in media monitored in the Middle East and Asia, such as Biden’s guilt for immigrant abuse, fear, and planned cronopolitics of keeping people waiting at the border. He is also implicitly or explicitly accused of lack of power, due to age issues and creating false expectations toward immigrants. Finally, he is pictured as someone who may simply continue Trump’s migration state due to political/institutional limitations. In what follows, the two main framings—hope regarding the improvement of immigrant situations and its opposite: pessimism regarding its unfeasibility—are described using general concepts of international communication theory and immigration scholarship.

### **Reasons for Hope: The Migration President**

In the first place, the framing of hope may be better approached through the concept of country image and knowledge diplomacy. From this perspective, the United States is pictured as a historical nation of immigration, where immigrants have significantly contributed to welfare and consolidation of the United States as a world power.

In order to understand this positioning, we may recall the literature on country of origin as a basis for carrying out migration diplomacy. From a certain point of view used by tourism literature, countries are products that need to sell their destination image (Wang, 2020). This may be extended to investment and other economic exchanges, in which the foreign public opinion tends to

position itself through positive or negative attitudes toward a country. Through extrapolation of the aggressive discourse carried by the previous president, Donald Trump, many authors have shown a negative impact on the U.S. image abroad, from a leading country in democratic and liberal ideas, partly built by foreign talents, to one that was downgraded to a place of retrograde politics and conservative economic measures.

According to the theoretical model of country of origin by Motsi and Park (2020), such stereotypes have an impact on the micro and macro image of the United States. In general, stereotypes tend to be dichotomous: good or bad, and are based on the perceived warmth (i.e., caring) and competence (i.e., hardworking characteristics, skillfulness) of its people. These types of caricatural thinking lead to a macro image of a country—that is, the generic image that consumers/public have about a country. By comparison, the micro image refers to certain products from that country (Motsi and Park, 2020: 115).

By extension, the United States as a great power may be considered the macro image, while migration or immigration can be studied at a micro-level or by-product directed to foreign workers and would-be migrants. The two levels—macro and micro—are related. However, damage on one level, such as the abuse of human rights of immigrant workers or discrimination against foreigners of certain racial origin in the United States, may actually affect the overall image of the U.S. as a welcoming nation and further impact the country's wealth. This simple argument is actually behind the present administration's strategy to rehumanize immigrants, as a way to reposition the entire country as a friendlier partner in international society, a moral power that used to be a model for democracy.

At this point, it is important to outline how the image of the United States as a moral, democratic, and scientific power was created based on the contributions of certain elite diasporas. Recent literature that was published during the years of Donald Trump's administration, such as Burke (2017), Kando (2018), Gros (2018) and Van der Linden et al., (2020) has pointed to the role of skilled immigrants for U.S. scientific culture and its exceptional economic outcome. In his book *Exiles and Expatriates in the History of Knowledge, 1500–2000*, Burke (2017: 138) describes how knowledge immigrants have helped to deprovincialize and introduce other cultures to the United States, particularly since the great exodus from Hitler's Reich in the twentieth century.

One year later, Kando published a demographic history of the Nobel prizes in which he analyzed what he calls the massive “brain transfer” from Europe to America, after World War II. The migration of Jewish and other refugees fleeing Nazism, plus the migration of other intellectuals was welcomed by an open-door policy of the United States. In this way, the United States has benefitted from a “gigantic brain drain” (Kando, 2018: 69) and doubled its Nobel prize laureates. The political reason for Kando’s study, as the author himself shows, was to pinpoint to Trump’s “short-sighted move” to stop immigration, as it “has been the country’s greatest source of strength, vitality, scientific progress and future wealth. Without immigrants, America would not have Google and Apple. Few things have benefitted this country more than the free flow of immigration” (Kando, 2018: 76).

In the same vein, Gros (2018) carries an empirical study of the per capita yield of science Nobel prizes and sees a decline in some Nobel prizes such as the ones awarded to natural scientists in the United States. Gros concludes with a question on whether the U.S. era is coming to an end. In contemporary times, Nobel prizes may indeed serve as an indicator of a country’s scientific productivity (Van der Linden et al., 2020) and they also speak about the attraction of human capital from abroad.

In this way, the intention of Biden to keep strengthening R&D investment, attract skilled migrants, and repair relations with China could be interpreted as a return to science diplomacy that has historically characterized U.S. policy and even helped the country to win the Cold War (Krasnyak, 2018). In particular, knowledge diplomacy (Knight, 2020) focuses on academic exchange, and it may serve to attract international students to the U.S., along with human and economic capital.

Enrollment of foreign students in the U.S. slowed during Trump’s administration, due to certain measures to suspend H1B visas, and further decreased as a consequence of the pandemic. Chinese students are the main population among foreign graduates, accounting for a third of all international students in the United States with a population of 372,000 before the pandemic (Allen and Ye, 2021) and an annual contribution US\$15 billion to the U.S. economy (Malden and Stephens, 2020). Racist discourse and suspicions around espionage, which led to the suspension of some professors and students of Chinese origin enrolled at U.S. universities have however, deteriorated this exchange relation. According to Allen and Ye (2021), the

United States is now perceived as dangerous and unstable, and future Chinese students may fear study in the U.S. due to the mismanagement of COVID-19, which includes the exemption from wearing masks.

### **“The Black Spots”: Lack of Power in the Migration State**

In the second place, the more pessimistic view on Biden’s faults and limitations (what I call “the black spots” of his administration) may be analyzed based on previous literature on the migration state by Adamson and Tsourapas (2020) and Hollifield (2004), as well as from the critical stands on the commodification of citizenship for economic, demographic, and, above all, racial purposes. Since 2004, Hollifield proposed the concept of migration state that can be applied to the cases of the United States and other major receiving countries to control their borders and trade. These states seem to be caught in a “liberal paradox,” as they follow the laws of trade, but they are required to control their borders for human flow purposes and carefully decide who gets admitted as a migrant or citizen.

Adamson and Tsourapas (2020: 858) apply the concept to include states of out-migration from the Global South that try to manage migration as a strategy of economic development, alleviate unemployment, and secure foreign direct investment via remittances. In this way, weak and non-democratic states are suffering from what the author calls the “illiberal paradox,” as they seek to restrict emigration for political and security reasons, but they also need to encourage emigration for the economic reasons mentioned above as well as to control overpopulation (Adamson and Tsourapas, 2020: 861). For instance, Mexico’s Bracero and the following “Tres por uno” programs are examples of such a dilemma between using migration as an escape valve but also trying to get economic benefits from migrant workers in the United States.

According to this model, the U.S. may be considered a neoliberal migration state, carefully selecting immigrants based on economic background and race, rather than on humanitarian reasons. This tendency was further deepened by Trump’s policy and discourse, while Biden seems to revert to a more friendly discourse based more on human rights than on sovereignty

interests. The representations of his stand on immigration will be discussed in the media analysis that follows.

## Method

We offer a study of image of Biden's immigration policies and initiatives taken to deal with those at the border with Mexico and other immigrant populations who try to reach the U.S. or are already inside the country. When focusing on Biden, we accept that certain personalities such as presidents do have a relevant impact in affecting the image of their country abroad. A previous work by Balmas (2018) shows that a leader's messages may have positive characteristics (e.g., trustworthy and warm) or negative characteristics (e.g., untrustworthy and cold).

In this way, Balmas proves the psychological effects of the personal projection of leaders on how a certain country is perceived. Looking through the lens of immigration, we see a contrast between Donald Trump's aggressive messages toward migrants and a warmer one promoted by Joe Biden, which may further affect the representation of the United States as an un-welcoming vs. welcoming country.

However, such interpretations and generalizations may have limitations depending on different contexts and political background. According to Agadjanian and Horiuchi (2020: 584), immigration policy content may have a larger effect on worsening/improving public opinion than the message cue given by presidential discourse. In this way, foreign opinion toward the U.S. does not unconditionally hinge on its political leader. By extension, Agadjanian and Horiuchi suggest that Trump has not irreparably damaged U.S. image abroad (Agadjanian and Horiuchi, 2020: 600).

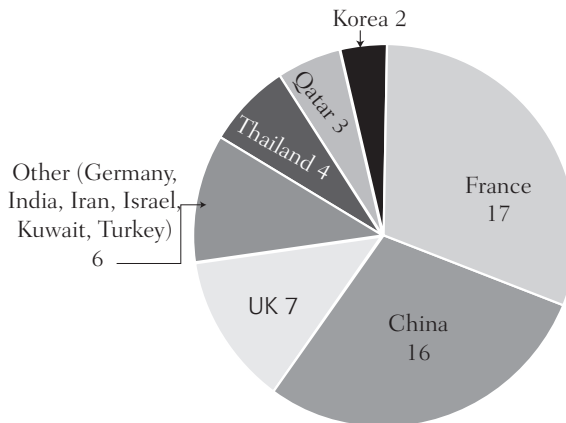
Using data and media representations from the first hundred days of President Biden, we find that the damage may indeed not be irreversible; however, regions and countries with a historical background of tense relations with the U.S. and territories that had been more affected by restrictive policies such as Trump's ban, also tend to picture Biden in a less optimistic way. Media from the Middle East are more cautious about his policies, while European media believe more in the message of rehumanizing migrants promoted by Biden.



Monitoring was focused on non-American media, a geographically restrictive approach that has been previously used by authors such as Endong (2019). In this way, most of the countries included in the study are not directly involved in the current immigration issues of the U.S., with the exception of China, where reports were released on the difficult conditions of Chinese foreign students in the United States during the Trump administration. In media studies, proximity is also considered as a way of appreciating how a topic such as regional migration in the Americas may be exported and interpreted by newspapers in other regions of the world.

To tackle the wide variety of messages and formats, we use a classical framing methodology to distinguish between the main topics around Biden and his approach to immigration. Based on a similar methodology, Viladrich (2019: 2) has pointed to an active role of the media “in prompting their audiences to align with a specific vision on a controversial topic, as when supporting a humanitarian approach (i.e., immigrants deserve compassion) or when conveying the idea of a threat (i.e., immigrants are dangerous subjects).”

FIGURE 2  
DISTRIBUTION OF ARTICLES ANALYZED BY COUNTRY



SOURCE: Developed by the author.

The qualitative data analysis for this chapter consisted of 55 journal articles from 12 countries (figure 2), published between January and May 2021 in their online editions, summing a total of 18,573 words. From the selected media, non-American newspapers that published most were *Le*

*Soleil* (16 features) and *China Daily* (Weekly, Global, and Hong Kong Edition, 13 features)—see table 1. Most of the articles (70 percent) were written in English and the other 30 percent in French.

TABLE 1  
ELECTRONIC JOURNALS AND ARTICLES ANALYZED BY COUNTRY

<i>Journal</i>	<i>Country</i>	<i>No. of articles</i>
1 <i>Le Soleil</i>	France	16
2 <i>China Daily</i> (weekly, global, and Hong Kong edition)	China	13
3 <i>Bangkok Post</i>	Thailand	4
4 <i>The Guardian</i>	UK	3
5 <i>The Korean Times</i>	Korea	2
6 <i>Qatar Tribune</i>	Qatar	2
7 <i>The Daily Telegraph</i>	UK	2
8 <i>Global Times</i> (China)	China	1
9 <i>Shanghai Daily</i>	China	1
10 <i>Yuman Sun</i>	China	1
11 <i>Ouest France</i> (Rennes)	France	1
12 <i>Deutsche Welle</i> (English edition)	Germany	1
13 <i>Quartz India</i>	India	1
14 <i>Iran Daily</i>	Iran	1
15 <i>The Jerusalem Post</i>	Israel	1
16 <i>Kuwait News</i>	Kuwait	1
18 <i>Gulf Times</i>	Qatar	1
19 <i>Daily Sabah</i>	Turkey	1
20 <i>The Independent</i>	UK	1
21 <i>Yorkshire Post</i>	UK	1
	Total	55

SOURCE: Developed by the author.

Even though there is an implicit bias when selecting features in these languages, it is important to note that their audience may be a regional public with cosmopolitan cultural capital that may actually be interested in news issues that do not address their immediate proximity. In what follows, we describe the results of the media analysis, which ranges from a discourse

of hope to pinpointing certain more pessimistic clues about Biden's migration policy, based on evidence from Europe, Asia, and the Middle East.

## European Media

Biden's image and his corresponding action on immigration were generally favorable in his first three months in power, according to the selection of European newspapers researched for this chapter. He was perceived as a president who tries to do justice to immigrants, in terms of discourse and actions. One of the journals with the most publications on Biden's image is *Le Soleil* in France. Following the methodological objectives described above, 16 articles were chosen for qualitative analysis, most of them news features with some opinion considerations. Some of the pieces are not original research done by *Le Soleil*, as they are authored by Agence France-Presse (AFP).

According to *Le Soleil*, Biden's campaign on immigration seems to be based on symbolic clues: he assigns the role of family migrant reunification to his wife, Jill Biden, as a sign of a president who appreciates family, understands it, and relies on its values. An article from January 29 in *Le Soleil* (AFP, 2021a), describes Jill Biden as a university professor with a PhD in educational science—a stark contrast to Melania Trump—and quotes from her speech after the visit at a migrant camp in Mexico: “We are a welcoming nation, but this is not necessarily the message that we send.” By comparison Melania Trump had visited a facility of child migrants in 2018, wearing a t-shirt that read: “I really don't care, do u?”

In this way, Biden's first actions were analyzed as part of a broader view on the necessity to restore the asylum system and renew aid provided to Palestinians. However, he did not reach the extreme of proposing open borders; on the contrary, all the ideas about protecting asylum seekers were occasionally suspended under conditions of exceptionality imposed by the pandemic, with the argument that it “takes time” to repair all the damage. Among other practical measures, this meant that Biden did not suspend a public health order issued by Mr. Trump at the start of the coronavirus pandemic that allows the United States Customs and Border Protection to immediately deport almost everyone trying to enter the country, including asylum seekers (Spagat, 2021 in *Le Soleil*).

However, the president does show intentions of reestablishing national honor and “delet[ing] the shame” of family separation (Plantive, 2021 in *Le Soleil*), which can be interpreted under the frame of discursive justice. By February 2021, Biden promised to reopen legal recourses for Central American migrants and asylum seekers. Almost paraphrasing from Global Compact for Migration, U.S. Secretary of State Antony Blinken declared that “international cooperation is essential to guarantee a secure, orderly and humane migration process.”

The exceptionality during the pandemic made it harder to implement plans on immigration. Several pieces of news by Cartillier (2021a, b and c) show that energy cuts, high unemployment figures, fear of inflation and the general unstable international situation give a tough context for Biden’s first hundred days. Says Cartillier (2021): “After the first hundred days at a good pace, with a discipline contrasting with the chaos of the Trump years, the Democratic president has entered a more delicate phase of his mandate.” The situation will complicate even further due to conflicts with Russia and further classification of the U.S. and the Czech Republic as “unfriendly states” by President Putin (AFP, 2021b).

By May 2021, Biden announced an increase in refugee figures up to 62,500 in 2021, which would double in 2022, in what appears to be a decision to break with the Trump perspective, but also a reaction to several critiques from migration supporters who signaled he was not doing enough to help Central American migrants. This program would take refugees established in UN camps, who have previously applied to be resettled in the United States.

In general, Biden’s first programs and initiatives allowed for high approval rates: 63 percent of the Americans thought he was doing a good job at the beginning of May, and even more so (71 percent) regarding the pandemic (Pace and Fingerhut, 2021). Almost half of the Republicans (47 percent) also approved his ways out of the pandemic and his approach to vaccine diplomacy (Cartillier, 2021b).

The most recurrent framing in French media (*Le Soleil* in particular) is the pandemic and relations with Russia. The thread of relations with Russia is recurrent in *Le Soleil*, with planned summits and official meetings reminiscent of the Cold War (Fontemaggi, 2021). Immigration is a secondary topic to evaluate Biden, less important than in Asian and Middle East media. Other issues, such as the liberation of some Guantanamo prisoners, tie

several aspects together, as some of the prisoners are previous immigrants from Middle East countries (AFP, 2021c).

President Biden also launched a discursive strategy against discrimination and racism of Asian migrants in a pandemic context, which is surprisingly not an important issue in Asian media considered in this study, but it was targeted by European outlets. Biden denounced the “horrible poison” of racism and lamented that so many members of this community have been “attacked, vilified, and made scapegoats” in recent months (AFP, 2021d). In particular, people of Chinese origin were accused of causing the pandemic, which led to the murder of some Asian female workers.

Different approaches from *Ouest France* (January 18) also mention the conflict (“war of words”) between the U.S. and China that could affect educational exchange and skilled immigration. News from *Ouest France* continuously picture forced migration from Central America, with plenty of details that implicitly point to a general crisis that cannot wait for good or bad moments of U.S. Immigration policy. Indirectly, this is a critique of Biden’s declaration that “it was not the moment to come for Central American Migrants.”

The UK media pictures Biden as a decent president, with a more humane approach to immigration than his predecessor, but having a difficult time undoing previous actions. Marcus (2021) for *The Independent* as well as Holpuch (2021) for *The Guardian Weekly* write features that describe Trump as a phantom difficult to leave behind with regard to U.S. migration policy. *The Guardian Weekly* writes “Trump’s Influence Still Lingers over U.S. Immigration” to describe the difficulty of starting deportations and border violence under a pandemic situation.

However, two articles by *The Daily Telegraph* bring brighter news: Biden has instructed agencies to stop using the “illegal alien” phrase. “‘Alien’ will become ‘noncitizen or migrant,’ ‘illegal’ will become ‘undocumented,’ and ‘assimilation’ will change to ‘integration’” (Ensor, 2021). His friendlier approach give space to a critical interpretation that migration authorities were caught by surprise regarding the number of unaccompanied children, whom Biden decided not to return.

Even though in general, Biden seems to have high rates of approval in his first three months, his image regarding immigration actions is approved by less than half (47 percent) of voters, according to the UK media. In this

sense, an article by *The Daily Telegraph*, published in May by Lynch and Wallace (2021), also refers to disappointments regarding the number of jobs created: 700,000 less than what Biden had expected in a context of economic recovery from the pandemic.

Regarding immigration from Central America, it is worth recalling an in-depth feature from *Deutsche Welle* (English edition), released on April 5, 2021. Migration from Central America, Honduras in particular, is described as an exodus out of control for the U.S. and Mexican authorities. An episode with migrants drowning in the Rio Grande River describes the inaction of the Border Patrol, which doesn't intervene to save people, even when they see them dying. "According to the Border Patrol, officers encountered 100,441 people making unauthorized crossings into the United States in February, the most since June 2019, when the figure was 104,311. Nearly 20,000 of those people were from Honduras [...] Pictures of drowning Hondurans and U.S. border officials doing nothing to intercede may scare people for a while, but won't likely serve as a preventative for long," writes *Deutsche Welle*.

The anonymous author explains Central American immigration to the U.S. based on economic and climate reasons: people are unemployed and their countries have been hardly hit by tropical storms, hurricanes, and draughts in the last year. The rise in Central American migration may also be due to Biden's friendlier discourse towards immigrants, a discourse which coyotes are using to attract people to cross the border illegally. However, *Deutsche Welle* implies that the policy at the border is the same tough approach that tries to stop people from crossing and it especially affects women, who are more subject to sexual abuse during their journey. Implicit to this view is the idea that Biden's and Trump's migration approaches are not so different, when managed by the immigration authorities and bureaucracy.

## **Asian Media**

Different regions may present their own views on migration. Twenty-three news and opinion articles were analyzed from Asia, most of them from *China Daily* (13), followed by *Bangkok Post Thailand*, *Korean Times*, and other three media from China and India.

The Indian press primarily addressed Trump's actions to reduce the number of skilled workers and access to permanent residency in the United States; consequently, it focused on Biden's friendlier discourse to diasporas and how to undue the wrong (Bahar, Choudhury, and Glennon, 2021). Many of the pieces in favor of Biden's migration policy in the United States are based on features that were first released in Indian media. We therefore found a process of intermediate quoting based on local secondary sources, with Indian media functioning as a first-hand information source on Biden's policy on skilled migration.

One of the most recurring authors to write on the topic is Ananya Bhattacharya from *Quartz India*, who shows a very different position from the ones previously mentioned in this section: Biden is a president who kept his word and has "started to deliver on his campaign promises to immigrants on the coveted H-1B visa," for instance, by revoking the Trump rule that ended work permits for H-1B holders' spouses (Bhattacharya, 2021). In this way, the Biden-Harris administration is also seen as having a more gender-friendly policy. The idea is illustrated with an earlier quote from Vice President Kamala Harris in her previous role as a senator from California: "Preventing women from engaging in employment can lead to isolation, depression, anxiety, feelings of guilt, and a loss of self-worth." In general, the features related to skilled immigration tend to picture Biden in a much better light than the ones referring to asylum, Central American migrants, and his broad actions on immigration. They point to a clear change of policy, very distinct from the Trump administration.

However, many features released in the Asian media focus on Central American migration and toughly criticize Biden for his immigration policy and, in general, seem to be more in favor of a restrictive stand, with exception to skilled immigration. *China Daily* is a highly relevant source of information for English speakers in East Asia. Several in-depth features by *China Daily*, Hong Kong edition, released in December, 2020, state the academic urge for the U.S. to change visa restriction policies in order to maintain foreign students and talent attraction. "Biden should restore normal people-to-people exchanges" and irrational decisions taking during the Trump administration.<sup>1</sup>

<sup>1</sup> "On Aug 26, the University of North Texas sent a letter to fifteen visiting researchers from China saying their visa program stands canceled, thus forcing them to leave the U.S. on short notice amid the travel restrictions imposed to contain the spread of the coronavirus.

Quoting from Lee C. Bollinger, president of Columbia University (*China Daily*, December 9, 2020), these measures have eroded talent attraction and growth for the country, due to paranoid restrictions taken in a context of fear about the virus. The topic of restrictions imposed on Chinese academics and students was also seen as a return to racial discrimination and an anti-talent policy that ignore patriotism and contributions of Chinese Americans (Zhu, 2021). This feature does not really say anything about Biden, but it describes the circumstances under which he must act.

In an article released in January before Biden took office (Jishe, 2021) there is mention of the ongoing conflict (“war of words”) that started in 2018 between the U.S. and China, due to the so-called “China Initiative” of Donald Trump, meant to investigate cases of economic espionage. Tensions produced by this action could affect education exchange and skilled migration from China to Mexico, poisoning bilateral relations, according to *China Daily*.

The U.S. National Security Strategy Report 2017 said Washington “will consider restrictions on foreign STEM (science, technology, engineering and math) students from designated countries” and, according to some media reports, top White House aide Stephen Miller once tried to persuade Trump to cancel all student visas for Chinese nationals. Over the past almost four years, the U.S. administration has taken restrictive and punitive measures not only against Chinese scholars and students but also Chinese high-tech companies.

The author adopts a normative approach, suggesting that the United States should not target Chinese students in any way. Other opinion articles in the same journal mention the need to restore reputation and talent exchange/talent attraction policies, damaged by actions such as visa cancelling for Chinese students that are already in the United States. Nevertheless, the topic of talent attraction, particularly the Chinese-American exchange,

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The university did not cite any reason for canceling the program—except that the researchers were associated with the Chinese Scholars’ Council—and probably made the decision under pressure from Texas politicians, some of whom are zealously pushing the U.S. administration’s anti-China agenda devised by politicians such as Texas Republican Senator Ted Cruz.

Actually, all the about 369,000 Chinese students studying in the U.S. can feel the change in the atmosphere following UNT’s decision, simply because the fifteen visiting scholars are not fundamentally different from them and they could be the next to be ‘deported.’ Plus, it is hard to believe that the UNT and other U.S. universities will welcome Chinese students in the same way as before and, more importantly, Chinese students and scholars would be as enthusiastic to study or conduct research in the U.S.” *China Daily* (Hong Kong), December 17, 2020.



was not followed after Biden took office. It was replaced by the crisis of migrants from Central America, an issue that was used to question Biden's administration in the first part of 2021.

*China Daily* started reporting on Biden's triumph with a generally positive stance and released features on his first executive actions to combat climate change, advance racial equity, and support other underserved communities (Huanxin, 2021). In the beginning of his term, his age and previous experience as a senator were seen as an opportunity for a good change in terms of diplomatic and political relations. Quoting from a piece in *China Daily* (Hong Kong): "... perhaps the finest characteristic one can ascribe to Biden is that he's a truly decent and empathetic person. At his inauguration, he confirmed it by giving a pretty impressive speech" (January 22, 2021). He was seen as a president with rational policies, whose by-the-book actions meant better relations with the world. By January 25, *China Daily* informed on Biden's intentions to restore aid for the Northern Triangle countries, previously suspended by Donald Trump, in an effort to reduce immigration. The same journal—*China Daily*—mentions that not all countries are benefitted by the Biden policy. A case in point is Cuba, as it was included on the list of state sponsors of terrorism, a piece of news that has not necessarily circulated much in world media.

By February 2021, Biden's actions regarding the Central American crisis were the main topic in most of the monitored foreign media. Very few of the articles tackle the issue as forced migration with its own causes and consequences; most of the reporters choose to frame it from a political point of view: what Biden can or cannot do in terms of political influence in Congress to improve immigrant living conditions. In general, the Asian media included in this study make no differentiation between migrants and refugees. The authors would rather emphasize the conditions of migrants, a perspective that implies Central American migrants have options back home and they crave economic opportunities, rather than trying to escape life-and-death situations in their homeland.

In this new context, President Biden as a political leader who created hope is downgraded to a president who might not have enough power to deal with immigration and, in general, with the responsibilities of the presidency. By February 2021, *China Daily* (Hong Kong edition) raised the age issue for Biden: he is described as the oldest U.S. president, one who may have less

energy to carry on. Migration becomes a way to put pressure on his administration and show he does not have enough power. Accordingly, the name of Kamala Harris is recurrent in the features on immigration, as she is supposed to be the right hand of the president, also responsible for the crisis.

In a piece of news from March 27 (*China Daily*, “Frontier Issues: U.S. President Joe Biden Defends Policy on Children Crossing border”), the unknown author talks about his/her experience at Biden’s first solo press conference, where reporters asked him if he expected to run again for President in 2024. The age issue is a way to attack and deny his capacity to deal with Central American immigrants. Says *China Daily*: “In office for only two months, his 2024 plans have a direct effect on his political strength. If viewed as a one-term president, Biden would effectively be a lame duck with diminished sway at home and abroad as he pursues an aggressive agenda.”

The lack of power issue is also developed by media in other parts of Asia. A piece of news called “Biden Scrambles to Shelter Migrant Kids. President’s Vow Falls Short of the Mark,” from *The Bangkok Post* in Thailand (March 12, 2021) exemplifies the issue through the inability to control the flow from Central America and give proper living conditions to migrants/asylum seekers who look for legal status. He is portrayed as having little power to convene other political sources, even though there is mention of a new diplomatic measure taken to allow “children in Central America to apply for protection in the region and avoid making the dangerous journey north to join parents already in the United States.”

*The Bangkok Post* deals with the ambiguity of Biden’s actions. He is taking good but inadequate measures. International media tend to picture migration as a high-stake issue for Biden’s image and administration and also a way to compare Biden with Trump. For instance, *Bangkok Post* informs that by March 8, “. . . the number of children stuck in border detention facilities had tripled to more than 3,250, according to federal immigration agency documents obtained by *The New York Times*” (March 12, 2021).

The “immigration President” Joe Biden seems to be trapped in his own discourse and in an immovable national immigration system, caught up in a scramble to find shelter for so many migrant children. If the system is not in crisis, the president is caught in one, according to these reports. He is even accused of creating the crisis, since he is seen to promote immigration through a friendlier discourse. “Mr. Biden campaigned on a more humane approach

to immigration at the border, one that would prioritize investing in Central America to deter illegal immigration. But it has had the effect of drawing more people who see a better chance to enter the United States than they had under the Trump administration” (*Bangkok Post*, 2021).

The same article by *The Bangkok Post* clearly said “Republicans are framing the situation as a crisis of Mr. Biden’s making, signaling an aim to use his immigration agenda as a political weapon against him in 2022.” It goes as far as to affirm that “Mr. Biden [. . .] has continued to use a Trump-era rule to rapidly turn away most migrants at the border, with the exception of unaccompanied minors.”

In a separate opinion piece republished by the same journal (originally released in *The New York Times*), with the suggestive title “Joe Biden Should Finish the Wall” (April 8, 2021), Bret Stephens indirectly accuses Biden of murder for not building the wall. He mentions an accident of a truck carrying migrants, in which thirteen people died on the spot in California. Says Stephens: “. . . those 13 people—along with others who have recently lost their lives in dangerous crossings—might not have met their grisly fate if the Biden administration’s concept of compassion wasn’t also an inducement to recklessness. And they wouldn’t have been killed if a wall had been in their way.” The wall, according to the author, “is a barrier against sudden future surges of mass migration,” such as the one experienced during the first months in power of President Biden. According to his data, U.S. agents apprehended 170,000 migrants along the southwest border in March 2021, “a 70 percent jump over February’s numbers and the highest level in 15 years. Despite the administration’s claims to the contrary, there is a crisis, led by a massive surge in child migration spurred by President Joe Biden’s promises of a more humane policy than his predecessor’s.” In conclusion, the U.S. “risks a version of the European migration crisis of 2015,” which could further undermine Biden’s plans for an immigration reform.

The same perspective of a failed immigration governance is present in *The Korean Times*, even though from a different critique based on arguments of environmental conservation and demographic growth. Migrants are accused of carrying about six to eight pounds of garbage when crossing the border, which would affect “America’s beauty” (Guzzardi, 2021a). Biden is accused of supporting unreasonable growth in migration numbers that would more than double the U.S. population to 669 million in 2100, an

expansionist view hard to manage in demographic and economic terms, according to the journalist.

Guzzardi, also reporting for *Imperial Valley* (April 30, 2021b) refers to President Biden as an “expansionist” who failed to attend refugees in the way he promised and in general failed voters who expect the system to be controlled, but also care for the image of their country. The language used in this article is quite aggressive and informal: “Biden caved” as the “the annual refugee resettlement kerfuffle is underway”; “Biden’s waffling about refugee quotas.” Consequently, Biden is considered a president who cannot resist political pressure, especially regarding migration. In turn, the refugees he admitted are supposed to compete in the labor market, even when studies from academic institutions recognize the need for essential migrant workers in the American economy (Kerwin and Warren, 2020).

Four days later (on April 30, 2021), the same journal, *The Korean Times*, emphasizes the role of diplomacy in Biden’s plan and the meeting with the Korean President Moon Jae-in, meant to “mark another diplomatic and national security ‘milestone’ in Biden’s first hundred days in office.” However, Biden is depicted in the middle of multiple crises caused by terrorism, nuclear proliferation, mass migration, cybersecurity, climate change, and the current pandemic. Biden is portrayed as a president who seeks support and allies abroad, using diplomatic channels.

Other media from Asia tend to criticize less and focus on economic rather than migration issues. *Shanghai Daily* (April 28, 2021) describes a wide range of economic aid offered by the Biden and Harris administration in a less ideologically-charged feature. However, the unknown author also mentions increased smuggler activity, as more migrants are persuaded to travel. Many of the researched media mention Kamala Harris’s visit to Guatemala and a possible call for help from the Guatemalan President Giammattei, who asked for vaccines from the United States, but his proposal seemed to be ignored by the administration.

## **Middle East Media**

Our findings on Biden’s immigration policy in the Middle East media are based on the analysis of seven articles published in Iran, Israel, Kuwait,

Qatar and Turkey. Most of them were published electronically in February 2021. One of the very few positive pieces on Biden's migration policy to be found in the Middle East media comes from Turkey (*Daily Sabah*, March 23, 2021), and it describes the "no ban" actions, that is, the initiative of prohibiting future U.S. presidents from issuing racial, religious or geographical proxy bans that would impede certain groups from traveling to the United States. In this way, Biden is portrayed as a more just president who reopened embassies in countries previously excluded by the Muslim ban.

However, most of the articles in the Middle East media show a critical approach to Biden's migration diplomacy, based on evidence from the Central American crisis. A feature in *Iran Daily*, called "Freezing Weather Hits Migrant Camp Near U.S.-Mexico Border" by Cedar Attanasio (2021) mentions the human rights abuses in migrant camps, even after Biden took over as president. At the time, very low temperatures in facilities that were not properly prepared for winter caused the water filtration system to freeze. The article is framed by the same fear that migrants experience: fear of freezing temperatures, and fear for their health, in addition to uncertainty. Most of the migrants interviewed by *Iran Daily* had lived in the camp of Matamoros for two years. The uncertainty and vulnerability of their status is key to the way they are described by *Iran Daily*. The two themes of this article may therefore be *cronopolitics* (the politics of waiting) and fear.

Most of the articles from the Middle East tend to analyze Biden's and Trump's policy as part of the same restrictive and discriminatory system of U.S. immigration policy, which is not compatible with respect for human rights. Biden's policy is seen as a continuation of Trump's policy and there are more descriptive articles on the impact of his actions to protect migrants or in some cases, lack of programs, rather than a political analysis of his discourses. Gottesdiener, Daniel and Hesson (2021) write a piece for *Gulf Times Qatar*, in which they analyze the implications of promises about migration and blanket amnesty as well as the process of border externalization with Mexico. The article says:

Under the Biden administration, the same general strategy is likely to continue, at least for the near term, according to six U.S. and Mexican sources with knowledge of diplomatic discussions.

They also said any rush to the U.S. border could hand Biden's political opponents ammunition to sink the rest of his immigration agenda, which includes

providing a pathway to citizenship for immigrants already in the United States and reducing asylum application backlogs.

The Mexican government has informed the new U.S. administration that it intends to keep current immigration enforcement measures in place because it is in Mexico's sovereign interest to secure its own borders, one senior Mexican official said, speaking on condition of anonymity.

Above all, this reporting on human rights abuses, which covers critiques of the military actions of the National Guard in Mexico, in charge of applying U.S. immigration policy, comes from journalists in countries that are not directly involved in Central American migration to the United States. Even when many of the countries in the Middle East did suffer from Trump's travel ban, they do not picture Biden as a political figure capable of navigating the diplomatic crisis. They criticize him for coming to a late start in applying certain promises made during the campaign; his slow actions are expected to cause uncertainty among migrants. The same article by Gottesdiener, Daniel and Hesson for *The Gulf Times Qatar* adds:

In the mid-January confrontation in Guatemala, the Reuters photographer and other witnesses saw a wall of security forces confront hundreds of migrants, beating some and deploying tear gas. Some migrants threw rocks. Guatemalan immigration authorities reported an unspecified number of injuries. Guatemala's human rights ombudsman Jordan Rodas said "it was outrageous to see the scenes of how the military brutally received our Honduran brothers and sisters."

A later article from March 2021 in *Qatar Tribune* (unknown author) looks at Biden's negotiations with Mexico from the viewpoint of vaccine diplomacy during the pandemic: indirectly Mexico is supposed to stop migrants in exchange for more vaccines.

The U.S. recently said it is shipping several million doses of COVID-19 vaccine to Mexico, where shortages are acute. At the same time, Mexico announced it was closing its southern border with Guatemala and Belize as a way to impede the northward travel of migrants. The White House denied the two moves were a quid pro quo arrangement.

Still, Mexico is accustomed to being strong-armed by Washington, under several administrations, to hold back immigrants. Roberto Velasco Alvarez, head of the North America section of the Mexican Foreign Ministry, said Monday the two countries will find ways to "cooperate on the development of Central America and southern Mexico" and agree to "joint efforts" to create "safe, orderly and regular" migration.

Biden's more "humane" discourse on migration is therefore questioned and his efforts to promote immigration reform are considered unsuccessful in a context of increased migration numbers. The same thread of migration crisis during the Biden administration, indirectly attributed to the inefficiency of his policy, follows in an article by the same journal (*Qatar Tribune* by Noah Smith, April 19, 2021).<sup>2</sup> This perspective responds to a particular ideology, as it implies migrants from Central America are a demographic issue rather than an issue of forced displacement.

High birth rates encourage migration because if you have a lot of young people around, it pays to send some of them to a rich country where they can find work and send money back to the family [. . .] Biden wants to address this by making Central America richer, which is a great idea. If the GDP of these countries can be doubled, the perpetual border crises would likely vanish. The question is how to do it.

Smith acknowledges that future development in countries of origin may actually reduce the desire to migrate and even to have more children on the long term. However, he believes Biden's plan to reduce corruption in Central America has not been particularly efficient.

*The Kuwait News* (May 9, 2021) follows on the thread that migration at the southern border cannot be solved and focuses on Kamala Harris's action rather than on Biden's. She is depicted as a number two at the White House, who has "already failed by not visiting the border." The editorial line here is not clear, as the unknown author does not offer a solution to the crisis, but only says the crisis should be brought to an end, implying both Biden and especially Harris are not capable of doing it. This piece may even be interpreted from a feminist point of view: the woman who is number two and cannot properly do the job, but perhaps this would be a topic to be addressed in another chapter on homonationalism in Middle East media discourse.

## Results and Conclusions

Even though one hundred days may be a short time to assess the impact of migration diplomacy actions, the media representations of Biden's discourses

<sup>2</sup> The piece was first published in *Bloomberg* and republished by *Qatar Tribune*.

and actions are relevant proof of a change in discursive terms. From a communication point of view, a friendlier discourse may indeed be translated into a better image of the United States as a country of destination for immigrants, with a cosmopolitan approach that better suits economic globalization.

The qualitative data analysis applied to media on three continents—Europe, Asia and Africa—allows two types of conclusions. The first one refers to a differentiated representation of policies for skilled and unskilled immigration. In this way, Biden's policies on increasing the levels of H1B skills at levels prior to Donald Trump and allow spouses on H4 work permits may be understood as a talent attraction policy, implemented along with more permissive immigration laws that may help the U.S. economy to recover from the COVID-19 crisis and heal bilateral relations with Central America, China, and Mexico. In contrast to this positive evaluation of actions on skilled immigration, Biden was criticized and questioned for his efficiency in dealing with the political crisis of Central American migration, which involves more humanitarian problems regarding undocumented and many times, low-skilled displaced people.

This finding leads us to a second conclusion on the use of intermediate quoting and circulation of media content between U.S. sources and non-American media. This study found a process of intermediate quoting based on local secondary sources: for instance, articles from Indian media tend to be reproduced by U.S. media, due to first-hand information related to Biden's diplomacy on skilled migration in Asia. In turn, certain content from foreign media in the Middle East and Asia is similar to more conservative newspapers in the U.S., from which they actually reproduce articles as a way to replace foreign correspondents; therefore, they also penalize undocumented immigrants and launch many reasons to doubt Biden's immigration actions. This intricate process of quoting and ideological similarities is a reason that further justifies studying the U.S. image on macro and micro levels in foreign media, based on the broad actions of President Biden in terms of foreign policy and migration challenges. In the future, a comparative study may follow for his last hundred days as president in order to look at the medium-term impact of his course of action on immigration policy and diplomacy.



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## **Part II**

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**Specific Anti-Immigrant Policies:  
DACA, Asylum Policies, Public Services, and Imaginaries**



# **DACA, DREAMERS, AND OTHER MIGRANTS AFTER TRUMP**

*Jorge Santibáñez  
Arcelia Serrano*

## **Introduction**

Since the 2016 presidential election campaign, Republican Party candidate Donald Trump clearly expressed his anti-immigrant positions, particularly against the region of Mexico and Central America, turning the issue and his proposals into the pillar of his campaign and later of his government, negatively defining the role that Mexico should play in the regional management of the migration process.

Likewise, he lashed out against immigrants, focusing his attacks on annulling the Deferred Action for Childhood Arrivals (DACA) program (DHS, 2012), an executive order signed by President Obama in 2012 that granted temporary permission to stay and work in the United States, as well as providing social security numbers to unauthorized immigrants who were brought by their parents to the United States as children (under 16 years of age) and met certain requirements. Toward the end of his administration, Obama proposed expanding the program's coverage, including extending it to undocumented immigrants with U.S. citizen or lawful permanent resident (LPR) children, but the action was blocked by state courts and the U.S. Supreme Court. Legal challenges to Trump's actions stopped the full repeal that Biden sought. However, in practice the granting of permission stopped and new applications have not been accepted since September 2017.

In the scenario of a new government headed by Joe Biden, who has expressed his support not only for the reinstatement and expansion of the program but also for the full regularization of the so-called DACA youth, this group would be the closest to an eventual immigration regularization.

Beyond whether Donald Trump's expressions on the immigration issue reflect his ideology or not, it is an indisputable fact that the issue divides U.S.

society; it is politically and electorally profitable given that a broad sector of society is anti-immigrant, particularly against Mexicans.

The DACA youth are perhaps the group of unauthorized immigrants who in principle should be better accepted by U.S. society. The overwhelming majority of them were taken to the United States as children. They grew up and were educated in the United States. They have their social circles and a wide network of support among U.S. citizens. They are perfectly integrated, and in fact many of them have a better command of English than the Spanish that they only speak at home with their families; and—as President Obama mentioned when launching the DACA program—they are as American as any other American except for the documents. Many of them know the United States better than their countries of origin, of which they often only have references from their parents and relatives.

The eventual regularization that turns them into authorized immigrants would not detonate what in the United States is known as the “call effect,” or what Donald Trump called “chain migration,” where an immigrant, upon being authorized to reside in the United States, would bring his or her direct family once established in the country because that family is already in the United States. Within this logic, Dreamers should be the easiest group to regularize and perhaps this is why the resistance of relevant actors in the U.S. political, legislative, and judicial class, who have systematically opposed this regularization and the program, is so striking.

The issue is alive in the sense that its history is not over. Following the conference in which a preliminary version of this document was presented, in July 2021 a court of the Southern District of Texas, considering that the fundamentals of the program were illegal, suspended the approval of new applications, a situation that at the time of writing remains in force. Nevertheless, the ruling preserved the rights of those who were already enrolled in the program.

This decision, which essentially captures arguments put forward by Donald Trump to oppose the program, has devastating effects for those who support the program. It radicalizes pro-immigrant groups and organizations because it makes evident the vulnerability and fragility of DACA-type strategies, through executive orders, and somehow activates them to search for a more solid legal scheme reflected in deeper immigration reform, as President Biden promised during his campaign.

It also discourages new applicants to the program, not only because it may ultimately be terminated by a judge's ruling or the will of another president, but because it exposes their families, since DACA applicants naturally share households with unauthorized immigrants. Upon enrollment in the program, the authorities have the applicant's complete record, specifically his or her address and contact information.

Under these considerations, this essay begins with an analysis of the prevailing immigration context in the United States, which is not new and, therefore, did not arise in the era of Donald Trump, although he took advantage of it in a particularly important way.

It continues with the analysis of the emergence of the DACA program, derived from a legislative proposal known as the DREAM Act (Development, Relief, and Education for Immigrant Minors Act; U.S. 107th Congress, 2001-2002), the limits and scope of its functional definition, as well as a numerical estimate and characterization of the potential participants, the current beneficiaries of the DACA program, and the path it took during the Trump administration.

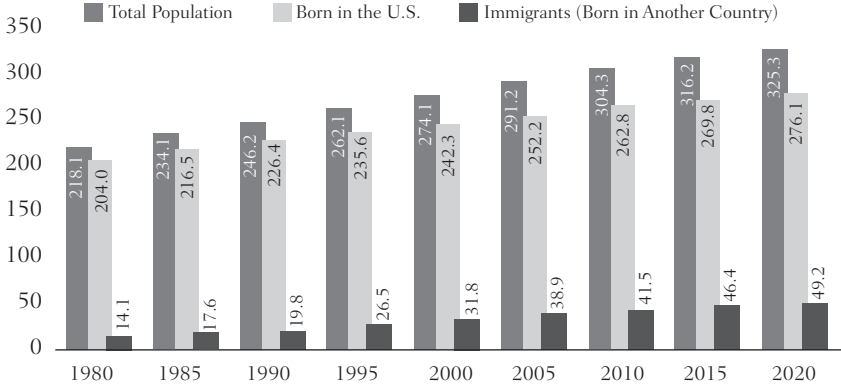
It concludes with the development of strengthening and expansion scenarios, instructed by President Biden immediately after taking office, and how they could become the first step to broader immigration reform.

## **Context: the situation before Trump's arrival as U.S. president**

Migration has been a constant theme in the shaping of the American Union. Historically, the United States is a country of immigrants; it is neither a new issue nor a discovery of the Trump administration, but it did manage to be placed on the agenda as the main issue of his campaign and subsequently within the objectives and actions of his administration.

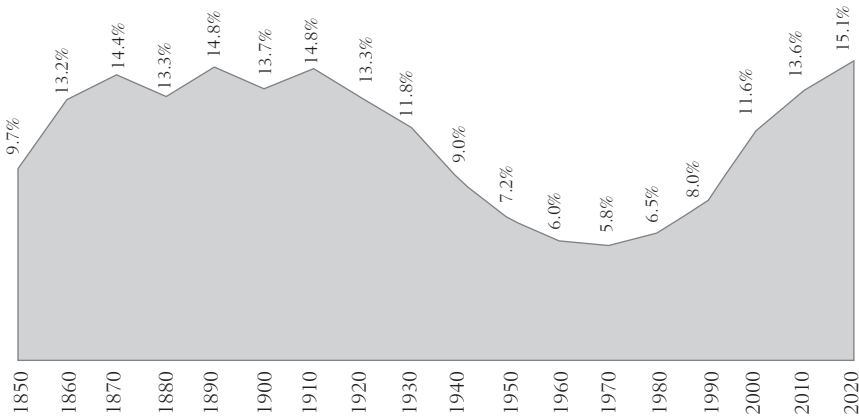
The first population records of the U.S. Census Bureau (2020a) indicate that in 1850 there were 2.2 million foreigners, who at that time represented 9.7 percent of the total population. Today, the number of immigrants is 49.2 million, 15.1 percent of the total population. In the last twenty years, between 1980 and 2020, the number of immigrants grew by 250 percent, from 14.1 to 49.2 million (see fig. 1).

FIGURE 1  
EVOLUTION OF THE NUMBER OF IMMIGRANTS IN THE UNITED STATES:  
TOTAL POPULATION AND BY PLACE OF BIRTH, 1980-2020 (millions)



SOURCE: Created by the authors based on data from the Current Population Survey (CPS), 1980-2020, and U.S. Census Bureau, 2020a.

FIGURE 2  
PERCENTAGE OF IMMIGRANTS AS PERCENTAGE OF TOTAL U.S. POPULATION  
(1850-2020)



SOURCE: Created by the authors based on data from the Current Population Survey (CPS), 1980-2020, and U.S. Census Bureau, 2020a.

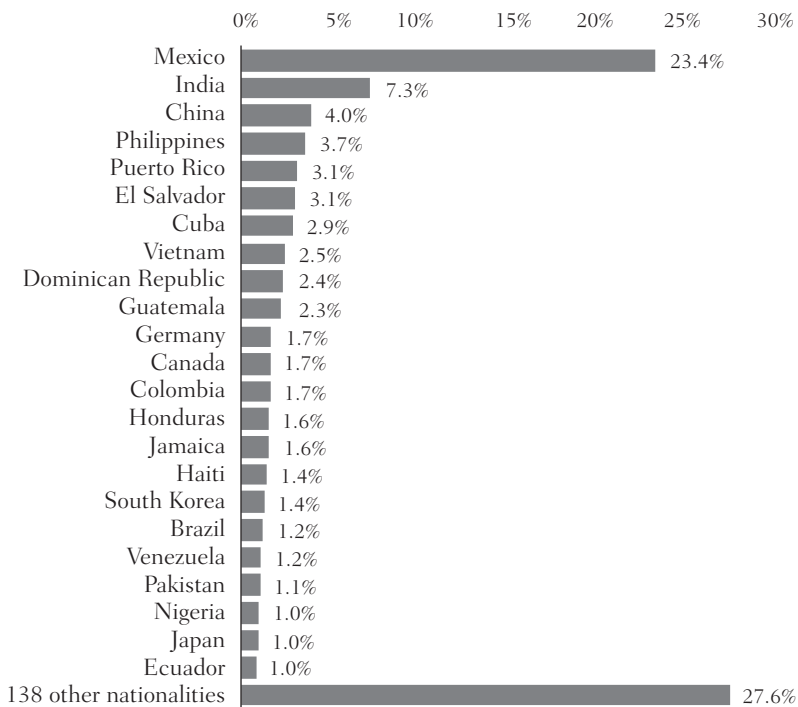
The proportion of immigrants in the total population has varied by decades, but is currently at its highest point on record (see fig. 2). This undoubtedly further fueled Trump’s anti-immigrant discourse, arguing that the foreign



population was coming into the country in large, uncontrolled numbers and that this put national security at risk. The COVID epidemic further exacerbated this discourse.

It is beyond the scope of this essay to analyze the deplorable role of the Mexican government in constructing this idea that the United States was being “invaded” at its southern border.

FIGURE 3  
DISTRIBUTION OF THE IMMIGRANT POPULATION BY COUNTRY OF ORIGIN, 2020



SOURCE: Created by the authors based on data from the Current Population Survey (CPS), 1980-2020, and U.S. Census Bureau, 2020a.

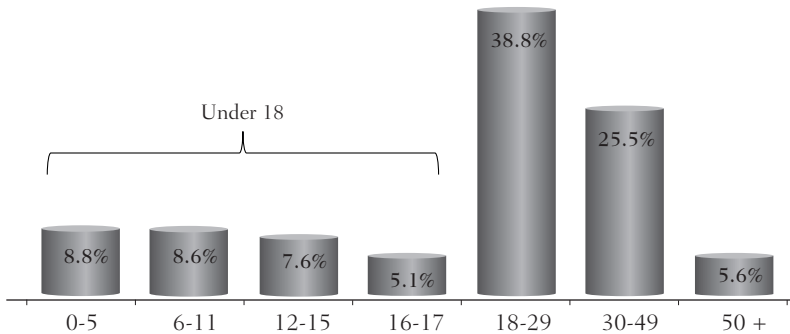
The United States is a country that does not have an explicit policy of attracting immigrants as some other countries do, like some Arab countries, Canada at some point, or Australia, which receives more immigrants. Just to mention one example, in Mexico the percentage of immigrants has always been below one percent of the country’s total population, according to data from the National Institute of Statistics and Geography (INEGI, 2007).

Mexico has been characterized as a country that expels migrants and, given its geography, the United States is the main destination. This explains why a quarter of all immigrants currently living in the U.S. are Mexican, placing them well above the second and third-largest groups in both absolute number and percentage terms (see fig. 3). This is even more true in the case of Dreamers and DACA.

However, not all immigrants in the United States are “undocumented,” as Trump implicitly claimed. In fact, most of them are in the country legally.

Of the 49.2 million immigrants, 55 percent are U.S. citizens, that is, they have already completed their naturalization process and paperwork, while 24 percent have LPR status, which means that they have residency permits and can live and work without any problem. After five years in this category they can start their citizenship process. Only 21 percent of immigrants lack residency documents; and within this group, three out of ten arrived in the United States under the age of eighteen. In fact, when this group is disaggregated, most of the minors are between zero and eleven years old. In other words, they were brought by their parents or relatives (see fig. 4).

FIGURE 4  
DISTRIBUTION OF UNDOCUMENTED IMMIGRANT POPULATION  
BY AGE OF ARRIVAL IN THE U.S., 2020

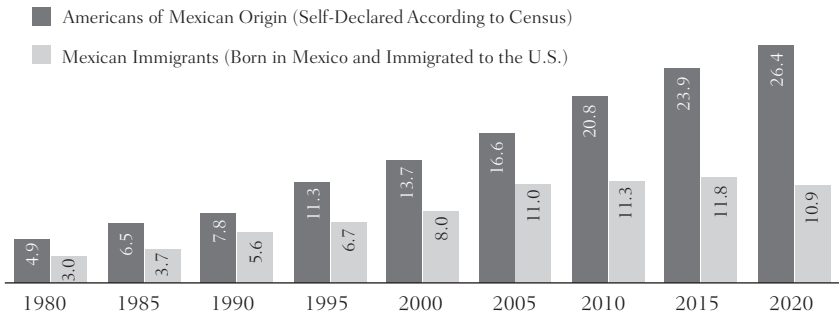


SOURCE: Created by the authors based on data from the Current Population Survey (CPS), 1980-2020, and U.S. Census Bureau, 2020a.

Trump’s xenophobic comments about immigrants in general and Mexicans in particular showed his ignorance of statistical information, although it worked for him as a political strategy.

Another confusion in U.S. society, taken advantage of by Donald Trump and his followers to strengthen their anti-immigrant positions, is mistakenly considering the entire Mexican community in the United States as immigrants. The majority of the members of the Mexican community are actually U.S. citizens of Mexican origin (see fig. 5).

FIGURE 5  
POPULATION OF MEXICAN ORIGIN LIVING IN U.S.,  
BY BIRTHPLACE 1980-2020 (millions)



SOURCE: Created by the authors based on data from the Current Population Survey (CPS), 1980-2020, and U.S. Census Bureau, 2020a.

FIGURE 6  
DISTRIBUTION OF UNDOCUMENTED MEXICAN IMMIGRANT POPULATION  
BY AGE OF ARRIVAL IN THE UNITED STATES, 2020



SOURCE: Created by the authors based on data from the Current Population Survey (CPS), 1980-2020.

Currently, 37.3 million people of Mexican origin live in the United States, 71 percent (26.4 million) of whom were born in the U.S.; 10 percent (3.9 million) are immigrants but naturalized U.S. citizens; 9 percent (3.4 million) are immigrants with LPR status; 500,000 (1.3 percent) currently have DACA protection; and 8 percent (3.1 million) are undocumented.

Among undocumented Mexican immigrants, 31 percent arrived as minors (see fig. 6).

### **The emergence of the DREAM Act and the DACA program**

The rigid control of the border and the modification of the labor market toward more stable urban occupations, among other factors, modified the so-called “circularity” of the migration process. Immigrants stopped coming and going from one country to another for certain seasons and occupying temporary jobs, and decided to settle permanently in the United States. As a result, immigrants in general, but especially Mexicans, began to take their families with them, including a significant number of children; so much so that, to date, one out of every three undocumented Mexican immigrants reports having set foot on U.S. soil for the first time as a minor.

In this scenario, several proposals arose to try to regularize the immigration status of these minors, with the understanding that due to their condition as children they did not have full knowledge or awareness that they were entering a country other than their own and, moreover, that they could be breaking the law, an argument that has often been used to stop an immigration regularization since it would pardon the committing of a crime. In addition, these minors could do nothing else, since they were limited to following their parents or relatives on the journey.

These children, who would later become youth and adults, lived most of their lives in the United States. Therefore, they accept, recognize, and love the United States as their country, since they do not really know their country of birth. Many no longer speak their native language (mainly Spanish) and grew up and socialized as Americans. Many find out that they are undocumented when they want to enter college or want to leave the U.S. for the first time. It is only then that they realize that they do not have valid documents to process an ID or a passport. Various local and national media began to

publish their stories, generating diverse local support networks, which moved part of American society.

In April 2001, Democratic Congressman Luis Gutiérrez presented a bill called the Immigrant Children's Educational Advancement and Dropout Prevention Act, which would be the basis for what later became the DREAM Act. That first bill, which originated more in the educational sphere than in the immigration sphere, sought to allow undocumented immigrant students to apply for protection to avoid deportation and later apply for and receive legal permanent residency if they met certain criteria. However, the bill was rejected. In May 2001, Congressman Gutiérrez presented a reduced version called the Student Adjustment Act of 2001, but it also failed.

In August 2001, a bipartisan bill called the DREAM Act, as we know it today, was introduced, based on Gutiérrez's proposal, but this time it was introduced in the Senate by Orrin Hatch (R-Utah) and Dick Durbin (D-Illinois). The objective of the DREAM Act was to seek a path toward the legalization of those young people who were brought to the United States as children. To this end, and with the objective of having a working definition that reflected the principles of the proposal, a series of requirements was established that these young people had to meet, such as:

- Having proof that they arrived in the United States before their sixteenth birthday;
- Having proof of residency in the United States for at least five consecutive years since their arrival in the United States;
- Having graduated from high school in the United States or having a GED (General Educational Development test) certificate;
- Demonstrating good moral character, i.e., no serious criminal record, no arrests, or drug charges.

Unfortunately this proposal has faced multiple rejections. This has led to modifications, and has been presented at least nine more times before Congress; the last time was on March 3, 2021.

Due to the constant refusal of the Senate to approve the DREAM Act, President Barack Obama proposed a special program that would help young people, who by then had already adopted the name of Dreamers, based on the acronym of the bill.

In June 2012, then President Obama signed the executive order called *DACA*, which aimed to prevent the deportation of young people brought by their parents to the United States when they were under sixteen years old, in addition to providing work permits (and even permits for travel abroad), as well as social security numbers. It was a temporary program with the possibility of renewal every two years. Like the *DREAM Act*, the *DACA* program also established a series of requirements that young people had to meet in order to enroll, such as:

- Having arrived before the age of sixteen and residing continuously in the country since June 15, 2007;
- Being under thirty-one years of age as of June 15, 2012;
- Being a high school student or graduate, or holding a GED certificate;
- Demonstrating good moral character, i.e., no serious criminal record, no arrests or drug charges.

These requirements are similar to those established in the *DREAM Act*, with the major difference being that it does not offer a path to legal residency, much less citizenship, and it is not a law, but rather an executive order that can be easily revoked, as in fact partially happened.

Once the program was approved, it was expected that a large number of Dreamers would respond to the government's call. Different organizations dedicated to the study of migration such as the Pew Research Center (2012) and the Migration Policy Institute (Batalova and Mittelstadt, 2012) made various estimates indicating that in the United States there were between one and a half and two million candidates for the *DACA* program. However, after the first years of operation the maximum number that managed to enroll was eight hundred thousand.

It should be noted that estimating the number of potential Dreamers is not an easy matter, since these are people without documents and therefore there are no records or data sources that capture their information directly. In order to calculate the target population, various statistical methods must be used using the scarce information available.

For this study, two estimates were made: the first of the possible number of Dreamers currently living in the United States, and the second of the possible number of *DACA* beneficiaries. For this purpose, we used two public

data sources whose information is collected by the U.S. Census Bureau: the Current Population Survey (CPS) for 2020 and the American Community Survey (ACS) for 2019. Additionally, LPR information from the U.S. Department of Homeland Security (DHS) is considered.

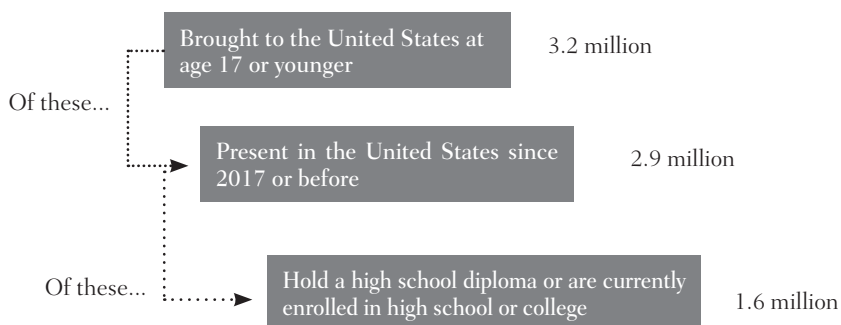
Four basic steps were followed to achieve the estimation of both numbers:

- 1) Individuals were selected who meet the requirements defined by the DREAM Act or the DACA program, as mentioned in previous paragraphs.
- 2) The fundamental condition sought in the database is that the individuals are labeled as “noncitizens,” i.e., the population is considered to be foreign-born and that at the time of the interview declares that they are “non-U.S. citizens.”
- 3) Given that no source of information in the United States asks about immigration status as such, much less whether the status of the interviewee is undocumented, we must resort to a process of case elimination based on the assumption that individuals without documents could not receive benefits that are only for citizens or LPRs; therefore, we omitted from the count those who:
  - Receive public assistance
  - Are employees of the federal government
  - Are in the military
  - Receive a pension
  - Receive retirement benefits
  - Receive social security payments
  - Receive veterans benefits
  - Are lawyers, judges, magistrates, judges, or court workers
  - Receive assistance from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
  - Are beneficiaries of the Food Stamp Program
- 4) Foreigners who entered the United States before 1982 are presumed to be legal residents, since most would have become eligible to attain LPR or citizen status under the amnesty law Immigration Reform and Control Act (IRCA) of 1986 (U.S. 99th Congress, 1985-1986).

It should be noted that no national public statistics data source has information on convictions for felonies, significant misdemeanors, misdemeanors, or the designation as a “threat to national security or public safety,” all requirements that appear in the functional definition of Dreamers or DACA recipients, so these variables could not be included in the estimates.

Under these considerations, two estimates were made of the number of potential Dreamers currently living in the United States. The estimates respond to the functional definitions embodied in the most recent proposed legislation: S.264 DREAM Act 2021, introduced before the U.S. Senate on February 4, 2021 (see fig. 7), and HR6 DREAM and Promise Act 2021, introduced in the Senate on March 22, 2021 (see fig. 8).

FIGURE 7  
ESTIMATE OF THE DREAMER POPULATION BASED ON THE DEFINITION  
IN THE PROPOSED BILL S.264 2021



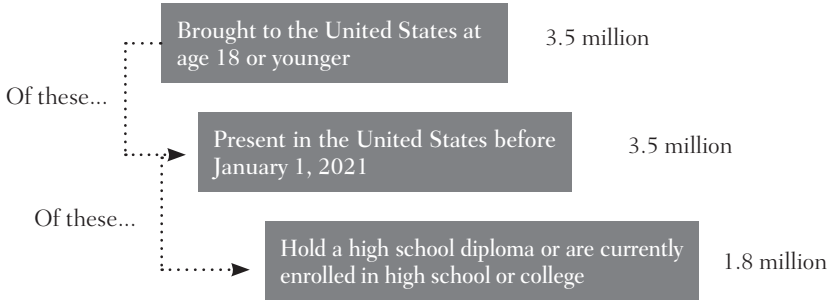
SOURCE: Created by the authors based on data from Current Population Survey (CPS), 2020, and American Community Survey (ACS), 2019.

Our estimates indicate that there are between 1.6 and 1.8 million Dreamers living in the United States to date.

Similarly, estimates of potential DACA candidates were made based on the executive order signed by President Obama in 2012. Some organizations such as the Pew Research Center and the Migration Policy Institute estimated between 1.2 and 1.5 million. Our estimate is approximately 930,000 candidates for the program (see fig. 9). According to the most recent data from U.S. Citizenship and Migration Services (DHS, 2021), as of March 31, 2021, there were 616,030 people enrolled in the DACA program, well below other estimates of beneficiaries.

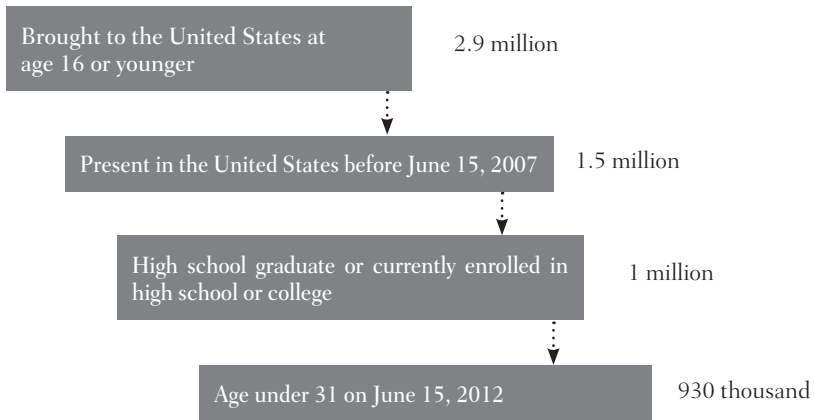


FIGURE 8  
ESTIMATE OF THE DREAMER POPULATION BASED ON THE DEFINITION OF THE PROPOSED HR6 DREAM AND PROMISE ACT 2021



SOURCE: Created by the authors based on data from Current Population Survey (CPS), 2020, and American Community Survey (ACS), 2019.

FIGURE 9  
ESTIMATED NUMBER OF POTENTIAL 2021 DACA RECIPIENTS



SOURCE: Created by the authors based on data from Current Population Survey (CPS), 2020, and American Community Survey (ACS), 2019.

The reason for the lack of enrollment in the program may be its instability and uncertainty. From 2012 to date it has faced several suspensions by federal judges and attacks by anti-immigrant groups as shown in Table 1.

TABLE I  
HISTORICAL ACCOUNT OF DACA PROGRAM, 2012-2021

<i>Date</i>	<i>Event</i>
June 2012	Obama signs DACA executive order. Enrollment and implementation begin.
November 2014 (New proposal)	Obama proposes: <ol style="list-style-type: none"> <li>a) Expansion of the DACA program: the intention is to eliminate the age limit (those over 30 years of age may apply), modify the date of residence in the United States (those who have resided there since January 1, 2007 may apply), and the permits will be extended to three years.</li> <li>b) Creation of the DAPA program (Deferred Action for Parental Accountability): seeks to avoid the deportation of undocumented persons who have U.S. citizen children or LPRS.</li> </ol>
February 2015	Federal court blocks proposed DACA expansion and DAPA creation.
September 2017	The incoming Trump administration announces the suspension of the DACA program. Various civil society organizations win injunctions in federal and state courts. The legal battle begins in defense of the program.
January 2018 - February 2020	For over two years, hearings are held in different courts to speak in favor of the program; period of legal battles between pro-immigrant and anti-immigrant organizations.
March 2020	DACA receives four favorable and one negative ruling by different federal courts for its continuity. Due to its national relevance, it is determined that it should be sent to the Supreme Court for a final ruling.
June 2020	U.S. Supreme Court rules in favor of DACA, avoiding suspension issued by Trump.
December 2020	The DACA program is re-implemented.
January 2021	President Biden issues a memorandum directing the Homeland Security Secretary to take appropriate steps to preserve and strengthen DACA, in accordance with applicable law.
July 2021	A federal judge in Texas suspends the DACA program on the grounds that it has no legal basis.

Of the total number of active DACA beneficiaries (616,030), eight out of ten are Mexican, making them the largest group. In terms of absolute and percentage numbers, Mexicans are well above nationalities of other DACA beneficiaries (see table 2).

TABLE 2  
DISTRIBUTION OF ACTIVE DACA ENROLLEES BY COUNTRY OF ORIGIN, 2021

<i>Country of Origin</i>	<i>Active Enrollees</i>	<i>Distribution %</i>
Mexico	496,700	80.6
El Salvador	23,810	3.9
Guatemala	16,140	2.6
Honduras	14,760	2.4
South Korea	5,900	1.0
Peru	5,840	0.9
Brazil	4,730	0.8
Ecuador	4,460	0.7
188 other countries	43,690	7.1
Total	616,030	100.0

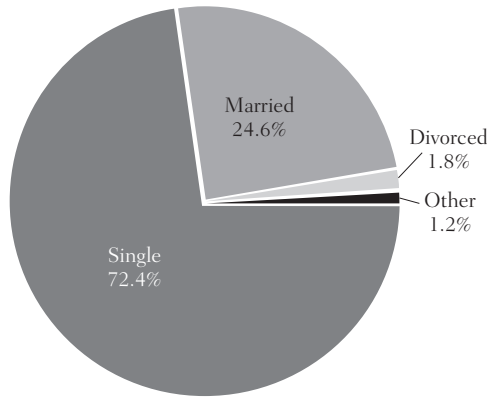
SOURCE: Created by the authors based on data from U.S. Citizenship and Immigration Services (CIS), 2021.

Fifty-five percent of current DACA beneficiaries live in four states: California, Texas, Illinois, and New York, which are precisely the states where the Mexican community has the largest presence in the United States. These states include the metropolitan areas of Los Angeles-Long Beach-Anaheim and Riverside-San Bernardino-Ontario in California; New York-Newark-Jersey City in the tri-state area of New York, New Jersey, and Pennsylvania; Dallas-Fort Worth-Arlington and Houston-The Woodlands-Sugar Land in Texas; and Chicago-Naperville-Elgin in Illinois.

Fifty-three percent of DACA recipients are female. Most of them are single (see fig. 10).

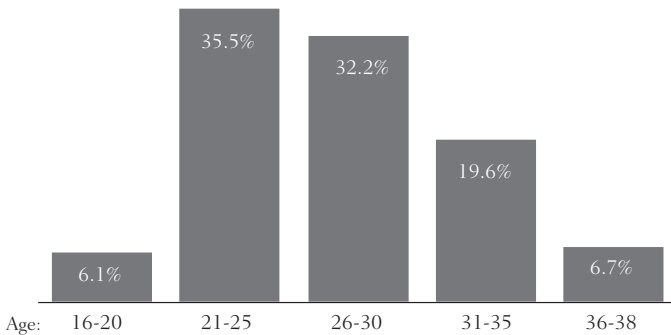
Seven out of ten DACA recipients are under the age of thirty (see fig. 11), the average age is twenty-seven. Youth is one of primary appeals of this group given that they have been fully raised in U.S. culture, with cultural ties in the United States. They are therefore ready to take the final step: becoming citizens on paper, because in practice they are already fully citizens.

FIGURE 10  
DISTRIBUTION OF ACTIVE DACA RECIPIENTS BY MARITAL STATUS, 2021



SOURCE: Created by the authors based on data from U.S. Citizenship and Immigration Services (CIS), 2021.

FIGURE 11  
DISTRIBUTION OF ACTIVE DACA RECIPIENTS BY AGE GROUP, 2021



SOURCE: Created by the authors based on data from U.S. Citizenship and Immigration Services (CIS), 2021.

### What’s Next for Dreamers and DACA Recipients? Strengthening and Expansion Scenarios

In order to consider what can be done in the future, we must first understand why all potential DACA beneficiaries have not enrolled in the program, and there are several hypotheses in this regard:

- Mainly, because there is a fear of providing information to the government and being deported. Many of them have preferred to remain in hiding and not share their existence with the government, with the understanding that their information could be used against them if immigration policies change and become stricter.
- Given that Dreamers may be cohabiting with other undocumented immigrants, family or not, who do not meet the requirements of either the DREAM Act or the DACA program, they may prefer not to register for the program so as not to expose them.
- Another strong hypothesis is that Dreamers see the program as unsound, as it has been suspended several times and could be cancelled permanently or modified, causing them harm, as has already happened during Donald Trump's administration.
- There is also the idea that the DACA program does not make much difference, since there are states where, regardless of whether immigrants are enrolled or not, they will not deport them; there are no raids and these states do not collaborate with federal authorities to detect undocumented immigrants, since they are pro-immigrant, such as California or New York.
- Another possible reason for not trying to enroll in the program is the belief that if they have small administrative offenses on their police records, they will be rejected, and for that reason they no longer make any effort to research or seek advice about the program.
- A final reason may be the lack of legal and administrative advice. This lack of knowledge or ignorance about how the program works, coupled with the lack of adequate guidance, is the perfect combination for losing interest in enrolling.

## **What's next? What can be done?**

Over twenty years have passed since the initial proposal for the DREAM Act was presented in 2001. There have been ups and downs, cancellations, political struggles, court battles, and even battles in the Supreme Court. However, the initiative has come a long way, and there is already experience on the subject that has led to important learning.

The issue has been positioned in different spheres, and has come to be discussed in the most important tribune of the United States: its Congress. Therefore, it should not be put aside now that the whole country knows about the existence of Dreamers and many have joined their cause to defend against deportation, first and foremost because they really are Americans. The United States is what Dreamers know and recognize as their country since they have lived there since childhood.

For example, in the case of the Dreamers who were brought to the United States from Mexico, the reality is that they do not know Mexico. Many no longer have relatives in the country, or even speak Spanish. And while they have feelings of love for Mexico because it is the land of their parents and they have been told many stories about it, they consider the United States their homeland.

If you want to support or help Mexican Dreamers, there is a lot that can be done in both countries:

- From the United States, support should be sought from: senators, congress members, public officials, businessmen, and civil society organizations, who know their stories, who evaluate their trajectories, and who are key players when it comes to proposing and voting laws.
- The path of executive orders is fragile and vulnerable. A legal reform is needed to provide certainty to undocumented DACA immigrants.
- From Mexico, the government should place the issue on the bilateral agenda, promote it in consulates, and involve binational non-governmental organizations. It is time to show that cooperation between the two countries is real and that it addresses issues that matter to both governments.

The citizenship of Dreamers in the United States benefits both countries. This is the most important thing to understand on both sides of the border to finally solve a long-standing problem that continues to affect thousands of young people and their families.

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# **RETHINKING ASYLUM ADJUDICATION AND REFUGEE RESETTLEMENT IN THE CONTEXT OF CENTRAL AMERICAN MIGRATION**

*Nicole Hallett  
Angela Remus*

## **Introduction**

Former President Donald Trump rose to power by demonizing and dehumanizing immigrants, particularly asylum-seekers at the U.S.-Mexico border (Stanley, 2018). He termed the growing Central American refugee crisis an “invasion” and an “infestation,” and called asylum-seekers “criminals,” “rapists,” and “animals” (Scott, 2019). His campaign rallies were filled with chants to “Build the Wall.” Once in office, he set about the full-scale dismantling of the right to asylum. By the time he left office in January 2021, he had largely succeeded.

President Joe Biden has promised to restore the right to asylum, but a refugee crisis continues to grip the U.S.-Mexico border, despite the fact that the Trump Administration has ended (Biden and Harris Campaign, 2020). In March 2021, shelters for unaccompanied minors were facing severe overcrowding, with 516 minors held in a facility that—due to COVID-related capacity limitations—should have held a maximum of 32 people (Miroff, 2021). As of May 2021, an estimated 16,138 people who had applied for asylum while the Migrant Protection Protocols (MPP) were still required to wait in Mexico for their hearings, and 10,375 people formerly in the MPP system had their cases transferred to traditional U.S. immigration courts, where they may face years-long backlogs (Transactional Records Access Clearinghouse, 2021). In June 2021, almost 189,000 people were apprehended by U.S. Customs and Border Patrol, the highest number in decades (CBP, 2021; Walsh, 2021). Returning the asylum system to its previous state will not solve the crisis. Instead, the Biden administration should take a new approach to humanitarian protection in the context of Central American migration to the United States and move beyond asylum adjudication as the primary—and inadequate—means by which we are addressing the crisis.

This chapter traces the development of the U.S. asylum system and contrasts it with the U.S. refugee resettlement system. It argues that the asylum system has always been, and will continue to be, ill-equipped to manage the Central American migration crisis, let alone develop durable and lasting solutions. Finally, it proposes a reimagining of the U.S. asylum system to focus on alternative adjudicatory mechanisms, forms of relief, and burden-sharing agreements.

### **Non-Refoulement and Its Impact on Interpretation of the Refugee Definition**

The cornerstone of international refugee law and the U.S. asylum system is the legal obligation of non-refoulement, which prohibits the return of people who meet the refugee definition to their countries of origin. Specifically, the Refugee Convention and its 1967 Protocol provides that “[n]o Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (UNITED NATIONS, 1951: Art. 33; 1967). A refugee is defined as 1) any person outside the country of nationality or last habitual residence, 2) for whom the country of nationality or last habitual residence is either unable or unwilling to provide protection, and who has 3) a well-founded fear of persecution that 4) has a nexus to a protected ground, including 5) race, religion, nationality, membership in a particular social group, or political opinion (UN, 1951: Art. 1).<sup>1</sup> These obligations were subsequently codified in the U.S. Refugee Act of 1980.<sup>2</sup> Accordingly, any asylum seeker who

<sup>1</sup> Upon enactment in 1951, the Refugee Convention’s definition was limited to people who had become refugees as a result of “events occurring . . . before 1 January 1951.” (Art. 1). At the time of ratification, states could also opt to apply a geographic limitation to the definition that limited the definition’s applicability to refugees of “events occurring ‘in Europe’ before 1 January 1951.” (Art. 1). The 1967 Protocol to the Refugee Convention eliminated these geographic and temporal limitations on the refugee definition.

<sup>2</sup> More limited bases for refugee admission existed under earlier immigration laws. The first major development was the enactment of the Immigration and Nationality Act of 1952, which provided a parole authority that allowed the attorney general to admit people for humanitarian reasons. The 1965 amendments to the Immigration and Nationality Act of 1952 codified a refugee definition that included some of the elements of the Refugee Convention’s definition, but it was limited to people fleeing communist-controlled countries.

arrives in U.S. territory and meets the refugee definition is protected against return to their home country.

By contrast, the United States has no international legal obligation to engage in the resettlement of people who meet the refugee definition. While international agreements do contain admonitions for the international community to collaborate to address refugee flows, they do not create binding legal obligations. The preamble to the Refugee Convention, for example, acknowledges the importance of interstate collaboration, noting that “the grant of asylum may place unduly heavy burdens on certain countries,” therefore requiring “international co-operation” to achieve a solution (UN, 1951).

The recent New York Declaration states a commitment “to a more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees, while taking account of existing contributions and the differing capacities and resources among States” (UN, 2016). The language found in these documents are expressions of cooperation, not legally binding agreements.

These dichotomous legal obligations create incentives to treat asylum seekers and refugees differently. With respect to asylum seekers, the United States owes a duty to every individual who reaches the territory and who is able to demonstrate that the refugee definition is met. To regain control of the admission of asylum seekers, politicians and adjudicators have favored a narrow reading of the refugee definition, the detention of asylum seekers, and other forms of deterrence. With respect to refugees being considered for resettlement, by contrast, the United States owes no similar duty of adjudication, nor must a refugee be resettled even after a positive determination is made on their case. As a result, the U.S. asylum system and the U.S. refugee resettlement system operate in distinct ways.

In practice, if a person reaches U.S. territory and expresses a fear of return to their home country to a government official, the asylum seeker must present their case to an asylum officer conducting an initial interview or, when the asylum seeker is placed in removal proceedings, to an immigration judge. The adjudicator must find that the asylum seeker has established a “reasonable possibility” that they will be persecuted if returned to their country of origin (*INS v. Cardoza-Fonseca*, 1987).

Due to backlogs in the immigration courts, however, it can take years before an asylum seeker receives a decision granting or denying asylum. While

they wait for hearings, immigrants may be detained, released with electronic ankle monitors, or obligated to attend in-person checks with an Immigration and Customs Enforcement officer. Asylum seekers also must attend periodic status checks in immigration court. While asylum seekers may appeal denials of asylum to the Board of Immigration Appeals and then to the federal court system, success on appeal is rare. A positive grant of asylum typically leads to permanent residency and, five years later, the ability to apply for U.S. citizenship.

In the context of refugee resettlement, the United States exercises discretion over refugee admissions, rather than being legally obligated to provide access to residency for every person who meets the refugee definition. Setting the target number for annual refugee resettlement is the prerogative of the president. The U.S. Department of State, an executive-branch department, sets the priorities for the characteristics of the refugees who will be resettled. In these ways, the government uses the refugee admissions program to “align refugee admissions with foreign and domestic policy interests, as well as to make international humanitarian statements” (Van Selm, 2014: 514). Over the course of history, the United States has prioritized refugees fleeing communist regimes in China, southeast Asia, and Cuba; religious and ethnic minorities; and women and children, among other groups. Even within prioritized groups, the United States can select the individuals it actually will resettle from among the millions of refugees abroad. Because the number of refugees awaiting resettlement—even in the priority categories—far exceeds the number of refugees actually resettled, it may be possible to avoid the cases that pose the closest calls for the refugee definition. While the United States has an obligation to adjudicate the claim of every refugee that reaches its territory, it owes no similar legal obligation to refugees anywhere else in the world.

Because of the relative ease with which Central Americans can travel to the United States, seek asylum, and trigger U.S. non-refoulement obligations, the United States has limited the refugee definition in ways that are prejudicial to people from the region. The next section argues that developments in immigration law since the 1980s bear out this prejudice.

## Incentives to Constrain Access to Asylum Have Led to Prejudicial Treatment of Central U.S. Asylum Claims

Since the advent of the modern U.S. immigration system in the 1980s, Central Americans have faced unique barriers to accessing asylum. One particularly egregious example of discrimination against Central American claims involved near wholesale denial of the claims of asylum seekers from the region. In the 1980s, many Central Americans were fleeing brutal civil wars, characterized by forced disappearances, summary executions, and the targeting of indigenous populations.

Despite this context, asylum approval rates for Guatemalans, Hondurans, and Salvadorans hovered around 2 percent (Hamlin, 2014: 39). By contrast, asylum approval for applicants from the Soviet Union were as high as 70 percent (Hamlin, 2014: 39). Partly in response to the low approval rates for Central Americans, advocates and civil rights organizations sued the U.S. Citizenship and Immigration Services, the Executive Office for Immigration Review, and the Department of State on behalf of a class of undocumented Guatemalans and Salvadorans, alleging discriminatory application of immigration laws in violation of the U.S. Constitution's Fifth Amendment guarantee of equal protection (*American Baptist Churches v. Meese*, 1990). The case *American Baptist Churches v. Thornburgh* was ultimately settled. The settlement agreement entitled certain Guatemalans and Salvadorans *de novo* asylum adjudication, in recognition of the inadequacies of prior adjudications of these asylum claims.<sup>3</sup>

Even legal developments that were broadly positive for Central American migrants in the United States contained prejudicial characteristics. The Nicaraguan Adjustment and Central American Relief Act (NACARA), passed in 1997, provides one example. NACARA provided access to work authorization, permanent residence, and citizenship for Nicaraguans and Cubans but, for Guatemalans and Salvadorans, limited access to work authorization and only allowed for suspension of deportation or cancellation of removal. These forms of relief are more tenuous than asylum because they do not create a pathway for accessing permanent residence and citizenship (Caldwell, 2000: 1581).

<sup>3</sup> A *de novo* asylum adjudication allows an asylum seeker to present their asylum claim as though there were not a prior denial.

By the 2000s, the rising influence and increasing brutality of criminal gangs was causing Central Americans to flee to the United States and seek asylum. For Central Americans fleeing gang violence, the “particular social group” ground often was used to establish asylum eligibility. This ground didn’t have a clear meaning at the time of adoption of the Refugee Convention, and its meaning has been subject to the interpretation of the courts (Schoenholtz, 2015: 107-08).

Historically, American jurisprudence converged on the principle that a particular social group was defined by an “immutable” characteristic shared by its members (*Matter of Acosta*, 1985). But in 2008, the Board of Immigration Appeals issued two seminal cases that narrowed the definition of particular social group (*Matter of E-A-G-*, 2008; *Matter of S-E-G-*, 2008). The board concluded that, in addition to immutability, viable particular social groups required both “social visibility” and “particularity.” Both these cases involved young people who resisted gang recruitment in Central America in the context of rising numbers of young people from Central America seeking asylum. In *Matter of E-A-G-*, the board rejected particular social groups defined as “young persons who are perceived to be affiliated with gangs” and “persons resistant to gang membership” (2008: 594-595). In *Matter of S-E-G-*, the board rejected the viability of two more proposed particular social groups: “Salvadoran youth who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang’s values and activities” and “family members of such Salvadoran youth” (2008: 585, 588). The facts underlying these cases, as well as the impact of the decisions on other cases involving asylum seekers from Central America, led one scholar to conclude that “the fear of increasing numbers of children fleeing gang violence in Central America seeking asylum in the United States improperly influenced the [Board of Immigration Appeals]” (Settlage, 2016: 292).

Limiting Central American asylum claims did not end the flow of refugees arriving at the U.S.-Mexico border. Beginning in 2014, at the same time the Board of Immigration Appeals was limiting gang-related claims, greater numbers of families and unaccompanied minors began to make the journey to the United States. This new influx of asylum seekers stressed the asylum system and created difficult choices for the Obama administration, which tried to balance its pro-immigrant rhetoric with the unfolding crisis and

criticism from conservatives, including from then-presidential candidate Donald Trump.

## **The Trump Administration and Asylum**

The Trump Administration inherited an overburdened asylum system that did a poor job of protecting Central Americans from the threats they faced at home. But whereas the Obama Administration attempted to make changes at the margins to asylum, Trump attempted nothing short of a full dismantling of the asylum system. Most of Trump's asylum policies could be classified into three distinct but interrelated strategies. He sought to deter individuals from seeking asylum at the U.S.-Mexico Border, to detain asylum-seekers who were not deterred, and to deny the claims of those asylum-seekers by narrowing the legal definition of "refugee" under U.S. law. Though many of these actions were enjoined by U.S. courts, the cumulative effect rendered the U.S. asylum system almost unrecognizable by the end of Trump's term in office.

With respect to deterrence, the Trump administration implemented several interlocking policies that together made invoking the right to asylum at the U.S.-Mexico border next to impossible. In early 2018, the administration imposed "metering" at border checkpoints, which limited the number of asylum-seekers who could be processed each day (AIC, 2020: 1). Long waiting lists arose as asylum-seekers languished for months on the Mexican side of the border waiting for their numbers to be called. Metering increased incentives for asylum-seekers to attempt to cross between entry checkpoints and then claim asylum upon encountering U.S. law enforcement. In response, in November 2018, the administration promulgated a regulation that became known as the "Asylum Ban 1.0," which made asylum-seekers who crossed between checkpoints ineligible for asylum (Harris, 2020: 157).

Another pair of policies implemented in 2019 brought the administration even closer to accomplishing its goal of dismantling the asylum system. In January 2019, the administration began implementing the Migrant Protection Protocols, also known as the "Remain in Mexico" program whereby asylum-seekers are processed at border checkpoints and then returned to Mexico to await their asylum hearings (AIC, 2020: 2). Many people never made it back for their hearings because they did not receive notice of date

changes or were prevented from making it back to the border because of economic or security concerns. Of those that did, only 0.1 percent were granted asylum (Solis, 2019). Then, in July 2019, the administration promulgated what became known as the “Asylum Ban 2.0,” which made anyone who crossed through a third country, including Mexico, ineligible for asylum. The Asylum Ban 2.0 was followed by agreements with Guatemala, El Salvador, and Honduras, which purported to declare them “safe third countries” where asylum-seekers could be legally deported to under U.S. law (Harris, 2020: 146, 158).

Immigrants’ rights advocates had mixed success challenging these policies in court. The Asylum 1.0 was quickly enjoined. However, temporary court orders enjoining the implementation of Remain in Mexico and the Asylum Ban 2.0 were vacated by the Supreme Court and the policies were allowed to go into effect (Wadhia, 2019: 126-130). A lawsuit challenging the metering policy is still pending. As these interlocking policies went into effect one by one, the number of refugees stranded on the Mexican side of the border swelled and refugee camps sprang up.

These policies substantially limited the number of asylum-seekers who were able to invoke the right to asylum. Those still could face immigration detention for weeks, months, or even years. Even with the Asylum Ban 2.0 in place, many individuals still could not be deported because the U.S. has a separate form of relief called withholding of removal, which satisfies the United States’ non-refoulement obligation. This statutory right, unlike asylum, is not discretionary, but it is much harder to obtain. With the Asylum Ban 2.0, many asylum-seekers were not asylum eligible, but they still had the right to seek withholding of removal, even though few would ultimately receive it. For those not stuck in the Remain in Mexico program, this meant spending long periods in detention awaiting their hearings. Many asylum-seekers gave up and chose deportation rather than imprisonment.

The Obama administration detained immigrants at the border too, but it also released many asylum-seekers, particularly those traveling with children, to await their court date from within the United States (Rizzo, 2018). The Trump administration saw this policy, which became derisively known as “catch-and-release,” as providing asylum-seekers a benefit to coming to the United States. Because of the backlog in the asylum system, even someone whose asylum claim was ultimately denied could live and work in the United States for years.



The Trump administration immediately began to release fewer asylum-seekers while they fought their claims. But the administration quickly ran into the same problem that Obama did when it came to families crossing the border. A settlement agreement from the 1990s, called the Flores Settlement Agreement, required the government to release minors detained at the border “without unnecessary delay” (Collins, 2021: 232). With the Flores Settlement Agreement in place, the government had two options: it could release families detained at the border, or it could separate children from their parents, release the children, and detain the parents. The Obama administration decided against separating families, and most families continued to be released after a short period in detention.

After unsuccessfully attempting to withdraw from the Flores Settlement Agreement, the Trump administration made the opposite decision in a policy known as “Zero Tolerance” (Baker and McKinney, 2021: 589). Under Zero Tolerance, parents were separated from their children in order to prosecute them for illegally entering the country. Their children were transferred to the custody of Health and Human Services, and the parents were deported after they were convicted. Thousands of families were separated before public outrage forced the Trump administration to change course. Even after the formal end of Zero Tolerance, the administration continued to use the threat of detention to deter and punish asylum-seekers for seeking protection. Parents were often forced to sign away their children’s right to release from detention in order to avoid separation. Single adults continued to be detained at high rates.

The Trump administration also set out to limit who was eligible for asylum in a series of decisions aimed at refugees from Central America. In *Matter of A-B-*, the attorney general overruled a previous decision, making domestic violence victims eligible for asylum. *Matter of A-B-* also attempted to limit access to asylum for victims of gang violence, both by raising the standard for when a state is unable or unwilling to protect someone from persecution, and also by making sweeping statements about how “private violence” would very rarely give rise to an asylum claim (2018). The next year, the attorney general issued *Matter of L-E-A-*, which curtailed the right of people to seek asylum based on family relationships (2019). Together, these two decisions purported to bar the vast majority of Central American asylum claims.

The Trump administration had successfully slowed asylum claims to a trickle when in March 2020, it used the COVID-19 pandemic as a pretext to

end the right to asylum at the U.S.-Mexico border entirely. While the Trump administration resisted calls for domestic restrictions to stem the tide of infections, it wasted no time in shutting down U.S. borders using the same rationale. On March 20, 2020, the Centers for Disease Control and Prevention (CDC) issued an order under Title 42—a statute allowing the CDC to prohibit the entry of individuals with communicable diseases—that completely shut down the U.S.-Mexico border to asylum-seekers (Armstrong, 2021: 361). After four years of trying, it took a global pandemic for Trump to accomplish his goal of ending the right to asylum.

### **Rethinking Asylum Adjudication and Refugee Processing in the Biden Era**

Biden came into office promising to restore the right to asylum, and he quickly reversed many of Trump's immigration policies. His administration withdrew from the agreements with Guatemala, Honduras, and El Salvador, announced an end to the Remain in Mexico program, promised to reunite families separated under Zero Tolerance, rescinded the Asylum Ban 1.0, and stopped construction of the border wall (CIS, 2021). Biden's Department of Justice also rescinded *Matter of A-B-* and *Matter of L-E-A-*, and announced it would undertake rulemaking to clarify the term "particular social group," one of the five protected grounds under U.S. and international law.

Some Trump asylum policies, however, remain in effect. Perhaps most importantly, the Biden administration has not removed the COVID-19-related restrictions, which have led to over 520,000 expulsions at the U.S.-Mexico border from the beginning of the pandemic to February 2021 (AIC, 2021: 3). With the pandemic nearing a conclusion, Biden will be forced to end those restrictions soon. When he does, refugee processing at the border will look much the same as it did before Trump took office. But the Central American refugee crisis will not have abated. The past four years have confirmed that stricter enforcement policies will not stem the tide of migrants from Central America. In fact, before the COVID-19 pandemic, border apprehensions were at their peak in May 2019, when most of Trump's border policies were in effect (Pew Research Center, 2021). They are at nearly record levels again despite an almost total ban on asylum still in effect. There is simply

no evidence that the Trump strategy accomplished anything except increased human suffering.

Although the Biden administration has been slow to act to restore the asylum system to its pre-Trump functioning, his administration has recognized the humanitarian character of migration from Central America. Instead of collapsing economic migration and forced migration, the Biden Administration has suggested that Central Americans should have improved access to safe and orderly means of migration to the United States. The Biden Department of State, for example, has stated that “the United States’s strong interest in increasing refugee resettlement from Central America to facilitate safe and orderly migration and access to international protection and avert a humanitarian crisis at the U.S. southern border, means that we will need to increase the overall refugee admissions number.” And, while development and humanitarian assistance has long been a part of the U.S. government’s approach in Central America, the Biden administration’s recently announced “Root Causes Strategy” explicitly describes the renewed approach as “a core component of [the] Administration’s efforts to establish a fair, orderly, and humane immigration system” (White House, 2021).

While these efforts trend in the right direction, Biden will need to continue charting a path forward that adheres to humanitarian norms and international legal obligations. This path forward cannot simply be a retread of failed policies. Instead, his administration must be willing to adapt the asylum system to respond to the particular situation in Central America and at the U.S.-Mexico border. This chapter proposes a number of reforms that Biden could make. These reforms fall into four general categories: changes to U.S. asylum law to expand who is eligible for asylum; expanding refugee resettlement from Central America; implementing burden-sharing with Mexico; and reimagining other forms of humanitarian protection under U.S. law.

#### EXPANDING ASYLUM ELIGIBILITY

As noted above, the Department of Justice has already rescinded two asylum decisions that had the effect of barring most asylum claims from Central America, but several other decisions, including ones setting a high bar for gang-related claims, remain in effect. The announced rulemaking on particular

social groups provides an opportunity for the United States to acknowledge the realities of violence in Central America and to bring U.S. asylum law in line with international law. More specifically, the new regulations should abandon the three-part test for particular social groups established by the Board of Immigration Appeals and adopt a test that focuses on immutability as the sole factor (Kelly, 2015: 219). The other two requirements—particularity and social distinction—are unnecessary given the nexus requirement. If a persecutor targets an individual “on account of” a particular social group, that individual should not need to prove that the society in question sees the social group as distinct or that it is possible to determine who is in the group and who is not. Both are implied by the persecution itself.

The new regulations should also remove the requirement that a particular social group not be “overbroad.” There is nothing in either U.S. or international law that only grants protection to an individual if there are only a certain number of other individuals who need protection. The other protected grounds contain no such restriction. A religious or racial group may constitute a majority of a country without being considered overbroad. With these superfluous requirements removed, it should be crystal clear that gender, with or without an additional factor, is a particular social group. It is immutable and individuals are targeted on that basis, regardless of whether a large portion of the population identifies as one gender or the other.

Finally, the new regulations should make clear that gangs in Central America operate as *de facto* governmental actors in the region and that violence inflicted because of resistance to gang membership is persecution on account of actual or imputed political opinion.

#### EXPANDING REFUGEE RESETTLEMENT IN CENTRAL AMERICA

The U.S. asylum system was simply not designed for mass migration events, and not surprisingly, it is buckling under the pressure of processing hundreds of thousands of claims per year. The United States has a system for handling mass migration events elsewhere in the world: the refugee resettlement system. But the United States has not employed this system to address the Central American refugee crisis, except at the margins. The reasons for this are political, not practical. The stated policy of the United States is

to deter Central American migration, not to manage it. But pretending that a mass migration event is not occurring does not make it so. Nothing the United States has done up to this point has stopped the flow; in fact, recent years have seen ever-increasing numbers of refugees arriving at the border. It is time to recognize reality and begin to implement a management strategy, rather than a deterrence strategy.

A first step could be expanding on existing programs such as the Central American Minors (CAM) program, which permitted minors with parents living legally in the United States to apply for asylum from Northern Triangle countries (NIF, 2021). As designed under Obama, it only allowed a small number of individuals to apply—a minor needed to have a parent who was already a lawful permanent resident. Most minors in that category could already come to the United States as a derivative of their parents, though in many cases, the process was longer. After the program was halted by Trump, Biden has announced that CAM will be reinstated and that it will make new categories of individuals eligible to petition for a minor through the program, including recipients of Temporary Protected Status and recipients of withholding of removal. These expansions will make the program available to a much greater number of children. But Biden should consider expanding the program even further to permit undocumented parents living in the United States to apply for their children abroad to be assessed for resettlement or parole. Without such a policy, unaccompanied children are likely to continue arriving at the U.S.-Mexico border seeking to reunify with family members in the United States.

In addition, the United States needs to work closely with the United Nations High Commissioner for Refugees (UNHCR) and Mexico to begin refugee processing in Mexico to discourage migrants from making the dangerous journey across the U.S.-Mexico border. UNHCR plays a critical role worldwide in administering services in refugee camps and in vetting refugees for resettlement. Beginning in 2016, the agency increased its presence in response to the Central American refugee crisis (UNHCR, 2019). UNHCR also facilitated the Comprehensive Regional Protection and Solutions Framework (MIRPS) between seven Central American countries: Belize, Costa Rica, Guatemala, Honduras, Mexico, and Panama, with El Salvador joining later. But although the United States is by far the largest resettlement country in the region, the United States is not a party to MIRPS. In a 2019 UNHCR report

about its activities in Central America, the United States is mentioned only twice, once to note the high number of Central Americans who are deported from the United States each year (UNHCR, 2019: 8).

Attempts to involve the United States in resettlement efforts have had limited success. A small pilot program called the Protection Transfer Arrangement was initiated in September 2016 with plans for the UNHCR to identify and process up to 200 particularly vulnerable individuals in the Northern Triangle for transfer to Costa Rica to await resettlement in the United States or another country. However, only 140 people had been resettled through the program two years later. The Biden administration should reengage with UNHCR to expand the PTA (UNHCR, 2018: 6).

Such expanded efforts should include refugee processing in Mexico where many Central Americans transit before making the journey to the United States. This will require working with UNHCR to set up refugee processing infrastructure as well as changing resettlement priorities domestically. Right now, only 5,000 of the 62,500 cap for this fiscal year are allocated for refugees from Central and South America, and most of those slots are not taken by refugees from the Northern Triangle. The Administration set as a target the resettlement of only 1,000 refugees from Honduras, El Salvador, and Guatemala (DOS, 2021).

The U.S. refugee program should identify Central America as an area of “special humanitarian concern,” which would prioritize Central American refugees for resettlement. Right now, refugees in that priority category include Burmese in Thailand and Congolese in Tanzania, both groups deserving of protection but whose conflicts exist at a much farther remove than the Central American refugee crisis. Prioritizing refugee resettlement from Central America will allow the U.S. to fulfill its international obligations while addressing the crisis unfolding on its doorstep.

#### IMPLEMENTING BURDEN-SHARING WITH MEXICO

Because many Central Americans transit through Mexico on their journey to the United States, any comprehensive solution to the refugee crisis must involve cooperation between the two countries. Right now, there are several obstacles to resettling large number of Central Americans in Mexico. The

first is the inaccessibility of asylum under Mexican law. On its face, the right to asylum under Mexican law is broader than either the U.S. or international definition of refugee. In addition to persecution on account of the five protected grounds, it includes protection for those “who have fled their country because their life, safety, or freedom was threatened by generalized violence, foreign aggression, internal conflict, massive human rights violations, or other circumstances that have gravely disturbed public order” (Kerwin, 2018: 293-96). In practice, however, few asylum-seekers can access the Mexican asylum system. For example, asylum-seekers in Mexico must apply within 30 days of entering the country, and most are not given the opportunity to do so (Kerwin, 2018: 297-98). Instead, they are either ushered to the U.S.-Mexico border to apply in the United States, or they are quickly deported back to Central America.

In addition, many Central American refugees do not want to resettle in Mexico, perceiving it, rightly or wrongly, as a dangerous place without economic opportunity. Many refugees also have preexisting support networks in the United States—family members and friends who previously immigrated to the United States.

The answer to many of these problems is economic aid and law reform. But that alone will not solve the problem. Burden-sharing agreements must find ways to incentivize Central Americans to resettle in Mexico. Incentives could take the form of robust integration programs, or Mexico could agree to resettle family members living undocumented in the United States (perhaps those whose asylum claims were denied) so that families can resettle together. Burden-sharing agreements could also be modeled on the agreement between the European Union and Turkey in response to the Syrian refugee crisis, whereby the E.U. and Turkey agreed to resettle a certain number of Syrian refugees in exchange for economic aid and border control. The Trump administration’s efforts in this area mostly involved threatening Mexico with aid cuts and tariffs unless it dealt with the crisis itself. Preliminary talks between Mexico and the United States during the Biden administration indicate a more collaborative approach that will hopefully be more productive.

## REIMAGINING OTHER FORMS OF HUMANITARIAN PROTECTION UNDER U.S. LAW

The United States should also consider whether it should create a new form of humanitarian protection outside of the existing asylum system that would not require applicants to prove the technical requirements of asylum. This form of protection could be nationality-specific and omit the requirement of proving asylum eligibility, akin to the Cuban Haitian Entrant Program (CHEP). It could also be temporary, akin to Temporary Protected Status (TPS), a form of protection under current U.S. law that allows the president to grant nationals from certain countries temporary protection from deportation due to circumstances (such as war or natural disaster) in their home countries. It could also lead to permanent status, similar to NACARA. The application process could be streamlined to ease pressure on the overburdened asylum system, with interviews at the border taking the places of years of hearings in immigration court.

A NACARA-like program would require legislative action, which considering the make-up of the current Congress seems unlikely. However, Biden could use the parole power in much the same way without any legislation at all. The administration could parole individuals who meet certain requirements into the country temporarily and continue to renew the parole as long as the conditions in Central America remain dangerous. Individuals that are granted temporary humanitarian protection could still apply for asylum if they meet the requirements, but would still receive protection even if they cannot show that they meet the technical requirements of asylum, such as proving they were targeted on account of one of the five protected grounds.

## **Conclusion**

The status quo at the U.S.-Mexico border is unsustainable. Biden cannot simply use the same failed strategies, nor is reversing the damage Trump did to the system enough. Instead, the administration must implement creative new solutions that could provide lasting solutions to the Central American refugee crisis.



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# A JUST PUBLIC CHARGE RULE

*Enrique Camacho-Beltrán*

## Introduction

On February 24, 2020, the United States Citizenship and Immigration Services (CIS) implemented the Inadmissibility on Public Charge Grounds final rule. Let's call this instance of the rule Trump's Public Charge Rule or TPC for short. TPC is the codified criteria now used to determine eligibility for change of status, green cards, or visas. This means that applications will be rejected when it is determined that the applicant may become or is *likely* to become a fiscal burden for the taxpayer in terms of social benefits. (CIS, 2021a).<sup>1</sup> The main goal is to identify immigrants who are potentially unable or will be unable to support themselves (or are supported by their families). This is achieved by tracking the immigrant's dependence on financial or social support. Those who required assistance during twelve of the last thirty-six months will be considered a public charge and thus denied a green card or residency. The rule exempts refugees, asylum seekers, children, and teenagers with "special immigrant juvenile status" and some other victims of abuse and violence (CIS, 2021b; CIS, 2021c).<sup>2</sup> Notably, TPC expanded the meaning of "public charge" and "public benefits" (present in previous legislation) thus

<sup>1</sup> "The 2019 Public Charge Final Rule is no longer in effect, and DHS will partner with federal agencies to ensure impacted individuals are aware" (CIS, 2021a).

<sup>2</sup> "That was in place before the Public Charge Final Rule was implemented. In addition, USCIS will no longer apply the separate, but related, "public benefits condition" to applications or petitions for extension of non-immigrant stay and change of non-immigrant status." (CIS, 2021b).

"On March 9, 2021, the Seventh Circuit Court lifted its stay and the U.S. District Court for the Northern District of Illinois's order vacating the Public Charge Final Rule went into effect. When the vacatur went into effect, USCIS immediately stopped applying the Public Charge Final Rule to all pending applications and petitions that would have been subject to the rule. USCIS continues to apply the public charge inadmissibility statute, including consideration of the statutory minimum factors in the totality of the circumstances, in accordance with the 1999" (CIS, 2021c).

establishing a forward-looking test to determine *the likelihood* of dependence on public programs and specifying a standard that Homeland Security employs to predict if an alien is likely to become a “public charge” at any time in the near future and is therefore inadmissible and ineligible for admission or adjustment of status.

Biden’s administration is expected by many to revoke TPC, but the formal rulemaking process will take time. His administration may also choose simply to not enforce it. Regardless of what happens to TPC while I wrote these lines, I believe it is important to have a broader discussion about the justification and scope of TPC, PCR, and similar immigration policies in order to identify whether conditions exist under which such policies are morally required or even permissible. There is also the issue of how we can measure public burden in a meaningful, normative way if people who represent a burden at admission later become active, cooperating members of society. This is why I question in this chapter the morality of public charge.

There are several familiar approaches to the morality of public policy. Here I will take the framework of normative theory of international relations, global ethics, and normative political theory. Some theorists will assess the consequences of public policy, deeming inadequate the policy that delivers detrimental consequences and, conversely, judging adequate public policy that produces good consequences (Macedo, 2018; Miller, 2005). Some others invoke a concept of justice in order to ask what justice requires from our institutions or public policy (Walzer, 1980; Wellman, 2008). Still a third view will ask a methodologically prior question about what is morally permissible and required in terms of public policy. I take this last path in the hope of preserving a more pluralistic normative approach that allows the consideration of several claims and different levels of analysis (Camacho-Beltrán, 2019; 2020).

The agenda of this paper runs as follows. In section two, I lay out what defenders of TPC have to say in favor of this policy and I examine some straightforward objections to the consequentialist defense of TPC. These objections, however, do not preclude the possibility of reinstating PCR in some other fashion, so in section three I offer an account of the normative core of PCR. I capture the normative core straightforwardly and center it around the value of self-sufficiency and the principle of membership. This in turn is easily connected in section four with familiar justifications for exclusion grounded in rights and obligations. These justifications are each flawed, but perhaps



they could work together in order to sustain PCR, working out a sort of pluralist justification. So, I reconstruct the justification in this pluralist way only to find out that the pluralist defense may ground TPC in certain circumstances, but under these circumstances, we know it seems to favor more inclusion than less. Finally, in section five I show the plausibility of the account by employing it for analysis in the case of El Salvador.

## **A Philosophical Ground for TPC on Consequences**

According to its supporters, the TPC establishes a move in the right direction to emulate some of the positive traits of the Canadian immigration system, which gives greater weight for eligibility to educational background, occupation, and language proficiency. The Canadian system has been defended in consequentialist terms. Consequentialism is a kind of moral assessment or evaluation of actions or policies that attributes moral properties mainly to consequences (Pettit, 1997). Under this view, border policy such as TPC is morally right if and only if, as a consequence, it maximizes some function of welfare or social utility (Sen, 1985). In this vein, by increasing regular admissions of skilled immigrants relative to the unskilled, the Canadian system avoids the detrimental effects that immigration sometimes have over the wedges of low-skilled citizens and residents; and at the same time lowers the wages of the better off (Borjas, 1990: 176-77; Macedo, 2018: 290). So, it is possible that TPC may be defensible in the same terms as the Canadian system.

Following that path, there are at least two major lines of defense. First, as explained above, TPC reduces discretion in the interpretation of the rule on Public Charge by laying down the framework, detailing the circumstances, and establishing the prospective character of public charge judgments (DHS, 2021). For this prospective analysis, TPC requires factoring in age, health, family status, assets, resources, financial status, education, skills, and self-sufficiency. By reducing arbitrariness and discretion, TPC seeks to protect resources and benefits that are desperately needed by worst-off residents and citizens. This entails that would-be immigrants seek inclusion *for the right reasons*, and also ensures that the availability of public benefits are not an incentive for immigration to the United States (DHS, 2021). For instance, immigrants who seek to change their status are generally required to continue to be

self-sufficient and not remain in the U.S. with the purpose of relying on any public benefits (DHS, 2021).

Second, the emphasis on self-sufficiency may also protect the interest of guest workers, as it requires that immigrant workers receive adequate income and resources to support themselves without resorting to seek public benefits. The detrimental effects of unskilled immigration over low-income residents and citizens have been profusely measured and studied (Wasem, 2012: 3, 7-8).<sup>3</sup> According to a popular view, high levels of unskilled immigration have tended to lower wages overall by increasing the labor supply. Keeping the wages of newly arrived immigrants above the federal line of poverty also protects the wages of low-income residents and citizens.

If the consequentialist defense of TPC is sound, then it is not only morally permissible but even morally required (as a requirement of basic justice). But this is too quick, because requirements of justice also compel us to protect the interests of the less well-off abroad. In this vein TPC may come up short. In order to comprehend this, notice that TPC has at least four kinds of major detrimental effects that are objectionable in consequentialist terms. First, it is likely to affect some of the most vulnerable people holding temporary humanitarian statuses. The welfare rules vastly limit these benefits almost entirely to U.S. citizens, refugees and asylees, and green-card holders. Non-citizens, who are both eligible for benefits and subject to TPC's test at the green-card application stage, fall into a very limited set of mostly humanitarian immigration statuses. Second, it has serious chilling effects, effectively causing people to withdrawal (justifiably or because of misinformation) from essential public benefit programs (providing food, housing, and medical needs to citizens, people holding temporary humanitarian statuses, and other family members who are directly targeted by the rule). (Batalova et al., 2019; Kerwin et al., 2018: 3, 9).<sup>4</sup> Third, the implementation of a forward-looking

<sup>3</sup> See also the controversial analysis of Borjas (1990).

<sup>4</sup> "TPC is likely to make millions of people in immigrant households—both citizens and noncitizens—fearful (i.e., people disenrolling from or not applying for benefits for themselves and other family members) of receiving public benefits. According to Migration Policy, more than 10.3 million noncitizen adults and children live in families in which at least one person receives either cash or noncash benefits. Disenrollment of social benefits such as SNAP (Supplemental Nutrition Assistance Program) and Medicaid could seriously spoil children's academic success and long-term economic self-sufficiency effectively creating the problem that it allegedly attempts to solve. Disenrollment of other programs may be detrimental to integration of low-income, working-class immigrants and their families to local communities and society as a whole" (Batalova et al., 2019).

test required by TPC is likely to affect future green-card applications. In order to make forward-looking judgments and predict future dependence on social benefits, officials look at multiple factors, including: income, assets, educational attainment, English skills, etc. Finally, it should be stressed that TPC increases chances of deportation by establishing certain kinds of identity or profiles corresponding to deportable subjects relying on public benefits (De Genova, 2002: 439). TPC establishes a conceptual and interpretative link between the need and employment of social benefits and deportability (Valenzuela and Camacho-Beltrán, 2021).

The detrimental effects that TPC causes are obviously unfortunate, but it is not apparent why they are morally wrong and should be avoided or removed. In order to explain this as a kind of wrongdoing, it is useful to remember the rationale behind asylum and refuge. Everyone has a basic fundamental right to settle in a place where a reasonable safe life is viable. So, asylum and refuge are ways to provide a mandatory form of humanitarian relief that cannot be exported or given away but can only be provided within the jurisdiction of a legitimate, just state at the request of the person in peril (Walzer, 1980: 49-50). The refugee regime created by the Geneva Convention meets some of these duties along with the U.N. High Commissioner for Refugees (UNHCR). The number of this type of requests has been constantly growing from a few thousand in the 1970s to several million (in 2011, the UNHCR had over ten million refugees under its care) (UNHCR, 2012). Allegedly, in order to deal properly and specifically with the numerous requests of asylum and claims of refugees, the U.S. has created various other categories of temporary humanitarian relief. But the rationale behind these categories remains the same: to provide the kind of mandatory assistance that can only be provided within the territory. This differential consideration seems to be inflicting disproportionate burdens over those under humanitarian statuses, only to avoid costs to the taxpayer (provided that the harm to the wages of lower-skilled native workers may be also addressed by means of taxpayer-funded social programs). This differential consideration seems wrong or at least morally arbitrary because it prevents the U.S. from offering the same kind of protection implicated in the rationale that motivates humanitarian statuses, asylum, and refuge protections in the first place. A moral justification for this differential consideration should be provided or the arbitrariness of this should be removed (Buckinxy and Filindra, 2015).

## Identifying the Normative Core of the Public Charge Rule (PCR)

TPC may be morally impermissible or at least morally arbitrary, but this does not preclude the possibility of restating the Public Charge Rule in different terms or to provide a justification for differential treatment among different statuses. So, it is worth exploring these possibilities, in order to identify the normative core of PCR and to offer some conceptual clarity about what kind of interests are being protected. There is a chance that this will allow me to establish certain links to familiar moral justifications for exclusion of would-be immigrants. In turn, this may help to offer a general assessment of the plausibility of obtaining a justification for some other forms of PCR.

The normative core of the rule could be seen already in the Immigration Act of 1882, which first introduced PCR. In a nutshell, it established some of the first criteria under which authority is permissibly used to expel immigrants from the U.S. (Immigration Act, 1882a). According to this document, there are grounds for exclusion for “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge” (Immigration Act, 1882b).

The most obvious normative problem with this rule (apart from the plainly unacceptable discriminatory language) is that it admits a broad space for interpretation regarding which level of self-sufficiency is required, who should be considered a public burden, and what kind of public burdens justify exclusion or deportation. This leaves to the discretionary action of courts and implementing agencies the decision about who is likely to become a public charge. However, the statements by Congress included in the Immigration and Nationality Act of 1952 offer some clarity on this regard. *Self-sufficiency* is regarded by Congress as the core principle encompassing immigration policy since the 1882 immigration act. This means that the American people expect would-be immigrants “who aspire to be included, to rely on their talents, efforts and their own resources or their families.” Aliens must be motivated to share their resources and talents with the American people instead of exploiting the society by relying on its public system of benefits (GPO, 2021). So, consider the following clarification on the requirement of would-be immigrants: “*self-sufficiency*: would-be immigrants should embody the ideal of self-sufficiency. This means *i*) that upon inclusion they will rely

solely on their talents, efforts and their own resources (or their families) to sustain themselves and *ii*) they have something to offer to current members and residents in terms of their resources and talents.

If this interpretation of self-sufficiency is sound, it seems that the legacy of the 1882 act established a conceptual link between the need for public institutional support with exclusion and deportability, regardless of the moral claims of admission that individuals may have, according to their condition of vulnerability and need. But this seems to be at odds with principles of public morality. For instance, note that almost the opposite view applies to residents and citizens. Political morality seems to require members of a political community to be strongly concerned with the fate of their fellow human beings. This is clear because no citizen or resident gets disenfranchised or deported when she suffers a terrible accident that prevents her to be self-sufficient, and no child with cognitive disabilities is denied citizenship. In fact, applied ethicists now look for new forms to make sure that children and people with cognitive challenges are guaranteed certain kinds of political participation that allow them a full manifestation of their citizenship (López-Guerra, 2012). So, it seems that self-sufficiency implies the opposite principle for citizens and residents. Consider the following requirement: “*mutual concern*: members of a political community should establish and maintain domains of freedoms and forms of mutual concern *for one another* that are morally defensible and valuable.”

The tension may be resisted by suggesting that *mutual concern* plays the role of a principle about the moral character of states or political communities, whereas *self-sufficiency* merely functions as a principle of prudence regarding the interest of such communities. But this is too quick. As opposed to *de facto* regimes that exercise political power arbitrarily following the whip of a tyrant or the short-sighted interests of a social class, states with a moral character aspire to establish and exercise political power over their citizens and residents, according to standards of public morality such as legitimacy and justice (Miller, 2005: 374). For instance, for liberal democracies, sovereignty is not absolute or supreme. Instead, sovereignty-rights should be constrained by moral values and standards if political power is exercised legitimately (Buchanan, 2002). Yet by itself, *mutual concern* does not exclude outsiders or foreigners from its scope in order to make them subject to self-sufficiency only. So *mutual concern* must also imply *membership*: the right of political

self-determination of a political community of mutual concern consists in the exercise by its members of rightful control over that societal composition as they see fit, including the right to exclude whomever they see fit in accordance with their interest to preserve relationships of justice among them.

As *mutual concern* is a general principle of morality with no determined scope, its scope is constrained by *membership*. Indeed, the exact nature of the moral character of a specific state may vary greatly. Rawlsians famously claim that states should be fair systems of social cooperation between free and equal members. Libertarians on the contrary claim that states ought to be more similar to associations of mutual benefit. But the problem with these familiar views is that exclusionary borders are difficult to tide with these conceptions of the moral character of states, as in principle it seems that anyone willing to participate in the association or the society should be welcome.<sup>5</sup> Instead, *mutual concern* seems to imply an intergenerational enterprise with a unique character that provides strong rights of self-determination that extend even over the composition of the group. If *self-sufficiency* were a principle of prudence and *mutual concern* were a principle establishing the moral character of states, then *membership* must be a principle regarding the moral character of borders.<sup>6</sup> It establishes that a certain kind of partiality is morally permissible among citizen and residents that cannot be generally established with outsiders (Carens, 2013: 181).<sup>7</sup>

What matters here is to see the conceptual continuity between a conception of the moral character of states and borders with the moral permissibility of a prudential principle such as self-sufficiency. That is, the moral justification of *self-sufficiency* may be parasitic to the plausibility of *mutual concern* and *membership*. Put in another way, *self-sufficiency* seems to require that states are morally permitted to give more weight to the interests of citizens

<sup>5</sup> For the claim that a system of social cooperation implies open borders see Yong (2017). For the claim that libertarianism requires open borders see Steiner (2001). I've discussed these implications in Camacho-Beltrán (2015).

<sup>6</sup> This section relies on previous work. I've previously discussed the general traits of the morality of immigration controls in Camacho-Beltrán (2017). I discussed the moral scope of principles such as *membership* in Camacho-Beltrán (2019). The plausibility of partiality among members is discussed in Camacho-Beltrán (2020).

<sup>7</sup> In order to establish partiality-based relations outside the members of a political community and trump the partiality established among them, one needs to form a deeply meaningful bond such as those established with foreign-born spouses or children. That is why states with a moral character in their border policies normally recognize rights of family reunion.

and residents than to the interests of would-be immigrants. If this kind of partiality is justified, then the kind of differential concern that PCR requires may be justified as well. In order to be sure about this we need to unpack the claims implied by *membership*.

## A Philosophical Ground for PCR

There are at least two kinds of arguments that could provide moral support for *membership*. Arguments of the first kind are grounded in collective rights of association which are analytically embedded in a commonsensical notion of collective rights of self-determination.<sup>8</sup> Proponents of the right to exclude—grounded in members' collective rights—argue that states, as any other association, are at liberty to refuse to associate with any would-be immigrant according to their own interests (Wellman, 2008). The case for exclusion grounded in collective rights may be invoked to justify PCR. In order to understand this, suppose that we launch a charity association. All help is welcome, but certainly members would need the disposition and capacity to help. If someone has difficulties supporting herself, she may certainly qualify to receive help, but the association may be justified in rejecting her application for membership. This means that the charity association is not under obligation to accept her as member. She will be a burden for the group instead of a source of support. It is in the interest of the group to acquire new members, but those new members should be at least self-sufficient enough so as to provide support for the group instead of requiring it. All things being equal, states are collectives that assume many forms of collective care. So it is also possibly in their legitimate interest to acquire members that could provide support instead of demand it. As a result, states may have also a right to reject would-be immigrants if they are more likely to become a burden than a cooperating member of the society (Wenar, 2005).<sup>9</sup>

<sup>8</sup> This account is expanded and presented, examined, and discussed in Wellman and Cole (2011). Complementary discussion could be found in Camacho-Beltrán (2015) and Fine (2010).

<sup>9</sup> This narrative of brute bare rights is very compelling for many American citizens and residents. As a matter of cultural particularity, many American citizens believe that any threat or decrease to liberty-rights is unacceptable or at least it should be resisted. However, in reality no theory of absolute or bare rights may be coherently defended; not even for the case of liberty-rights. For an overview see Wenar (2005).

The problem with the argument of the right to exclude, as it is, is that the argument seems formulated in a rather simplistic fashion and is unable to take into account the complexities of rights to exclude from territorial states (Wenar, 2005).<sup>10</sup> The argument as it is, simply assumes a connection between rights of disassociation and territorial rights of exclusion. But the right not to associate with someone is not equivalent to the right to prevent someone from entering somewhere. An additional argument explaining the appropriate relation between states, peoples, and land must be provided (Moore, 2015). Furthermore, the right not to associate with low-income, low-schooled would-be immigrants is clearly limited by other rights; firstly, by the individual rights of natives to associate with those would-be immigrants (Steiner, 2001). But other rights such as rights of reparation or rights to be protected may complicate the normative scene. Hence, a good explanation of the nature of a putative right to exclusion should explain the complex relation between all the rights implied or relevant for territorial and collective exclusion.

Now arguments of the second kind are grounded in collective special obligations. Typical special obligations arise from consent as is the case of promises or contracts. But associative special obligations arise from the roles we find ourselves in, regardless of consent, as it is the case with children's obligations toward parents or siblings. In the same vein, proponents of this argument hope that citizens and residents are engaged in morally meaningful relations of socialization and mutual care in a way that establishes mutual associative obligations between them and toward each other (Miller, 2016).<sup>11</sup> Citizens and residents are engaged with each other in a way that they are not with outsiders (Horton, 2006; 2007; Simmons, 2002).<sup>12</sup>

<sup>10</sup> Recall that in its contemporary meaning, having a right means to specify the scope and limits of the protection of that interest which is said to be protected by a right in a way that remains compatible with rights of everyone else. In order to be limited and specific, another important trait of the contemporary conception of rights is that they function as a sort of shorthand for what in reality stands for a complex net or molecule of right-incidents that together explain the nature, scope, and limits of a particular right. For a discussion about this canonical Hohfeldian analytical account of the form of rights see Wenar (2005). As a result, no right is absolute and even human rights have limits. To be sure, sometimes we obtain better accounts of some rights when we offer the adequate set of boundaries and constrains appropriate for that right (Wenar, 2005).

<sup>11</sup> David Miller is the key proponent of this view. He has developed this argument over the years. The completer and more self-contained version of this argument can be found in Miller (2016); see particularly the chapter on "Closed Borders."

<sup>12</sup> For a complete defense of the case for associative political obligations see Horton (2006). In defense of associative political obligations: Horton (2007). For discussion see Simmons (2002).



The kind of support that the argument of obligations could offer to PCR is straightforward. If the argument from the position of obligations *i*) finds a normative way to explain how certain obligations are obtained only among citizens and residents and not between insiders and outsiders; and also *ii*) finds a way to show that those obligations of mutual care are indeed obligations of distributive justice and may be disrupted if less-educated would-be immigrants with low income represent a public charge; then citizens and residents may defensibly exclude those flagged by PCR, because they could jeopardize the unique and intrinsically valuable relations of mutual care and justice that residents and citizens have over time created and sustained. Finally, it purports to be grounded in claims over territory: in this view, a cultural group with the power to socialize individuals as members by means of sustaining a unique culture combines the group's culture with its land in such a way that, over the course of generations, it becomes impossible to detach the culture from the land, without inflicting over that group a tremendous form of morally impermissible harm (Moore, 2015: 6; Miller, 2007: 218).

The argument would certainly work if the creation of obligations suddenly stops at the border, preventing the creation of transnational and global obligations. But there are several cases that empirically challenge the alleged particularity of associative obligations: in the first place, the case of border communities divided by the border that still establish consented and associative obligations to deal with shared problems. In the second place, communities of immigrants living for a long time in a place where—regardless of their migratory status—establish associative obligations toward other members of the community, residents and citizens. Finally, we have the case of regional development where several countries establish strong commercial, financial, diplomatic, cultural, and security-keeping bonds, and their intense relations give rise to associative obligations that go beyond signed agreements and treaties. There is not enough space here to discuss all of them in detail. But what all of these examples have in common is the fact that the conditions of possibility for associative obligations to obtain may be presented in different degrees, regardless of border lines or nationality. So again, the argument is too simplistic to deal with the complexities of reality.

Now, if we take a step back, it seems that the arguments for exclusionary rights and obligations may do better against the simplicity charge if they complement each other. So perhaps a more complex account of exclusionary

rights could be developed by showing the correlations between all the relevant obligations and rights among residents and citizens. This alternative version should take into account transnational rights and obligations in order to show—as opposed to merely assume—that the balance of rights and obligations among residents and citizens does not apply to outsiders and would-be immigrants. From these requirements we may obtain the following desiderata:

**GLOBAL SELF-SUFFICIENCY:** should be supported by a *consequentialist argument* that globally assesses the beneficial and detrimental outputs of implementing PCR. But it would be wrong only to factor out the direct consequences of PCR over just one group (even if advantageous) in isolation from the rest of the foreseen direct and indirect consequences. Now of course it would be foolish and supererogatory to expect an exhaustive account of consequences as in the flapping butterfly analogy that causes a storm. Establishing a criterion that could determine which consequences should matter is a familiar problem of consequentialism that I cannot work out here. Suffice it to say that there are well-known accounts of consequentialism that deal with the problem by distinguishing intended, foreseeable, probable, and degrees of proximity of consequences (Sosa, 1993; Railton, 1984). A full picture though could include direct and indirect effects that may be pinned down by duties of domestic, international, and global justice. In any case, this implies that we should weigh the positive effect that PCR has over the wages of less well-off natives against the negative effects that it could produce over natives and vulnerable would-be immigrants within U.S. territory and abroad.

**INTERNATIONAL MEMBERSHIP:** should be supported by a more or less complete account of obligations. It will be plainly flawed if we conceptually isolate the kind of obligations that we may encounter mostly among citizens and residents and then claim that the boundaries of those obligations constitute moral boundaries that compartmentalize the obligations insiders may have with outsiders. This amounts to taking the effect for the cause: we exercise coercive exclusionist policies in order to curtail obligations acquired with people outside of our borders, only to claim that the obligations we maintain solely with residents and citizens justify those same immigration policies. (I analyze this argument in Camacho-Beltrán, 2020). This means that we recognize the moral stance of consented obligations such as those present in international covenants and treaties. But for the very same moral reasons that ground that kind of stance, we ought to recognize at least a parallel set of involuntary obligations that arise as the result of the detrimental effects of our international accords and actions; and the associative obligations that arise as a result of the international relations we establish, and the role we, as members of a state, play in the world.

TRANS-TERRITORIAL MUTUAL CONCERN: should be supported by a more or less complete account of the rights of citizens, residents, and immigrants. It would be incomplete to put forward an account of the collective rights of self-determination and association of states and peoples without weighing those rights against the rights of individual citizens and residents and the different rights of different kinds of immigrants. Rights are not absolute and specifying the content of a right requires establishing its limits. Thus, all the competing rights involved in immigration issues should be drawn in order to see their mutual support and limits; in this way, the legitimate interest of more inclusion that citizens, residents, and would-be immigrants themselves have could be weighed against the interest of exclusion sustained by different anti-immigrant groups. This is tricky because rights have a cost that is not always transparent to public opinion. For instance, preventing immigrants from filling positions in the job market often has net operative costs that later are transferred to the consumer. Offering a complete picture of rights interaction may show that not everyone interested in keeping immigrants out is willing to pay the cost of it, and therefore is not willing to exercise that particular right.

To sum up, it may be true that we need to look into rights and obligations in order to establish requirements of justice to protect less well-off residents and citizens by means of implementing policies such as PCR. That is the normative core explained by *self-sufficiency*, *mutual concern*, and *membership*. But the simplicity challenge and the desiderata show that the defender of exclusionary policies does not get to cherry-pick the rights, consequences, and obligations that serve to justify PCR. Instead of an ad hoc account of consequences, rights, and obligations, the defender of exclusionary policies needs to show that PCR can stand on its own in a complete normative analysis as the one suggested by the desiderata.<sup>13</sup>

## Working Out a More Complete Normative Panorama

In order to see the plausibility of this kind of pluralist analysis, consider the case of El Salvador. The standard analysis from *self-sufficiency*, *membership*,

<sup>13</sup> It is very important to stress that the normative scheme drawn by this pluralistic account of consequences, rights, and obligations cannot at all be subsumed into an account of charity or humanitarian obligations. Humanitarian or Samaritan duties can be discharged at discretion. Instead, obligations of justice are mandatory because they specify what we owe to each other, as a matter of moral principle. This point is actually unchallenged by the defender of exclusionary policies such as PCR.

and *mutual concern* is straightforward: the U.S. recognizes some charity duties to be discharged as it sees fit with Salvadorans by setting up several humanitarian statuses for aid. But at the end of the day, the Salvadoran government is taken as generally responsible for the well-being of its people as much as the responsibility the U.S. government has with its own people requires it to sometimes implement exclusionary policies such as PCR (CIS, 2001; 2006).

Under this analysis, U.S. immigration policy comes out as generous, because it sustains admission of refugees and various humanitarian statuses even though it imposes limits to admissions such as those established by PCR. But, as I suggested, this analysis may be flawed as it is simplistic and it cherry-picks the consequences, rights, and obligations that in turn may be useful to defend the kind of immigration policy pursued by those interested in more exclusion. But those interested in more exclusionary admissions have to show that, all things considered, they have exclusionary rights over the benefits and privileges they seek to defend by excluding others from their production and enjoyment.

This is precisely what *global self-sufficiency*, *international membership*, and *trans-territorial mutual concern* seek to pin down. So now let's see how a more complete normative landscape may be worked out in the case of migrants from El Salvador.

U.S. citizens and residents willingly exercise their rights of association with Salvadorans: U.S. corporations benefit from operations in El Salvador mainly through the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) (ITA, 2021). Salvadorans exercise their associative rights as well: Local producers export to the U.S. only manufactured products with little added value such as apparel products (77 percent) and agricultural commodities such as coffee, tea, and sugars.

For the standard analysis from *membership* this will be the only account of rights required. In the same vein, from *mutual concern* we will consider only the fulfilment of the obligations arisen by the consent to these agreements and contracts because it is assumed that no obligations of distributive justice are obtained in the international realm, as there is no global coercive system (Nagel, 2005). But, as I have suggested, this is too quick and we have to take into account involuntary obligations that in turn give rise to other rights.

Salvadorans and U.S. citizens/residents are of course expected to honor their contracts and agreements. But in order to avoid reductionism and sim-

plicity, we must take into account involuntary obligations that arise from roles and actions of both Salvadorans and U.S. citizens/residents. Despite the fact that the doctrine of sovereignty requires us to consider states as having equal stand, admittedly El Salvador and the U.S. do not establish relations as equals and as a result they play different roles to one another.

U.S. companies and corporations have been able to introduce products with high added value such as aircraft and equipment of different sorts to the Salvadoran market, along with other desperately needed commodities like fuels, cereals (yellow corn, rice, and wheat), soybeans, and cotton. As a result, the bargaining power of U.S. corporations and companies is disproportionately high against the interests of local farmers and producers, so the trade agreement is much more beneficial to U.S. corporations. These imbalances weaken local industries and produce economic dependency on the United States. This asymmetry of bargaining power and relations of dependency give rise to a collective choice of roles: U.S. citizens and residents may choose to play either the role of caretaker for the vulnerable or the role of dominator that takes advantage of the vulnerable.

This may sound too quaint or informal to constitute part of international political deliberation. Yet, if states have a moral stand, they are bonded also to play a role relative to other states and to the context in which they act and maintain relations. Accordingly, given the circumstances and the asymmetry between El Salvador and the U.S., the latter is bound to choose between mitigating the adverse effects of maintaining asymmetrical relationships while reducing the asymmetry by providing support, or allow a *laissez-faire* state of affairs where U.S. citizens get protected but Salvadorans are left to suffer all the consequences of the asymmetrical relations, or some other choice in between. The asymmetry exposes Salvadorans to the wrongs of corporate plundering and extraction of resources.

Had the U.S. chosen to ignore its associative duties of care, then it would have damaged the Salvadorans and therefore would have acquired other kinds of special duties of reparation. But instead of *laissez-faire* or protection, the U.S. picked intervention. At the beginning of the twentieth century, President Roosevelt attributed to the U.S. the right to exercise an "international police power" in Latin America. This police power amounts to coercion, violation of national self-determination, and manipulation to protect the interests of the U.S. in the region instead of protecting Salvador-

ans from asymmetry. Here is where special obligations and consequentialism meet, justifying strong duties of reparation.

Indeed, there are other kinds of involuntary obligations such as those created by past acts of harm. (I thereby follow the discussion of Espindola, 2021). Again, as states are believed to have moral stand, they are bound by duties of compensation. These duties are conventionally understood since Aristotle as duties of corrective or commutative justice (Aristotle, 1998: V 1). As one part has been wronged, say the victim, the wronging part, say the perpetrator, is bound to equalize or repair the inequality generated by the wrongdoing. The reparation takes place when the victim receives goods in a process where the perpetrator owns the wrongdoing by specifically acknowledging his or her participation and responsibility over the wrongdoing (Walker, 2015; Nozick, 1974). In short, the perpetrator is not only bound by Samaritan duties toward the victim. Whether duties of distributive justice could be global or not, the wrongdoing gives rise to a special relation between the victim and the perpetrator who as a result acquires stringent duties of justice that require the perpetrator to provide just treatment to the victims (Falk, 2006).

The U.S. has a long history of intervention in El Salvador. The benevolence or malevolence of these interventions could be discussed further (McPherson, 2016; Schenoni and Mainwaring, 2019). But I am going to assume that intervention is a *prima facie* wrong and raise duties of reparation by itself. Further duties of reparation could be aggregated as a complete normative analysis of the motives, and consequences of these interventions could be offered. At the beginning of the twentieth century, British and U.S. nationals owned most of the coffee plantations and railways, with the detrimental effects on the local economy discussed above. When the impoverishment of the population hit rock bottom, a guerrilla of indigenous farmers led by Farabundo Martí burst onto the scene in 1932 (Payés, 2007). The U.S. sent naval support to contain the peasant rebellion and support dictator Maximiliano Hernández Martínez.

After the peasant revolution, the U.S. intervened several times in support of Martínez and other corrupt dictators alike. Notably in the sixties, the promise of free elections was curtailed by a right-wing coup. According to Fabio Castillo, former president of the Universidad de El Salvador (Hernández, 2013), the U.S. directly facilitated the coup fearing that the result of free elections wouldn't serve its interests. Throughout the eighties,

the U.S. sided with the authoritarian government against the Farabundo Martí National Liberation Front (FMLN). The U.S. CIA funneled up to US\$2.1 million to finance political parties and influence the outcome of the 1984 election (Taubman, 1984).

As I stressed above, the consequences of U.S. intervention in El Salvador need to be studied and discussed in detail because often judgment about detrimental consequences is mediated by values, biases, and interpretation of facts. But at least I can invoke the following instances. In 1981, the U.S.-trained Atlacatl battalion was infamously involved in the El Mozote massacre, where almost a thousand unarmed civilians (women and children included) perished. During the eighties, an estimated 80,000 people died in this U.S.-fueled war. In the terrain of the detrimental effects of US nationals' exercise of rights, the CAFTA-DR increased influence over domestic trade and regulatory protections, producing strong protests from unionists, farmers, and informal economy workers. One ominous example of this ensued in 2014 when the U.S. government pressured the Salvadoran government to abandon the acquisition of corn and bean seeds from small domestic producers (Family Agriculture Plan) in favor of transnational agricultural corporate interests. A violation of the CAFTA-DR was invoked as justification, but regrettably the U.S. State Department never procured any proof that the purchase of seeds by the Salvadoran government program constituted a violation of the CAFTA (CISPES, 2014). Overall, without palliative measures for the detrimental effects they produce, agreements such as CAFTA-DR produced great harm among local producers, making it impossible for local industry to survive. As a result, El Salvador currently has a trade deficit of US\$673.71 million (April 2021) (*Trading Economics*, 2021).

Despite the detrimental consequences of U.S. relations with El Salvador and the history of intervention, even in the worst moments of the war, President Reagan refused to recognize violations of human rights and a mere 3 percent of Salvadoran cases of asylum were approved. Later at the beginning of the nineties, the U.S. Congress passed legislation designating Salvadorans for Temporary Protected Status until in 2018 President Trump revoked this status for 200,000 Salvadorans living in the United States (Acevedo, 2018). According to *The New York Times*, the recent U.S. deportations of Salvadorans exposed them to great harm back home and perhaps even boosted gang recruitment.

This is only an incomplete account of the rights, obligations and consequences; yet as it is, it is enough to show what happens when we expand the scope of concern and analysis to a more complete picture of the interaction of relevant rights and obligations, avoiding simplicity and circularity in the justification of exclusionist policies such as PCR. Even though we accept the claim purported by defenders of PCR that immigration policy may be grounded in rights, obligations, and consequences, the case of El Salvador shows contradictory consequences of a deportation policy. The rights of Salvadoran migrants are not pitted against the obligations of U.S. residents toward their country of origin; in any case, the detrimental consequences of U.S. foreign and trade policy toward El Salvador leave ground for larger inclusion and for the reinstatement of TPC.

## Conclusions

Defenders of TPC argued that it may be evaluated in similar consequentialist terms as the Canadian system. The Canadian system is sometimes said to increase the regular admission of skilled immigrants relative to the unskilled. As a result, it is understood as avoiding the detrimental effects that immigration sometimes have over the wages of low-skilled citizens and residents and at the same time it may lower the wages of the better off. TPC allegedly achieves similar results by reducing discretion in the interpretation of the Public Charge Rule through laying down the framework, detailing the circumstances, and establishing the prospective character of public charge judgments. Also, by making sure would-be immigrants seek inclusion for the right reasons, it is supposed to ensure that the availability of public benefits does not constitute an incentive for immigration to the United States. The emphasis on *self-sufficiency* is crucially believed to protect the interest of workers.

The problem with this line of defense is that requirements of justice also compel us to protect the interests of the less well-off abroad. TPC expanded the meaning of public charge, and public benefits present in previous legislation established a forward-looking test to determine the likelihood of dependence on public programs. This may affect some of the most vulnerable, that is, displaced people holding temporary humanitarian statuses.



It also has chilling effects by effectively causing people to withdraw from essential public benefit programs. Disenrollment of other programs may be detrimental to integration of low-income, working-class immigrants and their families, as well as to local communities and society as a whole. TPC increases deportability, so deportation becomes a punishment for presumable administrative violations. This means TPC is morally arbitrary, because it establishes some kind of unjustified differential consideration that prevents the U.S. from offering the same kind of protection to those under humanitarian statuses. We know this because the rationale that motivates humanitarian statuses, asylum, and refugee protections is the same.

A further question is: Can PCR be formulated in different a way, so that it may be able to abide by requirements of justice or public morality? This question leads to other parasitic problems such as the way to determine under what grounds a state may deny admittance to would-be immigrants that potentially may represent a burden during some period of time, or how we can measure public burden in a meaningful normative way if the people who may represent a burden upon admission later become active cooperating members of society. I claim that we should present a more complete picture of relevant obligations and rights in order to better understand the role that “charge” or burden ought to play in rights of exclusion. This will in turn produce an account of *just public charge*.

During his remarks at the Munich Security Conference (February 19, 2021), President Biden declared that “America is back.” This could mean that Biden administration is trying to lead the defense of objective moral values such as fair terms of cooperation, freedom, or dignity against authoritarian regimes. But in order to do that, public policies such as PCR must show coherence of value.

This chapter proposed to identify PCR’s normative core with the principles of *self-sufficiency* and *membership*. This established a conceptual link between the need for public institutional support with exclusion and deportability, regardless of the moral claims of admission that individuals may have, according to their condition of vulnerability and need. In contrast, almost the opposite view applies to residents and citizens. So, in order to constrain the scope of *mutual concern* to exclude the people from whom we should expect *self-sufficiency*, *mutual concern* should be taken as limited by an inter-generational enterprise with a unique character that provides strong rights

of self-determination that extend even over the composition of the group; so we get the principle of *membership*, but this strategy failed because it may be too simplistic for the task in hand.

Proponents of the right to exclude grounded in members' collective rights argue that states as any other association have the liberty to refuse to associate with any would-be immigrant. Proponents for exclusion from the obligations of members argue that citizens and residents are engaged with each other in a way that they are not with outsiders. This engagement, though initially accidental, over time is morally meaningful because it constitutes ways of socialization, means for interpretation, shared meanings and relationships of mutual care. I hope I have shown that both arguments share the same flaw: oversimplification. Once we look closer, we can realize that *i*) group rights are not necessarily territorial; *ii*) borders are not necessarily exclusionary; *iii*) rights and obligations are trans-territorial; and *iv*) rights of self-determination or strong associative obligations do not entail justification for exclusion.

The U.S. has returned to the G-7, as well as coming back to the Paris Agreement on climate change and the World Health Organization. The discourse of democracy and defense of human rights have returned, as seen in the U.S. stance regarding the Myanmar junta and the Saudi war in Yemen. But along with these actions that put U.S. policy in the right direction to be joined by its moral principles, there are other actions that detach principles from praxis even further (Wertheim, 2021; Reuters, 2021; *The New York Times*, 2021; Kitroeff, 2021; Kitroeff and Shear, 2021; Friedman, 2020). About 13,000 asylum seekers were camping under a bridge that connects Ciudad Acuña with Del Rio in Texas in 2021. In September that year, the U.S. started flying out migrants from a Texas border regardless of their heart-breaking claims. In order to prevent these cases of unease of principles I proposed to extend the focus and scope of the analysis of rights and obligations at least for analyzing cases of public charge. I argued that once the U.S. administration employs a more complex outlook the same rights and duties that allegedly ground public charge sometimes point out to more inclusion and even reparation.

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She has published, compiled, and edited numerous books, most recently: *Migration and Borders in North America: Views from the 21st Century* (2021) and *Anti-Immigrant Actions and Policies in the Trump Era* (2020). She has also authored numerous articles and book chapters, mainly on migratory policies regarding North America and Mexico-U.S. relations. Vereá is currently a member of various collegiate bodies, academic hiring advisory committees, and national and foreign editorial boards. She was awarded the Juana Ramírez de Asbaje Prize by the UNAM the first year it was given, in 2005.

*Trump's Legacy in Migration Policy Postpandemic Challenges for Biden*, de Mónica Vereza y Camelia Tigau, del Centro de Investigaciones sobre América del Norte de la UNAM, se terminó de imprimir en agosto de 2022, en Gráfica Premier S.A. de C.V., 5 de febrero núm. 2309, San Jerónimo Chicahualco, Metepec, Estado de México. En su composición se usaron tipos Fairfield LH Light y Formata Light y Medium de 8, 11, 12, 14 y 18 puntos. Se tiraron 150 ejemplares más sobrantes para reposición, sobre papel cultural de 90 grs. Impreso en formato digital. La formación tipográfica la realizó María Elena Álvarez Sotelo. La corrección de estilo y la lectura de pruebas estuvo a cargo de Rowena Galavitz y Daniel McCosh, de Contexto Académico.