

IMMIGRATION

Congress should

- expand and deregulate H-2A and H-2B seasonal work visas;
- permit visas for year-round agricultural and nonagricultural workers;
- create a private refugee sponsorship program;
- streamline and expand high-skilled immigration;
- allow states and localities to sponsor immigrants;
- repeal the 3- and-10-year bars;
- create a "statute of limitations" for deportable violations of immigration law;
- permit asylum processing at ports of entry;
- restrict the right of noncitizens to access welfare benefits; and
- restrict the power of the executive to limit legal immigration.

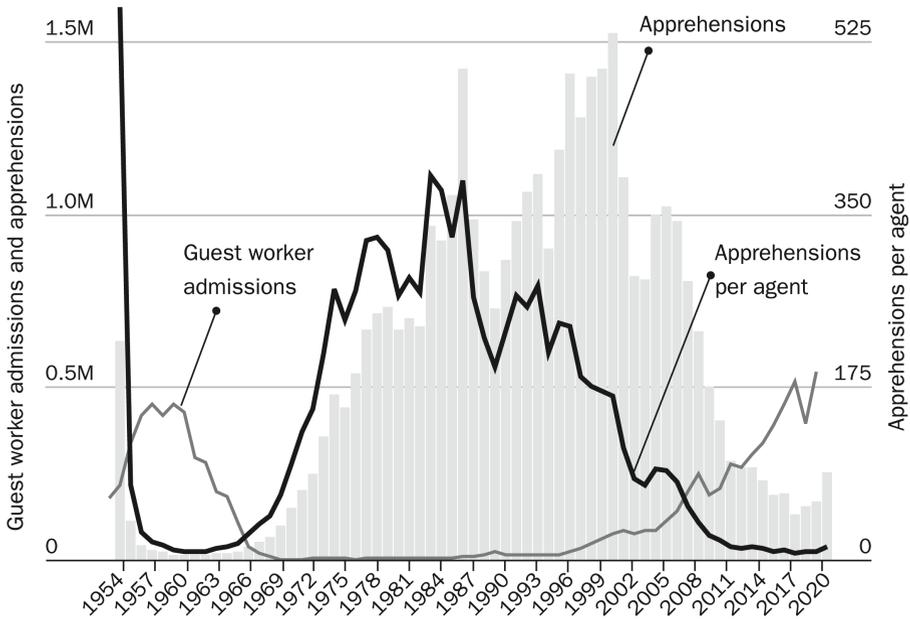
The U.S. immigration system is too restrictive and bureaucratic. The result is chaos along the U.S.-Mexico border, wait times for legal visas that sometimes extend for decades, and a reduction in economic and cultural vitality. The reforms discussed in this chapter, if enacted, will reduce chaos in the immigration system by restoring government control over the border, liberalize legal immigration, and reduce institutional deficiencies in the immigration system.

Expand Lesser-Skilled Work Visas

Congress should greatly expand visas for lesser-skilled workers. Figure 1 demonstrates that the admission of more legal workers reduces illegal Mexican migration along the border. Visas reduce illegal crossings in two ways: first, workers who obtain visas no longer need to cross illegally, and second, workers who fail to obtain visas still have a reasonable prospect of obtaining them in the future if they choose not to enter illegally.

Figure 1

Mexican guest worker admissions and apprehensions of Mexicans at the border, FY 1954–2020



Sources: Customs and Border Protection, “Southwest Border Migration,” 2019; “U.S. Border Patrol Nationwide Apprehensions by Citizenship and Sector,” 2007–2018; Department of Homeland Security, “Apprehensions by the U.S. Border Patrol,” 2005–2006; Congressional Research Service, “Border Security: Apprehensions of ‘Other Than Mexican’ Aliens,” 2002–2004; Walter A. Ewing, “Border Insecurity: US Border-Enforcement Policies and National Security,” 1999–2001; Department of Homeland Security, “Yearbooks of Immigration Statistics,” 1991–1998; Immigration and Naturalization Service, “Yearbooks of Immigration Statistics,” 1981–1996 (available under “General Collection”). Mexican guest worker admissions: Department of Homeland Security, “Yearbooks of Immigration Statistics,” 1997–2017; Immigration and Naturalization Service, “Yearbooks of Immigration Statistics,” 1979–1996 (available under “General Collection”).

Note: Apprehensions include only those Mexicans arrested at the southwest border (excluding worksite raids before 1990). Guest workers include bracero and H admissions (1979–1980 as well as 1997 and 2005 were linearly interpolated). FY = fiscal year.

Expand and Deregulate H-2A Agricultural Work Visas

The H-2A program provides farmers with a way to hire legal guest workers. The program is numerically uncapped, but it is among the most complex and expensive visa programs. Many farms cannot use the H-2A program at all because workers with that visa can work only in seasonal or temporary jobs, meaning that the statute prohibits dairies and other animal farms with generally year-round labor demands. Congress should not limit farms to only seasonal or temporary workers (8 U.S.C. 1101(a)(15)(H)(ii)(A); 8 U.S.C. 1188(h)), and it should end the regulatory requirement that H-2A workers leave after three continuous years in status.

Congress should streamline the lengthy H-2A visa process that includes duplicative reviews by the three agencies that must search for U.S. farm workers who rarely exist. Congress should require a single filing portal in which each field is reviewed only once by the relevant agency (see H.R. 1603, 117th Congress). By far the most burdensome H-2A regulation is the Adverse Effect Wage Rate (AEWR), which sets wages far above market rates (20 CFR § 655.120). Congress should not allow the AEWR to increase more than the rate of inflation.

Congress and agencies should also repeal rules that require farmers to provide H-2A workers free housing, transportation to and from their home country, and daily transit to the job site. Employers should be able to at least split the cost of these items with their employees. The main reason for these regulations is to prevent farmers from taking advantage of H-2A workers because they cannot easily find other jobs once in the United States. As an alternative to these rules, Congress should allow workers to change farming jobs without prior government permission and to create a grace period to look for a new job while unemployed (see H.R. 1603, 117th Congress).

Expand and Deregulate H-2B Nonagricultural Temporary Work Visas

The H-2B program allows nonagricultural employers to hire foreign workers legally when U.S. workers reject a seasonal or temporary job. The H-2B program is a maze of bureaucratic requirements (Figure 2 at www.cato.org/handbook) that includes a numerical cap of 66,000 annually (8 U.S.C. 1184(g)(1)(B)). The H-2B cap has been filled every year since 2015 and guarantees that job openings go unfilled. Congress should rescind the cap entirely to mimic the flexibility of the H-2A program. If ending the cap is impossible, Congress should permanently exempt workers returning to the same job that they held in a past year—a policy that was used to add cap space in individual years from 2004 to 2007 and then again in 2016 (8 USC 1184(g)(9)(A)).

Congress should allow employers to advertise an H-2B recurring position across multiple years and to accept offers from workers who commit to returning year after year. Treating workers returning to the same position year after year as existing employees would effectively exempt them from both the H-2B cap and the onerous labor certification processes after their initial hire. Congress should also reform the H-2B prevailing wage—the H-2B minimum wage—by allowing employers to pay workers on the basis of their skill level, as opposed to the average rate for the entire occupation, as was permitted until 2013 and is still used under other immigration programs.

Permit Visas for Year-Round Lesser-Skilled Workers

Congress should create a visa program for year-round, nonfarm jobs that do not require a college degree. In 1990, Congress had assumed that most illegal immigrants would remain employed in a few seasonal jobs as they had for decades, so it failed to create any program for year-round jobs in other sectors of the economy. This oversight became the primary driver of permanent illegal immigration. Today, employers in meatpacking and processing, restaurants, construction, and other year-round industries need a streamlined process to hire foreign workers. A year-round program would allow these businesses to fill open positions without hiring illegal immigrants with fraudulent, borrowed, stolen, or no documents.

Private Refugee Resettlement

The refugee program allows immigrants facing persecution in their home countries to resettle in the United States. Currently, the government selects all facets of refugee resettlement: the numbers, the locations, and the individuals. Instead, Congress should also allow individuals and nonprofits to sponsor refugees as they can in Canada. This method would allow private parties to sponsor refugees for resettlement in the United States without the president's approval. Similarly, any refugee whom a U.S. family member sponsors for a green card should be exempt from the family-sponsored green card limits so they can immediately enter. The United States should not leave family members of U.S. citizens or legal permanent residents to suffer persecution abroad.

Streamline and Expand High-Skilled Immigration

Congress should expand visas for high-skilled workers. The number of employment-based green cards stands at just 140,000, with a majority being used by the employees' spouses and minor children. That low cap, set by Congress in 1990, created a backlog of nearly a million workers and their families. Because the law caps the number of green cards that immigrants from any individual country receive—and India is by far the most common country of origin—nearly all backlogged immigrants are from India, with most facing decades-long wait times.

Congress should eliminate the overall caps on skilled immigration (8 U.S.C. 1151(d)) and the country caps (8 U.S.C. 1152(a)(2)). Failing this, Congress should at least exempt the spouses and minor children of workers from these caps, effectively doubling the visas for workers (see S. 3721, 117th Congress).

In addition, Congress should exempt anyone with advanced degrees in science, technology, engineering, and mathematics (STEM) and anyone with a PhD in any field from a U.S. university (see S. 744, 113th Congress). If Congress insists on having a numerical cap, it should index the employment-based visa cap to economic growth and guarantee a green card within five years to qualified applicants so that lengthy waits cannot recur and the system remains flexible.

Let States or Localities Sponsor Immigrants

Congress should allow states or localities to sponsor legal immigrants under whatever criteria they choose (see H.R. 5174, 116th Congress). This decentralized system, modeled on Canada's immigration system, would allow state or local authorities to address changing local conditions that vary across regions. Under a state or local sponsorship program, state and local governments in partnership with local residents could submit applications to sponsor immigrants for whatever need they see in their communities in the same manner employers sponsor workers to fill their needs. Immigrants could be required to commit to living in the area for a certain number of years but work for any employer or industry.

Repeal the 3-Year and 10-Year Bars

The law should allow any illegal immigrants who are eligible for legal permanent residence to return to their home country to obtain an immigrant visa and return lawfully. Current law bars anyone with at least 180 days of illegal presence in the United States from receiving legal status for 3 years and anyone with a year of illegal presence for 10 years, even if they return to their home country (8 U.S.C. 1182(a)(9)). The 3- and 10-year bars disincentivize compliance with the law and result in a larger illegal immigrant population, so Congress should repeal them (H.R. 3799, 116th Congress).

Create a Statute of Limitations for Deportation

Congress should only permit deportations of noncriminal illegal immigrants if they have resided in the country for fewer than 10 years, creating a de facto statute of limitations on deportations for immigration offenses. From 1929 to 1986, Congress repeatedly passed laws that allowed immigrants to receive legal status if they had not committed any serious crimes and resided in the United States before a set date (8 U.S.C. 1259(a)). A better approach would be to establish a permanent time limit of 10 years to carry out a deportation. This

approach would focus all enforcement resources on more recent entrants and serious criminal offenders, creating a stronger deterrent to violate the law and allow long-term peaceful residents to resolve their violations of the law. Both effects would reduce the illegal immigrant population.

Permit Asylum Processing at Ports of Entry

Congress should require admittance of asylum seekers at legal ports of entry. Many immigrants cross the border illegally to request asylum because the U.S. government blocks entry of asylum seekers at lawful ports of entry. For many years prior to 2017, U.S. ports provided exceptions for asylum seekers from Cuba and Haiti and allowed them to enter and pursue their asylum cases with a lawful “parole” status in the United States. Nearly 100 percent of Cubans and Haitians entered legally during those years, but now they are banned altogether. This ban caused nearly 100 percent of Cuban and Haitian asylum seekers to cross illegally.

Restrict Noncitizen Access to Welfare

Congress should reserve access to all welfare and entitlement programs to U.S. citizens only (see H.R. 848, 116th Congress). In 1996, Congress limited welfare use to those noncitizens with at least five years of legal permanent resident status and those with status based on humanitarian grounds, and no evidence exists that this deterred future immigrants from coming or even increased poverty. Immigrants who choose to come to the United States accept the obligation to support themselves. Immigrants generally pay more in taxes than they receive in benefits; however, the exceptions impose genuine and avoidable costs on U.S. taxpayers. Additionally, noncitizen receipt of government benefits significantly undermines Americans’ support for immigration. Nearly all immigrants come to the United States to seek jobs, not welfare, but further reform would make restriction of legal immigration even more politically difficult and save taxpayer money.

Restrict Executive Authority to Limit Immigration

A determined president can use the broad discretion granted by Congress to effectively undo the entire legal immigration system (8 U.S.C. 1182(f)). The Trump administration halted nearly all legal immigration. Congress should prohibit bans based on nationality or religion and raise the evidentiary standard to justify other bans. Presidential discretion to stop immigration should respond

only to truly extraordinary problems, not changes in unemployment or ordinary security concerns (see H.R.1333, 117th Congress). To enforce these requirements, Congress should create a visa appeals board to allow visa applicants abroad to appeal visa refusals (see Title II of H.R. 750, 110th Congress). Finally, Congress should enact an overarching rule that courts should interpret executive discretion as narrowly as possible when used to stop immigrants from accessing the legal system and repeal each instance where it has blocked judicial review of agency immigration actions.

Conclusion

Immigration is an important public policy issue that will only be resolved with expanded legal immigration opportunities, legalization, and welfare reform. The U.S. immigration system excludes the vast majority of potential immigrants. The basic presumption of the legal immigration system is that no one may immigrate legally unless they fall into very narrow exceptions. By walking through these exceptions and how to improve them, this chapter demonstrates that the strict criteria keep out nearly all immigrants who wish to come legally. The Biden administration should loosen whatever restrictions that it has imposed above and beyond what Congress has required.

Suggested Readings

- Baxter, Andrew M., and Alex Nowrasteh. "A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day." Cato Institute Policy Analysis no. 919, August 3, 2021.
- Bier, David J. "Deregulating Legal Immigration: A Blueprint for Agency Action." Cato Institute, December 18, 2020.
- . "H-2A Visas for Agriculture: The Complex Process for Farmers to Hire Agricultural Guest Workers." Cato Institute Immigration Research and Policy Brief no. 17, March 10, 2020.
- . "H-2B Visas: The Complex Process for Nonagricultural Employers to Hire Guest Workers." Cato Institute Policy Analysis no. 910, February 16, 2021.
- . "Reforming the Immigration System: A Brief Outline." Cato Institute, November 11, 2020.
- Bier, David J., and Matthew La Corte. "Privately Funded Refugee Resettlement: How to Leverage American Charity to Resettle Refugees." Niskanen Center, March 22, 2016.
- Nowrasteh, Alex, et al. "12 New Immigration Ideas for the 21st Century." Cato Institute White Paper, May 13, 2020.
- Nowrasteh, Alex, and Sophie Cole. "Building a Wall around the Welfare State, Instead of the Country." Cato Institute Policy Analysis no. 732, July 25, 2013.
- Nowrasteh, Alex, and Michael Howard. "Immigrant and Native Consumption of Means-Tested Welfare and Entitlement Benefits in 2019." Cato Institute Briefing Paper no. 137, March 30, 2022.

—Prepared by David J. Bier and Alex Nowrasteh

