



A WAY FORWARD

➤ IMMIGRATION



OCTOBER 2022

IMMIGRATION REFORM: A TIME TO ACT

FOR NATIONAL SECURITY, ECONOMIC COMPETITIVENESS AND WORKFORCE REALITIES

The future of America's economy—and manufacturers' competitiveness—will be determined in part by the future of immigration policy. Over the centuries, generations of immigrants have made the American experiment possible, helping to turn the United States into an exceptional nation and an unrivaled global leader. But while America is indeed a nation of immigrants, it has also become a nation with a broken and unreliable immigration system. Manufacturers believe our leaders have not only an obligation to fix this system but also an opportunity to do so as we work to strengthen our economy and our workforce and prepare for the challenges ahead.

Decades of neglect and lack of enforcement of existing laws and regulations have eroded the confidence of our citizens in the sanctity of our borders—while also leaving those who know no home other than the United States worried about their future, living in uncertainty and fear. Now, the conflict between those who rightly want our laws followed and those who recognize the contributions of immigrants and continued immigration to the United States has become a flashpoint.

It is time to move beyond these conflicts and focus on solutions to the problems that have plagued our system for too long. We can take an approach that strengthens our workforce and economy, bolsters our national security, upholds our rule of law, demonstrates compassion and establishes a modern, well-functioning system for welcoming new people to the United States.

This is the type of reform that manufacturers have long advocated and expect from elected leaders. And because manufacturers are in the business of building solutions, the National Association of Manufacturers put forth “A Way Forward,” a reasonable and practical proposal designed to address the problems created by our current system and to fix those issues once and for all. Since its release in 2019, the plan has helped shape the dialogue among government leaders and immigration stakeholders on the need for bold action and solutions that will enhance economic competitiveness. The latest edition of this document is updated with new data available in 2022 and includes new information on the vital role immigrants play in powering manufacturing innovation in the United States.

Whether Congress and the administration take up these solutions in a step-by-step manner or pursue a comprehensive approach, action cannot be delayed. Failing to act weakens our industry and our country, exacerbating economic and workforce challenges and making the immigration quagmire even more complex.

Real solutions will require compromise, and “A Way Forward” was designed with that in mind. We have an opportunity to move beyond the rhetoric and confusion that have defined this issue and to reestablish America's leadership and values, while making our country safer and our economy stronger.

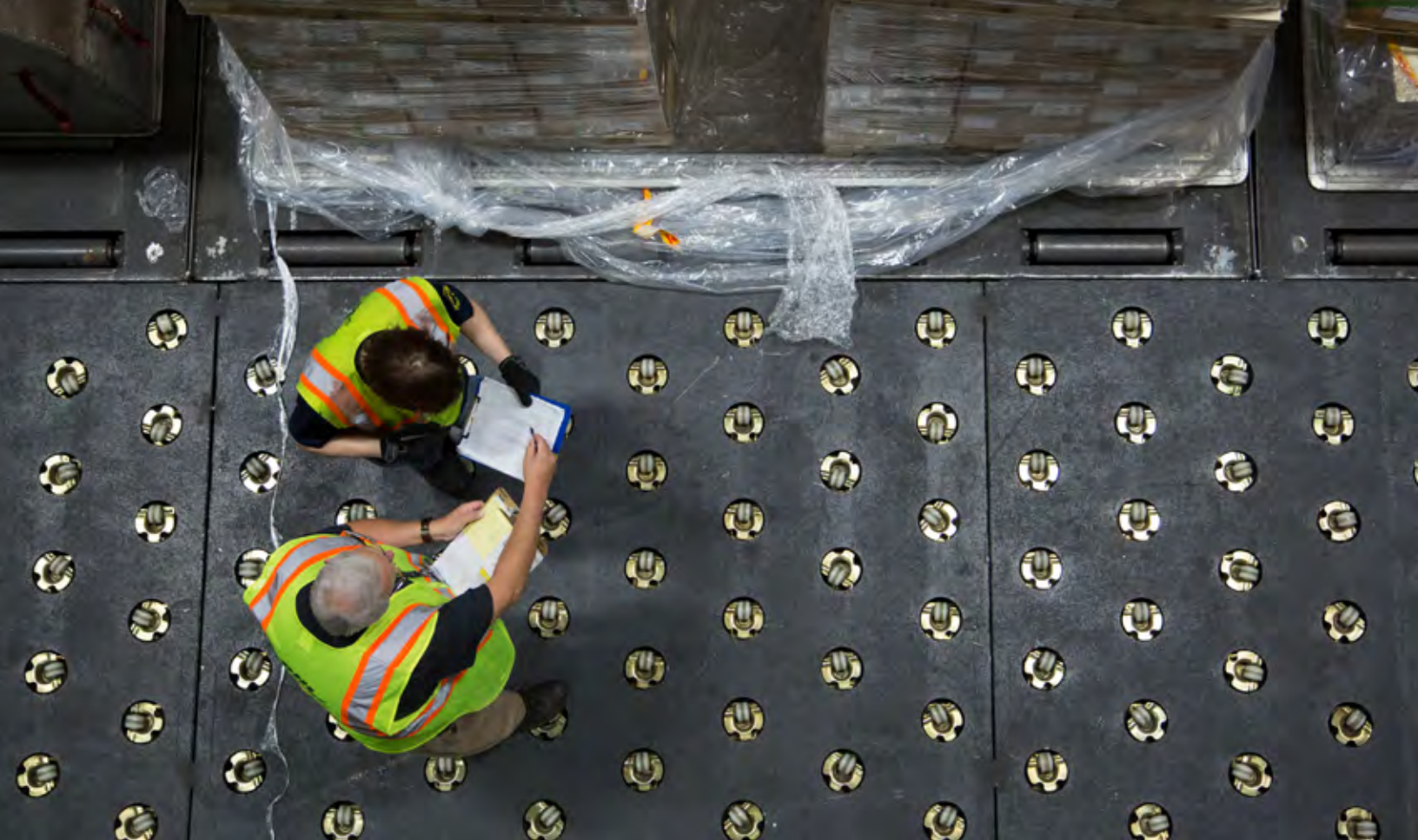
If we do that, we will have given those who deserve it a chance to be a productive and contributing part of our country. And we will have upheld the values that make this nation of immigrants exceptional: free enterprise, competitiveness, individual liberty and equal opportunity.



Jay Timmons
President and CEO

1 **STRENGTHEN BORDER SECURITY—WITH WALLS AND OTHER MEASURES**

Establishing control over our southern border to prevent future illegal border crossings is an essential part of any comprehensive immigration solution. Strengthening our border has only become more important. In 2021, there were 1.7 million encounters at the U.S.–Mexico border, the highest number ever recorded.¹ In 2022, 2.1 million encounters had already been recorded by August.² Any modern nation has a right and a duty to control its own borders. A nation with open borders lacks appropriate security and safety controls, creating undue risk to its citizens. The federal government must manage multiple avenues of entry—air, land and sea—that are exploited by those who wish to enter illegally every day. Securing points of entry is necessary for a nation to protect itself and its citizens from illicit drug and human trafficking, smuggling, terrorism and other illegal activities that endanger the homeland.



Steps for Congress to Pursue:

- Fund multiyear border security and infrastructure improvements along the southern border to reduce illegal crossings by adding walls, fencing, surveillance technology and other innovative measures that match the geographic diversity of the southern border and the needs of the officials responsible for patrolling these regions.
- Fund significantly higher staffing levels for U.S. Customs and Border Protection, including U.S. Border Patrol.
- Devote resources toward the advancement of new technologies and infrastructure at ports of entry to support safe, secure and reliable border crossings.
- Increase resources and funding for federal courts near the border, including adding federal judges, magistrate judges, prosecutors and others to help facilitate consistent and speedy prosecution of those who cross the border illegally.

2 PRIORITIZE AMERICA'S WORKFORCE NEEDS THROUGH REFORMS TO LEGAL IMMIGRATION

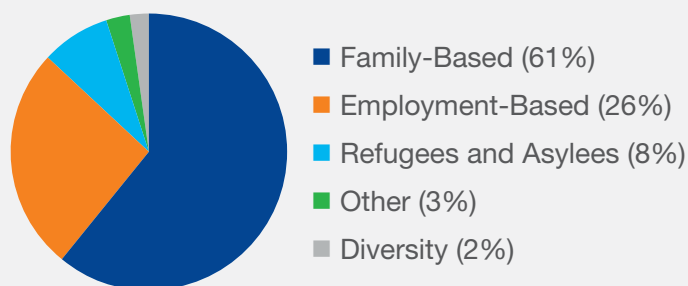
We need to incentivize the admittance of the best and the brightest to enhance America's economic leadership. The current system does not allow us to reach our full potential for economic growth and leadership. Employment-based immigration represents a very small percentage of permanent legal immigrants, and the system is difficult for both employers and applicants to navigate.

The lawful permanent resident or green card backlog is estimated to be 1.4 million applicants, 10 times the number of available employment-based LPRs.³ Reform is needed now more than ever as manufacturers and numerous other business sectors face labor crises. On average in 2022, for every 100 job openings, there have been only around 50 unemployed workers.⁴ Immigrants can play a role in addressing the labor crisis.

Lawful Permanent Residents

The Immigration and Nationality Act established a “permeable” cap of 675,000 new LPRs per year. Employment-based LPRs are capped at 140,000 per year plus any unused family-sponsored preference LPRs from the previous year. Family-based LPRs are more than double the available employment-based LPRs.⁵ Due to the entry of new LPRs from categories not subject to statutory caps, the United States admitted approximately 740,000 new LPRs in 2021, the second-lowest amount since 2003.⁶ Less than two-thirds of this total (61.0%) were family-based recipients.⁷ Employment-based recipients totaled a mere 26.1%.⁸

Categories of LPRs Admitted in 2021⁹



Steps for Congress to Pursue:

- Increase employment-based immigrants as a percentage of overall new LPRs to respond to economic needs and to keep talent in the United States.
 - Remove the limits on specific types of high-skilled employment-based immigrants. For example, Congress should increase the allowable number of advanced degree graduates of U.S. universities in the science, technology, engineering and math fields for employment-based categories. At the same time, the U.S. must take direct steps to improve American primary and secondary education to further cultivate talent at home and thus rely less on this type of solution moving forward.
 - Allow employers to efficiently hire and keep talent graduating from American universities for permanent employment by building off the success of the STEM Optional Practical Training program, a limited temporary visa for foreign-born U.S. students in STEM fields.
 - Do not count spouses and minor children of employment-based immigrants toward numeric caps of LPRs.
 - Prioritize applicants based on workforce demands and remove per-country limits for employment-based immigrants.
 - Create a regular review process (every five years) to solicit economic and industry feedback and make recommendations for updates to employment-based categories based on market dynamics to inform changes to caps and categories for congressional review.
- Phase out the diversity lottery visa program, as a reformed immigration system will inherently promote diversity, with ongoing congressional oversight to ensure appropriate outcomes.

“Immigration is integral to the nation’s economic growth. The inflow of labor supply has helped the United States avoid the problems facing other economies that have stagnated as a result of unfavorable demographics, particularly the effects of an aging workforce and reduced consumption by older residents. In addition, the infusion of human capital by high-skilled immigrants has boosted the nation’s capacity for innovation, entrepreneurship and technological change.”¹⁰

Report by the National Academies of Sciences, Engineering and Medicine, “The Economic and Fiscal Consequences of Immigration,” September 2016



3 REFORM NONIMMIGRANT VISAS AND TEMPORARY WORKER PROGRAMS TO IMPROVE COMPETITIVENESS

Making key changes to visa programs for specialty occupations and temporary guest workers—which currently fail to meet the needs of both employers and workers—will boost U.S. economic competitiveness and ensure the United States remains a global leader in innovation. The United States grants temporary entry to individuals through nonimmigrant visas (there are many categories of nonimmigrant visas, including visas for tourists, foreign students, temporary agriculture workers, entertainers, diplomats and religious workers), and the duration of stay and the ability to engage in certain activities, such as working in the United States, depend on the type of visa.¹¹ Unfortunately, while the current employment-based visa categories focus heavily on professional skills and those with extraordinary abilities, they do not represent the full spectrum of employment needs. Moreover, current visa categories do not allow employers to hire lesser-skilled foreign-born employees for in-demand jobs. This is another example of how the current immigration system fails to meet employer needs.



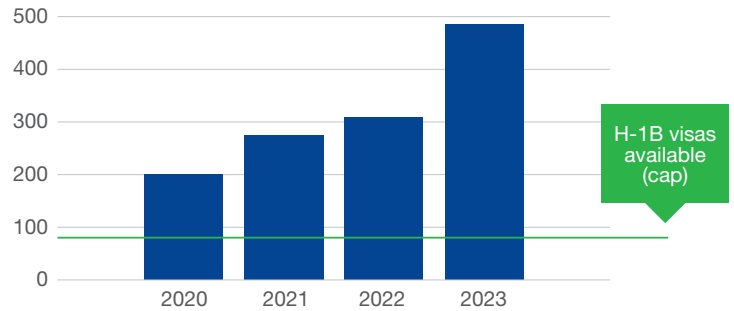
H-1B

H-1B visas are employer-sponsored visas available for highly educated foreign professionals in specialty occupations. By statute, there are 65,000 H-1B visas available each year, plus an additional 20,000 visas for foreign professionals with advanced degrees from U.S. universities. Each year, the number of applications received from employers far exceeds the number of visas available. So far in 2022, U.S. Citizenship and Immigration Services has received 483,927 H-1B visa registrations for FY2023.¹²

H-1B Visa Demand¹³

H-1B visa applications exceed supply year after year.

Number of Capped H-1B Applications, by Fiscal Year, in Thousands



Source: U.S. Citizenship and Immigration Services press releases.

H-2A and H-2B

H-2A and H-2B visas are the two main avenues for temporary guest workers in the United States. H-2A visas are for agricultural workers, and H-2B visas are for nonagricultural seasonal workers. There is no statutory cap on H-2A visas.¹⁴ H-2B visas are capped at 66,000 per year, and employer demand for H-2B workers regularly exceeds the statutory cap and is evenly divided by summer and winter seasons.¹⁵ The hospitality and fishing industries rely heavily on these visas, but they are also used in some industrial settings, such as boatyards, food packaging and other sectors with seasonal needs.

IMMIGRATION AND INNOVATION

Policymakers, industry and universities in the United States are prioritizing investments that support America's continued technological leadership in the face of global competition. We also must ensure our nation has the talent and skills to propel this innovation, and pathways for the best and brightest are critical.



H-1B visa fees paid by employers have funded nearly 90,000 college scholarships for U.S. students in science and engineering and enabled more than 1 million K-12 students and 50,000 teachers to receive support and training to enter science fields.¹⁶



More than 70% of STEM graduates with advanced degrees are foreign born.



Job openings in manufacturing are highly technical, workers require specialized skills training and credentials to qualify for these jobs, and manufacturers need to attract a diverse set of workers with technical backgrounds in science, technology, engineering and math disciplines.¹⁸



As of September 2021, the U.S. unemployment rate for individuals in computer and mathematical occupations was 1.5%. There were more than 1.2 million active job vacancy postings in these fields at the time—more than 20 times the available number of H-1B visas available for these fields, signaling a significant labor disparity.¹⁷



Advanced technologies enabled manufacturers' ability to respond to the COVID-19 pandemic, with digital tools supporting their ability to pivot operations to produce much-needed equipment and supplies. Manufacturers are expected to accelerate investments in digital transformation as a result of the pandemic. But these planned investments may not happen if manufacturers in the United States are unable to hire the talent needed to implement them.

Steps for Congress to Pursue:

■ Pursue H-1B reform.

- Double the current number of available H-1B visas to better reflect current workforce needs and eliminate barriers on retaining the most-qualified applicants to enable the U.S. to retain its competitive edge.
- Increase federal oversight and enforcement of H-1B-dependent employers so that American workers are not displaced or disadvantaged.
- For all H-1B employers, ensure that pay is fair across sectors and industries so that salaries reflect the regional market and so that American workers are not competing against underpaid labor.
- Provide work authorization for spouses of certain H-1B workers.
 - ▶ The U.S. is competing with other countries to attract the best workers. Without spousal work authorization, families who rely on two incomes are more likely to decide to work in countries that provide this opportunity.
- Provide a simplified processing program for H-1B employers with proven records of compliance to reduce processing times and paperwork burdens on employers, employees and the government.
- Streamline the green card application process for H-1B workers hired into permanent positions.

■ Enact guest worker reform.

- Reform H-2A and H-2B programs to be flexible for employers and workers and provide for longer-term employment for temporary workers.

■ Establish a modern, fully electronic and mandatory employment verification system that ensures undocumented workers do not displace American workers and provides employers' confidence in hiring workers.

- Employers need a reliable, accurate and efficient employment eligibility verification system that also provides fair enforcement of the laws. A federal verification system should preempt state laws regarding verification and limit employer liability for those following good compliance practices.

■ Create a new visa category to address temporary economic needs in the U.S. so that other skilled needs can be addressed. Congress should consider following Bureau of Labor Statistics jobs data to reflect these employment needs.

- A formal legal structure for foreign-born employees who want to fill available jobs not covered by the current system would reduce the incentive to enter illegally and/or falsify records to obtain employment.

■ Fund STEM training.

- Use visa application fees to fund training and retraining programs for K-12 students and U.S. workers in STEM fields.

WHY ACT NOW?



U.S. population growth in the past decade was the second lowest in our nation's history, near levels last seen in the 1930s in the aftermath of the Great Depression.¹⁹



There are 11.2 million available jobs across sectors, around 834,000 are in manufacturing, and in this decade, manufacturers will need to fill an estimated 4 million jobs.²²



In 2021, the U.S. population grew at the slowest rate in the country's history.²⁰ While resident population growth in the U.S. has been falling for two decades, the rate in 2021 fell below previous lows seen during World War I, the economic slowdown in the 1970s and the 2008 financial crisis.²¹



Without boosting legal immigration, the U.S. will lose its competitive advantage with other countries and sacrifice its position as the world's largest economy by 2030.²³

4 PROVIDE A PERMANENT SOLUTION FOR POPULATIONS FACING UNCERTAINTY

Dreamers—individuals brought to the United States as children by their parents—continue to face uncertainty and fear that they will lose the only home they have known. Americans broadly support a pathway to legal status for individuals brought to the country illegally as children, and Congress should act to immediately provide certainty on the fate of this population.²⁴ The Dreamer population is larger than the 800,000 Deferred Action for Childhood Arrivals recipients, and any solution must be inclusive of the broader Dreamer community (which is closer to 3.6 million people), provided similar eligibility criteria to that under the DACA program are met.²⁵ As such, we must establish requirements for the Dreamer population to achieve provisional legal status (with the possibility of receiving U.S. citizenship once certain conditions are met).

Temporary Protected Status is a humanitarian program that responds to ongoing global and regional challenges by allowing individuals to remain in the United States due to unsafe or unstable conditions in their home countries. Many individuals in TPS have lived in the United States for decades and are integrated into life in this country. With work authorizations provided by the Department of Homeland Security, the majority of TPS beneficiaries are gainfully employed and filling key workforce demands in sectors such as construction, food service and home health care. The labor participation rate of the TPS beneficiary population from El Salvador is close to 90%, and labor participation rates are high across all populations.²⁶ We must also provide a pathway to permanent legal status for individuals with TPS who are unable to return home due to natural disasters, armed conflict or other extraordinary conditions.

Without congressional action, these individuals remain uncertain about their future and subject to shifting political decisions.

DACA

In 2012, DHS, under the Obama administration, established the DACA program, which provided relief from deportation and work authorization eligibility for undocumented individuals who were brought to the United States as children. Eligible individuals were under age 16 at the time of entry into the United States; were under age 31 on June 15, 2012; resided in the United States for at least five years before June 15, 2012; not convicted of a felony, a significant misdemeanor or three or more misdemeanors and not otherwise a threat to national security or public safety; and in school, graduated from high school or honorably discharged from the U.S. Armed Forces or the Coast Guard.

Approximately 800,000 individuals have been granted DACA status since the creation of the program, with 590,070 active DACA recipients living in the U.S. as of 2021.²⁷ DACA recipients contribute to the U.S. economy in a variety of ways. More than three-quarters of DACA recipients were essential workers during the COVID-19 pandemic.²⁸ In fact, DACA recipients are involved in work across the economy, from construction to hospitality to manufacturing; 94% of the DACA-eligible population is employed.²⁹ DACA households contribute \$6.2 billion in federal taxes and \$3.3 billion in state and local taxes each year.³⁰

The legality of the DACA program continues to be debated in the courts, and congressional action is needed to secure the legal status of this worker population. Further disruptions to the legal status of this worker population would be devastating. Manufacturers cannot afford to lose access to this pool of skilled, ambitious and dedicated workers—especially during a workforce crisis that has left our industry with around 800,000 open positions.

Temporary Protected Status

DHS can grant TPS to individuals who are seeking protection from natural disasters, armed conflict or other extraordinary conditions and are unable to return to their home country. For example, DHS granted TPS to individuals from El Salvador, Honduras and Nicaragua in the late 1990s due to a series of natural disasters. More recently, DHS announced TPS for migrants from Ukraine in 2022 following the Russian invasion of the country, from Afghanistan in 2022 due to armed conflict, from Burma in 2021 following a military coup and violence against civilians and from Yemen in 2015 due to armed conflict in the country. As of February 2022, there are approximately 350,000 individuals from 15 countries living in the United States on TPS, with a potential 145,800 additional individuals due to recently announced TPS designations in spring 2022.³¹

DHS reviews TPS designations on a regular basis and can terminate or renew the status.

TPS by Country³²:

Immigrants from 15 nations have TPS.

Nation	Approved Individuals
Afghanistan	N/A
Burma (Myanmar)	380
Cameroon	N/A
El Salvador	193,940
Haiti	3,240
Honduras	58,625
Nepal	9,355
Nicaragua	3,130
Somalia	370
South Sudan	75
Sudan	N/A
Syria	3,910
Ukraine	N/A
Venezuela	40,400
Yemen	1,335

Source: CRS compilation of information from Federal Register announcements or press releases; numbers provided to CRS by USCIS.

Steps for Congress to Pursue:

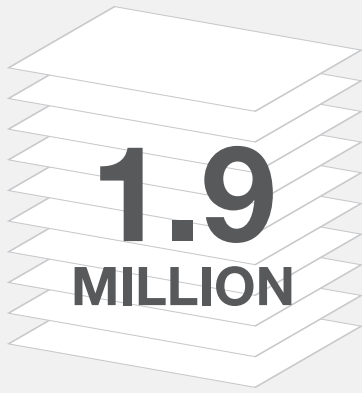
- Establish requirements for the DACA population to achieve provisional legal status with the possibility of receiving U.S. citizenship provided conditions such as background checks and educational requirements are met.
- Clarify that LPR status for the DACA population does not count against existing limits.
- Maintain a clear definition of the eligible DACA population to include those who were brought to this country as children and have remained in the United States; clarify that eligibility will not apply to future arrivals to deter people from coming to the United States with the hope of being part of a future DACA population.
- The population should include all individuals initially eligible for DACA, including those who have received DACA status and those who have not yet applied.
- Provide a separate pathway for permanent legal status for individuals in TPS, with the opportunity to apply for citizenship if individuals in TPS have been present and employed in the United States for several years and meet certain additional requirements, including a criminal background check.

5 REFORM ASYLUM AND REFUGEE PROGRAMS FOR A MORE ORDERLY AND HUMANE SYSTEM

Congress should seek to improve the asylum process and avoid the tragedy of family separations at all possible costs. Asylum seekers are individuals arriving or currently in the United States seeking protection and to remain in the country based on a credible fear of persecution if they return to their home country. Refugees are individuals, outside of the United States, seeking protection in the United States from abroad. Asylees in the United States can apply for LPR status after one year in the country and for citizenship after four years. U.S. migration policy must continue to reflect the difference between economic migrants and legitimate asylum seekers. American asylum laws and processes must adhere to our nation's values and obligations under international laws. Providing legal pathways for workers and establishing an orderly asylum process at ports of entry will boost border security by allowing officials to focus resources on illegal activities at the southern border.

Asylum

The United States has seen a dramatic increase in asylum claims in recent years. From fiscal 2017 to fiscal 2019, the total number of individuals arriving at the southern border with credible fear claims nearly tripled from 55,584 to approximately 147,000.³³ Due to backlogs in immigration courts, the asylum process can take up to four years to complete.³⁴



PENDING CASES



AVERAGE WAIT TIME

Immigration Courts Can't Keep Up:

- The number of filed asylum applications skyrocketed from nearly 45,000 in 2012 to nearly 216,000 in 2019—a 380% increase. Claims fell in 2020 and 2021, only to continue to rise with 156,374 filed as of the third quarter of 2022.³⁵
- Resourcing for immigration courts has not kept pace; the total number of immigration judges increased from 267 in 2012 to 589 in the third quarter of 2022—only a 120% increase.³⁶
- As of June 2022, there were nearly 1.9 million pending immigration cases, an increase in the backlog of approximately 25% from the beginning of the fiscal year.³⁷
- The average wait time for a pending immigration case as of August 2022 is 798 days.³⁸
- At the current rate of processing, immigration courts would need to hire 200 additional judges just to prevent the backlog from growing further.³⁹

Steps for Congress to Pursue:

- Create standards for asylum that are guided by U.S. civil rights laws and policies as well as consistent with U.S. values (such as asylum claims for persecution for religious beliefs, race, gender, national origin, sexual orientation and political beliefs). Congress needs to consider and decide the issue of gang and domestic violence as a basis for asylum given the conditions in Central America.
- Reduce the backlog in asylum cases by increasing funding for immigration courts, including judges and caseworkers.
- Explicitly prohibit the separation of minor children from their parents.
- Establish and fund alternatives to detention for family units guaranteed to ensure appearance at court hearings.
- Increase criminal penalties for human trafficking organizations and organized crime groups that profit from exploiting migrants.
- Target foreign aid resources to address the “push factors” that drive regional migration, including gang and domestic violence in migrants’ home countries.
- Increase opportunities for asylum seekers to apply in country rather than risking a dangerous journey to the U.S.
- Cooperate with allies and regional partners to reduce migration across Central America.

6 FIX THE PROBLEM OF THE UNAUTHORIZED POPULATION WITH A FIRM RESET

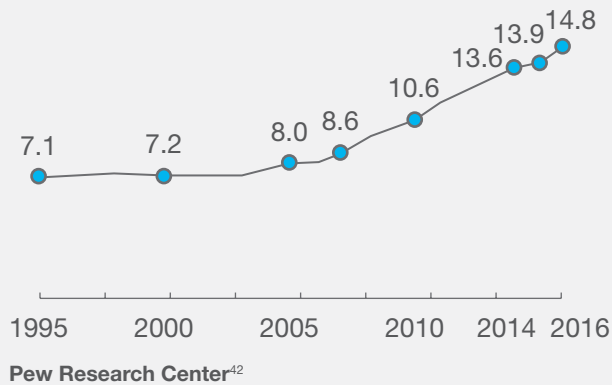
There were nearly 11 million undocumented individuals living in the United States as of 2017.⁴⁰ It is illogical to believe that this population can simply be uprooted and deported without significant disruptions to the economy and local communities. Losing these workers would be detrimental at a time when so many industries face labor shortages and economies rely on their buying power. By finally addressing this problem with a firm reset, the United States will be in a better position to strongly enforce its laws and to deter illegal immigration in the future. While these individuals clearly broke immigration laws to relocate or stay in the United States without authorization, they did so under a very broken system. Providing a path forward is essential for not only individuals living in the shadows but also the employers that rely on their talents.

Integrated into Society and in the Shadows

These individuals have become part of the fabric of our society, with two-thirds of unauthorized adults in the United States having lived in the country for a decade or more.⁴¹ Deportation of this population is impractical and costly. It would prove economically damaging as our country faces a labor crisis and inflationary pressures. It would also run counter to the values of our nation. But there is no doubt that the status quo is also unacceptable and that finding compromise on this sensitive issue will be essential to establishing a workable immigration system for our nation's future.

The typical unauthorized immigrant has lived in the U.S. for nearly 15 years.

Median Years of U.S. Residence for Adult Unauthorized Immigrants



Steps for Congress to Pursue:

- Establish an orderly process for this population, with the goal of offering a pathway to legal status for unauthorized individuals in the country after the individual has gone through a criminal background check, paid penalties and back taxes and met conditions necessary to demonstrate the skills/knowledge necessary for successful participation in society.
- Deport individuals who fail to come forward during the provided window to obtain legal status.
- Include employers as part of the solution by providing legal protections for meeting conditions to promote compliance and discourage the hiring of illegal labor.



7 **STRENGTHEN THE RULE OF LAW SO IT IS RESPECTED AND FOLLOWED BY ALL**

Knowing who wants to enter our country and having clear knowledge of who is within our borders is a national security imperative. There is no ambiguity on this issue. Managing the immigration pipeline is critical to preventing illegal activity and reducing future risks. Fixing the broken system will close decades-old loopholes created by political inaction, leaving no excuse for noncompliance. To accomplish critical national security and public safety goals, key steps must be taken.

Steps for Congress to Pursue:

- Criminals must be deported and expelled from the United States through prioritized enforcement based on the appropriate felony level.
- Moving forward, visa overstays must be addressed and prevented, including approved accountability measures for visa holders.
- Criminal prosecution of gang violence must be a top priority, and state and local authorities must be required to cooperate to root out gang activity at our border and in our communities.
- States and localities must be required to cooperate to advance consistent enforcement or face consequences.

ENDNOTES

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