CREATING AVENUES FOR LEGAL MIGRATION THROUGH SELF-PETITIONING

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The steady rise in individuals requesting asylum at the U.S.-Mexico border over the last decade illustrates one of the core problems with our immigration system: There aren't enough ways to immigrate to the United States without a sponsor.

Asylum attracts a disproportionately high number of applications because it's one of the few options that allows a migrant to petition for themselves. With thousands displaced in the Western Hemisphere and a high demand to migrate to the United States, asylum has become one of the most important immigration pathways in the region. Whether migrants experience persecution or are fleeing desperate economic conditions at home, the U.S. asylum system is often the only lifeline available.

Immigration reform often focuses on expanding existing migration pathways, especially those with employer sponsorship. That still has merit. But it's also worth exploring adding self-petitioning channels to provide more flexibility for economic and humanitarian migration. It is vitally important that the United States maintain its leadership as a refuge for people fleeing desperate conditions. We are better able to keep asylum access open if other avenues exist for legal migration.

In most countries, there are two general routes prospective migrants may use to enter: self-petitioning channels and sponsorship channels. These vary depending on a country's current operational and policy goals, specific needs, and the historical circumstances that shaped its response to immigration.

Nearly all self-petitioning channels are exactly as they sound – an individual can apply on their own to enter or extend their stay in that country if they already reside there. Sponsorship channels, on the other hand, require a prospective immigrant to secure a sponsor such as an employer, family member, or institute of higher education to start the process; the noncitizen must then file a supporting application.

The United States is no exception. Our immigration system has both self-petitioning and sponsorship pathways. In the self-petitioning model, a small subset of noncitizens may seek a green card if they meet certain requirements for specific programs, with key examples listed in the following table.

Figure 1: Examples of self-petitioning channels in the U.S. immigration system

Legal Channel	Category of Legal Channel	Description
EB-1 First Preference Category	Employment Based	Under this channel in the employment-based green card system, individuals can self-petition if they meet these requirements: • Demonstrate extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim. • Demonstrate international recognition for outstanding achievements in a particular academic field. • Fall under specific categories of multinational managers or executives.
EB-5 Fifth Preference Category		Noncitizens can access this green card if they invest at least $1.8 million in a new commercial enterprise that creates at least 10 new jobs.
Asylum	Humanitarian	• Individuals have the legal right to seek asylum at the U.S.-Mexico border. • Individuals already present in the United States have the same right.
Violence Against Women Act Self-Petitioner		Individuals can self-petition for a green card in the United States if they are a victim of battery or extreme cruelty committed by specific categories of individuals.
Diversity Visa	Other	Individuals can self-petition for the Diversity Visa green card lottery if they • are citizens of countries with historically low rates of immigration to the United States. • have at least a high school education or its equivalent or two years of experience in an occupation that requires at least two years of training or experience.

Sponsorship pathways in the United States are mostly through family, by which U.S. citizens and immigrants with legal permanent residence can sponsor certain family members for a green card. Employers can do the same for certain classes of workers.[1] Humanitarian migrants don't typically have sponsorship pathways, but the Biden Administration has introduced programs allowing individuals to sponsor nationals from specific countries to come to the United States through humanitarian parole. The administration also introduced a program in January 2023 that allows private groups to finance the reception of individuals arriving through the U.S. Refugee Admissions Program. This program will allow private groups to directly select and sponsor refugees in the future.

The Strengths and Challenges of Maintaining Self-Petitioning Systems

Self-petitioning channels offer several benefits over their sponsorship-based counterparts. Self-petitioning simplifies and streamlines the employment-based migration process for individuals seeking

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1 Furthermore, all temporary employment-based visas require employers to sponsor workers for visas such as the H-2A seasonal agricultural visa and the H-1B visa for high skilled workers.

Points-based self-petitioning

Australia, Canada, and New Zealand have "merit-based" systems that use a points-based assessment for evaluating the professional, academic, and personal backgrounds of highly skilled individuals who filed their applications and inviting qualified ones to apply for permanent residency. Canada has maintained some iteration of a points-based system since 1967. Its latest form, Express Entry, provides applicants with a clear explanation of the selection process that reduces ambiguity about their prospects for migrating to the country.

economic opportunities in other countries. It also helps receiving countries fill gaps in their labor markets more effectively, particularly if paired with mechanisms to select specific skill sets.

Individuals seeking permanent protection can also readily access humanitarian pathways without having to wait for a sponsor. Asylum access at the U.S.-Mexico border is one of the most important self-petitioning humanitarian channels in the Western Hemisphere. The 1980 Refugee Act, which established this process, used universal self-petitioning to eliminate the discrimination some asylum seekers faced when seeking protection in the 1970s.

While there are clear benefits to self-petitioning channels, they are often stressed by high volumes of applicants seeking entry. Immigration systems without an effective way to filter out applications and rapidly adjudicate cases undermine efficiency, creating backlogs that disadvantage migrants ranging from highly skilled individuals to those seeking refuge, who often aren't a priority for processing. The absence of a fully funded immigration system to process an uptick in applications can reinforce these problems. This is especially true with humanitarian migration, where attempts to reduce the number of applications can endanger migrants fleeing persecution.

Migration to the U.S.-Mexico border shows similar challenges for humanitarian migration. The arrival of large numbers of unaccompanied children in 2014 marked a shift in the demographics of border arrivals from those searching for work to people in need of refuge. As these types of cases grew more

Addressing backlogs

In the early 2000s, Canada's backlogs increased because the number of individuals who met the points threshold exceeded the number of slots available for permanent migration. The Canadian government's practice of processing applications on a first-come, first-serve basis compounded this problem. In response, the Canadian government incorporated a process called the Candidate Ranking System as part of the Express Entry rollout. It ranked candidates who met the minimum point threshold and invited the top-ranked ones to apply for permanent residency, allowing Canada to select ones with the most optimal skills profile and reducing the backlog. The Canadian government took this idea from New Zealand, which created this process within its own points-based high skilled channel to improve the management of applications and prioritization of specific skills.

frequent, the backlog of cases expanded, with multiyear waits for resolution because of a shortage of judges, staff, and resources in the Department of Justice's Executive Office for Immigration Review. Furthermore, U.S. Citizenship and Immigration Services (USCIS), which oversees the processing of asylum claims for individuals already in the United States, has struggled with similar backlogs as the number of applications exceeded its ability to process the cases in a timely fashion.

In response, the United States limited asylum access at U.S. borders based on the flawed notion that these restrictions will stop migration to the country. In January 2020, the Trump Administration introduced the Migrant Protection Protocols (MPP), which made many asylum seekers wait in Mexico for the duration of their asylum cases. In March 2020, it transitioned using Title 42, a COVID-19-era health care policy that allowed the United States to rapidly expel migrants from the border without meaningful access to asylum or serious consequences for crossing the border. This led to high rates of recidivism.

The Biden Administration maintained Title 42 in 2021 and expanded its use after U.S courts reversed the administration's initial effort to end the policy. The policy ended in May 2022 due to the expiration of the public health emergency, but the administration adopted a regulation that maintains strict limits on asylum despite the language of the Refugee Act. It allows the United States to rapidly deport individuals who fail to apply for asylum in other countries en route to the United States. The action mirrors a similar one adopted by the Trump Administration.

These policies seem tough on irregular migration, but their impact on migration to the U.S.-Mexico border remains tenuous at best. Analyses of migration patterns to the U.S.-Mexico border and the greater hemisphere show that policies like Title 42 largely failed to stop immigrants from crossing, partly because they lacked penalties for individuals who repeatedly crossed the border without authorization. Keeping these policies in place increased the vulnerability of immigrants seeking protection, with many remaining on the Mexican side of the U.S.-Mexico border in the hope that U.S. border policy will change. Finally, these measures left the problems that undermine the efficient and fair processing of immigration cases firmly in place, ensuring that the United States will lack the ability to address the long-term displacement of individuals in the future.

Supporting Self-Petitioning Channels in the U.S. Immigration System

Policymakers need to be cleareyed about maximizing benefits and mitigating potential problems when designing new self-petitioning pathways to migrate. Underscoring this are past efforts at reform – like incorporating a merit-based pathway into the U.S. employment-based system – and current attempts to reform asylum processing. New policies will need ample resources and well-designed, efficient policies to ensure successful implementation.

The refugee crisis in the Western Hemisphere and its effect on the U.S.-Mexico border reinforce the need to work with other countries to assist with processing these individuals in the region. In-region processing should supplement asylum access at the U.S.-Mexico border to improve efficiency and safety rather than replacing it entirely.

Policymakers should consider the following steps to ensure that future legislative efforts to incorporate a merit-based system into the U.S. immigration process will establish channels that can successfully handle any potential increases in the number of applicants.

Congress should build flexibility into the selection process for employment-based self-petitioning programs.

Current U.S. immigration law is too inflexible to changes in labor demand. Legislation is often needed for substantive changes, but the political environment has created huge hurdles. Congress should ensure

any employment-based self-petitioning channels are able to adjust to select applicants who best meet market needs. There are many options available, including apolitical, automatic triggers. Congress could also consider creating a bipartisan commission that would meet at regular intervals to adjust selection criteria. Each of these options has advantages and disadvantages but will still allow employment-based self-petitions to be more responsive to the changing needs of U.S. employers.

Congress must build mechanisms to address an increase in applications and prevent backlogs.

Self-petitioning systems must have mechanisms to address an influx of new applicants when needed, especially if these systems contribute to the growth of backlogs. A multitude of options exists: a candidate-ranking system similar to the one in New Zealand's merit-based immigration system; automatic release of additional visas based on specific economic indicators; or additional temporary to permanent visa options allowing more rapid entry to the United States while pursuing permanent residence. Congress can also prioritize individuals whose skills or existing job offers match major gaps in the economy or labor market, ensuring that these approaches produce better outcomes for our economy.

Congress should appropriate funds to ensure U.S. Citizenship and Immigration Services can effectively process immigration applications in a timely fashion.

Any major reform of the U.S. legal immigration system, such as expanding existing or creating new self-petitioning channels, will necessarily need strong implementation. Congress needs to ensure that USCIS has the resources to do this so that the agency can efficiently process new applications and prevent backlogs.

Currently, the agency's funding model – in which the payments for immigration benefits such as visas and green cards form most of its operating budget – has left it incapable of securing additional staff and resources to process the expansive caseload of immigration applications. This situation deteriorated in 2019 and 2020 as policy changes and the COVID-19 pandemic dramatically reduced USCIS's caseload and burdened the agency with a financial crunch. Multiple proposals exist to address the problems stemming from this funding model.

The above recommendations would help implement mechanisms for a proposed self-petitioning pathway on the employment side. But the United States already has a robust self-petitioning system on the humanitarian side given the current asylum laws. Asylum in the United States can work more effectively by doing the following:

Congress should properly fund the agencies that will adjudicate the asylum cases, especially those coming from the border.

The U.S. asylum system is already a robust self-petitioning channel for migrants seeking refuge in the United States. Its problems are primarily ones of process and adjudication rather than qualifications and access. The backlog of asylum cases – especially ones filed at the U.S.-Mexico border – has been a persistent challenge for the agencies which handle asylum seekers.

Congress must commit to providing the resources needed to allow USCIS and the immigration courts to

address any increase in individuals seeking asylum in the United States while simultaneously tackling the existing backlog. Congress should also provide adequate funding to the Department of Homeland Security and the Office of Refugee Resettlement in the U.S. Department of Health and Human Services, which handles the processing of unaccompanied children arriving at the border, to handle increases in asylum caseloads. To be sure, Congress can also explore reforms of asylum processing. But given that individuals may seek protection at current or increased levels in the future, resources to process more cases will determine whether any accompanying reform has a chance at successfully managing migration.

The executive branch and Congress should reform asylum processes, not asylum eligibility.

Policies that aim to reduce the number of migrants at the border by limiting asylum access have appealed to lawmakers for decades. This energy is misplaced, however. Policymakers need to have fully developed processes that ensure asylum works and the border is well-managed. This must begin in the Western Hemisphere, where the United States should work with partner countries to establish in-region processing capacities allowing individuals to seek resettlement in the United States or register for accessing protection at ports of entry.

While regional processing centers that provide these services can form a major plank of this approach, the United States should work with the U.N. High Commissioner for Refugees (UNHCR) and partner governments to establish more targeted sites where individuals can access desktop versions of CBP One, the app which the Biden Administration has used since 2022 to manage access to ports of entry. Given the likelihood that most individuals will seek asylum at the border – and reports about technical issues with CBP One – investments aimed at improving access to CBP One are smart.

The executive branch should explore closer collaboration with other countries which can accept migrants.

The executive branch – both current and future administrations – should develop a migration strategy that works with other countries that can receive and resettle migrants. The United States has already begun to establish coordinated mechanisms for managing migration across the Americas, securing support from Canada and Spain to accept some humanitarian migrants as part of the U.S. plan to reduce pressure on the U.S.-Mexico border as Title 42 ended. The United States and 20 other countries also signed the Los Angeles Declaration, another step forward in developing regional solutions to migration. Given that migration is a hemispheric challenge now, it's incumbent that U.S. immigration policy incorporate new frameworks and partnerships with other countries to tackle the scope and scale of new movements of individuals across the Americas.

While these measures should form part of the United States' hemispheric approach to managing migration, they should be seen as pathways that supplement – not replace – asylum access at U.S. borders. Furthermore, the United States should always ensure that these agreements only involve countries that are politically and economically stable, an important correction to earlier efforts to make countries such as Guatemala receive asylum seekers. Taking these steps will ensure that the United States has a realistic and pragmatic approach that recognizes individuals will continue to travel to the country to seek protection – meaning it must be ready for increases in arrivals even as alternate

pathways to enter the United States or seek protection in other countries create offramps that reduce pressure on the U.S.-Mexico border.

Cooperative resettlement is also needed for refugees outside the Western Hemisphere, as we have seen in the ongoing delayed resettlement of thousands of Afghans who fled the Taliban after the United States withdrew from the country. Refugees have been languishing in third countries, awaiting processing and resettlement to the United States that may be years away. Rather than continuing to drag out their wait, the executive branch must adopt a cooperative approach to finding permanent resettlement solutions for them, allowing these families to begin rebuilding their lives as soon as possible.

Conclusion

Self-petitioning immigration programs are an important tool for a functioning, robust legal immigration system. Unfortunately, the current U.S. self-petitioning programs suffer from the same ills as the rest of the immigration system – inflexibility, poor processing, backlogs, and underfunded agencies. Congress should consider reforming and expanding self-petitioning to help ensure that the U.S. immigration system continues to benefit America.