

**Rethinking the American Immigration System:  
A Bipartisan Blueprint for Congressional Reform**

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“They let — I think the real number [of illegal immigrants] is 15, 16 million people into our country. When they do that, we got a lot of work to do. They’re poisoning the blood of our country,” said former President and current presidential nominee Donald Trump at a rally in New Hampshire last year (Gibson, 2023). After this rally, Trump doubled down on his comments by taking to social media. He said, “Illegal immigration is poisoning the blood of our nation. They’re coming from prisons, from mental institutions — from all over the world (Gibson, 2023).” Earlier this year, Trump made more grotesque comments about immigrants to a crowd of conservative Christians. He said, “Why don’t you set up a migrant league of fighters and have your regular league of fighters. And then you have the champion of your league — these are the greatest fighters in the world — fight the champion of the migrants (Obeidallah, 2024).” These harmful quotes spoken by Donald Trump have perpetuated hateful rhetoric regarding immigrants throughout American politics. This idea of demonizing undocumented immigrants and characterizing them as savage animals has unfortunately become the norm in American politics since he entered the political scene. It has become commonplace to pin the chaos at the southern border solely on undocumented immigrants despite the fact that many of them are seeking reunification with their families, economic opportunity, and asylum from political instability, war, and violent crime (Moslimani & Passel, 2024). While it may be easy to blame the southern border crisis on some of the most vulnerable people in society, the real cause of the crisis is far from the Mexican border. Rather, its roots can be traced back to Washington D.C. Instead of characterizing an entire population of people as animals and criminals, we should therefore turn our focus to the politicians who possess the power and means to effectuate change but have made minimal progress towards solving the issue. Before addressing the immigration

crisis in the United States, the history of the topic and how it relates to American values must first be understood.

### **History of the American Immigration System**

As with any other political issue in the United States, the Constitution must first be examined before parsing through immigration. Although the Constitution does not directly address immigration, inferences from the Constitution and legal precedent from Supreme Court cases have long held that immigration is a federal responsibility, rather than the responsibility of states. This legal precedent of the federal government's exclusive power over immigration stems from various clauses in the Constitution such as the Commerce Clause, the Naturalization Clause, the Declaration of War Clause, and others. The Supreme Court has reasoned that the Constitution has explicitly given Congress the power to regulate foreign commerce, make naturalization laws, and declare war on other countries, thereby reflecting its constitutionally-granted power over international relations (Daniellson & Weissbrodt, 2004). Consequently, Congress has been given the exclusive power over regulating immigration with little intervention from the judicial and executive branches. The Supreme Court has upheld laws that prohibit immigrants based on ethnicity and religion and generally only intervenes if an immigration law somehow violates an American citizen's constitutional rights (Legal Information Institute). This approach to immigration can be clearly seen when Justice Robert H. Jackson said, "[A]ny policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference (Daniellson & Weissbrodt,

2004)." Likewise, the Executive branch is limited in its power over immigration. It is responsible for enforcing the immigration laws passed by Congress, but the only power it has outside of Congress is through executive actions, which are susceptible to judicial review (Daniellson & Weissbrodt, 2004). Thus, Congress holds the seemingly exclusive power to pass meaningful immigration policy in the federal government.

Along with the Constitution, it is important to place immigration in the context of the ideas that the United States was constructed around, which can be accomplished by examining the original founding document: the Declaration of Independence. While the Declaration of Independence does not explicitly address immigration, it does offer insight into American values and ideals that shaped how the United States viewed immigration for around the first century of its existence. The Declaration of Independence notoriously says, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness (America's Founding Documents)." Although Thomas Jefferson may have been referring to white, property-owning men having the right to self-governance when he wrote these revolutionary words, they grew to mean something much more as the United States progressed and matured. The words set an ideal for the nation to recognize the unalienable rights of all people—which we have made great progress towards—and have become a cornerstone of American democracy. It therefore follows that looking at the world through an American lens means to view everyone as equal in their natural rights. This notion of equality seems to indicate that all people who understand these natural rights—regardless of their race, ethnicity, religion, or culture—have the right to immigrate to the United States to have these rights recognized politically (White, 2011).

While the founders of the country largely agreed with the Declaration of Independence's implications on immigration policy, there was some nuance to their stances. Thomas Jefferson and George Washington both viewed the United States as a place of refuge and opportunity for people who faced political oppression and tyranny. Likewise, Thomas Paine referred to America as "an asylum for mankind (Anderson, 2019)." While the founders were referring to white, European men, their words have grown to encompass all people like the Declaration of Independence has today. Conversely, the founders recognized the potential problems of truly open borders and desired that the country's national interest be prioritized. For example, Alexander Hamilton wrote in one of his essays, "To admit foreigners indiscriminately to the rights of citizens, the moment they put foot in our country, as recommended in the Message, would be nothing less, than to admit the Grecian Horse into the Citadel of our Liberty and Sovereignty (Founders Online)." Despite their concerns regarding immigrants, the founders produced arguably the most open immigration policy in the world when Congress passed the Naturalization Act of 1790, which allowed immigrants to gain citizenship to the United States after two years of living in the country and was changed to five years in 1802 (*Historical overview – immigration, 2023*). Although this act only allowed white men to naturalize, it still reflected a very open policy for its time and highlighted the founders' vision for immigration to the country. This vision was for the United States to serve as a place of refuge and opportunity for immigrants while also ensuring the nation's best interest.

These classically liberal ideas that the founders advocated shaped the country's immigration policy and went largely unchallenged for a significant portion of America's history. Until the late 19th century, the United States had managed to preserve the relatively open immigration policy implemented by the founders with a few exceptions. This was until 1882

when Congress placed the first federal restrictions on immigration by passing the Chinese Exclusion Act. It was not long after this act that the United States began to drift from the founders' vision of immigration (U.S. Citizenship and Immigration Services, 2020). World War I and an influx of European immigrants culminated in the Immigration Act of 1924, which established fixed quotas on national origin, thereby drastically altering the United States immigration system and essentially limiting immigration to northwestern Europeans. In the same year, Congress also officially established the U.S Border Control for the sake of securing the border (*Historical overview - immigration, 2023*). The quota system lasted until 1965 and significantly reduced the number of immigrants to the United States. In 1965, Congress replaced the quota system with a system that sought to reunite families and draw in skilled immigrants. This change led to most immigrants coming from Latin America and Asia, rather than Europe. It also drastically increased the number of immigrants coming to the United States per year (*Historical overview - immigration, 2023*). The next significant policy passed regarding immigration was the Immigration Reform and Control Act in 1986. This law restricted employers from knowingly hiring undocumented immigrants, while also granting amnesty to many undocumented immigrants (*Historical overview - Immigration, 2023*). This was the last truly significant, comprehensive piece of immigration policy to pass through Congress to this day (Galston, 2024).

Despite the fact that major immigration reform has not occurred since the late 20<sup>th</sup> century, the issue has been placed on the center stage of American politics in recent years. This is due to a number of factors such as the September 11, 2001 attacks, a growing undocumented immigrant population, and populist figures like Donald Trump pinning America's problems on immigrants (*Historical overview - immigration, 2023*). In fact, recent presidents have made

immigration a key issue within their campaigns. For instance, Barack Obama gave significant attention to immigration reform during his campaign and presidency; however, he left a mixed legacy on the issue. During his time in office, Barack Obama advocated for the DREAM Act (Development, Relief, and Education for Alien Minors), originally introduced in 2001, because it would provide a path to citizenship for undocumented immigrants who were brought to the United States illegally while they were under the age of sixteen. In 2010, a new version of the DREAM Act passed through the House of Representatives, but it failed to pass through the Senate (*A brief history of civil rights*, 2023). In response to the DREAM Act being curbed by Congressional gridlock, the Obama Administration turned to executive action to address the immigration crisis (Roy et al., 2024). In 2012, he issued an executive order called DACA (Deferred Action for Childhood Arrivals) that would provide up to four years of deportation relief to undocumented immigrants who were brought to the United States under the age of sixteen. As of 2024, this program has had more than 830,000 participants. President Obama tried to expand DACA by implementing DAPA (Deferred Action for Parents of Americans), but the Supreme Court ruled this as an executive overreach of power (Roy et al., 2024). Thus, Obama found some success through executive action, but this success can easily be (and was) curbed by the courts as seen in the DAPA case. While Obama tried to prevent certain immigrants from being deported, he was also responsible for around 3 million deportations during his term, which has made him a complicated figure on the issue (Sakuma, 2017). This complicated stance has led to him facing criticism from both political parties; nevertheless, his use of executive orders certainly set a precedent for his successors.

Once President Obama's time in office came to an end in 2016, Donald Trump began to intensify the immigration debate by making it the signature issue of his campaign. He relied

heavily upon executive orders to leave his impact on immigration. Donald Trump used executive orders to get funding for his wall on the southern border, to implement a zero-tolerance policy for anyone crossing the border illegally, to place a travel ban on numerous countries including many that were predominantly Muslim, to lower the number of refugees accepted to the country annually, and to place new restrictions on immigrants seeking asylum. He also tried to reverse DACA—Obama’s executive order—but was unable to because the Supreme Court blocked him (Roy et al., 2024). These executive orders drastically shaped immigration to the United States, which can be seen by the fact that legal immigration was reduced by 49% under Donald Trump (Anderson, 2022). In addition to the executive orders, Trump pushed for general immigration reform by advocating for a merit-based system but did not find success in his attempt (Roy et al., 2024). Although Donald Trump placed immigration at the forefront of his campaign and managed to make the immigration system more restrictive, he was able to accomplish no significant, long-term immigration reform in his term.

Once it was time for Trump to run for reelection, Joe Biden entered the race and essentially promised to undo all of the immigration policy implemented by the Trump Administration. Once elected, Joe Biden reversed many of Donald Trump’s executive actions by lifting the travel ban on Muslim countries, increasing the number of refugees allowed to immigrate per year, and temporarily halting the construction of the wall. However, Biden was forced to implement new immigration restrictions when a record influx of undocumented immigrants crossed the border during his time in office. His administration countered this influx by restricting the number of people who can claim asylum and by barring asylum requests when migrant crossings exceeded a certain threshold. The Biden Administration has also tried to address the immigration problem at the root by collaborating and giving aid to Latin America.



Despite these efforts to improve the immigration system, Joe Biden has so far been forced to rely on executive orders and, like his predecessors, has been unable to achieve any long-term reform during his time in office (Roy et al., 2024).

As seen above, the past three presidents have heavily relied upon executive orders to leave their mark on the immigration crisis. This is because the executive branch's authority over immigration is highly limited by the Constitution and Supreme Court precedent, which have essentially given Congress the exclusive power to regulate the issue. While some of the executive orders from the past three presidents have been successful, they are only temporary fixes to the problem. This is because executive orders can easily be overturned or reversed by the Supreme Court and by future presidents. For instance, Barack Obama had executive orders curbed by the Supreme Court and Donald Trump had many of his orders dissolved by Joe Biden, which shows the limited long-term impact a president can make on the issue. It is therefore essential for the U.S. Congress to overcome the barriers of partisanship that surround immigration by aggressively exercising their constitutionally granted power to improve the archaic immigration system by increasing the funding into the current system and making reforms to it, while creating pathways to citizenship for undocumented immigrants. These steps from Congress are the only way to make significant progress towards solving the immigration crisis because the executive and judicial branches are severely limited in their power to do so.

### **A Bipartisan Blueprint for Congress**

The first step Congress should take in addressing the immigration crisis is increasing the funding to the current system to make it more efficient. Making the immigration system more efficient should be appealing to both Democrats and Republicans because it would allow more people to legally immigrate to the United States, thereby reducing the number of people

attempting to cross the border illegally. Most immigrants would obviously prefer to be legal citizens; however, many of them do not ever get the chance. Increasing the efficiency of the immigration system therefore should transcend partisan barriers. To effectively increase the efficiency of the system, Congress needs to fund the right agencies and departments. There are currently four departments that are responsible for processing immigration applications: U.S. Citizenship and Immigration Services (USCIS), Bureau of Consular Affairs, Office of Foreign Labor Certification (OFLC), and the Executive Office for Immigration Review (EOIR) (Bier, 2022). As of September 30, 2023, the USCIS had over 9 million backlogged cases, the EOIR had accumulated around 2.46 million by the end of 2023, the Bureau of Consular Affairs recorded over 400,000 in August of 2024, and the OFLC's backlogs were not directly reported (USCIS, 2023; EOIR, 2023; Bureau of Consular Affairs, 2024). This data shows that Congress should specifically direct funding towards the USCIS and the EOIR because they have accumulated the majority of the backlogs.

The EOIR is an agency within the Department of Justice that is generally referred to as the immigration courts. This means that the EOIR is responsible for determining whether noncitizens should be removed from the United States, or if they qualify for relief from deportation. Within the EOIR, there are 69 different courts across the country and around 650 judges within these courts (*U.S. immigration courts*, 2023). While that may seem like a sufficient number, it must be recalled that there were 2.46 million backlog cases pending in 2023, and the number is only growing (EOIR, 2023). This means that these judges are responsible for handling hundreds to thousands of cases each, which has contributed to the average case taking three years to be resolved in 2022 (Bier, 2022). Not only does this lead to severe delays, but it also limits the time and attention the judges can give to each case. According to the Congressional Research

Service, the EOIR would need to hire 700 more additional immigration judges to be able to fully clear the backlogs by Fiscal Year 2032 (2023). Congress should therefore direct more funds to the EOIR when crafting the budget, so the EOIR can hire more judges to make the immigration courts more efficient. It is important to note that Joe Biden's budget proposal for Fiscal Year 2025 is requesting \$121 million more than what was given to the EOIR in 2023 and is pushing for the creation of 25 new immigration judge teams with these funds (Office of Management and Budget, 2024). If passed by Congress, this will certainly be a step towards reducing the backlogs, but it is certainly not enough.

Another way Congress can reduce the backlogs in the EOIR is by directing more funds to the U.S. Department of Homeland Security to create a new sub-agency that provides legal assistance to undocumented immigrants. This sub-agency should operate in a similar manner as the public defender system in the United States. Only 37 percent of people facing deportation receive legal representation in their cases. More specifically, only 14% of detained undocumented immigrants facing deportation receive legal counsel (Eagly & Shafer, 2016). This means that the majority of people facing deportation are representing themselves in a foreign legal system and often in a foreign language too. A new agency that would provide an immigration lawyer to each undocumented immigrant facing deportation would not only ensure the immigrant received a fair trial but would also make the process more efficient because the lawyers would be well-versed in the process. The funding for this agency should match that of the Office of the Principal Legal Advisor (OPLA)—a program that prosecutes immigrants. In 2021, OPLA's budget was around \$352 million, so this new agency should have an equal amount of money invested. If this agency received proper funding, the case process would be accelerated, thereby reducing the number of backlogs because the judges would be able to hear

more cases. These solutions that would reduce backlogs in the EOIR should appeal to both major political parties because it ensures a more efficient process of deportation for dangerous undocumented people within the country while also making the process of getting asylum more efficient and just.

An additional department that Congress needs to direct funding towards to reduce backlogs is the USCIS. The USCIS is a sub-agency of the U.S. Department of Homeland Security and is responsible for processing immigration applications to the United States. It deals with people's eligibility for citizenship, reunification with family, visa extensions, green cards, and eligibility for asylum (*United States Citizenship and Immigration Services (USCIS)*, 2022). Because of the large amount of territory the USCIS has to cover, they have earned a reputation for having severe backlogs. As mentioned, the USCIS has accumulated over 9 million backlogs on immigration applications to the United States (USCIS, 2023). To be more specific, the USCIS only approved around 15,000 asylum applications and had over 1 million asylum applications pending at the end of FY 2023, but only had 760 asylum officers employed (Gandhi et al., 2024). To reduce these backlogs, Congress needs to provide significantly more funding to the USCIS. This is because 96% of the funding for the agency is derived from application fees (USCIS, 2024). The federal government is therefore providing a small sum of funding to the agency. This is problematic because the agency is devoted to its humanitarian mission of offering fee waivers to low-income applicants (National Immigration Forum, 2022). Obviously, an agency that relies upon application fees to function is going to struggle when those fees are being waived. Thus, it is necessary for Congress to provide consistent appropriations to the agency, so it can efficiently handle immigration applications. The increase of funds would allow the USCIS to continue its slow transition to digitalization. In recent years, the transition has gained traction, but there are

still dozens of forms such as fee-waivers that can only be filed on paper. Congressional appropriations would allow this transition to occur faster (Chishti & Gelatt, 2023). Furthermore, it would allow for more workers to be hired, which would reduce backlogs. It is important to note that the Biden Administration has helped push for an increase in funding in previous years, but Congress has not consistently allocated funds to the USCIS, which has made it difficult for them to operate efficiently (National Immigration Forum, 2024).

Other than directing more appropriations towards specific agencies, Congress should also seek to make reforms to the current immigration system. According to a Pew Research Center survey, 80% of Americans think the government is doing a somewhat bad or very bad job handling immigration (2024). Reform should therefore appeal to both major political parties because both sides regard the immigration system as broken. The primary way Congress should seek to reform the immigration system is through the expansion of legal pathways into the country to take pressure off the asylum system and the United States-Mexico border. This is necessary because the current system is far too restrictive and incentivizes people to cross the border illegally due to a lack of options. The people who do try to immigrate legally are often funneled into the asylum system despite the fact that they do not qualify for asylum status (Gandhi et al., 2024). Unlike the refugee system, the United States does not limit the number of asylum claims per year (Roy, 2024). Furthermore, asylum seekers must make their claim from the border or from within the country (USCIS, 2015). This has prompted many people who do not qualify for any other legal immigration pathways to embark on dangerous journeys to the United States border with hopes of claiming asylum. The problem is that the majority of these asylum seekers will be rejected by the United States. For instance, the United States rejected nearly 36,000 asylum applications in FY 2023, which was around 50% of the cases that year

(Roy, 2024). Not to mention, this also creates massive backlogs for asylum cases, which is seen by the fact that the USCIS had over one million asylum claims pending at the end of FY 2023 (Gandhi et al., 2024). These rejection rates and long backlogs are a testament to the fact that the lack of legal pathways places too much pressure on the United States-Mexico border and incentivizes illegal crossings. To remedy this, Congress needs to implement and support programs like the Biden Administration's Humanitarian Parole Program (Gandhi et al., 2024). The program offers an alternative to people applying for asylum from Cuba, Haiti, Nicaragua, and Venezuela by allowing them temporary access into the United States without granting them immigrant status. This has reduced the number of migrants from these countries trying to cross the border illegally. For instance, the number of Venezuelan migrant encounters at the United States' border right before this program was implemented was 1,100 per day and dropped to 200 per day quickly after it was put into action. This trend has been the case for each nationality (Jawetz, 2023). Congress should therefore seek to expand this program and create others like it to reduce irregular migration patterns. By supporting, funding, and expanding programs like Biden's Humanitarian Parole Program, Congress would be able to take pressure off the border while staying committed to humanitarianism: a hallmark of American values.

Finally, Congress should create a path to citizenship for undocumented immigrants within the country after the other reforms and funding have been implemented. In 2022, there were roughly 11 million undocumented immigrants in the United States and about 8.3 million of them were a part of the workforce (Krogstad & Passel, 2024). As of 2017, around two-thirds of this population had been in the country for over ten years (Pew Research Center, 2021). They work, contribute to the economy, participate in their communities, and have families like any other American, but do not have citizenship and live with the fear of deportation. Because

Congress has failed to pass immigration reform, they have been unable to change their status (Gandhi et al., 2024). This is why it is essential for Congress to facilitate a path to citizenship for undocumented immigrants who are actively contributing to society. This can be done by passing the American Dream and Promise Act and the Citizenship for Essential Workers Act into legislation.

The American Dream and Promise Act was introduced to Congress in 2023 and is a reiteration of the original DREAM Act (Development, Relief, and Education for Alien Minors) first proposed in 2001. It would create a path to citizenship for undocumented children 18 or under who were brought to the United States as children. The act would allow all dreamers—except those with certain criminal histories and those who did not complete high school—to pursue Conditional Permanent Resident status, then Lawful Permanent Resident status, and eventually allow them to naturalize (American Immigration Council, 2024). Likewise, the Citizenship for Essential Workers Act, first introduced in 2023, would allow essential workers who worked during the COVID-19 Pandemic to pursue Lawful Permanent Resident status, also known as a green card. After maintaining this status for 5 years, the immigrants would be able to naturalize and become U.S. citizens (*S. 1392 – Citizenship for Essential Workers Act*, 2023). If Congress passed these bills, they would place around 6 million people on a path to citizenship, which is a little over half of the undocumented immigrant population. Not only would this grant citizenship to children and vital workers, but it would also generate roughly 400,000 jobs and increase the United States' GDP by around \$1.5 trillion over the next ten years (Peri & Zaiour, 2021). This is why both Democrats and Republicans in Congress should be willing to pass these acts because they would provide citizenship to vital, vulnerable members of society while stimulating the economy.

To reiterate, Congress must overcome the barriers of partisanship that surround immigration by exercising its constitutionally-endowed power to implement reforms to the immigration system, increase funding to agencies within the system, and create new pathways to citizenship for undocumented immigrants. Through these changes, the immigration system would become more efficient and humane while also becoming less restrictive. Furthermore, the economy would be stimulated by the naturalization of millions of undocumented immigrants without incentivizing people to cross the border without authorization. Not only would these Congressional changes positively impact the immigration system, but they would also reflect the ideas conveyed in the Declaration of Independence, the Constitution, and by the founders of the United States. These immigration policies recognize the Declaration of Independence's claim that all people possess intrinsic, natural rights while adhering to Congress' exclusive, constitutional authority over regulating immigration and the founders' warning of the potential dangers of open immigration.

### **Conclusion**

Regardless of how effective the proposed immigration policies would be, none of them will matter if people do not go out and vote. As the 2024 elections approach, the debate around the United States' immigration system will continue to intensify and the stakes around the issue will be as high as ever. Despite the high stakes, American citizens will have the opportunity to leave their mark on the immigration debate by casting a ballot for the leaders they think can adequately address this issue that not only affects Americans, but people from around the whole world. Voters will be confronted with the decision of electing either the Democratic nominee, Kamala Harris, or the Republican nominee, Donald Trump, as their next president. The Democratic Platform has pledged to advocate for a 21<sup>st</sup> century immigration system while the



Republican Platform has sworn to seal the border and perform the largest deportation in American history (Democratic National Convention, 2024; Republican National Convention, 2024). On top of the presidential election, many voters will cast their ballots to elect their states' next Senators and Representatives that will make up Congress. As we have seen in this paper, the Congressional elections are particularly crucial to achieving significant, comprehensive immigration reform because Congress has the exclusive power to pass immigration policy. Although we have seen that Congressional gridlock has surrounded immigration for decades, we must not grow apathetic towards the issue. Instead, we ought to relentlessly strive after a better immigration system. It is therefore essential for voters to go elect officials who are willing to collaborate with people from differing political parties to effectuate meaningful change and make progress towards a better immigration system that aligns with core American values.

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