



Border Security and Illegal Immigration

Summary and Key Talking Points

Policy Proposals

1. Implement effective border security.
2. Give immigration law judges summary judgment and contempt authority.
3. Do not grant amnesty, which undermines rule of law and encourages more unlawful migration.

Quick Facts

1. The number of illegal border crossers apprehended or individuals deemed inadmissible at ports of entry more than doubled from 2018 to 2019.
2. As of October 24, 2018, 786,303 immigration cases were pending in immigration courts, up from 186,090 in 2008.
3. It is estimated that almost half of the illegal immigrants in the U.S. came here legally and then overstayed their visas.

Power Phrases

Safe, Prosperous, and Free

- U.S. immigration policy should keep the American people safe, prosperous, and free.

Increase Border Security and Enforcement

- We have a responsibility to secure the border and enforce our existing laws.

Amnesty

- The problem with amnesty is clear: It only encourages more unlawful immigration by unfairly favoring those who came to this country illegally over those who follow our laws.
- Amnesty would overwhelm our already unaffordable and failing entitlement programs.

Step-by-Step Reforms

- Congress must consider the full range of necessary reforms to legal immigration, border security, and enforcement, using a step-by-step approach to address each reform on its own merits.

The Issue

The issue of illegal immigration has been at the forefront of significant political and policy battles for the past decade or more. To deal with this problem, three aspects of illegal immigration must be understood: illegal immigration at the border and through visa overstays, and inadequate interior enforcement to catch and remove those in the U.S. illegally.

Over the previous two decades, the U.S. experienced a declining number of illegal immigrants at the U.S. southern border. The number of border patrol agents had significantly increased, border barriers were increased, and fewer immigrants were able to sneak across the southern border. That trend changed, beginning in 2014, when smugglers and immigrants began to exploit major loopholes in U.S. immigration law, which has, at times, overwhelmed border enforcement. In recent years, anyone showing up at the border, either crossing illegally or attempting to come through a port of entry, could bring a child, and the resulting “family units” were almost immediately released into the interior of the U.S., per the *Flores* ruling loophole. Successful exploitation of the catch and release loophole encouraged tens of thousands more illegal immigrants to come to the U.S., resulting in an historic surge at our southern border. Most claimed asylum, and, although many can say the right words to pass the initial “credible fear” screening, only around 12 percent will be granted asylum in the end.

While proper border infrastructure, barriers, and resources are important to catch illegal immigrants, the *Flores* loophole, weaknesses of the well-intentioned Trafficking Victims Protection Reauthorization Act, and an easily gameable asylum system have overwhelmed the ability of U.S. Customs and Border Protection to operate and control the southern border.

A second aspect of illegal immigration is the long-standing issue of visa overstays. Before this recent surge at the border, most illegal immigrants were visa overstays, i.e., they legally entered the U.S. on a visa or other form of entry and then failed to leave when their visa or authorization expired. To counter this kind of illegal immigration, interior enforcement tools are needed.

Finally, approximately 11 million illegal immigrants currently reside in the U.S. The left argues in favor of amnesty for these immigrants who have broken the law, but amnesty would be unfair to Americans and legal immigrants, would encourage more illegal immigration by rewarding it, and would fail to solve the root causes of illegal immigration. While removing all illegal immigrants is infeasible, better immigration enforcement, both at U.S. borders and in the interior, would encourage existing illegal immigrants to return to their home countries and deter additional illegal immigration.

Recommendations

Implement effective border security. Congress must appropriate funding for cost-effective border security measures paired with robust enforcement. The U.S. must build a system that welds all of the nation’s border assets into a single, coherent security enterprise that deploys the right asset to the right place at the right time. This would require key investments in border infrastructure, organization, technology, and resources. These initiatives include such controversial but essential tools as additional border “wall,” expanded detention space, and (as required) the temporary and efficacious use of support from the Department of Defense.

Provide more funding for Coast Guard acquisitions. This would ensure that the Coast Guard can acquire the right mix of vessels, including Fast Response Cutters and Offshore Patrol Cutters, as well as appropriate unmanned aerial systems.

Align U.S. assistance funding levels to Mexico with U.S. national security interests. A safer and more prosperous Mexico would reduce the security threats to the U.S., lessen the impact of some of the drivers

behind illegal immigration, and allow both countries to focus on productive matters in their bilateral relationship. Yet U.S. assistance to Mexico in the form of the Merida Initiative has decreased from an all-time high of \$639.2 million in fiscal year (FY) 2010 to \$130.9 million in FY 2017.

Assess the efficacy of the Central American development package, the U.S. Strategy for Engagement in Central America. Following the 2014 unaccompanied-minor crisis at the U.S. southern border, the U.S., El Salvador, Guatemala, and Honduras launched this program to address the factors driving illegal migration in the region. Guatemala's northern neighbor Mexico collaborates with the U.S. in an effort to mitigate these shared challenges. The volume and frequency of illegal immigration toward the U.S. indicate a shortcoming. Congress should request impact reports from implementing agencies that gauge whether the programs are meeting their intended objectives.

Adjust the asylum claim process. Congress can improve the asylum system in many ways. Rather than applying for asylum at U.S. borders, asylum seekers travelling to the U.S. southern border should be required to have their asylum claims heard by a U.S. Citizenship and Immigration Services (USCIS) asylum officer at a U.S. consulate in Mexico or in another country in Latin America. Interviewers should also ask the asylum seeker why he or she did not assert asylum in another country. Immigration officials should consider failure to explain the refusal to pursue asylum in another country in making their decision. Congress could also consider new standards that make it harder for illegal border crossers to claim asylum, especially at U.S. borders. The Administration should also continue to pursue safe third country agreements and strengthen other agreements with countries in Latin America to promote better control of the asylum process.

Close the loopholes. Congress should reject the Ninth Circuit's recent interpretation of the Flores settlement. Flores has been interpreted to require the Department of Homeland Security (DHS) to release from its custody all children, even if they are with a parent or parents, within 20 days. Since the asylum process takes longer than 20 days, the government is left with the choice either to detain the parent and release the child, or to release both the parent and the child. Congress should legislate to allow accompanied children to remain with their parents while they are awaiting asylum adjudication or prosecution of misdemeanor violations of immigration law.

Strengthen immigration enforcement. U.S. laws must be enforced if additional illegal immigration is to be deterred. The U.S. should judiciously increase the number of Immigration and Customs Enforcement (ICE) agents; expand the 287(g) program that trains and deputizes state and local law enforcement officers to assist ICE in enforcing U.S. immigration laws; curb sanctuary cities; expedite removals of illegal immigrants caught at U.S. borders; streamline the removal process; increase resources to immigration courts; and ensure that aliens show up at court hearings by maximizing the use of detention facilities and alternatives to detention.

Give immigration law judges summary judgment and contempt authority. As of October 24, 2018, 786,303 immigration cases were pending in immigration courts, up from 186,090 in 2008. During that same 10-year period, the average wait time for the disposition of a case in immigration court went from 438 days in 2008 to 718 days in 2018. This is unacceptable and must change. One of the main reasons for the excessive backlog is the fact that immigration judges do not have the summary judgment authority that is common to federal and state court judges. Summary judgment authority allows judges to refuse to schedule cases that lack legal merit, but because immigration judges do not have that authority, meritless cases clog the dockets. Congress should amend existing statutes to give immigration judges this authority.

Do not grant amnesty. Amnesty undermines the rule of law and encourages more unlawful migration. Grants of amnesty, in whatever form, to aliens who knowingly enter or remain in the U.S. discourage respect for the law, treat lawbreaking aliens better than law-abiding aliens, and encourage future unlawful immigration into the United States. If America were to suddenly award legal status to aliens unlawfully in the United States, it would be treating them better than aliens abroad who follow America's immigration procedures and patiently

await a visa authorizing them to come to the United States. Such action—as past amnesties have proved—would also spur more aliens to enter or remain unlawfully in the United States in the confident expectation that Congress will continue to enact future amnesties that provide a shortcut to legal status. The government should pursue a measured set of approaches to a wide variety of immigration issues, but above all, it should exclude amnesty for aliens unlawfully present in the United States.

Facts and Figures

FACT: There is a crisis at the border.

- The number of illegal border crossers apprehended or individuals deemed inadmissible at ports of entry more than doubled from 2018 to 2019. In April 2018, 51,168 were apprehended or deemed inadmissible; in April 2019, 109,144 were apprehended or deemed inadmissible.
- This surge is primarily due to the increase in family units and unaccompanied minor children. In April 2018, 13,930 family units and unaccompanied children were apprehended, while 67,593 were apprehended in April 2019.
- Managing the staggering flow of family units and children is consuming so much of DHS's resources that our other security missions at the border are suffering. The U.S. Customs and Border Protection estimates that 40 percent of its agents on the southwest border have been diverted to deal with the humanitarian needs of children and families.

FACT: DHS enforcement resources have grown since 9/11 but have been undermined by bad policy.

- The U.S. Border Patrol has doubled its workforce since 9/11, with 19,555 agents in FY 2018.
- The number of immigration judges has nearly doubled from 219 immigration judges in 2000 to almost 400 in 2018.
- Despite these and other increases in resources, illegal immigration has spiked in recent years, and waiting times in immigration courts have continued to rise from 430 days in 2009 to 736 days in 2019.
- Weak laws and court settlements have created a system of catch and release for many illegal immigrants—especially for family units, unaccompanied alien children, and those claiming asylum—thus only encouraging more illegal immigration.

FACT: Interior enforcement is critical to address all aspects of illegal immigration.

- It is estimated that between 10 million and 12 million illegal immigrants currently reside in the U.S.
- While difficult to tabulate accurately, it is estimated that almost half of the illegal immigrant population in the U.S. came here legally and then overstayed their visas.
- In 2017, visa overstays surpassed illegal border crossings, with 62 percent of new illegal immigrants overstaying a visa and 38 percent illegally crossing the border.

Additional Resources

James Carafano, John G. Malcolm, and Jack Spencer, eds., forward by Kay Coles James, "An Agenda for American Immigration Reform," Heritage Foundation *Special Report* No. 210, February 20, 2019, <https://www.heritage.org/immigration/report/agenda-american-immigration-reform>.

Ana Rosa Quintana and David Inserra, "Managing the Central American Caravans: Immediate Enforcement Corrections and Regional Engagement Strategy Required," Heritage Foundation *Backgrounder* No. 3372, January 25, 2019, <https://www.heritage.org/sites/default/files/2019-01/BG3372.pdf>.

David Inserra, "Immigration Law and Enforcement in Dire Need of Clarity and Major Overhaul," Heritage Foundation *Issue Brief* No. 4912, October 24, 2018, <https://www.heritage.org/sites/default/files/2018-10/IB4912.pdf>.