



The End of Asylum?

Evolving the Protection System to Meet 21st Century Challenges

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Executive Summary

The territorial asylum system at the heart of the global protection regime has proven itself to be a blunt tool with which to address the protection challenges of the 21st century. New crises, protracted displacement situations, and expanding norms about who merits protection have created a significant and growing population of individuals in need of international protection. In addition, growing mobility pressures due to demographic change, economic inequality, and climate change have found an outlet in asylum systems, providing an avenue of entry even for those who do not technically qualify for protection. Meanwhile, national governments have struggled to reconcile their international protection responsibilities with their domestic responsibilities to maintain security and order and to foster public trust. Asylum adjudication systems have become unwieldy and unable to keep pace with the demands placed on them, particularly when confronted with rapid changes or complex needs.

The territorial asylum system at the heart of the global protection regime has proven itself to be a blunt tool with which to address the protection challenges of the 21st century.

These failures have had serious consequences. For individuals, the absence of large-scale alternatives to territorial asylum means that access to protection often depends on taking extreme risks or enduring hardships in order to reach the territory of a country where they can seek protection, journeys that may not be possible for the most vulnerable. For

states, territorial asylum places governments in a largely reactive position, only responding to protection needs once their hand is forced by the arrival of people seeking protection on their territory. And at the global level, the lack of tools to facilitate the legal mobility of individuals in search of protection and of opportunities for displaced persons to move to a country other than their country of first asylum has concentrated protection responsibilities in a small number of countries, most of them low- or middle-income. According to estimates by the United Nations High Commissioner for Refugees (UNHCR) nearly 40 percent of the world's refugees and individuals in refugee-like situations were hosted by just five countries as of mid-2023.

To answer these challenges, there is an urgent need to shift the focus of protection responses away from an exclusive reliance on territorial asylum and toward a diversified set of policy tools. Territorial asylum will, and should, remain accessible as a safety valve, but states should seek to proactively facilitate access to protection as soon after and close to a displacement crisis as possible—and well before dangerous journeys become necessary. At the same time, policy approaches should recognize the agency of refugees and displaced persons—and the mobility pressures this can create—and provide legal avenues for individuals to move within and outside of their country of first asylum to join family and other connections through family reunification or sponsorship channels and to pursue education, work, or other opportunities. Aside from the benefits for displaced persons, such approaches would help transit and destination countries to reduce disorder at their borders and, by capitalizing on the resiliency and resourcefulness of displaced individuals in locating and securing solutions for themselves, to better allocate scarce resources to assist those who are most vulnerable. Policy approaches should also be responsive to the specificities of each crisis or situation. This may mean adopting expedited procedures or flexible forms of status in order to enable faster access to

status, prevent processing backlogs, or respond to legitimate needs that are not recognized in existing legal frameworks.

In practice, a multidimensional approach to protection could encompass the following components:

- ▶ **Creating safe and orderly avenues to access protection:** Governments should expand refugee resettlement and complementary pathways (such as study and work opportunities), alongside adopting more nimble and accessible approaches such as humanitarian visas or parole. Allowing for some aspects of asylum processes to be completed prior to a protection seeker's departure from a transit (or even origin) country would also help reduce incentives for dangerous, irregular journeys and ease pressures on destination and transit countries' borders. Bespoke pathways should be designed to address displacement emergencies and key corridors, in order to provide viable legal pathways that relieve key pressure points. The Homes for Ukraine and Uniting for Ukraine programs in the United Kingdom and the United States, for example, used humanitarian visas and parole to facilitate the rapid entry of nearly 250,000 Ukrainians into these two countries in the first year following the Russian invasion of Ukraine. Expanding access to such pathways will, however, need to be paired with measures that create greater incentives to use legal pathways over irregular avenues. These could include softer incentives such as reduced access to certain status or benefits entitlements for those who transit through a safe country or chose not to use regular channels, while stopping short of closing off asylum entirely.
- ▶ **Adequately resourcing and streamlining asylum procedures and enforcement:** Territorial asylum will continue to be an integral piece of the protection system for people who have protection needs but lack access to legal pathways, but to prevent misuse, asylum procedures must be made fast and efficient, while providing access to fair adjudication. This means providing adequate staffing and financial resources, but also adapting procedures to allow certain types of cases to be processed more quickly and potentially using technology to improve communication and case flow. Norway, for example, has piloted chatbots that guide asylum seekers through registering an asylum claim and prompt them for more information when answers are incomplete or too vague. Group determinations can also be used in response to particular displacement crises and are useful tools for avoiding backlogs in times of acute need. Effective operations at a country's border, where most asylum claims are made, are critical to manage these systems effectively and should include surge capacity and appropriate triaging. Crucially, negative decisions must be followed by effective returns of those judged not to be in need of protection to their country of origin.
- ▶ **Expanding access to non-protection-based migration opportunities:** In order to reduce pressure on protection systems, mobility driven by economic demands and demographic and environmental factors will need to find another outlet through regular migration streams. Efforts to create lawful alternatives to unauthorized migration would also boost countries' ability to manage migration in an orderly way, reduce chaos (real or perceived) at their borders, and address certain acute labor shortages. In addition to expanding access to visas, creating such migration opportunities requires addressing practical barriers—including high visa fees, processing backlogs, and information gaps—that prevent displaced or vulnerable individuals from accessing the opportunities that do exist. The Safe Mobility Offices introduced in the Americas, for example, seek to screen people for protection

and non-protection-based migration options and to support them in moving safely. Providing more mobility opportunities at a time of growing skepticism toward migration may be a daunting prospect, but governments should be clear-eyed about the options on the table: in many cases, the alternative to safe and legal mobility is generally not “no migration” but rather the smuggler-enabled irregular migration that is widespread today.

- ▶ **Developing regional capacity and protection strategies:** Displacement rarely affects one country alone, and policies to address displacement situations in one country often have spillover effects for others in the region or along a particular migration route. To be effective and strategic, protection approaches should thus be coordinated and implemented alongside a state’s regional partners, and higher-income countries should prioritize building up and supporting the institutional protection and integration capacity of their neighbors. In the Americas, the Los Angeles Declaration on Migration and Protection and the Quito Process are attempts to coordinate action to address displacement and migration on a regional basis. Ideally, such regional approaches would work to ensure that protection is readily available close to home, onward movement is available in a safe and managed way, and responsibility does not fall disproportionately on a small subset of countries.

There are myriad trade-offs inherent to diversifying the protection toolbox, but ultimately governments and international organizations should keep their eye on the overarching goal: to ensure basic access to safety for people in immediate need, while providing the space for those who have been displaced to rebuild their lives in a way that respects individual agency. It is critical, however, that each element of a multidimensional approach to protection be seen and implemented as part of the system *as a whole*. Often, the deep interlinkages between various policies are overlooked—for example, how visa backlogs might affect spontaneous asylum claims or how public concerns about rising asylum numbers might affect the political space for reforms to the broader immigration system. Narrow or short-sighted policies that focus on only one piece of the puzzle are likely to merely push the problem elsewhere. To operate effectively, governments should seek to craft comprehensive solutions in conjunction with their regional partners.

Finally, for these approaches to succeed, governments will need to maintain the legitimacy of protection systems and secure public trust. This means ensuring the public has confidence that established regulations and laws are being adhered to, decisions are being made with the national interest in mind, and the government has the capacity to deliver on its stated objectives.

Designing for public trust means that enforcement and the rule of law will by necessity remain core elements of the future protection system, and that the interests and input of a wider array of actors across the whole of society should be involved in directing and implementing protection policy.

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1 Introduction

The international protection system is under increasingly untenable pressure, and the obsolescence of the policy architecture on which it relies is becoming more and more apparent. Over the last decade, the system has been roiled by crisis after crisis—from Syria, to Rohingya displacement from Myanmar (also known as Burma), to Venezuela, Afghanistan, Ukraine, and Sudan. Nearly every continent has been touched, straining the processing and reception capacity of neighboring states and the generosity of international donors and resettlement countries. Within the high-income world specifically, destination countries have faced mounting backlogs of pending asylum claims, while also grappling with intense housing shortages and strains on local services and infrastructure. Combined, these forces have called into question the ability of these nations to meet their international obligations to provide legal status and assistance to the forcibly displaced.

Rising protection needs have come at the same time as mounting demand for increased mobility, both international and internal. Armed conflict, organized crime, and severe discrimination create migration drivers that, while arguably protection-related, fall outside the strict confines of the 1951 Refugee Convention's definition of a refugee. Economic inequality—more visible than ever, thanks to the widespread accessibility of both social and traditional media—has fueled a desire to seek opportunities in destinations that previously may have seemed far-flung, and many of these destinations have significant labor market needs that make migration attractive. Growing diaspora networks, meanwhile, pull individuals to reunify with family and friends across countries and continents. On top of these pressures, the specter of climate change may precipitate a new era of mass mobility, as environmental degradation and extreme weather make living in some locations much less desirable or even untenable. With legal options to move inaccessible to many people, these growing international migration pressures have found one outlet in asylum systems in the high-income world, where an asylum claim often provides temporary relief from removal and access to basic rights, such as authorization to work, while that claim is reviewed. At the same time, low- and middle-income countries, often themselves stretched for resources, are increasingly finding themselves to be destinations in their own right for both large numbers of refugees and other migrants.

As a result, protection systems have buckled in many countries. As the misuse of asylum systems to serve broader migration needs has grown, governments and publics have become concerned about the integrity of these systems, the ability of states to control entry to their territory, the impact of greater demand for housing and other services, and the rapid pace of social and cultural shifts. These concerns have been amplified by a feeling that individual states have been left on their own to respond to growing migration and asylum pressures. In response, states have turned toward measures that are often restrictive, but also at times innovative, many of which fall outside of the traditional asylum and protection toolkit. Some of these measures focus on deterrence and aim in the first instance to forestall most arrivals through the use of border barriers, diminished rights for asylum seekers, and other measures that can at times become not just harsh but even cruel.¹ In the Aegean, there is strong evidence of pushbacks of migrant and refugee boats by

1 For example, in Costa Rica—which is the second largest recipient of asylum applications in the Americas, in addition to being a significant transit country for mixed migration en route to the United States—the government has announced restrictions on benefits for asylum seekers as well as requirements to prove protection was not available in a safe third country. See Javier Cordoba, “Costa Rica Tightens Overwhelmed Asylum System,” Associated Press, December 14, 2022.

the Greek coast guard that have resulted in deaths, potentially with the complicity of the EU border agency Frontex.² At the U.S. southern border, between 2017 and 2018, U.S. officials separated thousands of very young children from their families in an effort to deter other families from crossing the border irregularly.³ While these trends are the most prominent in the Global North, they are not limited to it or to high-income countries. South Africa, for example, is a common destination within Africa for refugee secondary movement and mixed migration, and representatives of the African National Congress party, which led the country's government for 30 years before losing a majority in May 2024 elections, proposed pulling out of the 1951 Refugee Convention ahead of the 2024 elections.⁴

Other reactions have tended in a more compassionate direction. One example is the response to the 2015 Syrian refugee and related European migration crisis; while much of the initial support for displaced Syrians came from private citizens, giving rise to the Refugees Welcome movement in Europe, governments also responded with generosity, in some cases moving metaphorical mountains to create new pathways for refugees. Canada alone resettled 25,000 Syrians between November 2015 and February 2016.⁵ And in Europe, the crisis catalyzed a serious push to invest in refugee resettlement. Between 2015 and 2019 (the last year before the COVID-19 pandemic), European governments nearly tripled their resettlement places, from more than 11,000 arrivals in 2015 to more than 29,000 in 2019.⁶ In parallel, new programs emerged to expand the accessibility of existing immigration routes to refugees, including new education pathways in Germany and Italy and employment pathways in Canada, Australia, and the United Kingdom.⁷ The generosity of this response has been echoed, if not amplified, in several of the most recent crises. In 2021, the Colombian government took the unprecedented step of granting a ten-year residence permit to displaced Venezuelans.⁸ And following Russia's invasion of Ukraine in February 2022, the European Union triggered the Temporary Protection Directive for the first time, providing ready access to legal status to nearly 6 million Ukrainians in the first two years following the invasion.⁹

These divergent reactions suggest that, as the global protection system is undergoing a fundamental shift, there is a paradox in the direction of travel. While the political space for territorial asylum has shrunk, governments have become increasingly willing to invest in managed pathways of admission,

These divergent reactions suggest that, as the global protection system is undergoing a fundamental shift, there is a paradox in the direction of travel.

2 Rhal Ssan and Euronews, "Investigation Claims Frontex Involved in Aegean Sea Migrant Pushbacks," Euronews, April 28, 2022.

3 Caitlin Dickerson, "We Need to Take Away Children: The Secret History of the U.S. Government's Family-Separation Policy," *The Atlantic*, August 7, 2022.

4 Farouk Chothia, "Why South Africa Regrets Its Liberal Post-Apartheid Asylum Laws," BBC News, November 15, 2023.

5 Global Affairs Canada, "Canada's Response to the Conflict in Syria," updated February 20, 2024.

6 United Nations High Commissioner for Refugees (UNHCR), "Europe Resettlement" (fact sheet, January–December 2019).

7 Susan Fratzke et al., *Refugee Resettlement and Complementary Pathways: Opportunities for Growth* (Geneva and Brussels: UNHCR and Migration Policy Institute Europe, 2021). According to global figures reported by Talent Beyond Boundaries, more than 2,000 refugees had received a job offer that would qualify them to travel via labor mobility pathways as of June 2024. See Sopact, "Talent Beyond Boundaries Global Dashboard," accessed June 11, 2024; Talent Beyond Boundaries, "Life-Changing Results," accessed July 11, 2024.

8 Andrew Selee, Susan Fratzke, Samuel Davidoff-Gore, and Luisa Feline Freier, *Expanding Protection Options? The Use of Flexible Approaches to Status for in Displaced Syrians, Venezuelans, and Ukrainians* (Washington, DC: Migration Policy Institute, 2024).

9 These data can include multiple registrations of the same individual in two or more EU+ countries. See UNHCR, "Operational Data Portal—Ukraine Refugee Situation," accessed June 11, 2024.

particularly in the high-income world. This points to a future where facilitated pathways, not irregular journeys, are the primary mode for accessing protection, at least in the Global North. This shift could either considerably narrow or widen access to protection. And to date, many of the policy shifts that have propelled the world in this direction have emerged in an ad hoc way, responding to specific pressures or opportunities, without strategic forethought.

This report delineates what a more purposeful direction of travel might be in the evolution of the international protection system, with a focus on the future of asylum. It analyzes promising developments and best-in-class ideas around facilitating orderly entry, ensuring high-functioning system efficiency, and building regional capacity. It also examines how these disparate elements could be transformed into a new system—one better at providing protection for those who need it, reducing harm to individuals, and securing public trust by reducing chaos at borders and within public systems that must manage migration. This analysis is the culmination of deep research and dozens of consultations and meetings conducted as part of the Beyond Territorial Asylum: Making Protection Work in a Bordered World initiative undertaken by the Migration Policy Institute and Robert Bosch Stiftung.¹⁰

2 The Asylum Labyrinth and Its Consequences

At its core, the global protection system is based on the definitions laid down in the 1951 Refugee Convention and structured around the aim of safeguarding against refoulement¹¹ for individuals fleeing persecution on account of predefined grounds.¹² While this may seem like a relatively straightforward goal to operationalize, the convention itself is written in explicitly individual terms, speaking to the protection of individual rights, and provides relatively little guidance on how to realize this principle at a policy level.¹³ Territorial asylum, which rests on an individual adjudication of protection needs after someone enters a state's territory, has over the last several decades become the default mechanism for evaluating protection needs and providing refugee status, particularly in high-income asylum countries.

10 Migration Policy Institute (MPI), “Beyond Territorial Asylum: Making Protection Work in a Bordered World,” accessed November 17, 2023.

11 Refoulement refers to the forcible return of refugees to a territory where they would face threats to their life or freedom.

12 Under the 1951 Refugee Convention, individuals qualify for international protection if they have a well-founded fear of persecution based on their “race, religion, nationality, membership of a particular social group, or political opinion.” African and Latin American countries have since signed agreements that expand these grounds to provide protection to those fleeing conflict and situations of public disorder. Finally, individuals may qualify for international protection under international human rights law if they can point to likely violations of the right to life or the prohibition of torture and cruel and inhuman treatment. See United Nations General Assembly (UNGA), “Convention Relating to the Status of Refugees,” July 28, 1951; UNGA, “Protocol Relating to the Status of Refugees,” January 31, 1967; Organization of African Unity (OAU), “OAU Convention Governing the Specific Aspects of Refugee Problems in Africa,” September 10, 1969; Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, “Cartagena Declaration on Refugees,” Conclusion III, No. 3, November 22, 1984; UNGA, “International Covenant on Civil and Political Rights,” December 16, 1966; UNGA, “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” December 10, 1984.

13 However, UNHCR, in pursuit of its mandate, has provided recommendations on how this should be done, such as through its guidance for policymakers on the tenets of international refugee law and the creation of effective national asylum systems. See UNHCR, *A Guide to International Refugee Protection and Building State Asylum Systems* (Geneva: UNHCR, 2017).

This has had several effects:

- ▶ **Risk of pervasive harm to the individual.** The requirement that an individual access a state’s physical territory or jurisdiction in order to activate its protection obligation can necessitate taking extreme risks or going through incredible hardship to reach the country’s border. These can include harms during migration journeys, including the risk of exploitation, trauma, injury, rape, and death. They also include the indirect harms of asylum systems themselves, such as the negative mental health impacts of prolonged waiting times and legal limbo, having to recount traumatic personal stories, and/or being questioned or disbelieved.
- ▶ **Skewed incentives for arriving populations.** The difficulty of the migration journey required to access territorial asylum can also skew the characteristics of the populations that undertake it, for instance more toward single men, which can further undermine public support for providing protection. Beliefs that certain populations will fare better under existing policy parameters, such as unaccompanied minors, can also incentivize families to separate and send children to travel alone, with often harmful effects.
- ▶ **Uneven global responsibility.** Just five countries host nearly 40 percent of the world’s refugees (including refugees, individuals in refugee-like situations, and those otherwise in need of international protection), and 75 percent are in lower- and middle-income states, where infrastructure and services are often already overstretched.¹⁴ This creates a feeling that some states must go it alone when addressing protection needs and, lacking any assurance of global responsibility sharing, may decrease their inclination to be generous.
- ▶ **(Increasingly) indiscriminate deterrence.** Some governments have taken extreme steps to deter people from reaching their territory, including by engaging in harmful and illegal practices such as physically pushing migrants and asylum seekers back from the border, in an effort to avoid taking on the protection obligations that would accrue as soon as a person enters that state’s jurisdiction.
- ▶ **Arbitrariness and poor targeting of resources according to need.** Those people who are able to travel to claim asylum in destinations beyond an immediately neighboring country are primarily those with the means to undertake often expensive and dangerous journeys—not necessarily the most vulnerable or disadvantaged. While vulnerability is not a legal criterion for adjudicating access to asylum, it may be a relevant consideration for governments and publics who want to ensure that scarce resources reach those most in need.
- ▶ **A market for smugglers and other bad actors.** Because legal pathways are limited, and moving irregularly can be difficult to do without specific local knowledge of border areas or routes, some asylum seekers pay facilitators for help along the way while others fall into the hands of and are extorted by criminal actors. The contemporary protection system thus creates opportunities for profit by smugglers and organized crime—an outcome the system’s architects could not have intended.

14 Iran, Turkey, Germany, Colombia, and Pakistan hosted 39 percent of the global refugee population in 2023, according to UNHCR estimates. See UNHCR, *Mid-Year Trends 2023* (Copenhagen: UNHCR Global Data Service, 2023).

While territorial asylum is designed to identify those in need of protection, a protection system—when seen as a whole—could or should arguably serve a number of objectives that extend beyond protecting individuals from refoulement:

- ▶ **Adhering to legal obligations.** States are subject to legal obligations under national and international law to provide protection to those at risk, including protection from refoulement under the 1951 Refugee Convention and the 1984 Convention Against Torture, as well as regional treaties that expand these obligations, such as the Cartagena Declaration in Latin America and the Caribbean, the Organization of African Unity Convention, and the European Convention on Human Rights.
- ▶ **Protecting the vulnerable.** People with particular vulnerabilities, such as children or victims of trafficking, may require more support than is routinely provided to refugees. And some individuals who do not fall under strict refugee definitions may nonetheless have protection needs—including needs that accrue during the migration journey—that impose basic moral responsibilities on the states with which they come into contact. These goals may be in line with legal frameworks, but they could also be additional.
- ▶ **Upholding national security and sovereignty.** Governments need to uphold the rule of law and demonstrate that systems (especially those, such as asylum, for adjudicating who has the right to enter national territory and who does not—the most basic tenet of national sovereignty) are managed fairly and efficiently. Their primary responsibilities also include ensuring the security of national territory from potential threats such as smuggling and organized crime or terrorism.
- ▶ **Facilitating integration.** Investing in newcomers' integration into society—ensuring refugees can thrive, earn sustainable livelihoods, and live alongside their immediate family members—is the most direct path to communities living side by side harmoniously and can reduce the long-term fiscal costs of hosting refugees.
- ▶ **Projecting a set of coherent values and geopolitical positioning.** Governments wish to ensure their stance toward humanitarian protection reflects societal values and how they want to be seen on the global stage. Such values can be inward facing, as in the form of national stories about immigrant/refugee history or values of multiculturalism and sanctuary. They may also be external, including signaling a critique of another government's policies (e.g., treatment of an ethnic or political minority), demonstrating international or regional responsibility sharing, or relieving pressures on or stabilizing neighboring or partner countries.

Yet territorial asylum alone has proven to be a blunt instrument for achieving these goals, and indeed it often brings various goals into direct conflict. For instance, a state's obligation not to return a person fleeing harm to a place where they would be at risk begins as soon as that person is in the state's jurisdiction, regardless of whether they entered via a legal route, but state sovereignty empowers a state to exercise discretion in determining who should enter its territory. Territorial asylum thus stands outside of the selection and vetting processes that generally are meant to govern the rest of an immigration and border system. Conversely, a desire to reduce spontaneous arrivals at a country's borders can lead to policies that devalue individual refugees' ties to a particular destination, such as their economic prospects or family networks.

These and other consequences point to a system that is far from ideal and, in many cases, perverse. This raises the question of whether the tool of territorial asylum, as currently applied in most states, is fit for purpose.

3 A Protection System for the 21st Century: What Could an Agenda for Action Look Like?

To address the shortcomings of territorial asylum, there is an urgent need to expand the protection toolkit. States will increasingly need to adopt protection policies that are multidimensional and rely on a diversified set of policy tools to create protection space in response to global needs. While territorial asylum will, and should, remain a necessary safety valve, states should seek to facilitate access to protection as soon after a displacement crisis and as close to the location of origin as possible—and well before dangerous journeys become necessary. At the same time, policy approaches should recognize the agency of refugees and displaced persons—and the mobility pressures this can create—and provide legal avenues for individuals to move within and outside of their country of asylum to join family and other connections who can facilitate their reception and integration, and to pursue education, work, or other opportunities. Policy approaches should also be responsive to the specificities of each crisis or situation. This may mean adopting different procedures or forms of status in order to enable faster access to status, prevent processing backlogs, or respond to legitimate needs that are not recognized in existing legal frameworks.

These interventions should be seen as part of a systemic approach to strengthening protection and migration management; each piece will be more effective when implemented in concert rather than in isolation.

What could such an approach look like in practice?

This section outlines six interlocking investments that states can make to expand their capacity.

These include approaching displacement crises in cooperation with regional partners, safeguarding territorial asylum while simultaneously establishing additional pathways and enhancing entry processing mechanisms across the board, eliminating system gaps and vulnerabilities, ensuring orderly procedures, and allocating sufficient resources to ensure proper

system-wide functioning. These steps are not an exhaustive solution on their own, but they provide concrete starting points that can help to drive rapid progress. Critically, these interventions should be seen as part of a systemic approach to strengthening protection and migration management; each piece will be more effective when implemented in concert rather than in isolation.

A. Address Displacement at a Regional Level through Longer-Term Capacity-Sharing

Any solution to protection needs should be approached through a regional lens. While higher-income destination countries often have the most tools and resources to respond to protection needs within their borders—and to police those borders—countries in the immediate vicinity of a displacement crisis feel its

largest effects. These impacts rarely remain isolated, however, as displaced and conflict-affected individuals often move onward to other destinations in search of more stable living conditions, better opportunities for the future, or to unify with family and friends located elsewhere. Policies introduced in one country to address displacement and forced or mixed migration will inevitably have a spillover effect on other countries in the region and along a migration route.

To be effective and strategic, protection approaches should be coordinated and developed with regional partners, with attention to the whole migration route—an approach that the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) have advocated.¹⁵ In practice, this means three things. First, higher-income countries in a displacement-affected region and international partners should invest in building protection and integration capacities to support forced migrants throughout the region, but particularly in those countries most affected or where capacity is most limited. This should go beyond immediate humanitarian assistance to include development-based support for education, workforce development, and social services systems. Support for developing and maintaining the systems that provide access to legal protection and asylum should also be part of this equation. Such efforts should, however, be conducted with a view to the sustainability of these systems in the long term, and thus go beyond delivering trainings or toolkits to include providing support for broader institution-building or even long-term financial support, in cooperation with infrastructure and governance support provided by development actors.¹⁶

In the Western Hemisphere, the Los Angeles Declaration on Migration and Protection serves as one example of such an approach. Adopted by 22 countries across North and South America and the Caribbean in June 2022, signatories have agreed to work toward the coordinated management of migration in accordance with several key principles, including increased support for countries of origin and countries hosting large numbers of refugees and other displaced populations, expanding and improving access to legal pathways, and enhancing coordination on migration policy and emergency response. Although still relatively young, the agreement has prompted several endorsing states to take concrete action in these areas.¹⁷ The Quito Process offers another example. Established in 2018 to coordinate Latin American and Caribbean countries' responses to displacement from Venezuela, this initiative has sought to strengthen reception and registration mechanisms and to promote integration.¹⁸

Policy direction around asylum and irregular migration, including partnerships with regional neighbors, has, by and large, been driven by ministries of the interior or of justice in most high-income countries. In building partnerships with neighboring countries, however, ministries of foreign affairs and of development should be brought in as allies. Effective partnerships are based on in-depth understanding of a partner

15 United Nations, "UNHCR, IOM Outline New Approach to Assist Growing Number of Migrants," UN News, July 24, 2023.

16 Susan Fratzke and Camille Le Coz, *Strengthening Refugee Protection in Low- and Middle-Income Countries* (Washington, DC: MPI, 2019).

17 Andrew Selee, "Translating Principles into Action: Countries Set New Agenda on the Los Angeles Declaration's Second Anniversary" (commentary, MPI, Washington, DC, May 2024); The White House, "Fact Sheet: Third Ministerial Meeting on the Los Angeles Declaration on Migration and Protection in Guatemala," (news release, May 7, 2024).

18 Quito Process, "What We Do?," accessed October 11, 2022; Quito Process, "Declaración de Quito sobre Movilidad Humana de Ciudadanos venezolanos en la Región," September 4, 2018; Quito Process, "Joint Statement by the Fourth International Technical Meeting on Human Mobility of Venezuelan Nationals" (statement, Buenos Aires, July 22, 2019).

country's interests, as well as a sense of the potential trade-offs of prioritizing migration objectives against other foreign policy interests.

Second, mobility should be a feature, and not a bug, of regional cooperation. This means collectively planning for regional pressures and proactively providing mobility opportunities for both forced and

Mobility should be a feature, and not a bug, of regional cooperation.

other migrants through safe and orderly migration and protection pathways that are scaled to meet needs. These should extend beyond traditional resettlement and include complementary labor or study pathways, family reunification, and private sponsorship for refugees, but also opportunities to move legally for people who have been displaced but fall outside the confines of the Refugee Convention. It also requires better monitoring and use of data for foresight to predict and plan for when internal displacement situations may begin to trigger cross-border movements, so that policy responses can be mobilized accordingly. Depending on the context, it may be valuable to formalize the rules governing onward mobility through safe third country arrangements between countries in a region, establishing who is responsible for an asylum application and under what conditions onward mobility from a first asylum country outside a legal pathway is allowed.

Finally, for regional approaches to be effective, there is a need for a shift in mindset. Often, regional approaches to protection are undertaken with a view to building up enough capacity in the short to medium term to halt migration and onward mobility for protection reasons—that is, the idea that if asylum systems and integration capacity reach a certain level, further development will not be needed and migration will drop. Yet displacement crises (as well as migration more generally) are arguably a feature and not an aberration of 21st century life. Addressing the consequences of displacement is a task that would strain the capacity of any one country alone—something acknowledged clearly in the original 1951 Refugee Convention. Rather than viewing cooperation and capacity-building with regional partners as something with a fixed goal or end point, regional cooperation should be approached as a long-term partnership, where responsibility and resources are shared on a continuous basis.

B. Encourage the Use of Safe and Orderly Means of Entry to Seek Protection

In many regions, legal travel between countries experiencing displacement and states with functional asylum and protection systems is limited by visa and passport requirements. Carrier sanctions further impose penalties on airlines that allow travelers to board flights without the required documentation. These measures are important tools for states seeking to maintain the security and integrity of their borders and to uphold the rule of law, but they also impose costs. At the individual level, these measures place the burden of responsibility on individuals to travel to locations of safety, requiring long and dangerous journeys that may place them in the hands of unscrupulous actors. At the societal level, giving the vast majority of asylum applicants no other choice but to use unauthorized means of travel to reach a place where they can seek protection creates perceptions of disorder and sows public distrust of the asylum system.

Reorienting the international protection system away from territorial asylum will require an expansion of viable alternatives that allow individuals to travel to asylum countries with prior authorization and without the need for dangerous, clandestine journeys. Yet for governments to expand legal pathways, they must have “social license”—sufficient public support to be able to make difficult decisions—which is likely to be missing if asylum pathways remain in heavy use.

The central questions, then, are how to create a sufficient number of workable pathways, how to fairly incentivize their use (and disincentivize irregular movement to access asylum), and how to situate these pathways alongside territorial asylum.

Expanding Refugee Resettlement and Complementary Pathways

Resettlement has long been an important part of the protection landscape, more recently joined by complementary pathways, but the number of slots on offer for both is low. In 2022, 114,300 refugees were resettled worldwide,¹⁹ compared to UNHCR’s estimate that 2 million were in need of resettlement.²⁰ And despite promising evolutions, recent expansions in complementary labor pathways for refugees remain quite limited in scope: Canada’s Economic Mobility Pathways Pilot program will offer 2,000 places over several years,²¹ for example, and the United Kingdom’s Displaced Talent Mobility Pilot will provide up to 200 spaces for refugees over three years.²² Opportunities to move via these various existing legal pathways can and should be further enlarged.

In order for traditional protection pathways to be scaled to the extent necessary to have an impact on protection seekers’ reliance on territorial asylum, countries would need to both increase resettlement quotas and caps on complementary pathways and also reduce barriers that prevent refugees from accessing these pathways. Existing protection pathways rely heavily on a small number of gatekeepers to facilitate their operation. Refugees must be referred by UNHCR or a nongovernmental organization to be considered for resettlement and, for complementary pathways, partnering entities such as universities and employers are responsible for naming the refugees who can access these pathways. The fact that a handful of organizations play this gatekeeping role creates a funnel that slows the pace of arrivals and allows states to maintain a high degree of order and control that, while appealing to policymakers, can severely limit the numbers and profiles of individuals able to access protection. Growing the number and types of entities making referrals through existing systems—as has been done in the United States under the Priority 2 resettlement pathway and the recently created community sponsorship initiative²³—can expand

19 UNHCR, “[Refugee Data Finder](#),” accessed October 12, 2023.

20 UNHCR, *2023 Projected Global Resettlement Needs* (Geneva: UNHCR, 2023).

21 Immigration, Refugees, and Citizenship Canada, “[Canada Expands Pilot to Help More Skilled Refugees Build Their Careers in Canada, Giving Employers Access to a New Pool of Talent](#)” (news release, December 13, 2022).

22 UK Home Office, “[Skilled Refugees Contributing £1m to UK Economy Each Year](#)” (news release, November 17, 2023).

23 The Priority 2 designation under the U.S. Refugee Admissions Program can extend resettlement access to “groups of special concern” referred by entities other than UNHCR, U.S. embassies, and designated nongovernmental organizations (the requirement for the Priority 1 eligibility category). For example, in August 2021, shortly before the fall of Kabul, the U.S. Department of State announced a Priority 2 designation for Afghan nationals, enabling qualifying individuals to be referred by their U.S.-based employer, including certain government agencies, nongovernmental organizations, and media organizations. Other expansions to the number and types of referral partners that facilitate access to national resettlement systems have been accomplished through the creation of community sponsorship programs. Emulating Canada’s long-standing Private Sponsorship of Refugees program, the United States launched the Welcome Corps in 2023 to enable groups of private citizens to identify or “name” a refugee for resettlement. Although this program extends referral capacity, it does not currently fulfill the principle of “additionality,” meaning that arrivals currently count as part of the government’s overall annual resettlement quota rather than being additional entry slots.

identification or “naming” of individual refugees for entry. The relocation of resettling refugees, as currently practiced by most receiving nations, also requires large expenditures to ensure proper reception and integration supports are available to refugees upon arrival. And in many countries, resettlement efforts have increasingly run up against a lack of social housing that has caused countries to reduce their commitments to admit refugees. Private resources, deployed through sponsorship or complementary pathways, could help to overcome some of these barriers. Sponsorship-adjacent hosting programs, for example, were central to alleviating housing shortages for displaced Ukrainians in Europe and the United Kingdom.²⁴

The utility of existing complementary pathways can be improved by restructuring or easing requirements that create challenges for a significant number of otherwise eligible individuals, including those related to furnishing specific forms of identification (e.g., by expanding access to refugee travel documents).²⁵ To accomplish this, states should look for ways to share capacity and cooperate on policy expansions. The European Union’s Resettlement Support Facility in Istanbul, for example, provides a central location with shared interpretation and other resources to support EU Member States as they process asylum claims.²⁶ Such shared processing centers can expand capacity across several receiving states and increase overall efficiency by easing access to the interpreters, other staff, and physical facilities needed for resettlement processing.

Mobility as Part of Emergency Response: Humanitarian Visas and External Processing

Resettlement and complementary pathways have most often been used to address protracted displacement situations and often lack the flexibility and speed to respond to emergency displacement—an increasingly common occurrence generating large movements of people with urgent protection needs.²⁷ Moreover, the international resettlement system often relies on the convention definition of a refugee as a person subject to individual persecution, despite a growing awareness that there are myriad valid reasons for seeking protection that fall outside of such parameters (including, for example, impending or recurrent climate disasters or some situations of generalized violence or conflict).

Other policy options, such as humanitarian visas and parole,²⁸ can operate more nimbly than traditional resettlement, though some of these offer only temporary, not permanent, status. These policy measures do,

24 Susan Fratzke, Viola Pulkkinen, and Emma Ugolini, *From Safe Homes to Sponsors: Lessons from the Ukraine Hosting Response for Refugee Sponsorship Programmes* (Brussels: MPI Europe, 2023).

25 Samuel Davidoff-Gore, *The Mobility Key: Realizing the Potential of Refugee Travel Documents* (Washington, DC: MPI, 2024).

26 Elif Çetin, *External Evaluation of EASO Operational Interventions – Summary Report: Resettlement Support Facility Pilot Project in Turkey (April 2019–April 2021)* (Brussels: European Union Agency for Asylum, 2021).

27 For example, in the first ten days following Russia’s invasion of Ukraine, more than 1.5 million Ukrainians fled the country. See BBC, “Ukraine Conflict: Russian Forces Attack from Three Sides,” BBC News, February 24, 2022; Matthew Luxmoore and Bojan Pancevski, “Refugees Fleeing Ukraine Now Represent Biggest Movement of People in Europe since World War II,” *The Wall Street Journal*, March 5, 2022. The Sudan conflict, which started in April 2023, saw similarly rapid displacement. By the end of 2023, at least 1.4 million people had fled Sudan to neighboring countries, according to UNHCR, and more than 6 million were internally displaced (in addition to the more than 3 million internally displaced persons in the country prior to the start of the conflict). See UNHCR Operational Data Portal, “Sudan Situation,” accessed January 25, 2024; International Organization for Migration (IOM), *DTM Sudan’s Internally Displaced Persons 2023 Estimates* (Geneva: IOM, 2024).

28 Particular to the United States, humanitarian parole (or simply parole) refers to the legal provision in the U.S. *Immigration and Nationality Act* allowing the admission of an individual who may otherwise be ineligible, at the discretion of U.S. Citizenship and Immigration Services (as authorized by the secretary of homeland security). Parole provides temporary legal status and is granted for “urgent humanitarian or significant public benefit” reasons. See U.S. Citizenship and Immigration Services, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States,” updated October 23, 2023.

however, generally have lower barriers to entry, broad eligibility criteria, and sometimes novel approaches to referral (including private sponsorship, as seen in the United States' Uniting for Ukraine program and Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, also called the CHNV parole programs). These sorts of programs can scale up quickly. The Homes for Ukraine and Uniting for Ukraine programs in the United Kingdom and the United States, for example, provided rapid entry pathways for nearly 250,000 Ukrainians in the first year following the 2022 Russian invasion by employing flexible humanitarian visas and parole.²⁹

Such entry mechanisms can also be linked directly to asylum procedures through the strategic use of external eligibility screening or pre-entry processing, which would allow displaced people to apply en route to a destination country. Several EU nations use humanitarian visas to grant access to national asylum systems by conducting preliminary vulnerability assessments as a precursor to a full territorial asylum procedure upon arrival.³⁰ And in 2023, U.S.-led Safe Mobility Offices (SMOs) were established as part of a regional migration management strategy in partnership with the governments of Colombia, Costa Rica, Ecuador, and Guatemala, enabling nationals or migrants transiting these nations to be screened and informed about protection routes and other legal pathways for which they may be eligible, including humanitarian parole or resettlement in the United States and complementary pathways in Canada and Spain.³¹

While the SMOs are still under development and it is too early to assess their results, they provide one potential model for facilitating better access to protection pathways earlier on during a migration journey. It is worth noting, however, that in order for such a model to play a significant role in reorienting the protection system away from territorial asylum by facilitating orderly access to humanitarian and other pathways, it must effectively serve the populations most likely to seek asylum at the border or between ports of entry. Currently, the Latin American countries hosting SMOs have restricted eligibility to their services, and the groups eligible do not align with the majority of those seeking asylum at the U.S. border. The SMOs in Colombia, for example, are restricted to those who have legal status in Colombia under the temporary protection permit (and thus have work authorization and are likely to be in a more stable situation) because of fears of attracting others to Colombia.³² This underlines the importance of retaining territorial asylum for those who have no viable alternatives as well as of engaging deeply with countries hosting such facilities to ensure they are bought into the approach and collaborate on its design.

Other ways to smooth displaced persons' access to legal mobility options during emergencies may also exist. A key barrier to the use of regular mobility pathways for protection seekers is the tightening of visa restrictions and carrier sanctions for populations likely to claim asylum. Destination countries often require a nationality group to have low asylum application rates before they will allow visa-free travel, and they may (re)introduce visa requirements or restrict access to visas when asylum application numbers rise—

29 UK Department of Levelling Up, Housing, and Communities, "Ukraine Sponsorship Scheme: Visa Data by Country, Upper and Lower Tier Local Authority," updated June 20, 2024; Camilo Montoya-Galvez, "In 2 Years Since Russia's Invasion, a U.S. Program Has Resettled 187,000 Ukrainians with Little Controversy," CBS News, April 24, 2024.

30 Italy, for example, operates humanitarian corridors out of Libya, where individuals are subject to a preliminary vulnerability assessment, apply for a humanitarian visa, and then receive asylum once in Italy. See UNHCR Italy, "Resettlement and Other Forms of Legal and Safe Transfer to Italy," accessed June 17, 2024.

31 Movilidad Segura, "General Information on the 'Safe Mobility' Initiative," accessed June 13, 2024.

32 The White House, "Fact Sheet: Third Ministerial Meeting on the Los Angeles Declaration."

with a few notable exceptions, including the choice of European states to maintain visa-free entry for Ukrainians in 2022. Removing visa requirements, carrier sanctions, or similar control measures completely is currently unthinkable for states, but it may be worth considering whether, in the future, such barriers to legal travel could be lessened for individuals with likely protection needs. Exactly how this would be done requires careful examination, but several options could be considered. At the most basic level, when asylum applications rise from a particular nationality, states could consider whether these applications are likely to be granted (i.e., whether the group has high rates of positive adjudication) before choosing to reduce access to visas. For nationalities with high grant rates, indicating widespread likely fear of persecution and harm, destination states could choose to maintain some level of access to visas or visa-free travel. Alternatively, a risk and needs assessment could be built into the visa application process or through predeparture screenings (for example, through algorithmic needs or risk assessment) for applicants who would otherwise be denied because they pose a risk of filing an asylum application after arrival; the aim would be to assess the risk of an individual filing a *false* asylum claim, rather than the risk that an asylum claim is filed at all. Such measures may seem farfetched, but they could provide meaningful alternatives to dangerous, smuggler-facilitated journeys. The choice made by European states to maintain visa-free entry for Ukrainians, who were thus free to use legal and safe means of travel, provides one example of how maintaining legal modes of entry to safe states can forestall the potential for disorder at borders and obviate the need for at-risk individuals to turn to irregular modes of entry.

Shifting the Balance Away from Territorial Asylum

If orderly pathways to protection were to be expanded significantly, the question remains: what happens to territorial asylum? Even with substantial improvements in speed and accessibility, orderly pathways will never be a perfect substitute for territorial asylum, and policymakers should not seek to fully replace this system. As new crises emerge, there will always be individuals with valid protection needs who do not have access to other legal mobility pathways or who are excluded by gatekeepers. Territorial asylum, which enables such individuals to seek out a solution for their own situation, must remain a safety valve.

There is a need to think about the incentives that could be put in place to facilitate and encourage protection seekers' use of regular pathways over spontaneous asylum.

Because governments are likely to lack the public support necessary to expand alternative lawful mobility pathways as long as territorial asylum remains in heavy use, there is a need to think about the incentives that could be put in place to facilitate and encourage protection seekers' use of regular pathways over spontaneous asylum. There are a number of ways this could be done. First, once more

safe and orderly pathways are opened, their greater availability may itself provide an incentive for those who qualify and redirect some would-be irregular arrivals to lawful pathways—provided such options are readily accessible, maintain sufficiently fast processing times, and procedures are credible. Second, to further disincentivize irregular arrivals at borders (without closing off access to territorial asylum for those who really need it), states could consider restricting access to asylum at the border for individuals who have had a valid opportunity to apply for asylum en route, either via a humanitarian visa or other protection pathway to the destination country or in a safe third country. Known as safe third country arrangements,

these approaches aim to encourage individuals to claim protection nearer to their country of origin, rather than traveling longer distances through other countries to reach a different destination. The United States, for example, has sought to do this with its Circumvention of Lawful Pathways rule, which encourages asylum seekers to present at ports of entry, rather than entering irregularly between them. The rule states that individuals who cross into the country irregularly between ports of entry are presumed to be ineligible for asylum unless they applied and were rejected for asylum in a country en route.³³ The approach has met with some success in redirecting arriving asylum seekers to ports of entry.³⁴ Note, however, that safe third country arrangements can raise the risk of refoulement, if not applied carefully. These measures should only be applied in coordination with partner countries, to ensure at-risk individuals have a realistic opportunity to access protection en route. The aim would be to maintain the accessibility of asylum systems for individuals fleeing immediate danger in a neighboring state, while encouraging the use of regular pathways—rather than territorial asylum—for secondary movement onward from a country of first asylum.

Finally, the opening of pathways should be accompanied by investments and improvements in the difficult but necessary enforcement measures that form a part of a well-managed migration system. This includes improving return rates through better cooperation with countries of origin, return counseling, and identity verification, as well as investments in anti-smuggling and organized crime measures along irregular routes and interior enforcement measures that target employers who employ workers illegally.³⁵ These measures work together to ensure that individuals who are found not to have a right to asylum are quickly returned to their country of origin, deterring spurious claims and building public confidence in the credibility of the system.

Ultimately, the degree to which the global protection system can shift away from an outsized reliance on territorial asylum will depend on the international community's willingness to develop comprehensive approaches that tackle in tandem these two sides of the coin: more opportunities for legal entry and disincentives for irregular routes. Political pressures often push governments to prioritize getting a border crisis under control before expanding legal routes, but genuinely moving the needle on territorial asylum requires both that asylum seekers have a viable alternative *and* that irregular channels are less desirable.

C. *Provide Sufficient Resources for Asylum Processing and Streamline Procedures*

What should future territorial asylum systems look like if they are to act as a necessary safety valve for a smaller number of at-risk individuals who are unable to access alternative pathways? To ensure that they are primarily a channel for those who most need it, and that access to this channel is orderly, asylum systems must be made to work consistently and efficiently. At a fundamental level, this means systems must be equipped to 1) provide access to refugee status and other forms of status to those who need it; 2) identify unmerited claims; and 3) deter claims by individuals without protection needs and those who could access

³³ Kathleen Bush-Joseph, *Outmatched: The U.S. Asylum System Faces Record Demands* (Washington, DC: MPI, 2024).

³⁴ Colleen Putzel-Kavanaugh and Ariel G. Ruiz Soto, "Shifting Patterns and Policies Reshape Migration to U.S.-Mexico Border in Major Ways in 2023" (commentary, MPI, Washington, DC, October 2023).

³⁵ Demetrios G. Papademetriou and Will Somerville, *A Strategic Framework for Creating Legality and Order in Immigration* (Washington, DC: MPI, 2014).

alternative mobility pathways. While it is tempting to look for silver bullets, in practice this will mean prioritizing the often-mundane investments required to make asylum systems function effectively.

Match Capacity and Resourcing to Demand

The important first step toward achieving this goal is adequately resourcing asylum systems and providing them with the capacity to operate efficiently even under increased pressure. Governments have tended to view the high level of demand placed on asylum systems in recent years as an aberration or emergency resulting from specific crises and, as a result, to revert to lower levels of investment once the immediate crisis has passed. In Europe, for example, some states have come under fire for cutting asylum and reception resources after the number of claims fell when the COVID-19 pandemic began in 2020, only to see these systems struggle to keep up when asylum numbers returned to higher levels in 2021 and 2022.³⁶ In the U.S. context, there is evidence that insufficient financial and staff resources contributed to a significant slowdown of asylum adjudications in immigration courts, contributing to a mounting asylum case backlog. Analysis of official data by the Migration Policy Institute found that over the last decade, the number of pending cases per immigration judge in the United States rose by 9 percent per year, due to insufficient hiring of new staff and an increase in turnover among immigration judges.³⁷ Without a sufficient number of experienced decisionmakers, asylum case adjudication has slowed and wait times have grown, with negative effects on individual applicants and on the ability of the state to carry out returns for those not granted protection. Instead, governments should view high demand as the norm, at least in the immediate term, and staff and resource asylum systems accordingly.

Asylum systems must also maintain surge capacity to deal with emergencies. When this capacity is lacking, a sudden increase in applications can cause backlogs to mount and even the most streamlined procedures to fall victim to a vicious cycle of lengthy processing times. Long wait times for decisions can, in turn, spur unfounded claims, as asylum seekers are usually granted temporary leave to remain in the country while their claims are processed and, often, a right to work. Maintaining efficiency under surge conditions requires a somewhat different approach than at other times, however, and requires flexibility across at least three areas. First, states should maintain adaptable staffing capacity. Keeping adjudications in pace with a rise in applications requires more people to hear cases and take decisions on claims. Rapidly scaling up an asylum workforce, however, is complex. Specific training and legal knowledge are needed to maintain the integrity of the decisions being made, which can make it difficult for asylum agencies to quickly find the staff they need. To deal with this challenge, Canada has developed a capacity-sharing arrangement between staff at the Canada Border Services Agency (CBSA), which is responsible for claims intake at the border, and Immigration, Refugees, and Citizenship Canada (IRCC), which is responsible for in-land claims. This cooperation allows staff from IRCC to intervene and remotely support CBSA staff with case intake during periods of heightened pressure at the border, freeing up CBSA staff to do tasks that require specialty training.³⁸

Maintaining efficiency under surge conditions requires a somewhat different approach.

³⁶ See, for example, Claudia Chiappa, “Belgium’s Eternal Asylum Crisis,” *Politico*, September 19, 2023.

³⁷ Muzaffar Chishti et al., *At the Breaking Point: Rethinking the U.S. Immigration Court System* (Washington, DC: MPI, 2023).

³⁸ Author interview with an asylum official from Immigration, Refugees, and Citizenship Canada, April 4, 2023.

Staffing capacity cannot be scaled up, however, without sufficient funding.³⁹ While budgets are usually set a year or more in advance, asylum seeker arrivals and the number of cases entering an asylum system can evolve rapidly mid-year. Asylum agencies thus require flexible funding streams that can allow them to access additional resources quickly and as needed. Sweden has addressed this challenge by allowing annual budgets to be adjusted twice within a year and allowing contingency funding for particular activities to be drawn from other parts of the Swedish Migration Agency's budget in the event of an emergency.⁴⁰

Improve Procedures and Case Flow

In addition to adequate resourcing, there is also a need to ensure that asylum procedures themselves are as efficient as possible. A key tool for doing so, and thus improving the flow of cases through the system, is to use tailored procedures for different types of cases. Applicants have extremely varied case histories and differ widely in the complexity of the grounds for their claims and their ability to provide substantiating evidence or proof of identity.⁴¹ As a result, cases inherently take varying amounts of time and resources to process. But by running all applications through the same procedure, cases that may be relatively quick to process invariably get stuck behind those that require more time and in-depth examination. To address this, several countries have experimented with triage measures to sort cases into specialized streams based on the characteristics of the case, whether or not it is likely to be manifestly founded or unfounded, and how quickly it could be processed.⁴² Applicants whose cases appear to be relatively straightforward may be placed in quicker procedures or procedures that forgo certain steps, such as the interview, entirely. In December 2022, for example, the governments of Sweden, Finland, and Denmark concluded that Afghan women and girls are subject to persecution under Taliban rule on the basis their gender alone and, therefore, as a group qualify as refugees, and have expedited processing of their applications.⁴³ Switzerland also introduced a triaging system with accelerated procedures for certain cases, including those deemed to be uncomplex, in 2019. After the new procedure was introduced, average processing times (including appeals) for cases submitted from 2019 through 2021 fell to just 93 days, five times faster than under the old procedure.⁴⁴ Canada, Italy,

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39 In the United States, for example, funding for the immigration courts that process defensive asylum applications has not kept pace with the demands placed upon them. See Marissa Esthimer, "Crisis in the Courts: Is the Backlogged U.S. Immigration Court System at Its Breaking Point?," *Migration Information Source*, October 3, 2019; Chishti et al., *At the Breaking Point*.

40 Immigration, Refugees, and Citizenship Canada, *Report of the Independent Review of the Immigration and Refugee Board: A Systems Management Approach to Asylum* (Ottawa: Immigration, Refugees, and Citizenship Canada, 2018).

41 Hanne Beirens, *Chasing Efficiency: Can Operational Changes Fix European Asylum Systems?* (Brussels and Gütersloh, Germany: MPI Europe and Bertelsmann Stiftung, 2020).

42 Beirens, *Chasing Efficiency*.

43 EU directives prevent Member States from forgoing individual asylum adjudications entirely, so these nations have opted to use simplified and accelerated procedures to examine asylum claims made by this population. See Nikolas Feith Tan and Meltem Ineli-Ciger, "Group-Based Protection of Afghan Women and Girls under the 1951 Refugee Convention," *International & Comparative Law Quarterly* 72, no. 3 (July 2023): 793–817.

44 UNHCR, *Effective Processing of Asylum Applications: Practical Considerations and Practices* (Geneva: UNHCR, 2022).

the Netherlands, Spain, and Sweden have also introduced triaging with differentiated case processing procedures.⁴⁵

Technology also has a role to play in improving and streamlining asylum procedures. Digital communications, in particular, can add value by allowing for better and more timely interactions both with applicants and between agencies involved in intake and decision-making. Canada, for example, undertook a massive interoperability initiative beginning in 2021 to ensure that different pieces of its asylum system are able to interact. The initiative also led to the digitalization of the asylum application process and the creation of an online form and mobile app that allow asylum seekers to submit applications virtually, reducing the time spent on intake and allowing data to be uploaded immediately to the case management database.⁴⁶ In response to COVID-19, some countries moved to automate parts of their asylum systems that traditionally required face-to-face interactions, including case registration. Norway, for instance, developed a chatbot to guide asylum seekers through a self-registration process, using AI to simulate human conversation and ask clarifying questions where responses were incomplete.⁴⁷ More states have also moved to conducting interviews virtually for asylum claims, allowing for easier allocation of processing resources between locations, particularly in remote areas, and cutting down on travel time. Triage or screening could also be sped up through the use of algorithms that could recommend when cases are likely to be ineligible for asylum processing or, conversely, manifestly founded and thus eligible for simplified procedures—though such tools should be transparent in the criteria they use and subject to review and public oversight.⁴⁸ Finland, for example, has automated its screening and triaging procedures through a system that assigns tags to cases based on data collected during registration. These tags are then used to channel cases into different workstreams, some of which are then prioritized.⁴⁹

Legal representation can also play an important role in improving both the speed and quality of asylum decision-making. Numerous reports from the United States, for example, have highlighted legal representation's benefits, including that applications are more likely to be complete and applicants are more likely to show up for hearings—factors that make adjudications faster and easier. And immigration judges themselves have reported in surveys that when applicants have legal representation, decisions can be taken more efficiently.⁵⁰ In Switzerland, which introduced measures to provide free legal support to all asylum seekers in accelerated procedures as part of asylum reforms in 2019, an evaluation found that legal support improved the quality of asylum submissions. It also created more opportunities for collaboration between legal support providers and decisionmakers, which further increased efficiency.⁵¹ Asylum authorities and policymakers should consider ways to build this kind of flexible staffing and budgeting capacity into their systems.

45 UNHCR, *Effective Processing of Asylum Applications*.

46 Author interview with a senior official from the Canada Border Services Agency, May 4, 2023.

47 Hanne Beirens, *Rebooting the Asylum System? The Role of Digital Tools in International Protection* (Washington, DC: MPI, 2022).

48 Beirens, *Rebooting the Asylum System?*

49 Lucía Salgado and Hanne Beirens, *What Role Could Digital Technologies Play in the New EU Pact on Migration and Asylum?* (Brussels: MPI Europe, 2023).

50 Chishti et al., *At the Breaking Point*.

51 UNHCR, *Effective Processing of Asylum Applications*.

Employ Flexible Procedures and Forms of Status When Needed

In addition to streamlining normal procedures, countries may benefit under certain circumstances from being flexible in terms of the procedures used and statuses granted. In situations where there is a clear need for protection or an immediate displacement emergency, there may be a case for circumventing the usual individual status determination procedure entirely and instead providing status based on displaced persons being part of a group with a clear need for protection (e.g., identification with a particular ethnic minority). This can relieve asylum systems of the pressure to process each individual prior to granting protection and its associated benefits, and it can ease potential buildups at points of entry along a country's borders.

In situations where governments are not willing or able to provide refugee status on a group basis (such as where law mandates that all refugees undergo individual status determinations or when the population in question does not meet the legal criteria to be considered refugees), they could consider providing temporary statuses that afford many of the same rights and benefits. This has been an effective response to several recent emergencies, such as the European Union's use of the Temporary Protection Directive for displaced Ukrainians in Europe and Colombia's provision temporary status to Venezuelans. In both cases, governments were able to swiftly provide protection to sizeable groups with a clear need for protection, some of whom may not have qualified for refugee status, while maintaining public support for these populations.⁵² When these strategies are used, however, they should include—from their inception—a clear plan for access to longer-term status and support for integration, both to ease the pressures that mass displacement puts on host communities and in the (likely) event that displacement becomes protracted.

D. Create Orderly Processes at Borders

Alongside the operation of asylum procedures more broadly, the process for making a protection claim at the border deserves special attention. Much of the question of whether asylum processes are perceived as orderly comes down to what happens at the border. Borders are likely to remain the place where most spontaneous asylum applications are made, and they are also the place where the risk of chaos and disorder is highest—two elements that can undermine public confidence in the system overall. To mitigate this risk, states should invest in border area systems that enable the quick identification of people who have valid protection claims, disincentivize the use of asylum procedures by those who do not, and address urgent welfare needs, all while reducing the immediate pressure that fluctuating border arrivals place on local communities.

Much of the question of whether asylum processes are perceived as orderly comes down to what happens at the border.

This can be challenging to do for several reasons. First, border crossings (via both land and sea) often occur in remote or complex geographical areas, away from large port-of-entry operations with staff or shelter resources to quickly screen arrivals and address immediate needs. Borders are also where changes in

mixed migration trends are felt first, including sudden demands to scale up capacity or shift responses to meet particular needs. Moreover, individuals crossing borders without authorization have often undergone

⁵² Selee, Fratzke, Davidoff-Gore, and Freier, *Expanding Protection Options?*

dangerous and difficult journeys, which means many have accumulated additional medical, mental health, or safety needs en route. Finally, arrivals often happen in specific border regions, placing acute pressure on a small number of communities. In the United States, for example, tensions within border communities have resulted in unofficial busing of migrants and refugees away from these communities to other locations in the country, often with little prior coordination and planning.⁵³ While border communities may account for a small share of a country's population, they can be justifiably vocal in spotlighting their concerns about unauthorized migration, with implications for public perceptions.

Several things can be done to address these challenges, including:

- ▶ **Conducting initial triaging and screening as close to the border as possible.** States can invest in measures to ensure that, to the extent possible, initial asylum processing, including identity and security screening, occurs immediately at the border. Triage of claims and screening for eligibility can also be done at the border to determine which types of procedures may be most appropriate for each individual (i.e., fast-track procedures for those likely to receive protection or for those excluded by eligibility criteria). Technology, such as the registration apps that have been employed in the United States (the CBP One app) and Canada, may help to ensure these processes can operate quickly and smoothly, as long as they have adequate capacity and sufficient safeguards are in place for individuals who face technological barriers in using them.
- ▶ **Handling straightforward cases at the border and swiftly relocating those likely to take longer.** Some cases may be resolvable shortly after asylum seekers' arrival, such as cases that meet exclusion criteria or those that are eligible for prima facie or group recognition (where available). Border authorities should have the capacity to deal quickly and fairly with these cases without needing to transfer them onward to additional layers of adjudication. Most cases, however, are likely to require somewhat more time to adjudicate. For this "messy middle" of cases that are neither clearly founded or unfounded, authorities could set up systems that allow them to complete application filing and adjudication in another location—splitting the process into two steps, as has been done in several European countries and, more recently, in Canada. This requires, however, having a plan for where people will go that mitigates potential pressures on border communities. In Brazil, for example, Operation Welcome provided voluntary opportunities for Venezuelans to relocate elsewhere in the country, with the aim of reducing pressure on border communities.⁵⁴ Between its launch in 2018 and April 2023, more than 100,000 people had been relocated through the program.⁵⁵
- ▶ **Building surge and flex capacity.** Because shifts in migration trends are often felt first at borders, border management capacity must be able to scale up or down quickly. To do so, states should invest in flexible buffer capacity that can be scaled up or redirected to specific border regions as needed. Kenya, for example, has created mobile border control units that allow for rapid deployment of immigration and law enforcement staff to remote border areas.⁵⁶ And the European Union has

53 Muzaffar Chishti and Julia Gelatt, "Busing and Flights of Migrants by GOP Governors Mark a New Twist in State Intervention on Immigration," *Migration Information Source*, September 28, 2022.

54 Brazilian Federal Subcommittee for Relocation and IOM Brazil, *Voluntary Relocation of Refugees and Migrants* (Brasilia: IOM Brazil, 2021); author interview with an official from UNHCR Brazil, April 12, 2023.

55 IOM, "After 5 Years, Brazil Relocation Strategy Benefits Over 100,000 Venezuelans" (news release, April 4, 2023).

56 IOM, "IOM Hands Over Mobile Border Control Unit to Address Kenya's Porous Borders" (news release, September 23, 2010).

provided guidance to Member States on how to create modular reception and shelter facilities that could be rapidly moved and set up in response to changing needs.⁵⁷ In many contexts, particularly in urgent displacement situations, international organizations such as UNHCR play an important role in providing this capacity.

Because *where* along a border someone arrives matters for how readily a system can screen them and address basic needs, and because asylum seeker arrivals often occur outside official crossing points,⁵⁸ location should be a key consideration in efforts to create more orderly asylum processing at borders. Border procedures themselves could, in addition to ensuring smooth access to screening and asylum procedures, play a role in shaping the routes and pathways protection seekers decide to take by creating incentives to use regular crossing points rather than remote areas between them. The United States, for example, has sought to do this via the CBP One app, which allows certain asylum seekers to schedule appointments to seek asylum at ports of entry. Since the app was introduced in January 2023, together with penalties for those who cross in between border checkpoints, the share of asylum seekers and migrants arriving at ports of entry, rather than between them, has risen. While irregular entry still predominates (particularly for nationalities such as Venezuelans, who were until recently less likely to be returned), the shift in favor of entry at official ports has been sizeable—arrivals at ports of entry comprised 17 percent of border encounters in U.S. fiscal year 2023, ten percentage points higher than the previous year.⁵⁹ Such efforts need to be paired with credible, efficient process for seeking asylum at official checkpoints, however, which can require significantly increasing resourcing and capacity. For example, as the United States has sought to shift arrivals to official ports of entry, it has struggled to maintain the logistical and care infrastructure needed at those locations to keep pace with arrivals.⁶⁰

E. *Expand Non-Protection-Based Avenues for Migration*

Growing youth populations in many parts of the Global South, together with greater visibility of global economic inequality and the increased accessibility of irregular migration pathways and, in some places, informal work, have spurred more mobility, both at a regional level and between the Global North and the Global South. Legal pathways to move are unavailable or inaccessible along many of these routes, leading to the use of irregular pathways and often asylum systems instead. For states, this unintended use of asylum undermines confidence in the orderly management of migration. At the same time, many parts of the Global North are experiencing shrinking populations and labor shortages—trends that well-managed immigration can help address. Yet the disorderly and unmanaged nature of irregular migration means that destination countries do not have an opportunity to screen those seeking entry for needed skills or expertise, makes it difficult and sometimes costly to match those admitted to the country with opportunities in local labor markets, and often limits a society's openness to migration more broadly, despite the benefits it can bring. For states, the challenge is thus how to redirect migration flows away from

57 European Union Agency for Asylum, *Modular Approach to Reception: Container Site Designs* (Luxembourg: European Union Agency for Asylum, 2022).

58 As an example, in Canada, 14,663 asylum seekers were intercepted between ports of entry in 2023 and were subsequently brought to an official port of entry for processing, accounting for 50 percent of the asylum claims made at Canada's land ports in that period. See Immigration, Refugees, and Citizenship Canada, "Asylum Claims by Year – 2023," updated April 22, 2024.

59 Putzel-Kavanaugh and Ruiz Soto, "Shifting Patterns and Policies Reshape Migration."

60 Alan Bersin, Nate Bruggeman, and Ben Rohrbaugh, *Migration at the U.S.-Mexico Border: A Challenge Decades in the Making* (Washington, DC: MPI, 2024), 28–31.

unsafe irregular pathways that are difficult to manage and place undue pressure on asylum systems, toward safer managed channels that support filling local labor force needs, facilitate integration, ease strain on borders, and preserve asylum for those in need of protection.

Doing so has several facets. First, there is a need to better match already-available mobility opportunities with those searching for them. Insufficient information and difficult-to-understand bureaucratic procedures can prevent individuals who qualify for existing opportunities from benefiting from them. Several recent initiatives are seeking to fill these gaps. Germany, for example, cooperates with IOM to run centers in countries including Iraq, Jordan, Pakistan, and Turkey that support the family members of international protection beneficiaries in applying for reunification with family in Germany.⁶¹ The SMOs launched in the Americas in 2023 seek to fill this gap at a larger scale. As they become operational, the SMOs in Colombia, Costa Rica, Ecuador, and Guatemala aim to provide information to migrants—and in some cases, nationals of the countries hosting the offices—about legal migration opportunities to, initially, the United States, Spain, and Canada.⁶² While the SMOs are geographically limited, both in terms of which nationalities qualify and what their potential destinations are, such programs could expand in the future to connect would-be migrants in many different locations with many different mobility opportunities across the world.

Efforts such as the SMOs only work, however, if migration opportunities exist to offer viable alternatives to irregular movement. And indeed, one of the primary challenges facing the SMOs thus far has been the limited mobility pathways available to the offices' target populations.⁶³ There is thus a need for countries to evaluate the types and number of legal migration opportunities they offer, including for employment, study, or to join family, taking into consideration regional migration dynamics. At present, for example, there is often a disconnect between the types of migration opportunities that high-income countries offer—predominantly those for highly skilled labor—and the (often lower-wage) jobs in care and other sectors in these aging societies that desperately need workers, and where many would-be migrants could bring needed skills.⁶⁴ However, expanding lower-wage or family-based migration often raises a number of concerns on the part of destination countries about the long-term implications for social security systems, particularly as newcomers age or if labor market demands shift in another direction over time. Moreover, seasonal or temporary work visas, while often used to positive effect to meet seasonal or structural labor shortages, can raise concerns about downward pressure on wages and labor standards (for instance, if employers prefer to hire migrants rather than raise wages or improve living standards to attract local workers, both native and foreign born) and the potential for mistreatment (especially where visas are tied to a particular employer). Expanding the use of labor pathways for migrants with vulnerabilities or in response to a particular displacement crisis can amplify these economic and ethical questions. However, it is worth considering the counterfactual: in many cases, the alternative is not “no migration” but rather migration through clandestine channels, which poses even greater risks of exploitation and harm for individuals and of border and social challenges for receiving states.

61 IOM, “IOM Family Assistance Programme” (fact sheet, 2024).

62 Ariel G. Ruiz Soto, Colleen Putzel-Kavanaugh, and Doris Meissner, *Shifting Realities at the U.S.-Mexico Border: Immigration Enforcement and Control in a Fast-Evolving Landscape* (Washington, DC: MPI, 2024).

63 Ruiz Soto, Putzel-Kavanaugh, and Meissner, *Shifting Realities at the U.S.-Mexico Border*.

64 Kate Hooper, *What Role Can Immigration Play in Addressing Current and Future Labor Shortages?* (Washington, DC: MPI, 2023).

Finally, alongside expanding and facilitating connections to migration pathways, there is a need to ensure that these systems are functional as implemented. Visa processing backlogs, for example, often prevent individuals who are eligible for visas from accessing them in anything like a timely manner, creating incentives to move irregularly.⁶⁵ In other cases, a lack of access to passports or identity documents can prevent people from applying for visa programs.⁶⁶ Beyond these barriers, the considerable latitude consular officers often have in applying guidelines to specific cases leaves scope for additional barriers to arise through implicit bias. While these obstacles all impede the efficient functioning of legal migration systems, they also represent somewhat low-hanging fruit that could be addressed through training or procedural changes, and without the need for considerable, and potentially controversial, legislative reforms or the creation of significant new infrastructure.⁶⁷

4 Conclusions

A shift away from a territorial asylum system that relies on unauthorized entry has come to seem increasingly inevitable, given the growing political backlash to this system in many high-income countries. The question that now confronts states and the international community is what will replace it—and whether it is, in fact, possible to replace it with something that improves on the status quo.

What could an improved system look like? At a minimum level, a reimagined system should provide safety from refoulement for people at immediate risk of harm by ensuring the ability to leave one's country to seek safety elsewhere, in line with international law. This means working to ensure borders remain open in the immediate neighborhood of a displacement crisis, and also providing for emergency pathways and evacuation to other destinations, where needed. A reimagined system should also recognize the agency of refugees and other forced migrants, in particular the fact that all individuals, including those who have been displaced, have capacities and knowledge that they are well able to deploy in securing their own futures. This means that displaced individuals should be provided with meaningful ways to contribute to the development of policies that affect their lives, not simply as a moral imperative but because doing so can make policies more impactful.⁶⁸ It also means protection and migration policies should recognize the mobility pressures that exist in the immediate aftermath of displacement and provide legal opportunities for individuals to move onward, both within and beyond their first country of asylum, to reunify with family, use sponsorship arrangements to join diaspora networks that can ease their transition, seek work or education, and engage in the process of rebuilding their own lives. Finally, policy responses should seek to share responsibility for responding to displacement at a global level—but especially with regional neighbors. Providing legal pathways for onward movement within a region, where mobility is most likely

65 Wait times for family reunification visas in the United States, for example, stretched to more than a decade for many categories in the first half of U.S. fiscal year 2024. See U.S. Department of State, Bureau of Consular Affairs, “[Visa Bulletin for July 2024](#),” updated June 5, 2024.

66 Davidoff-Gore, *The Mobility Key*.

67 The refugee labor mobility organization Talent Beyond Boundaries, for example, has recommended several changes in the United States that would ease refugees' access to work visas, such as improving guidance and training for consular officers on how to treat applications from refugees, accepting alternative identity documentation for those unable to obtain passports due to displacement, establishing a central point-person to coordinate visa applications from refugees, and amending regulations to allow for remote visa interviews. None of these changes would require legislation or weaken the requirements for obtaining a visa. See Betsy Fisher, “[Launching our New Report on U.S. Refugee Labor Mobility](#),” Talent Beyond Boundaries, October 7, 2022.

68 Uwezo Ramazani, *Building Meaningful Refugee Participation into Protection Policymaking* (Washington, DC: MPI, 2023).

to occur, is one way to do so. However, many people experiencing displacement will ultimately stay in countries of first asylum and transit. Global and regional solidarity should thus also include adequate and long-term funding that goes beyond immediate humanitarian assistance and builds capacity for providing legal status and documentation, education, workforce development, and basic health and social services.

To be effective and sustainable, a vision for the future of asylum must not only enhance access to protection but also provide a realistic response to the concerns expressed—increasingly vocally—by many destination and transit countries regarding the practical and political strains that mixed migration has placed on their protection systems. These include concerns about the pressure placed on education, housing, and other services by large and unpredictable numbers of new arrivals; a sense that irregular arrivals pose a threat to the rule of law because they occur outside of lawful, orderly channels and circumvent the state's ability to determine who enters its territory; and the role that unauthorized migration can play in enriching smugglers, organized crime, and other bad actors. Addressing these concerns in a way that is effective, while safeguards protection, is a delicate balance. But there are several emerging elements that could make up such an approach.

To be effective and sustainable, a vision for the future of asylum must not only enhance access to protection but also provide a realistic response to the concerns expressed—increasingly vocally—by many destination and transit countries.

First, policies can seek to build systems that provide access to protection much closer to where displacement occurs and that, in parallel, encourage displaced persons to use legal pathways, rather than territorial asylum, for onward movement. To do so, legal pathways need to be credible alternatives to irregular travel—this means available at scale and accessible to those who qualify. Beyond increasing the number of spots such pathways offer, this requires addressing system bottlenecks by improving access to information about pathways and capacity to process applications (such as through SMO-style networks that can provide information and guidance, or potentially pre-entry screening for protection needs). However, encouraging the use of legal pathways for onward movement will, by necessity, also require disincentivizing the use of asylum systems for this purpose. Although they have a controversial history, safe third country policies, which require individuals to seek asylum in the first safe country, may have a role to play here, particularly when paired with meaningful regional cooperation and responsibility sharing. Enforcement policies, including return, for those found to be ineligible for asylum must also continue to be part of protection policy to maintain public trust in the validity of these systems.

Finally, many of the answers to the challenge of mixed migration may be found outside the protection system itself. Expanding legal immigration pathways in response to labor market demands and demographic pressures can redirect unauthorized flows toward authorized channels, reducing pressure on borders, more effectively connecting those moving with legal work opportunities, and supporting their integration into receiving communities. Non-refugee forms of protection, including temporary forms of status, are also likely to play a greater role, particularly in response to displacement that occurs outside the confines of the Refugee Convention's definition of a refugee.

Navigating the transition from a system reliant on territorial asylum to one that deploys a greater diversity of policy, procedural, and operational tools is not without risk. The growing use of flexible and temporary solutions, for example, can put individuals in a period of extended limbo, undermine long-term integration, or put them at risk of exploitation. And in some cases, pathways for legal onward mobility, such as for work or study, may come without the guarantee of long-term status that has typically been a prerequisite of refugee resettlement programs. These trade-offs must be balanced against the potential of such tools, when well-designed and implemented, to grow the overall numbers of people able to access legal status and protection and to exercise individual agency over their future, with all the economic, family, and network benefits that can bring for both protection seekers and receiving communities.

Potentially more challenging to navigate may be the political risks of the transition. The remodeling of the international protection system is likely to be incremental rather than involve wholesale reform, and many of the opportunities for leaps forward will happen in the heat of crisis. Not all experiments will be equally positive or effective, and there is considerable space for some approaches, such as safe third country arrangements, to be implemented in bad faith rather than in a way that expands access to protection for those in need. This experimentation has already begun and will almost certainly proliferate in the near term, as states seek ways to shore up the legitimacy of their migration systems in the public eye, while preserving political space to implement policies that meet increasingly acute labor market demands and mitigating the real strains confronting reception, housing, and service systems. Looking to the future, agreeing on broad parameters and goals, namely expanding protection space overall, can help international organizations and other actors constructively engage with such developments and advance a system that can create better outcomes for all.

This experimentation has already begun and will almost certainly proliferate in the near term, as states seek ways to shore up the legitimacy of their migration systems in the public eye.

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