



## **One Year In: The Biden Administration's Treatment of Vulnerable Migrants**

### **Introduction**

On October 20, 2020, in the final stages of the presidential election, a [bombshell report](#) revealed that the Trump administration had failed to reunite the parents of 545 migrant children after it had separated them under its “Zero Tolerance” border policies in 2017 and 2018. The parents had not only been separated from their children, the report [continued](#), but the Trump administration had not kept proper records and had no idea where the parents were.

The report was emblematic of the scope of the challenge that would face the future Biden administration in its [efforts](#) to rebuild a fair, orderly, and humane immigration system. Over four years, the Trump administration had made sweeping changes to the system, largely designed to restrict access to immigrants, with many targeted at the most vulnerable. The restrictions were entrenched via [hundreds](#) of meticulous technical reforms and regulatory changes, leading to an environment in which separating families at the border was not only an incidental outcome, but an [intended result](#).

Unwinding the previous administration's restrictions and building something better was never going to be easy. But the Biden administration can already count some real immigration policy achievements, including [ending Trump-era immigration bans](#), [implementing new enforcement priorities](#) that focus on threats to public safety, lifting barriers to [obtaining visas](#) and [green cards](#), and [fortifying](#) Dreamer protections. It has started the difficult work of [tackling the immigration court backlog](#) and [addressing root causes](#) driving Central American migration. Across the system, there are clear signs of progress. But there is also far more work to do.

With January 20, 2022 marking one full year in office for the Biden administration, this paper examines how it has done on three distinct pathways to protection: Asylum at the border, refugee resettlement from overseas, and the evacuation and resettlement of Afghan allies before, during and after the U.S.'s withdrawal from Afghanistan.

While the Biden administration has made significant progress in all three areas, it has often been unable to adhere to its [initial](#), vocal commitments to protect the most vulnerable and has [struggled to deliver](#) on other elements of an [ambitious immigration agenda](#). Facing congressional inaction, unfriendly courts, and political headwinds exacerbated by the ongoing COVID-19 pandemic, President Biden has at times failed to act decisively to protect asylum seekers, refugees, and others seeking humanitarian protection. In some cases, this inaction has led to additional negative repercussions.

Despite facing these ongoing challenges, President Biden still has the opportunity to build on the progress he has made in his first year and put the country on track to creating better, more humane processes for those fleeing violence and persecution. To do so, his administration must prioritize its commitments to vulnerable migrants, fostering a political consensus around these issues and avoiding abrupt policy reversals.

### **I. The Treatment of Vulnerable Migrants at the Border**

Challenges at the border have vexed [every recent presidential administration](#). Border policy measures the ability of an administration to balance seemingly competing concerns – properly caring for vulnerable migrants while effectively and securely managing the flow of persons and commerce. The border is a space where cartels and traffickers abound, and where security and

enforcement concerns [must be paramount](#). But the border is also increasingly where tens of thousands of unaccompanied children and asylum-seeking families arrive each month seeking protection under U.S. law.

Under the Trump administration's Zero Tolerance Policy, [thousands of these families](#) were separated from one another without any mechanism in place to reunite them — or even to track who had been separated from whom. The Trump administration also heavily restricted access to the asylum system through policies like [metering](#) (which turned back those seeking protection at official crossing points) and the [Migrant Protection Protocols](#) (which forced asylum seekers to wait in dangerous conditions in northern Mexico for their claims to be adjudicated).

Later, during the COVID-19 pandemic, Trump used a public health protocol called [Title 42](#) to initiate rapid expulsions and essentially eliminate any access to the asylum system. Even unaccompanied migrant children were being detained ([often in secretive holding sites](#)) and rapidly expelled without a chance to ask for protection.

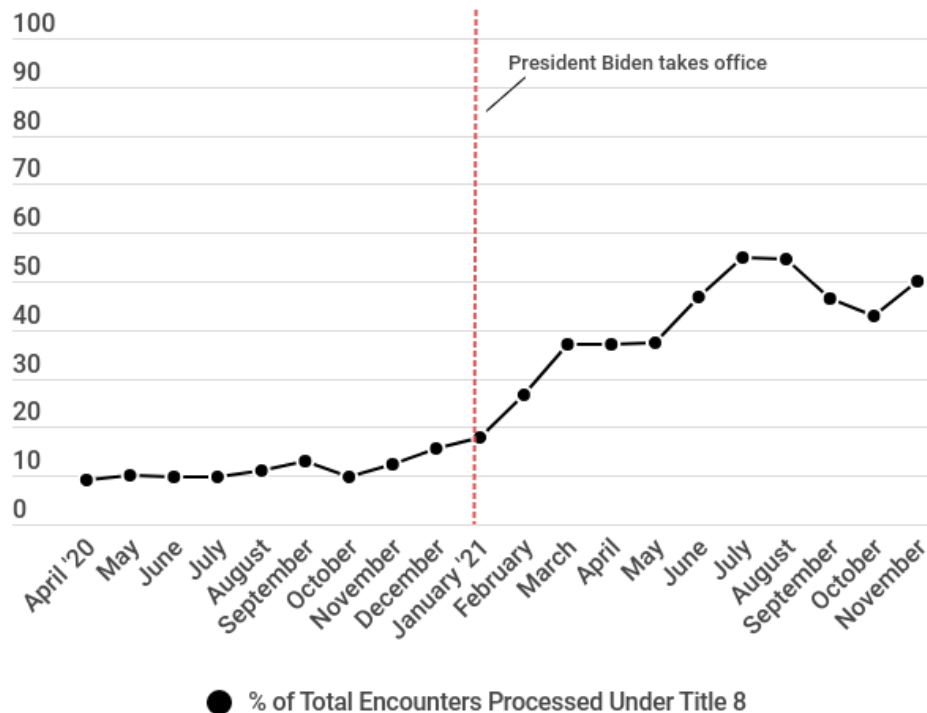
When President Biden took office, he vowed to halt draconian Trump-era border enforcement policies, promising to reunite separated families and to terminate the use of metering and MPP. He [pledged](#) firmly to “restore and strengthen” the asylum system and [end the practice](#) of returning vulnerable people to “a horrifying ecosystem of violence and exploitation, with cartels kidnapping, violently assaulting, and extorting migrants.” But despite some significant steps forward, the realities of governing have made it more challenging to implement many of these early promises.

Adverse judicial decisions have blocked a [planned temporary deportation pause](#) and [forced the Biden administration to reimplement MPP](#). Transnational criminal networks have [ramped up human smuggling activities](#), utilizing [misinformation](#) to exploit and mislead migrants. Congressional action has faced [procedural](#) roadblocks and [partisan disagreement](#). And the Biden administration itself [underestimated migrant flows](#) and [delayed in nominating](#) key DHS personnel. Facing these challenges, the Biden administration has often fallen short at the border, [struggling](#) to control an influx of migrants while disappointing immigration advocates.

## ***Progress***

- **Re-uniting separated families.** In February, President Biden signed an [executive order](#) establishing a Family Reunification Task Force, which was tasked with identifying parents and children that had been separated at the border during the Trump administration and taking steps to reunite them. As of December 10, the Biden administration has [reunited](#) 63 families and has identified and is moving to reunite an additional 221. The Task Force has also improved estimates of the number of families who remain separated, in part by working with nonprofits to [establish an online portal](#) where separated parents can sign up for reunification. There remains significant work to be done, with over 1,000 children still separated, but the Biden administration has committed to this effort and has made noteworthy progress in the difficult task of reunifying these families.
- **Restoring access to protection for the most vulnerable asylum seekers.** Upon taking office, the Biden administration [exempted](#) unaccompanied children (UCs) from Title 42 expulsions, allowing them to pursue legal protection in the U.S. It has also [allowed](#) most families and [other vulnerable individuals](#) to access the asylum process via traditional border processing procedures (which occur under Title 8). While the majority of arrivals still lack meaningful access to the asylum system, the administration has restored access to asylum for many of the most vulnerable migrants.

**Chart: Increasing Access to the Asylum System**



### Challenges

- **Struggling to care for unaccompanied migrant children.** While the Biden administration exempted UCs from Title 42, it has often struggled to provide them with appropriate living conditions and to transfer them quickly on to family members and sponsors in the U.S. while they continue with their immigration court proceedings. Both Customs and Border Protection (CBP) and Health and Human Services (HHS) shelters have come [under fire](#) for inadequate conditions, and [after some progress](#) was made in the fall, November data showed a [62% increase](#) in minors in CBP holding cells.
- **Continuing to return asylum seekers to danger.** After [reports](#) of internal disagreement about how to manage the border, Biden has kept Title 42 expulsions in place despite criticism from [public health experts](#), the [U.N. Refugee Agency](#), and [senior members of his own administration](#). The end of the fiscal year in September marked [1 million border expulsions](#) without affording returned individuals any opportunity to make claims for protection under U.S. law. The policy continues to [incentivize repeat crossing](#) and [line the pockets](#) of cartels and trafficking networks.
- **Restrictions ended in theory, but not in practice.** A [November 1 memo](#) terminating the metering policy has so far resulted in [virtually no change](#) in policy at the border, as asylum seekers continue to be turned back at official crossing points due to capacity challenges. Meanwhile, a [series of controversial judicial opinions](#) have required Biden to reimplement the Migrant Protection Protocols (MPP) despite repeated efforts by the administration to terminate the program. But when it came time to acquiesce to the court order, the Biden administration actually [expanded eligibility](#) for MPP to migrants from additional countries that were not included under the Trump administration's version of the policy.

## Map: Eligibility for MPP



## II. The Treatment of Vulnerable Migrants in the Refugee Resettlement Process

Since World War II, across Democratic and Republican administrations, the U.S. has demonstrated a commitment to protect the world’s most vulnerable, historically serving as a global leader in refugee resettlement.

America’s long legacy of welcoming the persecuted was undermined when President Trump cut necessary resources and repeatedly set refugee admissions targets at record low levels. Combined with the prolonged impact of the COVID-19 pandemic, President Biden took over a weakened resettlement program that faced significant domestic capacity challenges and extensive delays in the pipeline overseas.

Shortly after winning the election in November 2020, Biden pledged to increase the refugee admissions target to 125,000 in his first year. “The United States has long stood as a beacon of hope for the downtrodden and oppressed, a leader of resettling refugees in our humanitarian response,” Biden [said](#). “I promise, as president, I will reclaim that proud legacy for our country.”

Given the damage to the system, resettlement experts [suggested](#) that an admissions target of 125,000 for Biden’s first fiscal year in office was probably unreachable – 50,000 refugees resettled would be a more realistic goal. To this point, the administration has fallen well short of reaching even that lower target.

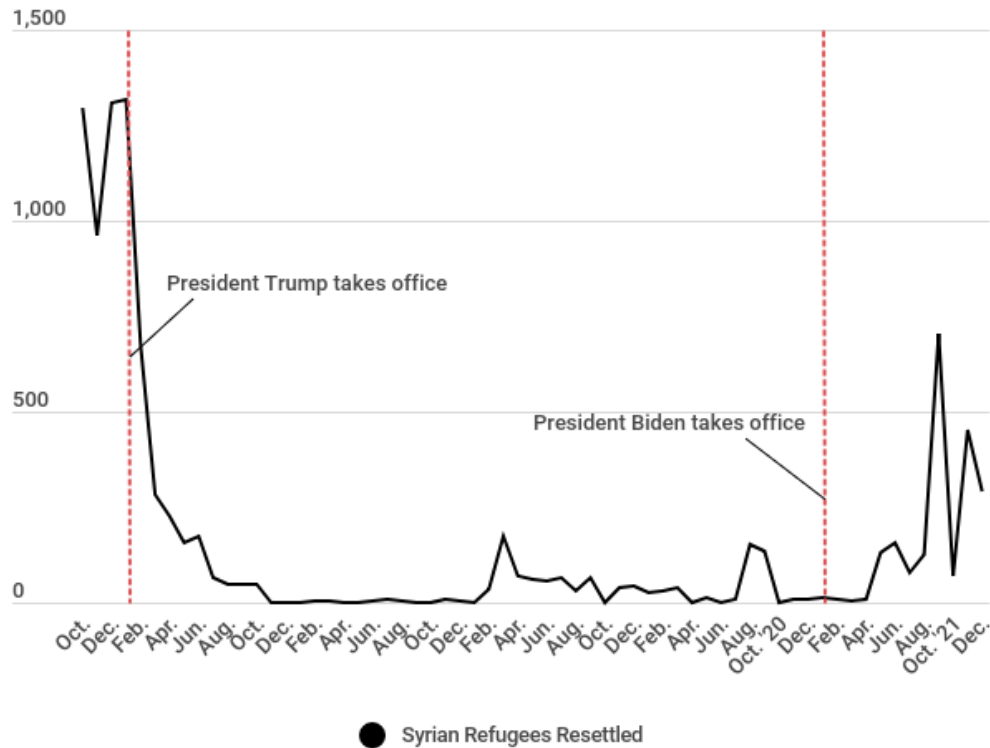
### **Progress**

- **Increasing the resettlement ceiling.** After waffling initially — [reportedly](#) due to political concerns — Biden revised the FY 2021 refugee ceiling to 62,500 in May, reversing the record lows set by the Trump administration. Then, in November, the Biden administration [followed through](#) on its initial promise by raising the refugee

ceiling to 125,000 for FY 2022. It represents the highest resettlement target since 1993 and a reaffirmation of the administration’s stated goal of restoring U.S. refugee resettlement.

- **Rebuilding the resettlement pipeline and restoring key resettlement programs.** The administration has begun [laying the groundwork](#) for a successful rebuild of the refugee program. Virtual refugee interviews [got off the ground](#) in mid-2021, a potential game-changer for the system. The administration has reimplemented and [expanded](#) a special program for refugee children in Central America, and it has restarted resettlement from war-torn countries like Syria that faced [bans](#) under Trump.

**Chart: Resettlement of Syrian**

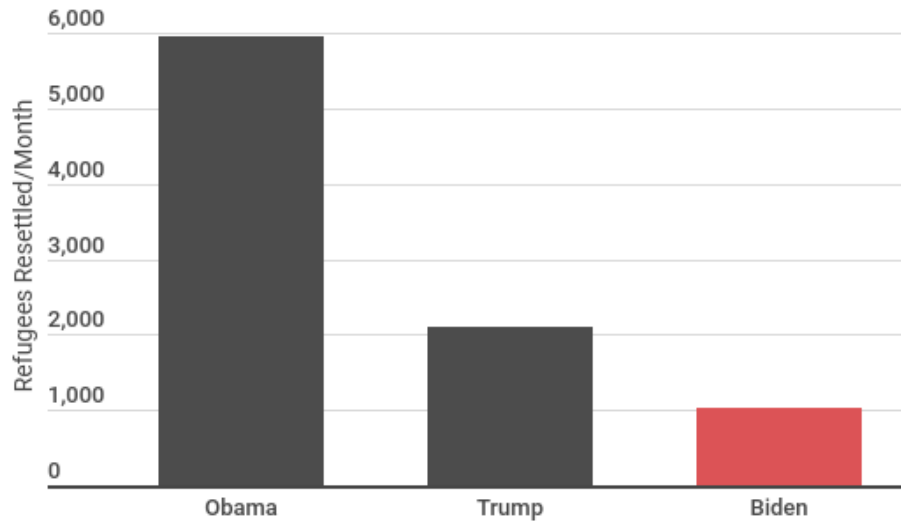


### Challenges

- **Actual numbers of refugees resettled remain at record low levels.** Given the weakened state of the refugee resettlement system, experts [estimated](#) that a committed administration could resettle as many as 50,000 refugees in FY 2021. But the Biden administration resettled [only](#) 10,008 refugees in his first 8 months in office, leading to a record low of 11,411 for the fiscal year.

Initial indecision over raising the refugee ceiling in both FY 2021 and FY 2022 caused the [cancellation](#) of refugee flights, [contributing](#) to the low resettlement totals. In addition, domestic resettlement capacity remains low and delays in the pipeline have [not been adequately addressed](#), with refugee resettlement agencies continuing to be under-resourced and refugee interviews overseas remaining near record low levels. In part due to an understandable focus on resettling Afghan evacuees as well as the lingering effects of COVID-19, the administration appears [nowhere close](#) to reaching its own lofty resettlement target of 125,000 for FY 2022.

**Chart: Refugee Resettlement by Administration**



President	Era	Total Months in Office	Total Refugees Resettled	Refugees Resettled/Month
Barack Obama	January 2009- January 2017	96	571,332	5,951
Donald Trump	January 2017- January 2021	48	100,788	2,100
Joe Biden	January 2021- December 2021	12	12,454	1,038

### **III. The Treatment of Vulnerable Afghans Before and After the Withdrawal from Afghanistan**

The U.S. withdrawal from Afghanistan and the subsequent fall of Kabul to the Taliban is another noteworthy area to assess the Biden administration’s record on vulnerable migrants.

Since January 2021, beginning prior to the U.S. withdrawal, more than 550,000 Afghans have been [forcibly displaced](#) due to Taliban advances. A significant number of these Afghans were at particular risk because they had worked on behalf of U.S. efforts over the past two decades. Even before Kabul fell in August, [more than 70,000](#) Afghans were stuck in the Special Immigrant Visa (SIV) pipeline, a program that is meant to protect those who are in danger for serving as interpreters or otherwise assisting U.S. military and diplomatic efforts.

Before completing the withdrawal, the Biden administration had [said](#) of SIV applicants: “We have a moral obligation to help those who helped us.” A State Department spokesperson [said](#) that regarding “Afghans to whom we have a special commitment, we will be relentless in helping them depart Afghanistan.” To those left behind after Kabul fell, an administration official [said](#): There is “no deadline in getting out Americans and Afghans who want to leave.”

#### **Progress**

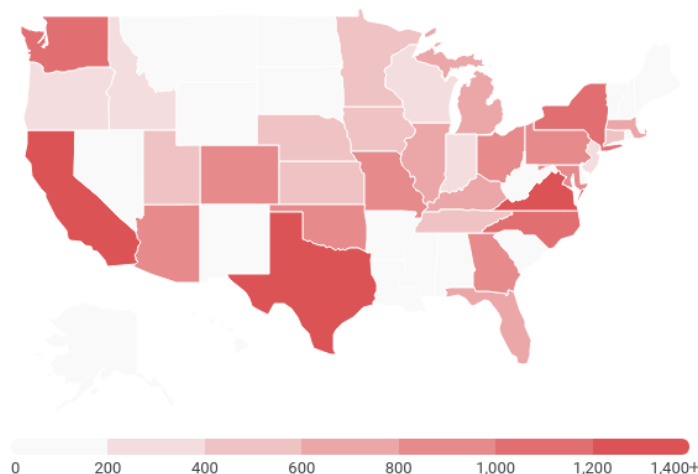
- **Evacuating over 100,000 at-risk Afghans using humanitarian parole.** In the weeks leading up to U.S. withdrawal, the Biden administration began ramping up SIV processing, and on August 2 it [created](#) a special Priority 2 refugee pathway for Afghan nationals who may not be SIV-eligible but who had worked for U.S. contractors and NGOs. However, as conditions worsened rapidly in Afghanistan, the Biden administration recognized that neither the SIV nor the refugee pathways were appropriate mechanisms for an emergency evacuation. Instead, it devoted enormous



effort and resources to conduct a 14-day airlift out of Kabul, evacuating 124,000 at-risk Afghans and others to third countries. Those who were successfully evacuated prior to the completion of the U.S. withdrawal were screened and brought to the U.S. using a [special humanitarian parole](#) program. Providing so many people protection in a secure manner and in such a short period of time was a heroic achievement.

- **Effectively resettling Afghans in welcoming communities across the country.** After bringing approximately 75,000 Afghan evacuees to U.S. soil – mostly to U.S. military bases initially – the administration has begun to [make progress](#) in resettling them across the country. After securing additional funding from Congress, the administration has worked with [resettlement agencies](#) and new [private sponsorship groups](#) to find homes for thousands of Afghans in the U.S. and to provide them with access to resettlement benefits. Approximately 29,000 Afghan evacuees [remain](#) at the bases, but in the context of a resettlement system already dealing with serious capacity issues, the number of parolees resettled so far represents a significant accomplishment.

### Heat Map: Afghan Resettlement Around the Country



### Challenges

- **Leaving allies behind in Afghanistan.** While the U.S. withdrawal has left the administration with limited options to extricate Afghan allies from the country after August, earlier missteps have aggravated the current situation. The Biden administration delayed in taking action in early 2021 to ramp up evacuations of SIV applicants and other at-risk Afghans, despite [frequent urging](#) from advocates and members of Congress. And since the August airlift concluded – despite claims that there was “no deadline” for evacuating Afghans at risk – the administration has [mostly focused](#) its limited remaining capacity on evacuating Americans and visa holders rather than SIV applicants and other vulnerable Afghans. As of December 16, more than [60,000 SIV applicants](#) and family members continue to face threats in Afghanistan. The administration has also [begun to deny](#) applications for humanitarian parole from those left behind, directing applicants instead to backlogged and [often inaccessible](#) refugee pathways.
- **Evacuees left in limbo without a path to permanent status.** Afghans who have been evacuated and paroled into the U.S. continue to face significant challenges, chief among them access to an adjustment of status. Parole is not a formal immigration status; it expires in two years and it does not confer the same benefits or access to permanent status as other humanitarian pathways. When parole has been used in [past large-scale evacuations](#), parolees have typically been granted a pathway to status via an adjustment

act. But Afghan parolees remain in limbo, and despite [a request](#) from President Biden, Congress has not yet acted to pass an Afghan Adjustment Act that would provide status — and stability — to Afghan evacuees.

**Table: Afghan Parolee Access to Permanent Status**

	Fleeing Imminent Harm	Protection from Deportation	Access to Resettlement Benefits	Path to Permanent Status
Refugees	✓	✓	✓	✓
Asylum Seekers	✓	✓	✓	✓
SIV Holders	✓	✓	✓	✓
Parolees	✓	✓	✓	✗

## IV. Solutions

As a candidate and in the early days of his presidency, President Biden approached the issue of vulnerable migrants with clarity and purpose. He was explicit about the ways in which his administration would differ from the one that came before. He charted a path towards restoring humanity and morality to the immigration system. He made concrete, ambitious promises about the steps he would take while in office.

One year into his administration, these goals remain in reach. But the Biden administration needs a course correction to get back on the path it had charted with respect to asylum seekers, refugees, and at-risk Afghans. Moments of progress have been paired with steps backward. If it can take needed corrective action in year two to better protect vulnerable migrants, the Biden administration stands to not only substantively improve on-the-ground conditions and procedures, but also to yield political gains by demonstrating more effective and coherent humanitarian policies.

### 1. Creating a system for humanitarian relief that is more than the sum of its parts

Asylum, refugee resettlement, and humanitarian parole are three distinct pathways to protection for vulnerable migrants. They are governed by different divisions in different agencies and (generally) use different pools of resources. Importantly, each of these pathways is best suited to protect different groups of vulnerable migrants.

Unfortunately, the Biden administration has frequently treated these pathways as if they are in competition, to the detriment of those facing danger. An initial refusal to raise the refugee ceiling was [reportedly due to concerns](#) about an increase in border arrivals. At-risk Afghans seeking humanitarian parole have been denied and [told](#) to use a backlogged refugee process instead, even as refugee resettlement has been [largely paused](#) to prioritize Afghan parolees who have already been brought to the U.S. These decisions have increased strain on the system, worsening backlogs in both immigration court and in the refugee admissions process that have served only to create additional headaches for the administration.

Rather than treat humanitarian relief like it is a zero-sum game, the administration should recognize the ways in which these separate protective pathways can work together. Bolstering refugee resettlement from Central America could reduce asylum flows at the border. Providing access to humanitarian parole to Afghans abroad could ease delays in the refugee pipeline, and providing access to status for parolees domestically could provide relief for those stuck in the asylum backlog.

### 2. Charting a clear path forward



Too often, the administration has been waylaid by moments of indecisiveness, managing immigration issues within a framework of political costs as opposed to opportunities. While shifts in policy can sometimes be necessary to respond to unforeseen circumstances, the Biden administration's noncommittal approach towards vulnerable migrants has all too often been ineffective, delivering suboptimal policy outcomes while antagonizing both immigration advocates and skeptics.

In numerous areas, the failure to chart a clear course has undermined the policy while complicating the politics. Reports have highlighted [internal disagreements](#) over issues like rescinding Title 42. Biden issued a [memo](#) denouncing the human costs of MPP, but then expanded the program to apply to nationals from additional countries that previously were not part of the program under Trump. The administration announced a higher refugee ceiling, but [delayed](#) in actually signing the determination, causing cascading delays across the system that ultimately reduced the number of refugees who were resettled.

These moments of hesitation have failed from both a policy and political perspective. Many of these decisions seem to hinge on the politics of the moment, but the administration has lost popularity precisely because its message is unclear. Biden's unequivocal statements in support of vulnerable migrants helped him get elected, and these commitments remain [broadly popular](#) across parties. The administration can build a larger American consensus around immigration issues by standing with vulnerable asylum seekers, refugees, and evacuees — even in the face of political headwinds.

### **3. Working with Congress to pass common-sense, bipartisan legislation**

Some problems require legislative solutions, and a polarized Congress is one reason the Biden administration has been unable to follow through on some of its commitments to vulnerable migrants. Since Biden took office in January, the House and Senate have failed to agree even on “must-pass” legislation like annual funding bills (instead passing a [series](#) of short-term [resolutions](#) to continue funding at previous levels).

But with regards to immigration, the administration bears some of the blame for congressional inaction. President Biden has tended to focus on other legislative priorities, and his agenda — including [immigration reform](#) — continues to be bogged down in the Senate. In 2022, absent progress through the Senate reconciliation process in the coming weeks, the administration should work to advance bipartisan incremental legislation that would provide permanent solutions for Dreamers, agricultural workers, and others. It should also consider endorsing bipartisan proposals to address border processing and provide better care for arriving asylum seekers, such as the [Bipartisan Border Solutions Act](#) and the [Border Response Resilience Act](#), potentially as part of a broader bipartisan immigration package.

Regarding vulnerable migrants, the administration should work with Congress to pass an [Afghan Adjustment Act](#), a bill that would allow Afghan parolees to adjust to permanent status. Concerning refugee resettlement, the White House should work with Democrats and Republicans on additional funding to resource key divisions such as the International Refugee Affairs Division (IRAD) within USCIS and the Refugee and Entrant Assistance (REA) Account within HHS. With the administration's support, there is a path for legislative progress on immigration in 2022, including reforms that would better protect vulnerable migrants.

The administration can already count many immigration policy successes in its first year in office, and there are signs it has begun to rebuild a system that was largely dismantled by the Trump administration. But the previous administration was particularly aggressive in its restrictions on humanitarian immigration pathways; it is in this arena where changes were especially ingrained and where rebuilding has proven most difficult. President Biden has made progress in these areas, as well, but lethargically. By treating humanitarian relief as more than the sum of its parts, charting a clearer and more consistent course on humanitarian policy, and

working towards bipartisan legislative solutions, the Biden administration can get back on track on these key priorities.