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One Way Trump May Have Changed Immigration Forever

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For decades, U.S. presidents have managed a delicate consensus on taking in refugees. Trump blew it up.

Last month, Stephen Miller — the senior Donald Trump advisor and architect of the former president's immigration regime — took to Fox News to give a fervid rant on President Joe Biden's immigration policy. "This is madness!" Miller shouted at one point, referencing a proposal to make available citizenship applications to people the previous administration deported. Since taking office, Biden has rolled back one after another of Trump and Miller's initiatives. On Day 1, he ended the travel ban from 13 majority-Muslim countries; paused construction of the wall along the Mexican border; and introduced a new bill that would give undocumented immigrants a path to citizenship. Biden also made clear he intends to rein in Immigration and Customs Enforcement.

But despite Miller's alarm at all his work being undone, there's still one way that his and Trump's immigration regime remains largely in force — and will likely continue to for some time: Since March 2020, America has been cut off almost entirely to asylum seekers and refugees.

Last year, citing the pandemic, the White House strong-armed the Centers for Disease Control to invoke Title 42, an order that closes the border in times of emergency. Though for many classes of people the border has remained totally porous —businesspeople, vacationers and even many immigrants have crossed it freely for most of the pandemic — asylum seekers and refugees have been blocked. In the months since, a record-low number of refugees have been resettled, and just about every asylum seeker arriving on the southern border, except for some unaccompanied children, has been turned away or summarily deported.

While Biden has started to reopen those processes — people in refugee camps in Mexico as part of Trump's "Remain in Mexico" plan have begun to enter the U.S. to make their cases for asylum — there are reasons to believe that on this front, Trump's presidency will have a much longer-lasting effect. While Trump and Miller attacked immigration in all its forms, no would-be immigrants received more attention or provoked more action than refugees. And in turning asylum seekers into political ammunition in the American fight over immigration — conflating them with illegal border-crossers — Trump broke a fragile but powerful consensus that had lasted through Republican and Democratic presidents and had kept America open as a nation of refuge for more than a generation.

Biden may yet repeal Title 42, the order closing the door to refugees and asylum seekers, though the White House has said it will remain in place while it figures out how to implement an improved processing system. But that order was not the only way Trump damaged the system. He was the first major party candidate to run on an explicitly anti-refugee platform. And he continued to wage a campaign unapologetically against asylum seekers after taking office, putting through a barrage of rule changes, regulations and legal decisions that hobbled the system before he shut it down altogether in the pandemic.

"Even if people would say these things behind closed doors, it was never articulated in public fashion the way that Trump did," says Ruth Wasem, a professor of public policy practice at the University of Texas who specializes in asylum. "Now, that vitriol towards refugees — once that taboo is crossed, it's hard to put the genie back in the bottle."

Since World War II, presidents of both parties have accepted millions of asylum seekers, honoring the treaties and statutes that the U.S. agreed to over the decades after the Holocaust affirming a right to refuge for people fleeing persecution. Taking in refugees has never been particularly popular in American public opinion, leaving the system vulnerable to a populist political attack, but governmental leaders had been able to invoke notions of America's standing in the world to depoliticize asylum policy and keep commitments relatively steady. No longer.

Since Trump mainly used executive action — circumventing Congress — to change policy, it may not be hard for Biden to reopen the U.S. to refugees and asylum seekers over the next four years. But in the longer term, closing the political divide that Trump widened on asylum will prove much more challenging. Thanks to the last administration, asylum in the U.S., once globally reliable, has become like the carpeting in the Oval Office: something that can be torn up and remade from president to president.

On the campaign trail, Biden framed asylum as more than a policy: He made it clear that he sees rebuilding asylum as fundamental to his mission of restoring the soul of the nation: "Offering hope and safe haven to refugees is part of who we are as a country," his platform read.

He was appealing to a vision of America that predates even the Constitution. In colonial times, Thomas Paine's fiery pamphlet Common Sense described the so-called New World's potential to be a shelter for those fleeing civil and religious persecution across the globe. "O! receive the fugitive, and prepare in time an asylum for mankind," Paine wrote in 1776. And since then, the image of the U.S. as a sanctuary has pervaded the national mythos: The colossal, outward-facing Statue of Liberty in New York's harbor raises her beacon to the world's tired, poor, tempest-tossed and homeless, huddled masses yearning to breathe free. Schoolchildren are taught that the Founding Fathers' forefathers, the Pilgrims who fled England, were themselves, fundamentally, refugees.

But a countercurrent has run through American history as well. America has repeatedly shut its borders to whole classes of people considered undesirable — regardless of their need or moral standing. There have been horrifying incidents, such as when a ship carrying nearly a thousand Jews fleeing Nazi Germany was turned away and sent back to Europe in 1939. As the Third Reich blitzed across the continent, at least 250 of the people who had been on the ship were killed.

And yet, a majority of Americans have been comfortable with this. From the 1930s on, U.S. public opinion polling has showed consistent opposition, or at best ambivalence, to refugee resettlement. Hostility to asylum seekers remained strong enough that in 1951, the U.S. became one of only a handful of countries around the world that refused to sign the 1951 Convention on the Status of Refugees, a United Nations treaty that forms the foundation of modern refugee law.

It wasn't until 1967 — after the Vietnam War had critically polluted the U.S.'s global human right's reputation — that the U.S. acquiesced and signed onto a renewed version of the treaty. More than a decade later, President Jimmy Carter signed the Refugee Act of 1980, which had been supported by a unanimous vote in the Senate. The law sought "to provide a permanent and systematic procedure for the admission to this country of refugees." The U.S. then quickly moved to the global fore, accepting more refugees than any other country in the world from the 1980s on.

On the one hand, the Cold War provided a fairly straightforward foreign policy justification for presidents of both parties to accept tens of thousands of refugees each year, especially from Communist regimes. It was a way both to repudiate the Soviet ideology and to burnish the U.S.'s human rights image in comparison. But Wasem, who has studied the history of asylum policy, says that geopolitical gamesmanship wasn't the only thing maintaining a steady bipartisan respect of asylum for so long. "Even though there was not a lot of public support for asylum seekers or refugees, it was just not a top tier political issue," she says. Historically, Americans have not obsessed over the issue the way they have under Trump. "It was not something people would have ever voted on," Wasem says.

Of course, the U.S. has never been an open door: Under President Ronald Reagan, thousands of Guatemalans and Salvadorans fleeing brutal civil wars were deported to danger and potential death in their homelands. Under Presidents George H.W. Bush and Bill Clinton, thousands of Haitian families were indefinitely interned in an open-air prison camp in Guantanamo Bay. But for decades, politicians of both parties heralded the importance of America's symbolic welcomeness to those in need: In his farewell address, Reagan described the U.S. as "still a beacon, still a magnet for all who must have freedom, for all the pilgrims from all the lost places who are hurtling through the darkness, toward home." Since the formalization of an asylum system in the U.S., there had never been a year when the U.S. outright refused refugees, no matter where they came from.

That changed under Trump, who has called asylum a "scam." In 2020, just as the number of asylum seekers worldwide reached the highest levels since World War II, for the first time in over a generation, the U.S. effectively sealed its borders to refugees. After more than three years of chipping away at asylum, in March 2020, the Trump administration universally suspended, with few exceptions, refugee resettlement from other countries, and the U.S. has since turned away hundreds of thousands of asylum seekers at the border.

Trump didn't invent the issue; as with many things, he rode a wave already cresting in his party. In the years before Trump took office, Eleanor Acer, the senior director of refugee protection at the advocacy organization Human Rights First, says she began hearing new rhetoric targeting asylum seekers from parts of Capitol Hill. While Republican politicians had long lambasted undocumented immigration, few had ever specifically fixated on asylum, a legal form of immigration. But a new sort of message was beginning to emerge from a handful of

congressional offices. Suddenly, in these corners, refugees and asylum seekers were being portrayed as line cutters, as cheaters and as criminals.

Acer says that, for a while, those messages were only coming from extremist figures, like Alabama Senator Jeff Sessions, whom Stephen Miller worked for as a communications director. Even when Miller was a minor figure in his party and little-known outside the halls of Congress, his opposition to asylum was notorious among Capitol Hill staffers and advocates, Acer says. In 2013, he spearheaded the PR campaign that sank the bipartisan "gang of eight" immigration reform bill. Acer says that the prevailing conservative attitude towards refugees was fundamentally shaken when Miller joined Trump's ascendant primary campaign in January 2016 and went on to be a senior adviser to the 45th president.

"For years, Stephen Miller and his allies, who were on the fringe of the Republican Party, worked on the Hill to try to block refugees and people seeking asylum in this country. As many of those same people moved into the White House, that xenophobic ideology infected a broader swath of the political scene," she says.

Even before he brought Miller on to his campaign, Trump shared his antipathy for asylum. In December 2015, he conflated nationalist immigration and assimilation concerns with refugee policies, calling for a "total and complete shutdown of Muslims entering the United States" in response to the Syrian refugee crisis, and he moved almost the entire Republican field of candidates with him on the issue. After Trump won the presidency, when the so-called Muslim ban became a reality in the name of national security, its impact primarily fell on asylum seekers. A Cato Institute analysis of State Department data found that from 2016 to 2018, the number of Muslim refugees admitted to the U.S. fell by more than 90 percent, whereas Muslim immigrants and visitors dropped by a much smaller percentage.

For Alex Nowrasteh, director of immigration studies at the libertarian Cato Institute, the Muslim ban marked a turning point in American history. "Trump pushed the bounds of what the president can do to restrict legal immigration," he says. Asylum is supposed to be within the purview of Congress, but Nowrasteh says that, after decades of unwillingness to take action, the legislative branch has ceded most of its power to the executive. When the Supreme Court decided, in *Hawaii v. Trump*, that the ban could remain in place, Nowrestah says that a new precedent was set, which Trump would continue to leverage: "that the president can stop all immigration whenever he wants to."

Over the four years of the notoriously undisciplined Trump presidency, perhaps no issue commanded more relentless, dedicated attention than Trump and Miller's attempts to end U.S. asylum as we knew it. After the Muslim ban, Trump and Miller's specific targeting of asylum seekers soon turned to those coming from Latin America. At the border with Mexico, Trump was far more effective at erecting a policy blockade to keep asylum seekers out than at erecting the physical wall he campaigned on.

His attorneys general, first Sessions then William Barr, issued directives intensely narrowing the grounds for asylum: For example, gang violence and misogynist domestic violence would no longer qualify as persecution, even if a person's life was clearly in danger. The administration also issued bans of people who traveled through any "third country" on their way to the U.S. and did not request asylum there first. And the Migrant Protection Protocols, often referred to as the Remain in Mexico program, forced asylum seekers to stay outside of the country as they awaited

the outcomes of their cases. (There have been hundreds of documented cases of robbery, assault, kidnapping and murder in the refugee encampments that cropped up south of the border.)

More than anything else, Trump and Miller tried to make it as painful as possible to seek asylum in the U.S. Whereas prior to the Trump administration, most asylum seekers were paroled as they awaited the outcome of their cases, at various times during Trump's tenure, more than 90 percent of asylum seekers in the U.S. remained locked in detention centers. Some families who fled political persecution in their home countries spent over a year in jail where they had hoped to find freedom. Even the family separation crisis was a result of efforts to deter migrants, including those seeking asylum.

Trump's broadsides against asylum didn't stop after Biden won the election. During the time before inauguration, the outgoing administration issued new rules, orders and guidelines on asylum at break-neck speed. "I can't do my job, because I don't know what the law will be next week," one asylum attorney told me in December. While issuing new policies with weeks left in a presidency might have seemed simply petty, it had a serious effect: Much of it cannot be dismantled overnight. Even advocates acknowledge that to properly change things, the Biden team will have to produce studies and legal arguments, draft new plans, and, at times, allow for lengthy public comment periods, before they alter the Trump doctrine.

In a logistical sense, the key to Trump's massive changes to the country's immigration system will also be their eventual undoing: Trump accomplished almost the entirety of his anti-immigration regime through the powers of the presidency, often holding televised ceremonies to sign new executive orders. Now, the news cameras are back in the Oval Office as Biden enacts his own slew of fiats reversing — or initiating reviews of — his predecessor's signature accomplishments.

But the politics are a different story. The 46th president can overturn the policies Trump enacted to hobble asylum, but unless there's a radical repairing of the animosity many in this country now hold toward refugees, the next Republican in charge will have the latitude, and likely the support, to reinstate them.

Having successfully made opposition to Muslim refugees mainstream two years earlier, during the 2018 midterms, Trump's obsessive tweeting led many of his supporters to understand the arrival of two caravans of asylum seekers from Central America as an "invasion." Now, in conservative messaging, the terms "asylum seeker" and "refugee" are frequently used in the same breath as the pejorative "illegal immigrant" and are implied to be unworthy objects of sympathy, not to mention potential importers of terrorism, crime and disease. "Your families still cannot go out to eat at local restaurants. But Joe Biden is bringing in thousands upon thousands of refugees from all over the world," Trump told a crowd during his keynote address at the Conservative Political Action Conference this past weekend.

When Trump took office, 35 percent of Republican voters believed the U.S. had a responsibility to accept refugees, according to a Pew Research Center poll. Just a year later, that number fell to just 26 percent. And by 2019, a PRRI survey found that fewer than half of Republicans said they would oppose a law banning all refugees — from anywhere, for any reason — from entering the United States.

The toxicity of the issue within the GOP electorate makes bipartisan action on asylum difficult to fathom. In 2013, a comprehensive immigration reform bill supported by President Barack Obama won the support of 14 Republicans in the Senate (though it would later go on to die in the House). On his first day in office, Biden sent his own immigration bill to Congress, which, alongside a pathway to citizenship for 11 million undocumented immigrants, includes a bevy of asylum reforms. But with the current state of polarization in the U.S., it's hard to imagine Biden winning even one Republican Senate vote, much less 14. POLITICO reported that the Biden White House is open to Congress pursuing his legislative proposals on immigration and asylum piece by piece, rather than as a whole package, but it's not clear that strategy will any more successfully lead to passage.

People like Stephen Miller, who once sat on the periphery of the party, have become embraced as the GOP's lead voices on immigration and asylum. In late February, Miller, who has advocated a no-compromise approach to these issues in his recent Fox News appearances, gave a presentation to the Congressional Republican Study Committee, which exists to shape conservative policymakers' agenda and priorities.

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Looking back on Trump's tenure, the most lasting effect of his politicization of asylum, suggests Cato's Nowrasteh, might be partisan gridlock and the sustained impossibility of ever being able to guarantee through legislation a stable system for refugees that isn't susceptible to the election of a new president with Trumpian disposition. "Trump made Congress totally irrelevant when it comes to immigration," he says, "and that's devastating to American institutions of government."

"Whether Biden goes all the way in the other direction, and opens everything up, or the next Republican president shuts it down, the uncertainty in the political system is very damaging," says Nowrasteh.

Trump's ultimate legacy, by tearing down in four years a system that had solidified over decades in international agreements and federal law, is to create a new status quo in which the fate of asylum seekers globally ultimately lies at the whims of whoever is in power.