



Biden Administration Day One Immigration Actions

On January 20, 2021, just hours after being sworn in, President Joe Biden took several immigration-related actions that together signal a new era for immigration policy. They comprise an important first step towards redressing some of the ways in which immigrant communities have been profoundly harmed — in particular, over the past four years — and towards the United States becoming more welcoming of immigrants and refugees. These Day One actions are the first of what we will fight to ensure are many immigrant-inclusive policies under the Biden administration.

Day One Executive Actions

Commitment to Preserve and Strengthen DACA

Background

In 2012, the Obama administration implemented Deferred Action for Childhood Arrivals (DACA), which grants eligible immigrant youth temporary protection from deportation for a two-year renewable period, and also provides them work authorization. More than 700,000 young immigrants were granted DACA and were able to pursue educational and professional opportunities, purchase homes, remain with their families, and live without fear of separation in the country that is their home.

The Trump administration abruptly terminated DACA on September 5, 2017. Several lawsuits were filed challenging the termination, and the U.S. Supreme Court concluded, on June 18, 2020, that the Trump administration had

terminated DACA unlawfully. The Trump administration again tried to dismantle DACA on July 28, 2020, by shortening the duration of work authorization and protection from deportation from two years to one year for renewal applicants and eliminating DACA for first-time applicants. NILC and our partners challenged that change, and a federal district court set the change aside. Nevertheless, DACA remains under threat, as there is ongoing litigation brought by the Texas and other states challenging its legality.

What the executive action does¹

President Biden issued a memorandum directing the secretary of Homeland Security, in consultation with the U.S. attorney general, to take all appropriate actions under the law to preserve and fortify DACA.

In addition to issuing the presidential memo, the Biden administration announced its plan to introduce the U.S. Citizenship Act of 2021 (see below), which would allow DACA recipients to immediately apply for lawful permanent residence.

Rescinding the Muslim and African Bans

Background

In his first week in office, President Trump issued the first of several versions of a Muslim ban, which prevented people from several Muslim-majority countries and refugees — who, in years leading up to the ban, increasingly were Muslim — from entering the U.S. As federal courts blocked multiple versions of the ban, the administration revised it several times in superficial attempts to conceal its anti-Muslim intent.

Despite numerous decisions from lower courts blocking the ban, in June 2018 the U.S. Supreme Court, in a 5-4 ruling in [Trump v. Hawaii](#),² ultimately allowed a version of the Muslim ban, Proclamation 9645, to go into effect and remain in place indefinitely until Congress or another president repeals it. Proclamation 9645 blocked most people from the Muslim-majority countries of Iran, Libya, Somalia, Syria, and Yemen (as well as a smaller number from North Korea and certain government officials from Venezuela) from coming to the U.S. on immigrant or nonimmigrant visas.

Since the Supreme Court's decision, the harms caused by the proclamation have been exacerbated by other Trump administration policies. In Proclamation 9983, issued in January 2020 and known as the African ban, the administration expanded the Muslim ban by adding Eritrea, Kyrgyzstan, Myanmar, Nigeria, Sudan, and Tanzania to the list of banned countries.



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What the executive action does³

President Biden signed a proclamation rescinding the Muslim ban (Proclamation 9645, and prior, related versions, Executive Order 13780 and Proclamation 9723) and African ban (Proclamation 9983) in their entirety, recognizing them as discriminatory and inconsistent with our history of religious liberty, and noting that they have inflicted pain on people kept apart because of them. The president acknowledged that the bans “are a stain on our national conscience” and that they undermined national security by jeopardizing America’s alliances and ability to serve as an example for the world.

The president directed the U.S. secretary of State to ensure that all consulates cease applying the bans. The rescission also requires that, within 45 days, the secretary of State report how to expedite visa applications pending on the date the proclamation was issued. Moreover, the proclamation directs the secretary of State to propose how to ensure that people previously denied under the bans have their files reconsidered or reopened, if possible, and likewise requires a plan to expedite the renewed or newly filed applications of previously denied applicants. As prior visa denials may harm an individual’s future applications, the rescission also requires that the secretary of State devise a plan to prevent prior ban-based denials harming future visa applications.

Last, the rescission requires reassessing the screening and vetting processes implemented as a result of the Muslim and African bans, including the State Department’s review of applicants’ social media accounts. It directs the secretary of State to determine whether those changes are actually useful. (More information is available in this [summary](#) by the No Muslim Ban Ever campaign.⁴)

Revision of Civil Immigration Enforcement Priorities and 100-Day Pause on Certain Removals

Background

In its first week in office, and from that point forward, the Trump administration pursued a host of measures that ratcheted up an already painfully high level of civil immigration enforcement within U.S. borders. This escalated a host of problems that communities across the country had long worked to resolve, by encouraging racial profiling, increasing and prolonging detention, and dramatically expanding deportations without due process. By making all undocumented immigrants a target for deportation, the Trump administration also clogged the already backlogged immigration court system with an astronomical increase in cases, while also seeking to speed the deportations of adults, children, and families eligible for protection or other relief from removal.

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What the executive action and memorandum do⁵

President Biden issued an Executive Order on the Revision of Civil Immigration Enforcement Policies and Priorities that revokes the priorities under the Trump administration, which made virtually everyone a target for immigration enforcement.

In addition, the U.S. Department of Homeland Security (DHS) issued a memorandum that directs DHS to review policies and practices concerning immigration enforcement and sets interim policies during the course of that review, including a 100-day pause on removals effective no later than January 22, 2021. Exceptions to this pause on removals are carved out for

1. individuals who, according to a written finding by the director of U.S. Immigration and Customs Enforcement (ICE), have engaged in or are suspected of terrorism or espionage or otherwise pose a danger to national security
2. those not physically present in the U.S. before November 1, 2020
3. those who have knowingly and voluntarily (and with access to counsel) waived any rights to remain in the U.S.
4. individuals who the acting director of ICE, in consultation with the general counsel, determines, on an individualized basis, must be removed as a matter of law

In the review process, agencies will develop recommendations that will take into consideration, among other things, policies for prioritizing the use of enforcement personnel, when to exercise prosecutorial discretion, policies governing detention capacity and conditions, and interaction with state and local law enforcement.

The interim priorities for civil immigration enforcement will go into effect on February 1, 2021, and focus on

1. people engaged in or suspected of terrorism or espionage, or whose apprehension, arrest and/or custody is necessary for national security
2. people apprehended at a port of entry while attempting to enter unlawfully on or after November 1, 2020, or who weren't present in the U.S. before November 1, 2020
3. people incarcerated in federal, state, and local prisons and jails released on or after January 20, 2021, who have been convicted of an "aggravated felony" offense and pose a threat to public safety



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These interim priorities will apply to a broad range of discretionary enforcement decisions, from those determining who is stopped for questioning and whether to detain an individual, to whether to settle a case or grant deferred action or parole. While these priorities are meant to more narrowly tailor interior enforcement, the memorandum does not prohibit the apprehension or arrest of individuals not identified as priorities.

The memorandum also requires DHS to prioritize (1) “provid[ing] sufficient staff and resources to enhance border security and conduct immigration and asylum processing at the southwest border fairly and efficiently”; and (2) “comply[ing] with COVID-19 protocols to protect the health and safety of DHS personnel and those members of the public with whom DHS personnel interact.”

The acting director of ICE is directed to issue, by February 1, 2021, written instructions with additional operational guidance on the “moratorium,” including a process for individualized case assessments for those who have been ordered removed for 90 days or more and for assessments of alternatives to removal.

Extension of Deferred Enforced Departure for Liberians and Improved Processing of Liberian Relief and Fairness Act Applications

Background

Deferred enforced departure (DED) provides protection from deportation and permission to work for eligible nationals of select countries. The president has authority to designate which nationals receive DED. Although Liberian nationals were eligible at first for temporary protected status (TPS) and then DED, the Trump administration decided to end DED for Liberians. Despite support for the program and the litigation that ensued, the Trump administration allowed DED for Liberians to expire on January 10, 2021, leaving approximately 4,000 Liberians at risk of deportation and without work authorization.

On December 20, 2019, Congress enacted the National Defense Authorization Act for Fiscal Year 2020, which includes a provision, Liberian Refugee Immigration Fairness (LRIF), that provides a path to lawful permanent residence and U.S. citizenship for certain Liberians and their families who have been living in the U.S. for years. Despite its enactment, the Trump administration failed to implement the program, by delaying the issuance of application guidance, establishing burdensome evidentiary requirements, and requiring unnecessary interviews. Fewer than half of eligible Liberians were able to apply for LRIF during the original application window, which expired on December 20, 2020. Recognizing the implementation delays, Congress extended the LRIF filing deadline to December 20, 2021. The Trump administration did not extend DED and its corresponding work authorization past January 10, 2021, leaving thousands of eligible Liberians without work authorization or protection from deportation.

What the executive action does⁶

The President’s memo “Reinstating Deferred Enforced Departure for Liberians” reinstates DED for those Liberians who had DED grants as of January 10, 2021, and directs the secretary of Homeland Security to provide them with work authorization through June 30, 2022. The memo also directs DHS to review LRIF application procedures and revise them to facilitate timely processing. As directed by the memo, the DHS secretary will publish a notice in the Federal Register stating that DED for Liberians has been reinstated and providing for the immediate allowance of work authorization for eligible Liberians, including the issuance of new or replacement documents where appropriate. The DED reinstatement will provide more time for eligible Liberians to apply for LRIF and take advantage of the congressional LRIF extension. The president’s memo excludes some Liberians from obtaining DED and work authorization, including those whose LRIF application were denied and those who were deported, excluded, or removed prior to January 20, 2021.



Census Inclusion of Immigrants

Background

Last July, the Trump administration issued a [memorandum](#) directing the U.S. Census Bureau to exclude undocumented immigrants from the decennial census count that is used to determine the apportionment of representatives by state in the U.S. House of Representatives.⁷ This despite the fact that the Constitution requires that the census count the “whole number of persons in each state” as part of the decennial census and apportionment process.

What the executive action does⁸

President Biden’s executive order revokes the prior administration’s orders setting out an unlawful plan to exclude non-U.S. citizens from the census and apportionment of congressional representatives and ensures that all residents are taken into account in ensuring that all states receive fair and lawful representation in Congress.

Termination of Border Wall Construction

Background

The Trump administration made numerous attempts to divert billions of dollars from other government budgets to fund a massive barrier along the U.S.’s entire southern border that would further militarize and ignore the safety of border communities and cause irreparable damage to protected lands and wildlife. Despite Congress explicitly rejecting an attempt to divert funds from military pay and pension funds, the Trump administration used national emergency declarations to justify its circumvention of congressional spending authority.

What the executive action does⁹

Under President Biden's proclamation, the new administration recognizes that construction of a massive wall is a waste of federal government resources. It calls Proclamation 9844 of February 15, 2019, unwarranted and terminates national emergency declarations that were invoked to justify this diversion of federal funds for a border wall. It further directs a pause in the construction of the wall to assess (1) the legality of the funding and contracting methods and (2) the administrative and contractual consequences of ceasing wall construction; and it orders an immediate pause on making funds available for wall projects and directs that a plan be devised for redirecting the funds within 60 days.

DHS Statement on the Suspension of New Enrollments in Migrant Protection Protocols

Background

On January 24, 2019, DHS announced [Migration Protection Protocols](#) (MPP),¹⁰ a new policy known as "Remain in Mexico," that required asylum-seekers at the U.S.'s southern border to remain in Mexico while they waited for their hearings before a U.S. immigration judge. Remain in Mexico has forced more than 67,000 asylum-seekers and migrants, including children, to wait several months in Mexican border towns where they may be exposed to [life-threatening conditions](#).¹¹ In March of 2020, DHS and the Executive Office for Immigration Review (EOIR) suspended indefinitely all Remain in Mexico hearings due to the COVID-19 pandemic.

What the statement does¹²

The U.S. Department of Homeland Security issued a statement on January 20, 2021, announcing the suspension of new enrollments in the Remain in Mexico program starting January 21, 2021. The statement asks MPP enrollees to remain where they are pending further information from U.S. officials. The situation for many enrolled in MPP is dire, as many individuals have suffered from violence and kidnappings while waiting for their hearings in U.S. immigration court. Advocates have called on the Biden administration to allow those enrolled in Remain in Mexico to be temporarily paroled into the U.S. while they wait for their U.S. immigration court hearings.

Day One Immigration Bill: U.S. Citizenship Act of 2021

Background

On his first day in office, President Biden sent the Biden-Harris immigration reform bill to Congress, outlining his transformative vision and commitment to building a 21st century immigration system that welcomes immigrants and

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refugees. While the legislative text has not been made publicly available, the White House released a [fact sheet](#) revealing key provisions of the bill, known as the U.S. Citizenship Act of 2021.¹³ The members of Congress leading the introduction of the Biden-Harris immigration bill are [Rep. Linda Sánchez \(D-CA\)](#) in the House and [Sen. Robert Menendez \(D-NJ\)](#) in the Senate.¹⁴

Select Key Provisions

In a dramatic shift away from the prior administration's harsh immigration rhetoric, the U.S. Citizenship Act of 2021 promotes inclusion. The bill removes the word "alien" from immigration law and replaces it with "noncitizen." This bill is a welcome departure from the racism and xenophobia of the Trump era and provides funding to promote integration and inclusion, increasing English-language instruction, and providing assistance to individuals seeking to become U.S. citizens.

Core to this bill is the creation of new pathways to U.S. citizenship for millions of undocumented immigrants who live, work, and are an essential part of the United States. Undocumented individuals are permitted to initially apply for temporary lawful status with the ability to apply for lawful permanent residence after five years, whereas DACA recipients, people with temporary protected status (TPS), and farm workers are eligible to apply for lawful permanent residence immediately. After three years, qualifying lawful permanent residents under this bill are permitted to apply for citizenship.

According to the outline, the bill also:

- ▶ Includes provisions from the NO BAN Act, which, among other things, seeks to prevent any president from issuing future bans such as the discriminatory Muslim and African bans – bans the Biden administration rescinded on Day One – by limiting dangerously overbroad executive authority to suspend people from entering the U.S.
- ▶ Aims to reduce the ballooning immigration court backlog by improving technology and expanding training for immigration judges. In an effort to make immigration court proceedings more fair, the bill provides immigration judges with discretion to review cases and grant relief to certain individuals. The bill also authorizes funding for legal orientation programs and counsel for children and vulnerable individuals.
- ▶ Supports asylum-seekers by eliminating the one-year filing deadline for asylum claims and allocating additional funding to reduce asylum application backlogs.
- ▶ Protects vulnerable populations by raising the annual cap of U visas from 10,000 to 30,000.

- ▶ Removes barriers to family-based immigration, repealing the three- and ten-year bars, as well as the permanent bar on admission for individuals unlawfully present in the United States from adjusting to lawful status.
- ▶ Seeks to reduce lengthy visa backlogs by recapturing immigrant visas lost to bureaucratic delays.
- ▶ Improves protections for immigrant workers, ensuring that victims of serious labor violations are afforded an opportunity to apply for relief from deportation without fear of retaliation.
- ▶ Creates a \$4 billion four-year interagency plan that would provide assistance to El Salvador, Guatemala, and Honduras to address the underlying causes of migration, and creates new systems for Central Americans to initiate the process — from within their countries — of seeking protection and resettlement to the U.S. or other partner countries.
- ▶ Calls for the deployment of improved technologies at U.S. ports of entry and in between ports of entry. While the bill’s fact sheet mentions that the DHS inspector general is authorized to conduct oversight of this technology, the fact sheet does not address to what extent it will include robust privacy laws to prevent the sharing of data between local, state, federal, and foreign agencies for use in immigration enforcement. Mass data collection of personal information and the storage of sensitive information is increasingly vulnerable to misuse by government employees and foreign actors.

The fact sheet does not specifically address immigrants’ access to health care and nutrition supports for those obtaining lawful immigration status under this bill. Current law denies many types of immigrants access to such programs, leading to harmful effects that have been profoundly exacerbated during the COVID-19 pandemic, in particular because of the high number of immigrants who are essential workers. Given the importance of addressing these access barriers, we will closely analyze and advocate for immigrant-inclusive proposals in this and other legislation.



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Endnotes

¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/>.

² https://www.supremecourt.gov/opinions/17pdf/17-965_h315.pdf.

³ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-ending-discriminatory-bans-on-entry-to-the-united-states/>.

⁴ <https://ca.cair.com/sfba/updates/ban-rescission/>.

⁵ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-the-revision-of-civil-immigration-enforcement-policies-and-priorities/>;
https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf.

⁶ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/reinstating-deferred-enforced-departure-for-liberians/>.

⁷ <https://webcache.googleusercontent.com/search?q=cache:DgDsMsqlbw0J:https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-alien-apportionment-base-following-2020-census/+&cd=1&hl=en&ct=clnk&gl=us>.

⁸ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-ensuring-a-lawful-and-accurate-enumeration-and-apportionment-pursuant-to-decennial-census/>.

⁹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>.

¹⁰ <https://www.dhs.gov/migrant-protection-protocols>.

¹¹ <https://www.humanrightsfirst.org/campaign/remain-mexico>.

¹² <https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program>.

¹³ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/>.

¹⁴ <https://lindasanchez.house.gov/media-center/press-releases/s-nchez-lead-biden-harris-immigration-legislation-house>; <https://www.menendez.senate.gov/newsroom/press/menendez-to-lead-biden-harris-immigration-legislation-in-the-senate>.