



# Revisiting ‘A Pen and a Phone’: A Midterm Assessment

What immigration actions has the president taken, and how effective have they been?

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## Introduction

The partial government shutdown took up so much oxygen in the public arena that virtually no aspect of border security other than a wall is being talked about.

Yet, as important as a physical barrier may be (see [here](#) and [here](#)), there are many more aspects to achieving a fair and balanced immigration policy that serves the nation's interests. Poll after poll shows not just border security, but immigration issues generally, as ranking at or near the top of ordinary Americans' concerns.

In April 2016 — before it was clear that Donald Trump would be the next president — we published “[A Pen and a Phone: 79 immigration actions the next president can take](#)”. Our *Backgrounder* was a guide to actions that we believed could, and should, be done to re-set the pendulum of immigration policies after its dramatic swing toward leniency and laxity during the Obama years. Most significantly, it outlined actions that might legally be taken (unlike the constitutionally dubious and extra-statutory DACA and DAPA programs) without need to rely on legislative actions by Congress — a dubious proposition in the best of times.

The wisdom of our emphasis on presidential actions in lieu of statutory change has been proven during the past two years in which, notwithstanding a Republican president and a Republican majority in both chambers of Congress, little of immigration significance occurred in the legislative arena.

Donald Trump is now two years into his presidential term, and we believe the time is right to look back and assess what progress, if any, has been made toward the 79 recommendations we previously made. As we stated in that report:

*Our suggestions for executive action cover the full spectrum of immigration, from lawful permanent residents to nonimmigrant entrants to illegal immigration. Note that some of our suggestions touch on more than one of these areas simultaneously, since such black-and-white categorizations can be imprecise. An example is Temporary Protected Status (TPS), because both illegal aliens and nonimmigrants in lawful status can avail themselves of the benefits of TPS, when it's offered.*

This assessment follows the format of the [original report](#), although in the interest of brevity we have reduced the verbiage associated with each recommended action. Each recommendation is then followed by our analysis of what has or hasn't been accomplished since the president took office.

## Immigration Benefits

1. *Restore the U.S. Citizenship and Immigration Services Fraud Detection and National Security Division (USCIS FDNS) analytical program to conduct regular benefits fraud assessments and enhance screening for categories and types of applicants deemed to be higher risk.*

*A parallel program should also be implemented at the Department of State (DOS) so that collectively all types of benefits — including green cards, work permits, immigrant visas, and non-immigrant visas — are analyzed for the risk of fraud. The high number of overstays, for example, suggests that more vetting is needed at the consular officer level to screen nonimmigrant applicants for fraud.*

At the headquarters level, the type of ongoing assessments we have suggested, which would provide a baseline on which to gauge fraud levels and types of fraud in each benefits area, have not been implemented. Although USCIS has added significant resources to FDNS units in field offices, it is not clear that they have either developed the skills to do some of the complex investigative work they've been charged with or been granted freedom from interference from higher-level managers in field offices, many of whom see FDNS as an impediment to a numbers-based system of completions (see [here](#), [here](#), and [here](#)). This stems from an institutional mindset that it is easier to approve than to investigate or deny because both of the latter affect completions and backlogs. This attitude must change.

Nevertheless, it must be said that USCIS has implemented some measures that will assist in detecting and preventing fraud, including collecting additional information from employers petitioning for guestworkers, launching a fraud tip line, stepping up site visits and focusing them more directly on fraud, empowering adjudicators to require more evidence to support applications, and scrutinizing renewal applications for prior errors. (For a summary of these reforms see [here](#).)

The State Department has been less targeted than USCIS, but has issued directives to consular officers to reduce the number of applications they are required to complete in a day and issued communiques to the effect that consular officers should feel empowered to conduct appropriate scrutiny as needed. It is not yet clear how successful these steps will be.

2. *Don't accept petitions from prospective sponsors of immigrants if no immigrant visa or adjustment will be possible within two years.*

Neither USCIS nor DOS has taken any actions to adopt this recommendation. This is inexplicable since accepting such petitions simply increases backlogs in an artificial way. We suspect it may be to enhance fee revenues, which in our view is an inadequate justification: Why accept work that cannot be accomplished?

3. *Don't issue work permits to aliens in removal proceedings or to spouses of H-visa guestworkers, H-visa guestworkers awaiting eligibility to adjust to resident status, and others. Adding these individuals to the pool of eligible workers diminishes work opportunities for citizens and resident aliens.*

USCIS has said that it intends to reverse an Obama-era rule allowing the issuance of work permits to certain alien spouses of foreign workers, but the proposed rule has not yet been issued.

In other areas, such as the granting of work permits to aliens in removal proceedings after a certain period of time, there has been no change in procedure or regulation. As a result, American citizens and legal residents, particularly those at the bottom of the economic ladder, remain in competition for job opportunities with aliens, including those in removal proceedings, who are granted employment as a matter of “discretion”.

# Lawful Permanent Immigration

## *Biometrics*

4. *Require USCIS to collect DNA samples from all permanent arrivals and forward them to the FBI for inclusion in its nationwide DNA database or by establishing a Department of Homeland Security (DHS) database for that purpose. Levy the same DNA requirement on aliens who adjust status after entry.*

No steps have been taken in this regard.

5. *Require mandatory DNA matching prior to admission for all individuals claiming the right to enter based on family status — parents, children, siblings — to ensure that the familial relationship exists. This can be done on a phased-in basis starting with the high-fraud-risk categories first.*

In these areas so susceptible to fraud, DNA testing remains the exception rather than the norm, perhaps because of costs. One way to ameliorate this concern would be to establish a fee for required DNA testing.

6. *Direct USCIS to vet all citizens and resident aliens who petition on behalf of aliens, in addition to vetting the beneficiaries themselves. As has become obvious, vetting both petitioner and beneficiary is important and necessary to the national security and public safety. (See [here](#) and [here](#).)*

USCIS and DOS have taken preliminary but important steps in this regard, for instance through a [search of social media sites](#) relating to beneficiaries and visa applicants. Given the importance that President Trump has articulated with regard to “[enhanced vetting](#)” to prevent terrorist entry, substantially more could be done to bolster robust national security vetting of all parties, including petitioners, where immigration petitions on behalf of alien beneficiaries are concerned.

## *Investors*

7. *Institute changes to the ill-run and deeply flawed immigrant investor (EB-5) program.*

One of the ironies of the partial government shutdown was that the EB-5 program was temporarily shut down as well, simply because the program relies on a statute that has been regularly reauthorized with embedded sunset clauses. We would like to think that this time-out would persuade lawmakers to reconsider the worth of a program so sadly ineffectual and plagued with fraud and corruption, but have no reason to believe they won't again reauthorize the program at the first chance.

At the regulatory level, though, on January 13, 2017, the Obama administration issued a [sweeping set of proposed changes in the EB-5 regulations](#) that drew praise from many members of Congress on both sides of the aisle. The Trump administration has not acted upon them.

- A. *To curb corruption, require all beneficial owners of EB-5 regional centers, developers, and alien investors to be identified in public records by full name, current residence, current citizenship, and date of birth.*

No steps have been taken in this regard.

- B. *For security reasons, reverse the policy that the government cannot terminate regional centers, and issue an executive order (EO) directing that regional centers may not be owned in whole or in part by foreign governments, or corporate entities substantially owned by foreign governments.*

No steps have been taken in this regard.

- C. *In order to move the benefits of this program from glitzy downtown areas in big cities to depressed areas (as the law demands), issue new regulatory definitions. “Targeted Employment Areas” must consist of no more than three census tracts adjoining each other and may not be linked through bodies of water or other uninhabited areas. Nor will census*

*tracts that only touch each other tangentially or diagonally be permitted. These are among the ways in which regional centers and developers have gotten around the requirement that the program assist depressed areas.*

No steps have been taken in this regard.

- D. Suspend granting any more EB-5 regional center licenses until the number of regional centers shrinks considerably; perhaps no more than one per state or territory in total. Presently there are over 700 existing EB-5 regional centers — far more than can prosper or be scrutinized, resulting in minimal or nonexistent oversight and corruption, fraud, and deception.*

No steps have been taken in this regard; in fact things have gotten worse. There were, according to USCIS, [887 regional centers](#) as of January 7, 2019.

## Terrorism and National Security

8. *Cease issuing “exemptions” (waivers) to known terrorists and supporters of terrorism, individually or by group, that permit them to enter the United States as immigrants, asylees, or refugees. DHS issued over 1,500 such exemptions in 2014 alone, according to a report it submitted to Congress.*

To our knowledge, no additional “exemptions” have been issued. However, neither has any step been taken by the Trump administration to officially rescind the policy or reject the legal interpretation behind these exemptions that was published on February 5, 2014, by the Obama administration in the *Federal Register*, the official voice of the federal government. We believe this was based on a flawed interpretation of the breadth of the [discretionary grounds](#) contained in the Immigration and Nationality Act (INA). Our belief that a narrow view should be applied to such conduct was bolstered recently by a decision in the 9<sup>th</sup> Circuit Court of Appeals, the most liberal federal circuit in the country, in [upholding an order of removal](#) against a Nepalese man who provided \$50 in support to a designated Nepalese terrorist organization.

9. *Grant no more extensions for states not yet compliant with the REAL ID Act of 2005, which enacted the 9/11 Commission recommendation that the federal government “set standards for the issuance of ... identification, such as driver’s licenses.” As a result, the Commission’s recommendations continue to be ignored over 17 years after the terrorist attacks. Under the Obama administration, DHS [announced](#) it would not require compliant licenses for air travel until October 2020.*

The Trump White House has taken no steps to rescind the prior administration’s announcement of extensions to states; in fact, DHS secretary Nielsen has [authorized several extensions](#). As a result, a number of states, including some that deem themselves “sanctuaries” and that grant driver’s licenses to illegal aliens, such as Illinois and Oregon, are not yet compliant with the Real ID Act. California, another populous sanctuary state that issues driver’s licenses to illegal aliens, only came into compliance this January. We find this incomprehensible and a significant threat to homeland security, including safe air travel.

## Nonimmigrants

10. *Rescind [EO 13597](#), which resulted in the issuance of massive numbers of nonimmigrant visas to countries such as China and Brazil with high visa refusal rates. Wholesale granting of visas contributes to the vastly increasing number of overstays among illegal aliens residing and working in United States. Brazil alone accounts for about 10 percent of all short-term visitor visa overstays.*

By executive order issued on June 21, 2017, President Trump amended EO 13597 by eliminating Section 2, the most egregious portion of that EO. The State Department has taken some limited steps to address overstays, but still manages to avoid accountability for this problem.

In addition, in light of a variety of recent highly credible governmental and nongovernmental reports as regards the wholesale theft of sensitive data and information, often by graduate students and exchange scholars from countries such as China and

Iran, we believe that additional inhibiting steps need to be taken in the vetting and processing of applicants for those kinds of visas, particularly where STEM courses of study are concerned.

11. *Reduce the default grant for authorized nonimmigrant visitor stays to 30 days unless travelers provide justification for a longer stay at the time a visa is issued or at entry for Visa Waiver Program travelers.*

No steps have been taken in this regard.

12. *Direct a maximum authorized duration of stay of 72 hours for Border Crossing Card holders.*

In 2004, the default length of stay for Mexican nonimmigrants using a Border Crossing Card (BCC) was extended from 72 hours to 30 days, via an interim rule published in the [Federal Register](#). We believe extending the default authorized stay to 30 days has led to abuse of the BCC and encouraged Mexican BCC holders to seek unlawful employment in the United States. For this reason the regulation should be rolled back. Yet to date, no steps have been taken in this regard.

13. *Direct the Social Security Administration (SSA) to take affirmative steps to stop issuing Social Security numbers (SSNs) to children of foreign diplomats; they are not U.S. citizens under the Constitution. The SSA [is aware](#) that they are not entitled to SSNs at birth, but acknowledges that some are receiving the numbers, meaning jobs and benefits reserved for U.S. citizens could be granted to these children.*

No steps have been taken in this regard.

14. *Announce that the United States will not tolerate birth tourism or fraud committed by perpetrators who hide their true intentions when traveling to the United States. Perpetrators should be fined and/or jailed under federal statutes. DOS visa officers must also be given greater authority to deny entry when fraud is suspected. We [estimate](#) as many as 36,000 birth tourists travel to the United States each year. Announcing that U.S. passports will not be granted to children born here through such visa fraud will discourage fraudulent activity.*

The administration has denied or revoked the passports of a number of individuals who apparently received them through fraudulent birth registrations filed by corrupt midwives in Texas. Though this is a different matter than what we proposed, it suggests the viability of adopting such a policy. Additionally, ICE has engaged in a series of enforcement actions to [shut down centers](#) catering to aliens seeking to enter for the sole purpose of giving birth to children to accrue citizenship. These are encouraging signs, but do not establish the basis for a sound and rigorous national policy.

15. *Deny nonimmigrant visas to women in the third trimester of pregnancy, absent compelling circumstances and a certificate attesting that it is safe to travel for the woman and fetus, such certificates to be issued only by a pre-approved list of competent medical authorities in the country of origin.*

No steps have been taken in this regard.

16. *Hasten implementing biometric entry controls at land ports of entry, where large numbers of aliens enter with visas or Border Crossing Cards, but are untracked; complete implementation of the long-delayed biometric exit system to complement the biometric entry system. This reconciles entries to exits and provides data on which to build a visa overstay enforcement program.*

An agreement with Canada has been concluded and enacted that will permit that country's border agencies to collect biometric entry data and share the information with our government, and vice versa. The result will be that each nation's entries will reflect a departure from the other nation, thus substantially [filling a gap in exit data where the U.S. northern border is concerned](#). Ironically, our own government has taken only limited steps to further biometric exit controls. For instance, Customs and Border Protection (CBP) has initiated steps to take biometric (facial) images from exiting international travelers, which are compared to repositories of data, but according to its own information, retains the images for a very short period of time, after which they are deleted. What's more, the program has not been implemented nationally. (See [here](#) and [here](#).) Unfortunately, this leaves large swathes of entry and exit data uncollected, including most significantly along the southern land border with Mexico.



17. *Initiate a nationwide program requiring Immigration and Customs Enforcement (ICE) to dedicate significant resources to locate and arrest visa- and VWP-overstays. (VWP overstays are readily removed because they surrender rights to a court hearing when they enter using the program; this makes it exceedingly cost-effective to engage in deterrence by enforcement.)*

No steps have been taken in this regard.

On a related note, though, USCIS has recently issued updated, common-sense [guidelines](#) on the manner of calculating “unlawful presence” when foreign students (and exchange visitors) fall out of status — for instance, by failing to attend school, or for working without permission or other such violations of the conditions of their status.

The change in the unlawful presence policy for F, J, and M non-immigrants tightens compliance requirements by making clear that the clock starts ticking on unlawful presence when the individual is out of status, not when the government notifies the individual that he or she is out of status, a nonsensical interpretive requirement because notifying foreign students and visitors who are out of status is often a virtual impossibility since they also violate status by changing residence without notifying the government of their new address, as required by the registration requirements of the INA.

The change is important, though, because aliens who accrue a certain number of days in unlawful status become ineligible to receive immigration benefits. This policy modification ensures that the law is applied as it was intended, and not based on some artificial calculation that woefully undercounts the number of days that an alien has violated his or her status.

As is so often the case these days, the updated policy is the subject of a lawsuit filed by various universities. Plaintiffs in *Guildford College v Nielsen* hope to block the changes; the administration has filed a motion for dismissal in the case. Why, one is obliged to wonder, do universities — which only possess authority to accept foreign students and exchange visitors on approval of the government subject to their commitment to ensure that they act responsibly to ensure compliance of their student and exchange visitor population — think they have standing to object to policies governing the students themselves?

### *Skilled and Unskilled Workers Entering the Workforce for Extended Periods*

Few things could be more disappointing than the president’s attitude toward temporary workers. Very little has been done to curb H-1B, H-2A, and H-2B (skilled and unskilled worker) program abuses by employers addicted to cheap labor at the expense of American and resident alien workers trying to compete in the marketplace.

These programs were [flawed from their conception](#), but much of the damage could be mitigated through tight federal controls. At the agency level, we note that rank-and-file adjudicators, perhaps ordered to do so or perhaps acting on their own, have made what appear to be more Requests for Evidence regarding specific applications for the H visas; this is helpful, but how often this has happened and the extent to which applications have been denied as a result is not known, and in any case, it is a Band-Aid fix for a substantial wound.

Under the president’s tenure, more temporary workers than ever before are finding their way into the American economy and, once here, exploiting every opportunity to remain permanently. In fact, even as this report was being prepared, President Trump tweeted that H-1B workers, many of whom are not necessary to American industry or technology and whose skills are no more than ordinary at best, should anticipate changes that might even include a [“pathway to citizenship”](#).

We find these activities incomprehensible, and contrary to the policies outlined in the presidential EOs [“Buy American/Hire American”](#) and [“Establishing the President’s National Council for the American Worker”](#). They also don’t square with prior remarks made by the president and his own senior staff. See, for instance, commentary made concomitant with issuance of the presidential executive order on workforce development (“President Trump is fighting for America’s forgotten men and women, taking action to help retrain our workforce and equip students and workers with the skills they need to succeed”), [here](#).

18. *Substantially increase the application fees paid by employers of nonimmigrant workers in the temporary work visa categories of H-1B, H-2A, H-2B, L-1, Q-1, and J-1 exchange visitors (when they are hired by corporate entities).*

Not only have no steps been taken to increase these fees (which were last raised in 2016), but the proposed new regulations for the H-1B applications starting in 2020 would drop the current practice of forcing employers of these alien workers to make, in effect, no-interest loans to USCIS. These loans come about when an employer files an unsuccessful application for an H-1B worker, paying the full set of fees, but not getting this money back until months later when it is clear that the application will not be accepted. These new regulations would seem to invite employers to file for many more workers than they actually need, as there would be no fee for the initial applications, only for those that had already been approved.

19. *To diminish the negative impact of the H-1B program on citizens and resident aliens in the workforce (particularly older, at-risk workers susceptible to being laid off as a corporate means of avoiding pensions or benefits), establish rules directing denial of H-1B petitions demanding a bachelor's degree if the salary is less than \$80,000 a year or, for those demanding an advanced degree, \$90,000 a year, with pay level requirements adjusted yearly for inflation.*

No steps have been taken in this regard. However, the administration has taken some steps to tighten the standards of the H-1B and other guestworker programs, for example by changing the selection process to work more favorably for applicants with advanced degrees and by determining that low-level computer programmers are not sufficiently qualified to receive visas.

20. *Deny allocation of visas to employers who lay off citizens or resident aliens in order to backfill them with H-visa holders or other temporary alien workers. Additionally, revoke the visas should layoffs of preexisting workers occur within six months after arrival of H visa workers.*

No steps have been taken in this regard.

21. *Direct that employing entities found by a court or tribunal of competent jurisdiction to have violated prevailing wage guidelines, or that have improperly withheld pay or overtime or otherwise violated employment laws, be deemed ineligible to obtain H-visa allocations for a period of two to five years.*

No steps have been taken in this regard.

22. *Revert to the traditional methodology of counting all workers admitted in a year to be subject to the annual cap; work with Congress to rescind the legal provision permitting employers to bring back H-2B nonimmigrants who have departed the United States in circumvention of the H-2B application and approval process.*

Members of Congress continue to propose expansions to the H-2B visa program, such as by exempting workers who renew visas from the cap and by raising the cap. For example, in 2017 and 2018, Congress approved an open-ended increase in the H-2B cap. Following these “nudges” from Congress, for each of those years the administration, through DHS, made ad hoc decisions to expand the number of H-2B workers in those two fall seasons by 15,000, although the additional numbers were limited to employers who could show “irreparable harm” if they did not have access to the visas. This is a higher standard than the program generally requires, and the administration did show restraint in expanding program availability, but it is our view that no expansions should have occurred or been permitted.

23. *Direct ICE and USCIS to coordinate and initiate a program to systematically investigate, prosecute, or take available civil actions against abuses within each of the nonimmigrant worker categories. Issue an EO directing debarment of violating employers from use of the programs for a period of two to five years, depending on the severity of the violation.*

No steps have been taken in this regard. The failure of USCIS and ICE to work cooperatively together on this, and other shared matters involving the integrity of benefits, continues to deeply concern us. The existing DHS organizational structure is entirely too stove-piped to ensure the kind of close coordination required to deter and detect fraud in the immigration system. Although some notable prosecutions or civil actions have occurred, in a number of instances the investigating agency was not ICE but the FBI, which doesn't have primary jurisdiction in such cases. This is equally true of other prosecutions as well, such as in EB-5 and asylum fraud. These cases lend weight to our concerns over the lack of coordinated activity between these two DHS immigration agencies.

## Foreign Students

24. *Terminate the Optional Practical Training (OPT) program that allows foreign students to work for years after graduation, and to work through their existing OPT expiration date without need for extensions. (Eliminating OPT would end a program that evades statutory caps on other nonimmigrant cheap labor categories.) Regulate OPT programs strictly and reduce the maximum period that a student can be in OPT status to six months. Finally, require that any student applying for OPT sign an agreement to return to his/her home country for a **minimum of two years**, just like the J exchange visitor requirement, but with no waivers available.*

The administration has begun the process of rolling back the exceptionally long period of OPT now permitted to foreign students who have graduated, under which they themselves engage in employment that may or may not even have any relationship to their degree courses of study. A point that should be made about the continued existence of any OPT program is that it poses a threat to national security, because graduated students from certain countries who are free to seek employment where they choose may be (and in several instances have been proven to be, at the direction of their home country) engaged in the theft of sensitive or critical technologies and data, particularly if they have dual civilian-military applications.

Further, no action has been taken to eliminate the OPT subsidy for U.S. employers who hire aliens who have graduated from U.S. colleges. These employers, and these alien graduates, are excused from the 8.25 percent payroll taxes that support our Medicare and Social Security programs. Were an employer to hire a citizen college graduate, rather than an alien, it would have to pay the full tab. This is incomprehensible. In 2014, the Social Security fund was \$34 billion in deficit, and estimates suggest it **may be completely insolvent by 2035**. This raises the question: Why should America's elderly and pensioners be underwriting subsidies to U.S. employers for *not* hiring citizen workers?

25. *Eliminate or scale back visas for Summer Work/Travel, au pairs, and other exchange visitor subcategories involving employment used by certain industries to beef up temporary workers and depress working conditions for permanent employees. This can be done through establishing higher standards that winnow out employer/sponsors who abuse the program.*

No steps have been taken by the government in this regard although, ironically, au pairs themselves have initiated lawsuits against employers when taken advantage of; **a \$65.5 million settlement is alleged to be in the offing**. Perhaps once employers recognize that they underpay exchange visitor au pairs at their peril, it will act as an incentive to encourage them instead to provide summer opportunities to underprivileged youth in the United States.

But, of course, primary responsibility for program reform rests with the U.S. government, specifically DOS. Recognizing the importance of jobs in the education of young people and the formation of valuable work habits, DOS should eliminate financial incentives for employers to hire foreign students, and should prohibit employers from accepting travel or other gratuities from the agencies that recruit or sponsor the foreign students. Employers of more than 10 foreign students should be required to demonstrate that they have made rigorous efforts to recruit Americans and lawful workers in the United States. Such efforts should go beyond simple print or social media advertisements or announcements. Moreover, DOS oversight should ensure that American employers provide meaningful cultural exchange experiences for these exchange visitor students. Finally, exchange visitors should be forbidden to work more than 60 hours a week.

26. *Initiate a foreign student compliance program in which agents make significant efforts to take custody of aliens who quit school, illegally take jobs, or otherwise violate conditions of status. Require ICE — which uses only a fraction of the monies collected from foreign student fees to enforce the law — to engage in substantive, aggressive, and timely enforcement activities against both students who violate their status and against schools that act as “visa mills” instead of providing a legitimate education.*

No significant steps have been taken in this regard. ICE spends almost no productive agent time in enforcing compliance with immigration laws and regulations relating to foreign students. It also remains sadly behind in policing visa mills; even state accrediting agencies are doing a better job of closing down dubious institutions of “learning” whose primary purpose is to open a gateway to the United States through the foreign student program, rather than providing legitimate courses of study. In addition, we are unaware of any steps taken by the State Department to instruct consular officers to avoid issuing visas to students attending educational institutions of dubious reputations or that are obvious visa mills.



27. Direct that institutions most likely to act as [visa mills](#) (which history reflects have often been private-for-profit schools and English-language training institutes) be subject to yearly supervision and inspection, with enhanced fees to pay the cost of additional resources expended on these activities, including at least one unannounced site visit. Require such entities to provide the full name, citizenship, date of birth, and current address of all beneficial owners unless the entity has stock traded on one of the major national exchanges. Additionally require each to post in the main newspapers in their area key data, such as the number of students, number of classrooms utilized, number (rounded) of books in their libraries, and total dollars of tuition collected and of scholarships awarded.

No steps have been taken in this regard.

## Asylees and Refugees

28. Deny asylum to any alien who could have sought asylum in countries through which he or she has traveled en route to the United States. Interpret “could have sought asylum” to mean any country that is signatory to the international agreements on non-refoulement (non-return), which, significantly, includes Mexico.

Attorney General (AG) Jeff Sessions [took steps](#) to address this issue in his decision in [Matter of A-B-](#). Specifically, in footnote 12 of that decision, he reminded adjudicators that asylum is a discretionary form of relief, and noted:

*Relevant discretionary factors include, inter alia, the circumvention of orderly refugee procedures; whether the alien passed through any other countries or arrived in the United States directly from her country; whether orderly refugee procedures were in fact available to help her in any country she passed through; whether she made any attempts to seek asylum before coming to the United States; the length of time the alien remained in a third country; and her living conditions, safety, and potential for long-term residency there.*

Additional steps were taken in connection with the [most recent caravan](#)’s arrival in the United States. At that time, the administration, seeking to curb unlawful border crossings, expanded a “metering” policy that required individuals to queue up at ports of entry to file asylum claims while waiting on the Mexican border, and indicated that it would not entertain them from individuals after they had illegally entered. This is not precisely the same as our suggestion to invoke the “safe third country rule”, but is as close as the administration came. However, a lawsuit was immediately filed to block adoption of the new policy, resulting in an [injunction by a federal judge in the Northern District of California](#), which the administration must now litigate through the appellate process, probably to the Supreme Court, to overcome.

Nor is Mexico the only possible place to seek and be processed for asylum. Central Americans claiming persecution could seek asylum at Costa Rica’s refugee processing center instead of heading to the United States. This center was set up (and mostly funded) by the United States under the Obama administration in collaboration with the UN refugee agency (UNHCR) and the International Organization for Migration (IOM) to offer individuals from El Salvador, Guatemala, and Honduras a safe and legal alternative to a dangerous journey to the United States. For the record, this center is still running under the Trump administration — but at what cost and with what minimal results. One is left to conclude that a large majority of these migrants choose to come straight to the United States as a matter of [preferred destination](#), and not persecution.

We also feel obliged to note that another outcome of this massive surge of asylum cases, many of them non-meritorious if not outright frivolous, is that it disturbs the balance between the asylum and refugee programs. Because of the surge, refugee officers have been diverted to handle the burgeoning number of asylum claims and try to keep the backlog from growing further. Resource gains in the one program are offset by losses in the other. The consequence is obvious: The U.S. refugee program numbers for fiscal year 2018 dropped, and almost certainly will be lower in FFY 2019 and beyond. Some advocates might argue that USCIS needs to apportion more officers to both programs, but that, too, is a zero-sum game. Neither the asylum nor refugee programs are fee generating. They are funded by diverting monies from USCIS’s examinations fee account, which means that aliens who are in fact paying for benefits applications are forced to wait as backlogs develop in each of those service areas because the money has been put into these and other non-funded programs such as DACA.

29. *Comply with statutory requirements to detain individuals who lack legal status but who seek asylum, with few, clearly articulated, exceptions. Doing so will restore integrity to an out-of-control system that encourages both border surges and asylum fraud.*

For a short period of time, the administration not only attempted this, but began to establish a “zero tolerance” policy in which adult illegal crossers were prosecuted criminally. This required separating adults from minors who had accompanied them, and resulted in a significant amount of adverse public commentary. The policy was [dropped by EO](#) and, although prosecution for illegal entry is once again unlikely, the administration is attempting to revise regulations on how illegal migrants who bring children with them are handled, which would permit their detention potentially until the conclusion of their immigration case. This proposed policy is currently tied up in court following lawsuits from advocacy groups. Consequently, adults who bring minors can be held for no longer than 20 days. In reality, many are released almost immediately due to lack of CBP and ICE detention space.

As a result of the catch and release policies, more partial family units and “unaccompanied” minors (many of whom are in fact following to join parents already living and working illegally) have crossed in recent months [than any time in the history of the United States](#). The morally repugnant consequence is that current policies have resulted in the United States government not only becoming an unwilling participant, but an actual “state sponsor” of massive human smuggling and trafficking of minors and families, often by ruthless criminal organizations.

30. *Reinstitute the mandatory six-month waiting period for pending asylum cases before issuing employment authorization documents (EADs).*

Discretionary grants of employment authorization — based on the prior administration’s expansive interpretation of the law at INA Section 274A(h)(3) granting authority to the DHS secretary to issue work authorization — have substantially declined because the administration is hewing to the six-month rule both within DHS and EOIR. It’s important to note, though, that because USCIS’ current asylum backlog has reached some 300,000 cases, claiming asylum is still an easy method of exploiting the system merely to get employment authorizations. USCIS Director Francis Cissna, [testified](#) on this issue:

*Delays in the timely processing of asylum applications are detrimental to legitimate asylum seekers. Furthermore, while a series of security checks are initiated when an asylum application is filed, lingering backlogs can be exploited and used to undermine national security and the integrity of the asylum system. For example, the existence of significant backlogs may attract applicants who submit frivolous asylum applications solely to obtain employment authorization, knowing that they will wait months or years in the backlog before their claim can be heard and denied.*

31. *Require a full re-vetting of asylees or refugees once they apply for adjustment to permanent residence or upon re-entry after travel to their country of persecution, since such travel raises questions about the legitimacy of the persecution claim in the first place.*

No steps have been taken in this regard, although it seems to us a logical outflow of the president’s insistence on extreme vetting to protect the homeland against national security and terrorism threats. Advocates may argue that aliens applying for resident status are again vetted against national crime and security information databases when they seek to adjust status, but what we are suggesting is something substantially beyond this de minimis standard, including but not limited to examination of social media and other indices of one’s eligibility to adjust, and perhaps for a limited pool of applicants based on statistical sampling methods, in-depth examination of their bona fides and eligibility to adjust.

A re-vetting of aliens who have received refugee or asylee status is particularly important to examine whether they return to the country from which they claimed to fear persecution. While there is no bar to doing so, it raises reasonable questions as to whether the claim was legitimate in the first place. If they returned using a refugee travel document, how is it that they were able to do so without arrest and imprisonment? If they applied for and received a passport from that country to effect the return travel, what does that tell us about the assertion that they feared for their lives from the persecuting country? These questions should be routinely raised and answered in such circumstances.

## Temporary Protected Status (TPS)

32. *Return “temporary” to the spirit of the law as intended. Unfortunately, the [direct letter of the law](#) provides entirely too much latitude for abuse through endless extensions. Though a long-term fix will likely require statutory amendment by Congress to be fully effective, in the meantime the new president should direct termination of TPS designations that have been in effect for years for several nations (such as [El Salvador](#)), which have been renewed regularly even though the reasons for designation have long since disappeared.*

The administration did, in fact, direct termination of a host of long-overdue TPS designations. Unfortunately, in a classic example of “no good deed goes unpunished”, it promulgated terminations with end dates so far in advance that it provided ample opportunity for alien advocacy organizations to cherry-pick TPS registrants to act as plaintiffs in suing the government, alleging that the terminations were directed as the result of a racist president.

On October 3, 2018, Judge Edward M. Chen of the U.S. District Court for the Northern District of California issued an [order](#) “enjoin[ing] and restrain[ing]” DHS from terminating Temporary Protected Status (TPS) for Sudan, Haiti, El Salvador, and Nicaragua. In his decision, Judge Chen selectively identified statements made by the president, including when he was then-candidate Trump, to find that “there are serious questions as to whether the terminations of TPS designations could ‘reasonably be understood to result from a justification independent of unconstitutional grounds,’” in particular “whether there is evidence that President Trump harbors an animus against non-white, non-European aliens which influenced his (and thereby the Secretary’s) decision to end the TPS designation.” As with so many other pending lawsuits, court action in these matters is ongoing and the completion of proceedings nowhere in sight.

33. *Ensure that TPS is used sparingly and appropriately. The president should issue an EO directing that no TPS designation may stay in effect longer than one year unless vetted and approved through the National Security Council prior to extension, and only in one-year increments, with a thorough list of conditions to be met before extension is approved, to ensure that humanitarian need, not domestic or international politics, drives any extension.*

No steps have been taken in this regard. It is noteworthy that, while TPS has been renewed for a small number of countries (Somalia and Yemen), on the other hand no new grants of TPS have been made. However, absent an executive order or regulatory amendment — or, better yet, statutory amendment of the INA provision that [established the TPS program](#) — there is no assurance that prudence will prevail in deciding upon future designations.

## Immigration Parole

34. *End wide-scale use of parole to allow illegal aliens to go back and forth to their countries of origin. This simply requires a return to the [statutory definition](#), which limits use of parole to “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit”.*

Consistent with the plain language of the statute, the administration has significantly scaled back the use of immigration paroles, particularly grants of advance parole for DACA beneficiaries and/or CAM applicants (see No. 35, below) who were unable to establish eligibility for designation as refugees/asylees. As with so many other such scale-backs and reversals of the former administration’s expansive policies, it has resulted in at least one lawsuit that is still pending, but that — at least so far — [has not engendered a restraining order](#) directing the government to revert to the prior policy in violation of statute.

35. *Likewise, end use of parole as a surrogate for asylum/refugee status for those who cannot meet the standard, including particularly in the failed [CAM program](#), which should be terminated.*

The CAM program has been [terminated](#) and, as noted in our analysis of the prior suggestion, the administration has also significantly scaled back the use of immigration paroles. It should be noted, though, that embedded in [the bill the president presented to the Senate to break the shutdown impasse](#), is a proposal that would not only revive, but substantially enlarge, the CAM program.

36. *Cease granting parole to [Cubans arriving on our northern or southern land borders](#) and instead apply the expedited removal standard to repatriate them to Cuba. This will ensure no [unfair use](#) is made of the Cuban Adjustment Act by Cubans who cannot establish a credible fear of persecution and are in fact economic migrants, just like many arriving Central Americans.*

Interestingly, in the lame-duck days of the Obama administration just prior to inauguration of the new president, DHS adopted a [more nuanced, but tougher stance toward Cuban applicants for entry](#), including a general bar to parole except under certain specified conditions. This alleviated the need for the new president to adopt such a policy.

## Illegal Immigration

### *Unaccompanied Minors*

37. *Hew to the statutory definition of “unaccompanied alien child” found in federal law rather than treating each arriving alien minor below the age of 18 as if he/she is entitled to the protections afforded victims of a “severe form of trafficking” under the Trafficking Victims Protection Reauthorization Act (TVPRA); only those juveniles who are trafficked and who are not reunited with family members or friends are entitled to coverage under the special TVPRA due process protections. (See [here](#) and [here](#).)*

This issue has become nearly intractable as most readers will know from following the ups and downs of the government’s attempts to handle the tidal wave of UACs and partial family units crossing the southern border illegally, which is at least one reason that the president has stuck tenaciously to his demand to fund a border barrier. It has been further complicated by the [multiplicity of lawsuits](#) against each and every move that Homeland Security authorities take to attempt to reassert control. Adding to the complexities, many of the minors and family members released from custody [fail to appear for their hearings](#) in immigration court as ordered.

Clearly Congress must become involved to amend the seriously flawed TVPRA, as well as the laws governing “credible fear” and asylum claims. However, prompt promulgation and finalization by DHS of regulations governing detention and care of minors will go far toward amelioration of many of the debilitating effects of the [Flores](#) consent decree under which the government [now labors](#). It will leave unanswered, however, whether the federal government will be able to marshal appropriate bed space and resources. If it manages to do so, the mere fact that aliens will face detention upon apprehension, whether or not they are in the company of minors, will almost certainly dissuade a significant portion from attempting a journey that puts themselves and [children at substantial risk](#), and has resulted in tragic deaths.

38. *Direct that no unaccompanied minors be turned over to relatives who are illegally in the United States unless the relatives surrender themselves for processing and initiation of immigration court proceedings.*

No steps have been taken to implement this suggestion. The administration did implement improved vetting of sponsors to reduce the risk of releasing minors to inappropriate or abusive sponsors. However, after the recent uptick in new arrivals these protocols were suspended due to lack of resources.

39. *Require DNA testing to [confirm familial relationships](#) before turning unaccompanied minors over to individuals who claim to be family members who are legally in the United States. In the past, false claims to relationship have led authorities to actually place minors into the hands of unscrupulous smugglers and middlemen who profit from their labor in near-peonage conditions.*

Steps have been taken to use DNA to ensure familial relationships for alien minors who cross the border illegally and are then claimed by individuals after-the-fact as relatives or guardians, or by adults who cross with them and assert a familial relationship to obtain their freedom from detention. Unfortunately, this testing came to pass only after several media stories exposing false claims by such “relatives”, some of whom had taken advantage of the minors for a variety of illicit purposes. It is not clear, though, that DNA testing is undertaken in each and every case, and, as noted in No. 38, above, resource constraints and massive inflows of aliens have combined to adversely affect efforts to ensure that familial relationships exist.



40. *Selectively prosecute relatives who pay to smuggle unaccompanied minors into the United States, particularly in those instances when the minor is physically, sexually, or otherwise abused en route. Additionally, direct DHS and DOJ to work with state and local authorities to examine the propriety of criminal or civil charges against such relatives for child endangerment in cases where the minor is abused during the northward journey.*

No steps have been taken in this regard. In the meantime, adults continue to pour across our southern border with vulnerable minors in tow, leaving the U.S. government to deal with the fallout when those children sicken and die, either en route or immediately after custody has been assumed by federal authorities (see [here](#) and [here](#)).

## **Worksite Compliance**

41. *Require that a condition of all federal grant monies given to state or local governments is that they, or the contracting employers or sub-recipients of that grant money, whether as a pass-through or for any other purpose, must use E-Verify for their employees.*

No steps have been taken to implement this suggestion, although there is ample basis by which it might be done. In fact, there is reasonable basis to believe that the president may already possess the statutory authority required to mandate [universal E-Verify](#).

42. *End the existing ICE policy embargo on workplace enforcement actions, including arrest of illegal aliens employed at violating companies.*

ICE has begun to initiate more vigorous workplace enforcement actions (see [here](#) and [here](#)), including in states and locales that announce themselves as sanctuaries, as a way of making clear that federal law [cannot be avoided or evaded](#). However small a thing it may seem, however, to our knowledge ICE has never officially rescinded or repudiated the [policy memorandum](#) issued during the Obama administration that began the moratorium.

43. *Revitalize the use of [audits](#), to be used in strategic coordination with workplace enforcement actions.*

ICE has reinstated use of [I-9 audits](#) by the thousands, and clearly seems to be on its way toward a [much more visible and viable workplace compliance](#) environment than was ever existent during the past decade. There is cause for hope, although as one will see in our analysis of suggestion at No. 45, below, just as important as the audit efforts will be follow-on administrative hearings within the Office of the Chief Administrative Hearing Officer (OCAHO), about which we are concerned.

44. *Direct the strategic use of employment data obtained from alien arrestees to inform targeting of workplaces for operations and [audits](#).*

No steps have been taken to implement this suggestion.

45. *End [mitigation of fines](#) prior to hearings before the OCAHO and direct the Executive Office for Immigration Review (EOIR) to establish clear-cut guidelines for OCAHO (similar to sentencing guidelines) to rein in that office's proclivity toward mitigating offenses.*

No steps have been taken to implement this suggestion. We are also concerned that, because of a failure under the Obama administration to undertake any meaningful workplace enforcement activities, OCAHO has been permitted to attrit to a critical point. We hope that with a resurgence of activity, EOIR (which supervises OCAHO) will take the steps necessary to revive the office and to issue instructions ensuring that it adopts a robust posture toward violators of the employment verification laws.

46. *Establish and publicize a nationwide Social Security OIG / IRS CID / ICE HSI task force to root out fraudulent use of SSNs and taxpayer identification numbers by aliens unauthorized to work. Such aliens should be prosecuted for appropriate criminal violations, and thereafter deported. Any employers identified as having participated in the fraud should be*



*criminally prosecuted, including for harboring/concealing and/or pattern-and-practice violations under employer sanctions laws, and should be subject to civil penalties.*

No steps have been taken to implement this suggestion. However, the administration has begun issuing no-match letters to employers with workers whose payroll information does not match SSA records. Other salutary compliance and anti-fraud efforts may also be on the horizon, but they have not come to fruition yet.

47. *Require DHS and its subordinate agencies to not issue “certifications” of criminal aliens in state or local jails of sanctuary jurisdictions for purposes of the State Criminal Alien Assistance Program (SCAAP), thus removing the underpinning by which the Department of Justice’s Bureau of Justice Assistance (DOJ BJA) provides millions of dollars in federal SCAAP funding to these non-cooperating agencies. (See [here](#) and [here](#).)*

No steps have been taken to implement this suggestion.

48. *Require that all jurisdictions receiving federal law enforcement funding certify, and swear under penalty of perjury, that they are in compliance with 8 U.S.C. Section 1373 and do not obstruct communication or cooperation with federal immigration enforcement before receiving grants, awards, or reimbursement. This includes COPS grants and Byre/JAG grants administered by DOJ BJA.*

Former Attorney General Jeff Sessions did indeed institute these requirements. Unsurprisingly, several sanctuary jurisdictions have filed suit, and U.S. district court judges overseeing some of the lawsuits have enjoined compliance with the policies or withholding of grant funds, and in one extreme instance, found that the federal statute underlying U.S. policies (8 U.S.C. Section 1773) was **unconstitutional**. The cases are working their way through the courts and will almost certainly require resolution at the Supreme Court sometime in the indefinite future. But in the meantime, some sanctuary jurisdictions have either dropped or modified their policies (Miami-Dade County, for example) or agreed to allow communication and information exchanges without honoring detainers (Seattle).

49. *Direct DOJ and DHS to cooperate in establishing a policy of routinely procuring and serving civil [Blackie’s warrants](#) to take custody of criminal aliens in the jails of sanctuary jurisdictions that refuse to honor immigration detainers.*

No steps have been taken to implement this suggestion, although ICE has undertaken various amendments to its policy and operating procedures to ensure that detainers are understood by state and local jurisdictions to be statements that probable cause exists for the arrest of criminal aliens under the federal immigration laws. Unfortunately, those amendatory processes don’t have the force and effect of a federal court order, and have largely been ignored by jurisdictions that don’t wish to cooperate, or actively impede immigration enforcement efforts.

50. *Direct DOJ and DHS to examine the feasibility of criminally prosecuting egregious instances of providing official sanctuary under the federal statute prohibiting “harboring and shielding from detection” illegal aliens (8 U.S.C. Section 1324). In addition, DOJ and DHS should cooperate in examining the feasibility of legal actions or injunctive relief against sanctuary jurisdictions.*

To our knowledge, no steps have been taken to implement this suggestion, even though in at least a couple of instances, state judges have actively shielded alien criminals in their courtrooms from arrest by ICE agents, and in an egregious display the Oakland mayor took it upon herself to **publicly announce in advance** an impending ICE enforcement action, resulting in the flight of several wanted alien criminals. Reportedly, in one case in Massachusetts, federal authorities are considering prosecuting a state judge who assisted an alien in avoiding ICE officers in the courtroom.

51. *Issue a legal opinion clarifying that compliance with federal immigration detainers is not optional and defend state and local governments that are sued for cooperating with ICE to ensure that they don’t become sanctuaries. Doing so would require a policy of routinely submitting well-honed amicus briefs on behalf of state/city/county defendants against tort actions and perhaps even requiring U.S. Attorney’s offices to file motions to remove such actions to U.S. District Court whenever they are filed against a city/county defendant in a state court, since the underlying cause involves a matter of clear federal supremacy. (See [28 U.S.C. 1441](#) for the statutory basis of removal to federal courts.)*

The Trump White House has adopted the position of the former administration that detainees are not mandatory, probably to avoid litigating states' rights implications under the 10<sup>th</sup> Amendment — although we think that the constitutional clause providing federal authority over all matters of immigration and naturalization is sufficiently broad as to interpret detainees as a federal prerogative in the same way that the “commerce clause” of the constitution has provided the federal government ample authority to establish fundamental rules involving the states. Be that as it may, the administration has been vigorous in defending ICE authority to issue detainees and the authority of state and local enforcement agencies to honor them, something the prior administration did not do.

52. *Breathe new life into the nearly moribund 287(g) cross-designation program, opening it up and aggressively marketing it to all state and local enforcement agencies. In doing so, emphasize the immunity it provides to participating officers and promulgate guidelines that administratively establish the same parameters as are laid out in the Davis-Oliver bill.*

ICE has resuscitated the 287(g) cross-designation program, but it has limited participation to county jails, and not approved any new investigative or task force programs that operate outside the jails. As a consequence, ICE has lost the ability to take advantage of state and county officers working road patrols to act as eyes and ears in interdiction of human smuggling/trafficking and other important police and investigative work or to have local gang and drug task force officers participate in this important program. We believe that this is a missed opportunity to establish good cooperative relationships with many police and sheriff's departments. It also appears to contravene Section 10 of the presidential EO of January 25, 2017, “[Border Security and Immigration Enforcement Improvements](#)”, which encourages an aggressive use of this statutory provision.

### *Uncooperative Repatriation Countries*

53. *Issue an EO requiring DHS to yearly produce a detailed list of countries that have routinely taken three months or more to issue travel documents required to repatriate deportees, and requiring DOS to act pursuant to the INA (8 U.S.C. § 1253(d)) by suspending visa issuance to those countries, or alternatively providing to the [president](#) a compelling national interest reason why it has not done so.*

In a dramatic about-face, due to issuance of a presidential executive order as we proposed, DOS has been particularly aggressive against other nations that [resist accepting repatriation of their deported citizens](#). This new attention to denying or revoking visas — especially for officials and their families of scofflaw nations — has had dramatic results in the ability to [remove aliens](#), including especially alien criminals. Needless to say, though, the new policy has resulted in as-yet-incomplete lawsuits winding their way through the appellate process as various categories of aliens under final orders of removal turn to the courts to block their removal now that their countries of origin are providing the required travel documents (see [here](#) and [here](#)).

54. *Direct that matricula consular (MC) identification cards are adequate to repatriate deportable aliens, and that the U.S. government will seek no additional travel documents from the issuing governments prior to removal. This will prevent them from impeding removal by slow issuance of travel documents needed for repatriation, and make them carefully consider issuing the MCs to begin with; MCs are fertile sources of abuse and serve as “breeder documents” for illegal aliens to obtain U.S. driver's licenses, social benefits, etc.*

No steps have been taken to implement this suggestion.

### *Enforcement and Removals*

55. *Though superficially counterintuitive, take no steps to rescind DACA or DAPA while they are still under Supreme Court review, lest the case(s) be mooted out. It is worth the new president taking the risk so that the Court can affirmatively rule on the limits of presidential power (or abuse thereof). In the unlikely event that the Court finds these executive actions to be legal, then rescind them as a matter of policy and national interest.*

Subsequent to us making this suggestion, the Obama administration's DAPA program was overturned by the federal courts, including a [split 4-4 Supreme Court decision](#) that had the effect of sustaining the lower district and Fifth Circuit appellate court decisions.

With regard to DACA, after a long delay subsequent to inauguration, during which President Trump repeatedly indicated that he would welcome legislation granting permanent legal status to “Dreamers” in return for provisions enacting his other pillars for immigration reform, Congress found itself unable to cut a deal. Consequently, the president ordered a wind-down and termination of DACA. Various advocacy groups filed suit on behalf of DACA recipients, resulting in the administration being enjoined not only not to end the program, but to [continue accepting applications](#). The matter, like so many others, is slowly wending its way through the cumbersome appellate process up toward the Supreme Court.

The bill that the president has asked the Senate to consider contains provisions that would statutorily renew DACA for a period of three years with no extensions (unless, of course, some future Congress and president decide differently). Although the proviso contains language specifically asserting that “Nothing in this section may be construed to affect whether the Secretary of Homeland Security had the authority — (1) to adopt the Deferred Action for Childhood Arrivals Program announced on June 15, 2012; or (2) to maintain such program,” it is an open question whether the Supreme Court or any other reviewing appellate court will adopt such a view.

In the meantime, though, there has been some murmuring as to whether a legislative DACA deal might be possible in return for funding the president’s border wall. We are concerned over the White House’s possible amenability to such a deal. We are concerned that any legislative “fix” would go the way of the prior “Gang of 8” bill, with [much given and little received](#) in the way of immediate substantive enforcement or border security in return for the trade.

56. *Require all DACA recipients to immediately update their files with any and all SSNs they have ever used, a requirement that immigration attorneys [originally worried was required](#). Also require all DACA recipients to list all places of employment where they have used such SSNs. This information can be used to prosecute the alien for identity fraud, and provide leads to immigration authorities about which employers hire illegal aliens. DACA recipients can be instructed that they have 30 days to respond with a declaration that they have either (1) never used a SSN number or provided a number on an I-9 Form or otherwise falsified a government form, or (2) have committed such an act or acts and have provided such information within the declaration. DACA recipients can be informed that their status will be rescinded if the information is not received within 30 days.*

No steps have been taken to implement this suggestion; see also, however, our analysis of suggestion No. 55, above, regarding the DACA program generally.

57. *Investigate employers listed in DACA applications for knowingly hiring illegal aliens. At the outset of DACA, one pro-amnesty organization [noted](#) that “58 percent of potential applicants are currently employed” and that “employer documentation will be vital in establishing eligibility for many applicants” since applicants had to prove they were in the country by a certain date. Out of concern that law-breaking employers would demand their illegal alien employees not use employment records during the DACA application process, the Obama administration said it would not use this information to go after employers. But there is no reason future presidents cannot use this information.*

We believe that it exceeds executive authority to issue a blanket amnesty or pardon to thousands of unnamed employers for violating the workplace verification laws so that their illegal alien employees may receive an extra-statutory benefit that is itself constitutionally dubious. Yet, no steps have been taken to implement this suggestion.

58. *Since federal law [requires all aliens](#), including those here illegally, to register if they remain 30 days or longer, an enterprising president could remind such aliens about their requirement to register. Failure to register is a misdemeanor, and most illegal aliens are likely in violation of this statute and could already be prosecuted. Additionally, any false information provided during the registration process could be prosecuted under other laws.*

No steps have been taken to implement this suggestion. Failure to register is not just a misdemeanor, but also subjects the alien to removal. These facts hold great potential for use in enforcing immigration law in the interior (see [here](#) and [here](#)).

59. *ICE agents should investigate taxpayer-funded day-labor hiring centers for harboring or shielding from detection illegal aliens, or hiring, recruiting, or referring such individuals for a fee in violation of 8 U.S.C. § 1324. Though lawful employment can take place at day-labor hiring centers, it is [widely understood](#) that illegal aliens find work through such centers. Routine*

*ICE presence at day-labor hiring centers would discourage illegal aliens and law-breaking employers from engaging in unlawful employment practices.*

No steps have been taken to implement this suggestion.

60. *Use the public charge doctrine to reduce welfare-dependent foreigners living in the United States. The number of aliens denied admission to the United States as legal permanent residents due to a risk of becoming reliant on [welfare has dropped dramatically](#) in recent decades. Past presidents have [carved out exceptions to the law](#), exempting many immigrants on welfare from deportation. DHS admits it [does not track immigrants who become welfare dependent](#) and only attempted to remove one welfare-dependent alien in 2012; that case was ultimately dropped. [Half of households](#) headed by immigrants use at least one welfare program.*

USCIS has recently proposed new rules to update and clarify the definition of public charge and how applications shall be evaluated by consular officers and benefit adjudicators.

61. *Follow the example of New York Mayor Bloomberg and [bill immigrants' sponsors](#) for any welfare benefits obtained by the sponsored immigrant. (Bill de Blasio refunded the money when he took office.) As [explained by USCIS](#), sponsors sign an affidavit of support, which creates the “legal responsibility for financially supporting the sponsored immigrant(s) generally until they become U.S. citizens or can be credited with 40 quarters of work.” Under the law, if the sponsored immigrant receives any means-tested public benefits, the sponsor is “responsible for repaying the cost of those benefits to the agency that provided them” and can be sued if they do not comply.*

No steps have been taken to implement this suggestion. In fact, New York City under Mayor de Blasio has gone in the opposite direction and recently announced the city’s intention to [provide universal health care](#) to illegal aliens along with all others domiciled in the city. Can provision of other social benefits, in defiance of federal law, be far behind?

62. *Declare Cesar Chavez’s birthday, March 31, to be “National Border Control Day”. Despite the amnesty crowd’s effort to use Chavez’s image as a symbol of open borders, Chavez was a [fierce opponent of illegal immigration](#) and supporter of tight border controls. Chavez’s core insight was based on the law of supply and demand — farm work would remain low-paid, exploitative work so long as an unlimited supply of stoop labor could just come across the border and undercut his efforts at increasing pay and benefits.*

On March 20, 2018, [Rep. Louie Gohmert](#) (R-Texas) introduced a resolution (H.R. 791) to this effect; however, no action was taken on that proposal, nor has the president made an executive declaration to that effect.

63. *Enforce criminal laws violated by illegal aliens. For example, all men, including illegal aliens, are required to register for the Selective Service of face a fine of up to \$250,000 and/or five years in prison. A false statement on an I-9 employment verification form can result in a fine and up to five years imprisonment.*

No steps have been taken to implement this suggestion.

64. *Issue an EO forbidding the Departments of Agriculture and Interior from issuing regulations, policies, or procedures that in any way obstruct the capacity of the Border Patrol to conduct patrols on federal park or forestry lands within 100 miles of the border — a practice that results in the anomaly that large numbers of illegal aliens routinely trek through these lands, despoiling them by leaving their detritus behind. The practice has also encouraged drug-packing human mules working for Mexican cartels to use these “go-free zones”, often protected by armed and violent criminal escorts, while virtually unhindered by patrols.*

Section 12 of the presidential EO of January 25, 2017, “[Executive Order: Border Security and Immigration Enforcement Improvements](#)”, did precisely this, by directing the respective secretaries to work cooperatively to ensure full access to lands needed to patrol and secure U.S. borderlands.



65. *Rescind all outstanding “prosecutorial discretion” policies; eliminate the “Priority Enforcement Program”, and reinstitute Secure Communities.*

The Trump administration has not only done this both within the Departments of Homeland Security and Justice, but gone farther by directing that ICE trial attorneys re-examine the thousands of files of deportable aliens whose cases were “administratively closed” at the request of ICE’s Office of Professional Legal Advisor, with an eye toward reopening and bringing them to conclusion in immigration court.

66. *Expand the expedited removals program to the maximum extent allowed by law, to quickly remove illegal aliens, including the surge of arrivals on our southern border. Expedited removal may be used for all aliens who have been in the country for up to two years, but currently, is **only being used** within 100 miles of the borders for people who have spent less than 14 days in the country.*

No steps have been taken to implement this suggestion. While we recognize that this policy change would require an expansion of detention capacity, which is controlled by Congress through the appropriations process, we believe this is a missed opportunity, particularly in aiding effective interior enforcement where, solely because of policy choices that could be reversed, expedited removal has been placed out of bounds to ICE agents. Not having done so also seems contrary to the policy enunciated in the presidential EO dated January 25, 2017, “**Border Security and Immigration Enforcement Improvements**”, at Section 2(c), which directs executive branch agencies to “expedite determinations of apprehended individuals’ claims of eligibility to remain in the United States”.

67. *Direct maximum use of similar provisions (such as stipulated removal, which is the equivalent of a plea agreement) that permit deportation without referring cases to the already overburdened immigration courts.*

To our knowledge, no steps have been taken to implement this suggestion. Anecdotal evidence suggests that immigration judges are sometimes presented with such agreements, but infrequently enough to suggest that ICE trial attorneys do not regularly proffer them to aliens in removal proceedings. As with suggestion No. 66, this is a missed opportunity and seems contrary to the intent of the policy enunciated in the presidential EO dated January 25, 2017, “**Border Security and Immigration Enforcement Improvements**”, at Section 2(d), which directs prompt removal of aliens consistent with the law.

68. *Reinstitute the interior repatriation program for Mexican deportees: Send all but Mexican border-state residents to Mexico City and give them bus passes from there to their home villages in order to curb the **revolving turnstile of deportees** immediately returning to cross the border.*

No steps have been taken to implement this suggestion.

## Eliminate False Privacy “Rights” and Assist Victims of Alien Crime

69. *Direct DHS and subordinate agencies to cease their practice of according “privacy” rights to illegal aliens and nonimmigrants who are not protected by the federal Privacy Act (which makes clear that only U.S. citizens and lawful permanent resident aliens are covered under its provisions); DHS has used it as a way of sidestepping the disclosure requirements of the Freedom of Information Act and its obligation to ensure that the public is fully and accurately informed about its law enforcement efforts and practices.*

In April 2017, DHS issued **new policy guidance** on privacy rights for aliens. As a result, DHS agencies, including ICE, have become much more forthright in acknowledging or volunteering an alien’s status, particularly when the alien has been involved in criminal conduct, gang activity, or other adverse actions with public safety implications.

70. *As part of the vetting process, require **internet and social media checks** of all applicants and petitioning sponsors, including those “following to join” relatives who have already entered the United States after being granted status as refugees or asylees. Prior DHS policies prevented such screening as an invasion of privacy, with disastrous results. Much, although not all, of this work can be automated by algorithms and screening processes that track use of key words and phrases.*



See our analysis of suggestion No. 6, above.

71. *Eliminate the DHS policy that forbids ICE and CBP officers from entering or effecting arrests [within USCIS facilities](#), requiring instead that the enforcement and benefits entities coordinate closely to ensure maximum discretion and safety to the public and employees.*

While we know of no direct formal renunciation of the overly restrictive practices previously exercised by USCIS managers toward their ICE counterparts during the prior administration, we are aware that as a practical matter, barring ICE agents from USCIS facilities while in pursuit of their lawful duties is no longer deemed unacceptable by USCIS leadership, and that much improved cooperation is now the practice between these sister agencies. Nonetheless, we would strongly prefer to see official policy enunciated to ensure that close cooperation is understood by all to be an underpinning of the culture within both agencies.

72. *Reform the Office of the Public Advocate to become a victims advocacy unit, working closely with other, similar federal and state programs and providing services to those who have been victimized by illegal alien criminals. Direct that the USCIS Ombudsman's Office establish a mission statement that includes assistance to citizen and resident victims of marriage fraud.*

On April 26, 2017, in response to a presidential executive order, the ICE Office of Public Advocate was in fact phased out in favor of a Victims of Immigration Crime Engagement ([VOICE](#)) office.

However, within the USCIS Ombudsman's Office, no steps have been taken to ensure that citizen and resident alien petitioners recognize that they stand on equal footing with aliens seeking benefits and their advocates when those citizens or resident aliens believe that they have been victimized, for instance through marriage fraud or false claims of aliens alleging spousal abuse. We see no reason that this cannot and should not be done; it is in no way contrary to the statutory authority that created the Ombudsman's Office in the first place.

73. *In order to minimize the abuses of the in-house appeals system in USCIS, direct the Administrative Appeals Office to begin publishing the names of appellants (including corporate entities), the attorneys filing the appeals, and a brief precis of the issues contested for all cases, just as that information is available for all cases in the federal district courts.*

No steps have been taken to implement this suggestion.

## Right to Counsel

74. *Eliminate grants of legal aid to NGO groups for a variety of not-so-subtly masked purposes such as "legal training" and the like, which in fact are used to circumvent the provisions of law prohibiting the government from paying the costs of an alien's counsel in removal proceedings.*

In 2002, the Department of Justice Executive Office for Immigration Review (DOJ EOIR), which is home to the U.S. immigration court system, established the [Office of Legal Access Programs \(OLAP\)](#). The office and programs were radically expanded by the Obama administration in ways that appeared to circumvent [Section 292](#) of the Immigration and Nationality Act. The Trump administration, however, has ordered a [significant rollback of the program](#). Be that as it may, various advocacy groups are attempting to chip away at the clear language of Section 292 through a series of lawsuits in U.S. district courts throughout the country (see, e.g., [here](#) and [here](#)). In addition, Congress blocked one effort to discontinue a controversial legal assistance program designed for family unit cases.

## Enforcement Actions in Coordination with Other Entities

75. *Establish a grant program to award funds to state and local governments that develop cooperative programs that advance or improve immigration enforcement, deter illegal hiring, or undertake other cooperative and constructive efforts, by reprogramming of funds from divisions or programs within DHS that are not performing.*

No steps have been taken to implement this suggestion.

76. *Initiate aggressive audits (both selective and randomized) of voter rolls to scrub against DHS databases. Do this particularly in states that (a) have motor-voter, and/or (b) grant licenses to illegal aliens. Identify and prosecute aliens who vote illegally; and when the criminal justice system is done with them, deport them (voting illegally is a deportable offense).*

Inaccurate voter rolls containing ineligible voters, which are largely a result of the National Voter Registration Act (NVRA) (authorizing registration of voters at the time of applying for a driver's license) remain highly problematic. Several states have had problems with untrained motor vehicle personnel assisting aliens with voter registration (see [here](#) and [here](#)).

Although the NVRA nominally requires state and county electoral officials to routinely scrub the rolls to eliminate ineligible and deceased voters, there are reasons to believe it is [rarely done](#). The NVRA also authorizes the attorney general to initiate lawsuits against state and local entities to enforce the requirement. Be that as it may, a [presidential commission](#) established by President Trump to look into the problem was disbanded, and no federal entity, including DOJ and DHS, has shown itself willing to tackle the issue in a systematic way.

77. *To end the situation in which families with illegal aliens in them often get more in food stamps than comparable citizen families, eliminate the current provision that permits disregarding the wages of illegal aliens in the household in order to determine eligibility.*

No steps have been taken to implement this suggestion.

78. *To reduce [abuse of the Additional Child Tax Credit \(ACTC\) refund program](#), IRS should cease issuing ITINs (Individual Taxpayer Identification Numbers) to children of illegal aliens. ITINs are often used to claim tax refunds for nonexistent children. To secure ACTC benefits in the future, aliens must provide SSNs for each child claimed, plus documents showing school attendance in the United States for those over the age of five. IRS will be given funds and authority to sample a portion of claims annually, and to publicize the penalties laid on the alien tax abusers.*

We recommended requiring SSNs for the children of the beneficiaries of this tax break. This was done. Unfortunately, there is a provision that the worker (i.e. taxpayer) making this claim need not have an SSN (which indicates legal presence in this country) and may file for the ACTC benefits even though the person filing has only an ITIN, which can be obtained only by people who are *not* legal residents. This proviso undercuts the requirement. In general terms, we believe the IRS should only give income tax refunds if: 1) the refund applicant has a Social Security number legitimately issued for employment purposes; and 2) that the SSN reflects current, not past, eligibility to work legally in this country (some SSNs are time-limited for aliens whose work authorization is temporary). This rule should apply to both the tax return filer and to any dependents claimed. Careful execution of this requirement, which we do not think is happening, would save the government billions of dollars and would discourage many illegal aliens from staying in the United States collecting refund benefits to which they aren't entitled.

79. *Reduce immigration/marriage fraud by reinstating routine separate, simultaneous interviews of aliens and spouses before granting spousal or fiancé petitions. This time-tested procedure often reveals bogus marriages. Citizens and resident aliens petitioning for spouses or fiancés should be required to view a software webinar of the dangers of one-sided marriage fraud, in which previously defrauded petitioners describe what happened to them after being gulled by aliens intent on obtaining green cards. The presentation should also explain the criminal/civil penalties for marriage frauds in which both petitioner and beneficiary are conspirators.*

No steps have been taken to implement this suggestion. Marriage fraud, and fraud in self-petitions by aliens falsely claiming spousal abuse after engaging in one-sided marriage fraud, continue unabated.

## Conclusion

In wrapping up this assessment of progress toward the steps we identified in our original document, it's important to say a few things.

First, we have deliberately resisted the temptation to assign report-card-style scores either to any particular item or to the overall efforts. Doing so would have been both inappropriate and facile, given the scope and complexity of the issues we've raised. This brings us to the second point:

Readers, seeing many of the “No steps have been taken” observations, might be tempted to draw an adverse inference toward this administration's efforts to reform the immigration system for the better. We encourage you, instead, as we have, to consider the complexity of the issues, and the many years it took, over several administrations, for things to fall into such dysfunction, from unwise policies or indifference. It's tempting, but inaccurate, to impute all blame to the Obama White House. That administration was simply the tipping point in the years-long decline of a well-functioning immigration control regimen. That is why efforts at re-instilling integrity and rigor into the system will be years in the making. Rome wasn't destroyed in a day; it won't be re-built in a day either.

Third, it would be premature to assess progress to date due to the inordinate number of lawsuits filed by organizations, and even states and local governments, determined to block every effort at immigration enforcement and compliance. Readers cannot help but have seen, in perusing this document, that virtually every step that the administration has taken has resulted in litigation, and in all too many cases issuance of nationwide injunctions by U.S. District Court judges while the litigation plods onward and upward through the federal judiciary — a state of affairs that we find alarming and injurious to a judicial system, one of whose main strengths is to allow different outcomes to percolate through the district and circuit courts so that the Supreme Court may better provide constitutional and statutory guidance after reviewing a range of outcomes (see [here](#) and [here](#)).

Finally, it's worth noting that we did not predict — could not have predicted — all of the twists and turns that have taken place in ground realities where immigration and related matters are concerned. As a result, neither our “79 Steps” document, nor this midterm assessment, speak to many items the administration should be given credit for accomplishing. Two of major significance being the decision to opt out of the U.N.-sponsored Compacts on [Global Migration](#) and [Refugees](#).

With this in mind, readers can be assured that, as time and circumstances dictate, we will continue reporting on progress toward accomplishing the 79 items, and also issuing new reports in which we lay out other important matters that have arisen — or been accomplished — since publication of the original.