



President Biden's First 100 Days: Swift Action to Change Immigration Policy

By Robert Law

Introduction

Dating back to 1933, when President Franklin D. Roosevelt first took office, a new administration's first 100 days has become a benchmark for judging accomplishments. Although largely absent from the 2020 campaign trail, immigration is perhaps the policy area with the starkest differences in philosophy between former President Trump and President Biden.

The policy changes between administrations have had immediate impact since Inauguration Day, resulting in a crisis at the southern border. In its haste to undo the policies of its predecessor, the Biden administration has created enormous pull factors that are encouraging illegal aliens — single adults, family units (FMUs), and unaccompanied alien children (UACs) — to surge across the border in record numbers. The situation continues to worsen as the new administration searches for answers to regain control of the southern border. As the Center [noted](#) in its analysis of the beginning of the Trump administration (though with very different implications), *what a difference 100 days can make*.

This report does not grade or score the Biden administration's performance over the first 100 days. Instead, it analyzes the impact of policy changes in the following areas:

- [Border Security](#);
- [Interior Enforcement](#);
- [Legal Immigration and Foreign Workers](#);
- [The Rule of Law](#); and
- [National Security and Vetting](#).

Border Security

The Biden administration wasted no time taking numerous executive actions in the first few weeks to repeal certain Trump administration policies and introduce sweeping new policies on how it will enforce U.S. immigration law. The new president also issued executive decrees that were not substantive in nature, but sent a clear signal of his administration's policy preferences.

The election and inauguration of Joe Biden is directly [responsible](#) for the current border crisis. In the president's first full month in office, there were 100,441 U.S. Customs and Border Protection (CBP) apprehensions at the Southwest border, up from 78,442 in January, which overlaps with the end of President Trump's term. Not only do the February 2021 figures buck the historical trend of unlawful border crossings going down in the winter months, they also reflect a 15-year [record high](#) for the month of February.

As the situation continued to worsen in March, President Biden delegated responsibility to contain the crisis. On March 24, Vice President Harris was [made](#) "point person on immigration issues amid [the] border surge." But then, on March 25, the White House [announced](#) Roberta Jacobson as the "Special Assistant to the President and Coordinator

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for the Southwest Border.” After less than two weeks on the job, Jacobson revealed that she will [step down](#) as border czar on Biden’s 100th day in office. Vice President Harris has not yet held a press conference about the border crisis.

A description of each border security issue the new administration is grappling with is detailed below.

The Wall. On January 20, 2021, President Biden issued [Proclamation 10142](#) that fully rescinded the Trump administration’s [Proclamation 9844](#) (February 15, 2019; extended February 13, 2020; [extended](#) January 15, 2021), which declared a national emergency at the southern border and permitted the reprogramming of unspent money from the Department of Defense toward the building of the border wall. The Biden proclamation explicitly states that “no more American taxpayer dollars be diverted to construct a border wall” and that “authorities invoked in [the Trump] proclamation will no longer be used to construct a wall at the southern border.”

The move to defund border wall construction is notable in that it effectively nullifies the will of Congress as expressed in the [2006 Secure Fence Act](#) to construct “physical infrastructure to prevent unlawful border entry”. That bill passed the Senate with [broad bipartisan support](#), 80 to 19, including then-Sen. Biden, then-Sen. Obama, and current Majority Leader Schumer all voting in favor. While Department of Homeland Security (DHS) Secretary Alejandro Mayorkas reportedly [told staff](#) he may resume some border wall construction to plug “gaps in the wall”, he reiterated that the Biden administration stands behind its termination of the border emergency.

In April, President Biden made clear through his [discretionary budget request](#) for FY 2022 that his administration will not build the wall along the southern border. The request asks for \$1.2 billion for border security and infrastructure but also specifies that “The discretionary request includes no additional funding for border wall construction and proposes the cancellation of prior-year balances that are unobligated at the end of 2021.” It remains to be seen if Congress will oblige this request, but it seems likely with the president’s party in control of both chambers of Congress.

Border walls work to deter illegal immigration, but the effectiveness is mooted by policies that allow inadmissible aliens into the country.

Title 42 Authority. Beginning in March 2020, the Trump administration utilized the Centers for Disease Control and Prevention’s emergency health authority under Title 42 of the United States Code to turn away all aliens at the border as part of a multi-pronged effort to secure the border and stop the spread of Covid-19. The results were an instant [success](#), with just 17,108 apprehensions in April 2020 (compared to 109,415 in April 2019) and monthly apprehensions remained low until the fall, when Biden’s electoral victory appeared to be a certainty. Throughout the transition, border apprehensions exceeded the monthly averages during Trump’s presidency, but they hit crisis level once the Biden administration was in charge. In February, CBP apprehended 101,028 aliens (revised up from the initially reported 100,441 apprehensions), and in March CBP apprehended 172,331 aliens — a 70 percent increase in just one month.

Unlike the border emergency declaration, President Biden has not fully discontinued the application of Title 42 authority, much to the [chagrin](#) of his open-borders supporters. Still, the Biden administration has significantly curtailed its use, exempting FMUs with children under age seven and creating a [blanket exemption](#) for UACs. This amounts to [just 13 percent](#) of FMUs being turned away. Allowing most FMUs and all UACs into the country to make asylum claims that an overwhelming majority will not qualify for will continue to fuel the mass movement of citizens of the Northern Triangle countries of El Salvador, Honduras, and Guatemala to the Southwest border. In February, CBP apprehended just over 9,000 UACs, while the nearly 19,000 UACs apprehended in March represent the [highest](#) monthly total ever recorded.

The UAC aspect of this border crisis is particularly alarming because this is a [vulnerable](#) population and CBP facilities are not [equipped](#) to hold them. Inevitably, today’s unsuccessful family units become tomorrow’s [“separated families”](#) as the alien minors return to the border under the custody of dangerous coyotes and drug cartels with the guaranteed favorable outcome of being let into the country, now as a “UAC”.

MPP, ACAs, HARP, PACR. Before the Covid-19 pandemic required President Trump to shut down our southern border (under Title 42 authority) to stop the spread of the virus, his administration had its own humanitarian and security crisis at the border to address. In January 2019, the Trump administration implemented the **Migrant Protection Protocols** (MPP), colloquially known as “Remain in Mexico”, whereby non-Mexican aliens seeking to enter the country unlawfully were returned to Mexico to wait there for the duration of their INA § 240 removal proceedings. DHS [implemented](#) MPP to “restore a safe and orderly immigration process” and to “decrease the number of those taking advantage of the immigration system”. As a companion measure, the Trump

administration entered into **Asylum Cooperative Agreements** (ACAs) with Honduras, Guatemala, and El Salvador. Through these ACAs, aliens apprehended at the U.S. southern border were given the [option](#) to seek humanitarian relief in a regional country closer to the home country they were allegedly fleeing from persecution. Additionally, the Trump administration implemented the “Prompt Asylum Case Review” (**PACR**), expedited credible fear screenings for non-Mexicans, and “Humanitarian Asylum Review Program” (**HARP**), for Mexicans, to more efficiently handle asylum screenings at the southern border. Taken together, these initiatives were [highly effective](#) in discouraging asylum forum shopping by curtailing the number of illegal aliens permitted into the United States to possibly make an asylum defense against removal.

On President Biden’s first day of office he [suspended](#) new enrollments in MPP and, through [Executive Order 14010](#), subsequently [terminated](#) the ACAs with each Northern Triangle country, as well as ended HARP and PACR. These moves mean that now all illegal aliens apprehended at the border are being processed *inside* the United States.

Catch and Release. An enticing pull factor for illegal aliens during the Obama administration was the practice known as “catch and release”. Under this policy, CBP officers would release non-Mexican illegal border-crossers with a Notice to Appear (NTA), the immigration charging document, for an immigration court hearing years in the future. These economic migrants who posed as asylum seekers referred to the NTA as a [permiso](#), meaning a permit or permission to stay, and, unsurprisingly, most failed to appear at their court hearing to articulate their asylum defense to removal.

The Trump administration promptly ended “catch and release” within its first 100 days, removing this major pull factor that enticed illegal aliens to take the journey north under the guise of seeking asylum. In fact, following the end of “catch and release”, the number of new illegal arrivals declined dramatically, bringing border apprehensions to a 17-year low.

By February 3, 2021 (less than two weeks into the Biden administration), the Center [reported](#) the resumption of “catch and release”. Given limited detention capacity and the termination of MPP and the ACAs, this was an inevitable outcome. As word got back to the Northern Triangle that illegal border-crossers were (1) being let into the country under a reduced application of Title 42 authority and the termination of MPP, the ACAs, HARP, and PACR; and (2) not being detained during the pendency of the court proceedings, the message was clear that now is the time to come to the United States. And they did, in record numbers.

By March, the Biden administration introduced a new wrinkle to its “catch and release” policy by now releasing recent border apprehensions [without](#) an NTA. In the absence of an NTA, these illegal aliens are never put on the court docket, preventing immigration judges from ordering them removed in absentia. Without an absentia order, DHS will not be able to promptly remove these illegal aliens once immigration officials subsequently encounter them.

Root Causes. A theme of the Biden administration’s border policy is that “root” causes in the Northern Triangle are driving the alien movement to the United States instead of the administration’s own policies. To address the root causes, President Biden has pledged \$4 billion in taxpayer dollars to Guatemala, Honduras, and El Salvador over his term. In his Fiscal Year 2022 [discretionary budget request](#), the president asks for \$861 million for the upcoming fiscal year to address root causes in the Northern Triangle. As this amount falls short of the \$1 billion per year average to reach the \$4 billion target, it will be interesting to see if Congress appropriates more money than the White House requested.

Most of the details of the plan to send billions of American taxpayer dollars to the Northern Triangle have not been made publicly available and the initiative has many obstacles to contend with. As the Center recently [reported](#), addressing root causes is a long-term endeavor that does nothing to address the immediate border crisis. Vice President Harris acknowledged as much, [telling](#) reporters in April that “It will take some time to see the benefits of that work. These are not issues that are going to be addressed overnight in terms of the root causes.”

If the Biden administration follows through with this plan, they must navigate through the [rampant corruption](#) of government officials in all three countries. To that end, border czar Jacobson [told](#) Reuters, “The one thing I can promise you is the U.S. government isn’t going to be handing out money or checks to people.”

Separately, on April 6, 2021, USAID [announced](#) it had provided approximately \$112 million (Guatemala: \$57 million; Honduras: \$47 million; El Salvador: \$8 million) in “life-saving humanitarian aid — including emergency food assistance, nutrition services, safe drinking water, shelter, programs to help people earn an income, and disaster risk reduction programs.”

Interior Enforcement

There is universal agreement that U.S. Immigration and Customs Enforcement (ICE) has limited resources and lacks the ability to swiftly remove all illegal aliens. As a result of the large illegal alien population that has been allowed to grow in the United States and ICE's limited resources, the agency must prioritize enforcement resources. During the Obama administration, DHS only enforced immigration laws against defined priority categories, effectively exempting most illegal aliens from deportation. On January 25, 2017, President Trump issued [EO 13768](#), which made it his administration's policy that all removable aliens are an enforcement priority. What this meant in practice was that the Trump administration would naturally prioritize national security and public safety risks, but it did not exempt any illegal alien from enforcement should ICE agents encounter them in the course of doing their job.

100-Day Deportation Freeze, Enforcement Priorities. In two separate actions issued just hours apart on Inauguration Day, the Biden administration effectively nullified the enforcement of U.S. immigration law in the interior of the country. First, President Biden signed [EO 13993](#), which fully rescinded President Trump's EO 13768 but failed to establish new enforcement priorities. Mere hours later, acting DHS Secretary David Pekoske issued a [memorandum](#) to the (acting) heads of ICE, CBP, and USCIS ordering a **100-day freeze on deportations**. As the Center [analyzed](#) at the time, the limited exceptions to the deportation freeze (certain national security threats, illegal border-crossers after November 1, 2020, and aggravated felons who are *also* determined to be a public safety threat) would result in the suspension of at least 85 percent of *criminal* alien removals. The State of Texas subsequently sued and, while a federal district judge issued a nationwide injunction blocking the 100-day deportation freeze, the Center [observed](#) that the ruling does not actually compel the Biden administration to deport any aliens.

On February 18, ICE Acting Director Tae Johnson issued a [memorandum](#) that provided interim guidance on how ICE officers should apply the new **enforcement priorities** outlined in the Pekoske memo, i.e., the alien population exempt from the 100-day deportation freeze. The Center [analyzed](#) the seven-page memo and found that it limits the ability of ICE officers to arrest and remove aliens from the interior of the country, wastes ICE resources it claims to be conserving, and generally creates a chilling effect on ICE enforcement.

Combined, deportations have significantly fallen since the Biden administration began. According to internal documents reviewed by the [Wall Street Journal](#), ICE arrested approximately 4,400 aliens with *criminal* convictions in December 2020 (President Trump's last full month in office), compared to just 1,900 in February, Biden's first full month. Deportations are down nearly 50 percent and ICE is only holding 14,000 aliens in detention compared to a peak of 56,000 aliens in 2019 under the Trump administration. Additionally, the [Washington Times](#) obtained data that shows ICE made 75 percent fewer *priority* arrests over the first seven weeks (January 20 to March 8) of the Biden administration than during the same period in 2020. The Times further reported that non-priority arrests dropped more than 80 percent, from 17,819 to 3,306, and priority arrests dropped more than 30 percent, from 2,771 to 1,897, for the year.

SAFE Agreements. Toward the end of the Trump administration, acting DHS Deputy Secretary Ken Cuccinelli executed a Sanctuary for Americans First Enactment Agreement (SAFE) with nearly a dozen state and local jurisdictions. In exchange for these jurisdictions affirming their commitment to help enforce immigration laws (as all jurisdictions should be doing anyway), these agreements committed DHS to consult with these jurisdictions prior to enacting any policies or practices that would loosen immigration enforcement in the jurisdiction. Despite these agreements being "binding and enforceable" with at least 180-days notice required for either party to get out of agreement, on February 3 the Biden administration [unilaterally terminated](#) all of the SAFE agreements, effectively refusing assistance in spite of ICE's professed limited resources.

Operation Talon, Detainers. In early February, the Washington Post [reported](#) that Biden's ICE canceled Operation Talon, a nationwide operation targeting criminal alien sex offenders subject to deportation. Emails obtained by the Post show that the planning for Operation Talon began toward the end of the Trump administration but was quickly called off after Mayorkas was confirmed as DHS secretary. Additionally, ICE whistleblowers have revealed that the enforcement agency is not honoring detainers that it previously filed during the Trump administration, resulting in the release of criminal aliens into American communities.

Legal Immigration and Foreign Workers

While the legal immigration framework is largely established by statute, the policy decisions made by the Biden administration on permanent and temporary immigration have thus far favored the interests of aliens and businesses rather than protecting American workers and taxpayers.

Immigrant and Nonimmigrant Worker Ban. Government-mandated shutdowns to stop the spread of Covid-19 crippled the economy, with 20 million Americans unemployed within a matter of weeks in spring 2020. On April 22, 2020, President Trump issued [Proclamation 10014](#), which suspended the entry of new immigrants (lawful permanent residents) that the administration found posed a risk to the U.S. labor market during the economic recovery. On June 22, President Trump issued [Proclamation 10052](#), which extended the immigrant ban and added the suspension of entry for certain H-1B, H-2B, J, and L nonimmigrants (temporary workers) through December 31, 2020, to further help Americans get back into the workforce. On December 31, President Trump issued another [proclamation](#) extending the immigrant and nonimmigrant worker freezes through March 31, 2021.

Despite there being nearly 10 million fewer jobs in November 2020 compared to February 2020, President Biden ended both temporary bans. On February 24, President Biden [rescinded](#) the immigrant visa ban and then allowed the temporary worker ban to lapse by not extending it beyond March 31, [reopening](#) the pipeline of cheap foreign labor.

Public Charge. The public charge ground of inadmissibility has been a part of U.S. immigration law for over 100 years. Under the law, an alien who is likely at any time to become a public charge is generally inadmissible and ineligible to become a lawful permanent resident. While Congress provided certain mandatory factors to be considered in the inadmissibility analysis, it did not concretely define “public charge”. In 1999, the Immigration and Naturalization Service defined a public charge as an alien primarily dependent on *cash* assistance, but exempted receipt of non-cash welfare like housing assistance and food assistance. The Trump administration [redefined](#) public charge through extensive rulemaking in full compliance with the Administrative Procedure Act to mean an alien who is “more likely than not” to receive certain taxpayer-funded public benefits for more than 12 months within a 36-month period, including non-cash welfare.

The rule was supposed to go into effect on October 15, 2019, but was delayed until February 21, 2020, after the U.S. Supreme Court tossed out lower-court injunctions that had blocked implementation. Then a judge in the Northern District of Illinois issued an order on November 2, 2020, vacating the rule nationwide. The next day, the Seventh Circuit Court of Appeals granted a stay, which allowed for the continued application of the public charge rule pending appeal. Then on March 9, 2021, the [Biden DOJ](#) told the Supreme Court it would stop defending the Trump-era rule, allowing the district court’s vacatur to prevail. In a subsequent document published in the [Federal Register](#), DHS removed the 2019 public charge rule and reverted to the 1999 interim guidance.

While several state attorneys general attempted to intervene and defend the Trump-era regulation, the federal Ninth Circuit Court of Appeals [refused](#) the effort, effectively terminating the public charge regulation. As the Center previously [analyzed](#), 63 percent of households headed by a non-citizen used at least one welfare program, compared to just 35 percent of native-headed households.

Affidavit of Support. In a companion action, on March 19, 2021, DHS [announced](#) it is withdrawing the proposed rule regarding the affidavit of support, issued by the Trump administration but not finalized before President Biden’s inauguration. Under the law, family-based intending immigrants and certain employment-based intending immigrants must have a sponsor sign an affidavit of support as a condition of their eligibility for a green card. The affidavit of support is a binding contract between the sponsor (a U.S. citizen, U.S. national, or LPR) and the U.S. government whereby the sponsor, among other things, is responsible for reimbursing the Treasury (i.e., American taxpayers) for any taxpayer-funded benefits the intending immigrant accesses while the affidavit of support is in effect.

While rescinding the proposed rule does not change the requirements, the Biden administration’s refusal to complete the regulation signals that the new administration is uninterested in ensuring that sponsors actually have the means to support the intending immigrant and/or reimburse American taxpayers for any welfare benefits utilized while the affidavit of support is in effect. To that end, the Biden administration also ordered USCIS officers to stop reading out loud to intending immigrants that their sponsor(s) is legally bound to support them and repay the government if they sign the affidavit of support. This move suggests that the Biden administration will not enforce the affidavit of support, effectively nullifying this provision of immigration law. As a result, more immigrants will access more welfare benefits, increasing the overall burden on American taxpayers.

Naturalization Civics Test. Citing President Biden’s [EO 14012](#) directive to “eliminate barriers and make the [naturalization] process more accessible to all eligible” applicants, USCIS announced that it is scrapping the just-finished 2020 version of the civics

test and is reverting to the 2008-2009 version of the test. In a [press release](#), the agency claimed “USCIS determined the 2020 civics test development process, content, testing procedures, and implementation schedule may inadvertently create potential barriers to the naturalization process.” The Center [analyzed](#) these claims and demonstrated that they were unfounded and pretextual cover to undo something that was developed by career officials during the Trump administration. Additionally, the Center [exposed](#) that the phased manner for reverting to the 2008-2009 version of the test has injected uncertainty and confusion into the naturalization process.

H-1B Lottery. On January 8, 2021, DHS, under the Trump administration, published the “Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions” (H-1B Selection Final Rule) replacing the random lottery process used to select cap-subject H-1Bs with a merit-based process that prioritized the selection of the highest prevailing wage levels within the industry and geographic location. The new regulation was set to go into effect on March 9, 2021, in time for it to be applied to the FY 2022 H-1B cap season. However, the Biden administration delayed the effective date to December 31, 2021, and took additional [comments](#) from the public on delaying the rule.

The Center [submitted](#) a comment in support of implementing the H-1B Selection Final Rule for the FY 2023 cap season as the best method of allocating limited H-1B cap numbers, consistent with congressional intent. However, due to the delayed effective date, the lottery was used for the FY 2022 cap season. While USCIS [announced](#) it has reached the FY 2022 cap, the agency failed to disclose any data on the registrations selected. Historically, the lottery has resulted in the overrepresentation of the lowest level foreign workers (level 1 and level 2) being selected in overwhelmingly just one industry (tech). This allocation will yet again harm Americans in the IT field, particularly upcoming college graduates with science, technology, engineering, and mathematics (STEM) degrees.

H-2B Supplemental. In the FY 2021 Consolidated Appropriations Act, Congress delegated authority to the DHS secretary for a one-time increase in the H-2B statutory cap of 66,000 non-agricultural temporary foreign workers for the fiscal year. Former Acting Secretary Chad Wolf ended up not using this authority as the Covid-19 pandemic spread throughout the world. While the economy still has not recovered, the Biden administration announced on April 20 that it is [increasing](#) the H-2B cap by 22,000 for the remainder of the fiscal year, with 6,000 of the visas carved out for alien workers from the Northern Triangle to “expand lawful pathways for opportunity in the United States”.

The Rule of Law

Similar to the Obama administration, President Biden has issued numerous executive actions to unilaterally implement policies that Congress has failed to act on. Thus far, the Biden administration has advanced policies that reward illegal aliens with amnesty rather than enforcing current laws and protecting American workers and taxpayers.

DACA. In the summer of 2020, a divided Supreme Court ruled against the Trump administration’s attempt to rescind DACA on procedural grounds, finding that his administration [violated](#) the Administrative Procedure Act by not justifying its decision to end the program. On his first day in office, Biden issued a presidential [memorandum](#) entitled “Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)”, which signaled his support for the Obama-era executive amnesty program. This memo is not substantive in nature because there is pending litigation in federal court in Texas to end DACA. However, if the executive amnesty program is found constitutional, media reports indicate the Biden administration [plans](#) to institute a four-year extension of DACA while Congress debates legislation granting these illegal aliens amnesty and a path to citizenship. The Center has learned that the USCIS Office of Policy and Strategy is reportedly drafting a regulation to align with the presidential memorandum.

Amnesty. During his campaign, Biden promised to create a path to [citizenship](#) for approximately 11 million illegal aliens currently residing in the U.S. Specifically, President Biden endorsed the “U.S. Citizenship Act”, a bill that the Center [found](#) would (1) amnesty nearly every illegal alien in the country, with an expedited path to citizenship for the illegal alien beneficiaries of DACA and Temporary Protected Status (TPS); (2) weaken immigrant enforcement; and (3) double future legal immigration. Separately, President Biden has supported H.R. 6, the “American Dream and Promise Act”, which would have amnestied all of the illegal aliens who received DACA and TPS prior to Biden taking office. The House of Representatives passed this bill on a party-line vote and, while smaller than the U.S. Citizenship Act, if enacted, H.R. 6 would still be the largest amnesty ever signed into law.

TPS/DED. As Congress debates the aforementioned amnesty bills, the Biden administration is using TPS and DED to bestow “amnesty-lite” on certain groups of illegal aliens. This expansive use of TPS to reward illegal aliens due to events that occurred in their home country is a sharp contrast to the Trump administration, which properly [terminated](#) TPS for El Salvador, Nicaragua,

Haiti, Honduras, Nepal, and Sudan after country condition reviews showed that none of these countries continue to meet the statutory requirements for continuing TPS. Courts blocked the implementation of these terminations and it is doubtful that the Biden administration will follow through with the terminations.

Just nine days into the Biden administration, DHS [extended](#) and “re-designated” TPS for Syrians, which allows approximately 6,700 current Syrian beneficiaries to retain TPS through September 30, 2022 and [allows](#) an estimated 1,800 additional Syrian illegal aliens to obtain TPS. The Center [noted](#) that political influence drove the “re-designation”, which has no basis in statute and for which the Biden administration failed to articulate any new conditions that have emerged in Syria since the previous designation.

In March, the Biden administration added two new countries to the list covered by TPS. First, it designated Venezuela for TPS, granting work permits and deportation protection for approximately [320,000](#) illegal aliens. The [Venezuelan](#) designation is the largest for any one country and doubled the total number of illegal aliens with TPS. Less noticed, on March 12, DHS designated [Burma](#) for TPS. While DHS has failed to provide a population estimate of Burmese covered by this new designation, a source told the Center that approximately 1,600 Burmese illegal aliens will be eligible for TPS.

Prior to the TPS designation, certain Venezuelans were made eligible for Deferred Enforced Departure (DED) at the end of the Trump administration. DED is similar to TPS in that it grants deportation relief and work authorization, but it is supposedly rooted in the president’s foreign affairs power instead of statutorily based. President Biden also [reinstated](#) DED for Liberians who were previously under DED as of January 10, 2021 (the expiration date set by Trump), through June 30, 2022. It is unclear what drove this decision since this population is eligible for [amnesty](#) under the Liberian Refugee Immigration Fairness provision in the National Defense Authorization Act for FY 2020. USCIS [estimates](#) between 2,200 and 4,200 Liberian illegal aliens are eligible for DED.

CAM. The Central American Minors (CAM) program was [established](#) in 2014 by the Obama administration to provide children from Guatemala, El Salvador, and Honduras who have parents or relatives legally present in the U.S. with a means to apply for protective status in the U.S. Few benefited from the initial version of CAM because most people from the Northern Triangle do not meet the statutory definition of refugee and the parole aspect was unnecessary because lawfully present parents already have legal means to get their children into the country.

CAM was expanded in 2016 to include adults, including “caregivers” who were not required to be related to the lawfully present sponsor. Through the CAM expansion, Obama’s DHS was abusing its parole authority to allow large categories of otherwise inadmissible aliens into the country. Once paroled in, many of these aliens could adjust status (obtain a green card) as the parole authority is used to bypass restrictions on adjustment of status under section 245 of the Immigration and Nationality Act.

While President Trump [terminated](#) CAM in 2017, Biden reinstated CAM on February 2, 2020, through [Executive Order 14010](#), “Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border”. Biden’s version of the CAM program “will no longer be limited to nationals of El Salvador, Honduras, and Guatemala; any other ‘Central American’ country could be added to the list by the Secretary of State.” The Center [points out](#) that parole does not typically provide a pathway to permanent resident status; however, since it would be granted under the family-reunification umbrella, immigrants would be able to wait for their application to be processed while they are with family members in the U.S. rather than in their home country.

National Security and Vetting

Travel Ban. As part of the Trump administration’s focus on screening and vetting, the president issued [Proclamation 9645](#), “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats” and [Proclamation 9983](#), “Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats”. Certain nationals of 13 countries (Burma, Eritrea, Iran, Kyrgyzstan, Libya, Nigeria, North Korea, Somalia, Sudan, Syria, Tanzania, Venezuela, and Yemen) were designated under the two presidential proclamations (PP) for various visa restrictions. The media often misreported these PPs as a “Muslim travel ban”.

As the Center [testified](#) before Congress in September 2019, the analysis called for under the PPs established a “baseline” of the types of information that the United States government required to determine whether a foreign national from any nation — not just those that ended up designated — should be allowed to enter the country. There were three categories that made up the base-

line: identity-management information; national security and public-safety information; and national security and public-safety risk assessment. The countries designated under the two PPs were found deficient in at least one of the categories.

On his first day, President Biden issued a [proclamation](#) that rescinded the Trump PPs and ordered the resumption of visa processing for nationals of the 13 countries. In the preamble to the Biden PP, he framed the Trump PPs as a “Muslim ban” despite the [U.S. Supreme Court](#), ruling in favor of Trump’s authority to issue such a ban, noting that PP 9645 made no reference to religion, “covers just 8% of the world’s Muslim population and is limited to countries that were previously designated by Congress or prior administrations as posing national security risks.” One such prior administration was the Obama administration, in which Biden served all eight years as vice president.

Biometrics. On September 11, 2020, DHS [published](#) a proposed rule entitled, “Collection and Use of Biometrics by U.S. Citizenship and Immigration Services”. In general, this rule would modernize biometrics collections by establishing a uniform definition of “biometrics” for all of DHS, replacing the patchwork of specified identifying modalities (e.g., fingerprint, photograph) used for various DHS purposes. In contrast, the current practice of using “name and date of birth” identifiers or submitting documents to establish identity are unreliable and can be easily misrepresented or counterfeited.

As USCIS explained in the proposed rule, these changes are intended to “Provide DHS with the flexibility to change its biometrics collection practices and policies to ensure that necessary adjustments can be made to meet emerging needs, enhance the use of biometrics beyond background checks and document production to include identity verification and management in the immigration lifecycle, enhance vetting to lessen the dependence on paper documents to prove identity and familial relationships, preclude imposters, and improve the consistency in biometrics terminology within DHS.”

Rather than publishing the final rule that the Trump administration did not complete, the Biden administration has [killed](#) the regulation, first by putting it indefinitely on hold while actively drafting a withdrawal notice.

USCIS Form Rejection Criteria. The requirements for properly filing applications and petitions with USCIS are detailed at [8 CFR 103.2](#) and the requirements for USCIS to accept an application or petition to begin adjudication are explained in the [Policy Manual](#). In 2019, senior Trump administration political leadership at USCIS discovered that the agency was accepting incomplete Forms I-589, I-612, and I-918 in violation of the form instructions and regulations, ended this practice, and began applying the rejection criteria spelled out on the form instructions.

On April 1, the Biden administration [announced](#) that it will stop adhering to the form instructions and accept incomplete applications and petitions. As a result, adjudicators will have to divert limited resources by sending out Requests for Evidence (RFE) to get the missing information. In the meantime, many illegal aliens will be able to obtain work permits despite being ineligible for the underlying immigration benefit.

Supervisory Asylum Review. On April 1, the Biden administration [announced](#) a policy requiring 100 percent supervisory review of asylum adjudications conducted by USCIS officers. In contrast, under the Trump administration supervisory review was time-limited for new hires on approvals to ensure they were applying the law correctly. USCIS claims the change is being made after conducting a “quality assurance” review of the past practice, but the agency declined to provide the results of the quality assurance review when requested by reporters. While the 100 percent supervisory review policy may appear to be enhancing screening and vetting, it is an inefficient extra layer that will slow down the adjudicative process at a time when the agency has a significant asylum backlog. Additionally, there is a legitimate concern that this move is intended to override asylum denials issued by the cadre of asylum officers hired during the Trump administration whose backgrounds tended to include law enforcement and military rather than non-governmental organizations or advocacy groups.

OPT Integrity Unit. Optional Practical Training (OPT) is an unlawful work permit program that allows aliens admitted as F-1 students to work for 1-3 years after obtaining a degree. With the corresponding payroll tax exemption that makes hiring an alien on OPT cheaper than a similarly qualified American, OPT has exploded in popularity in recent years, becoming the largest guest-worker program never passed by Congress. Although the Trump administration failed to rescind the unlawful regulations that established OPT, on January 13, 2021, ICE [announced](#) the creation of a new unit — the OPT Employment Compliance Unit — dedicated to compliance matters involving wages, hours, and compensation within OPT, the OPT extension, and Curricular Practical Training (CPT). ICE, which has jurisdiction over student visa policy, conceded that it is “currently unable to evaluate the impact OPT has had on U.S. workers and foreign students [sic] who have obtained work authorization through the programs.” However, less than a week into the Biden administration, the new OPT integrity unit was [terminated](#) via “broadcast message” with no further explanation or analysis on DHS’s ability to ensure OPT is being administered in compliance with its (unlawful) regulations.

Conclusion

Immigration was a signature issue in President Trump's 2016 election, but that legacy was largely limited to Executive Branch actions, as Congress has not passed meaningful immigration legislation since 1996. As a result, President Biden is able to rescind or revise those policies through similar executive actions and has swiftly introduced numerous policies covering many different areas of immigration. While opponents of President Trump's immigration policies successfully utilized "lawfare" to tie things up in the federal courts for many years, opponents of President Biden's policies have had mixed results thus far using the same approach.

The Biden administration has not repealed all of the Trump administration policies. As mentioned earlier in the report, President Biden is applying Title 42 authority to some segment of the illegal alien border apprehensions, angering his base in the process. Despite criticizing President Trump's Fiscal Year 2021 refugee ceiling as "immoral" and cruelly low, President Biden has yet to actually increase the levels, waffling on whether or not he intends to do so. Importantly, the Biden Department of Justice is arguing before the U.S. Supreme Court that a grant of TPS is not considered an admission for purposes of being able to adjust status to lawful permanent resident, continuing the interpretation taken under President Trump. Additionally, the Biden administration appears to be keeping, for the timebeing, a Trump-era regulation that replaces the H-1B lottery with a selection process that prioritizes alien workers with the highest skills and salaries.

Immigration was not a focal point of the 2020 presidential debate, so many who voted for candidate Biden are just now discovering what his administration's immigration policies entail. During the first 100 days, the Biden administration has primarily focused on rescinding Trump administration policies rather than offering up its own proposals. The House of Representatives has already passed two amnesty bill, but their prospects in the Senate are unclear. As the 2022 midterm elections near, the Biden administration will likely be encouraged by its supporters to take bold executive action instead of waiting on Congress to act. A number of Republican state attorneys general appear willing to legally challenge Biden policies that run afoul of checks and balances.