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Two Years of Biden's Immigration Policies

10 actions and their impact

By Elizabeth Jacobs

January 21, 2023, marked the half-way point of President Biden's first term and, after two years, his immigration record has a lot to say. Here is a review of Biden's 10 most impactful actions with regard to border security, interior enforcement, and immigration benefits since he took office in January 2021.

Border Security

As CIS covered in its reports on President Biden's first days in office, the Biden administration swiftly took action to rescind deterrence policies put in place by the Trump administration at the U.S.-Mexico border. As a result, the Biden administration has overseen an historic humanitarian crisis that has remarkably worsened with nearly each passing month. U.S. Customs and Border Protection (CBP) has reported encountering over 4.1 million aliens at the southern border between fiscal years (FY) 2021 and FY 2022 (1.7 million and 2.2 million, respectively), not including an estimated 1.125 million aliens who were detected by officers but evaded apprehension (known colloquially as "got-aways").[1] Alarmingly, CBP reported encountering over 251,000 migrants at the southern border in the month of December 2022 alone, exceeding the number for any month in recorded history during a season when apprehensions should be at their lowest levels.[2]

Despite these figures, President Biden has failed to implement any policies to deter illegal entrants. Instead, his administration put forth reforms that are meant to hide mass illegal immigration from public view by accelerating the processing, transport, and issuance of parole to recent arrivals, under the banner of creating "safe, orderly, and legal pathways" for prospective migrants. Below is a recap of the Biden administration's most consequential actions on the border.

Termination of the "Remain in Mexico" Policy. Immediately upon taking office, President Biden announced that he would suspend the Migration Protection Protocols (MPP, commonly known as "Remain in Mexico") program, the Trump administration's most successful deterrent to illegal entry. MPP was originally implemented in January 2019 by U.S. Department of Homeland Security (DHS) then-Secretary Kirstjen Nielsen. Relying upon authority in INA § 235(b)(2)(C), MPP allowed DHS to return certain (non-Mexican and non-UAC (unaccompanied alien children)) aliens caught entering the United States illegally or without proper documentation back to Mexico to wait for their removal hearings.[3]

Unsurprisingly, illegal border crossings fell sharply after the agency implemented the deterrence policy.[4] The U.S. government expedited cases placed in MPP.[5] Most importantly, however, the program cut off the most significant pull-factor for illegal border-crossing and asylum fraud: the likelihood of being released into the United States. Even less surprisingly, illegal border crossings skyrocketed once the Biden administration announced it was suspending new enrollments.

On February 2, 2021, President Biden issued Executive Order 14010, "Creating a Comprehensive Regional Framework to Addresses 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", which directed the secretary

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of Homeland Security to "promptly review and determine whether to terminate or modify the program known as the Migration Protection Protocols."[6] In accordance with this directive, Secretary of Homeland Security Alejandro Mayorkas suspended enrollments in MPP and, on June 1, formally terminated the program through issuance of a policy memorandum.[7]

The Biden administration's decision to terminate MPP was challenged by state plaintiffs, led by Texas, in federal court.[8] Most recently, a Texas district court issued a new preliminary injunction, ruling the Biden administration's actions again were likely "arbitrary and capricious", stating that "the October 29 Memoranda do not appear to demonstrate a 'rational connection between the facts found and the choice made' to terminate MPP."[9] Given the significance of the legal issues presented in this litigation, the matter is likely to make its way back to the U.S. Supreme Court for a final resolution.

Title 42 Public Health Order. In March 2020, as a response to the Covid-19 pandemic, the Centers for Disease Control and Prevention (CDC) issued an order under its Title 42 authorities to allow DHS to quickly expel aliens who have entered the United States illegally or sought admission without proper documents, to limit the further transmission of Covid into the country and prevent the transmission of new variants.[10] The Biden administration reissued the Title 42 order several times thereafter (subject to modifications and amendments, restricting its applicability from family-units and unaccompanied alien children apprehended at the border, among other changes), into the spring of 2022.[11]

On April 1, 2022, however, the Biden administration announced its plans to end the use of its expulsion authority under Title 42, effective May 23, 2022,[12] despite warnings from DHS that the number of aliens who would seek to enter the United States would more than double if the order was lifted, to upwards of 18,000 migrant apprehensions per day.[13] With Title 42 as the last remaining border-control measure in place, the Biden administration's plans to end the order prompted an even greater surge of illegal entrants at the southern border. And like MPP, the administration's plans to terminate the order have been disrupted by litigation.

Concerned about the mounting costs of sustained mass illegal immigration, a group of states sued the CDC, asserting that the agency failed to adequately consider states' reliance interests in the government maintaining the public health order when it made the decision to terminate it. Shortly after, the federal district court considering the lawsuit issued an order to block the Biden administration from ending its use of the Title 42 authority.[14] As of January 2023, the administration is still defending its decision to terminate the order, and the Supreme Court will be considering the states' rights to intervene in another Title 42-related case during a February 2023 argument session.[15]

Mass Parole. Arguably the most concerning policy put forth by the Biden administration thus far may be its historic abuse of DHS's limited parole authority. Since January 2021, the Biden administration has released an estimated 1.7 million illegal entrants into the United States by using parole as a mechanism to circumvent the INA's mandatory detention provisions.[16] The Biden administration has also revived and expanded the Central American Minors program, which was originally created by the Obama administration to allow certain Central American migrants to apply for parole from home and, in its image, has created six new parole programs to allow prospective migrants from Afghanistan, Cuba, Haiti, Nicaragua, Venezuela, and Ukraine to apply for parole from abroad. Under the Biden administration's new programs, if an alien is granted parole, they will be able to enter and work in the United States, despite not having a lawful immigration status.[17]

While parole is temporary, DHS has not provided any information regarding whether parole granted under its new program will be extended or renewed. Nevertheless, it is unlikely that an alien whose parole expires will meet the Biden administration's enforcement priorities without the existence of other aggravating circumstances. Secretary of Homeland Security Alejandro Mayorkas explicitly stated in his 2021 enforcement guidelines that "the fact that [an alien] is removable ... should not alone be the basis of an enforcement action against them."[18]

Further, as my colleagues and I have repeatedly explained, DHS's class-based parole programs are not legal.[19] Congress has only conferred to DHS narrow authority to parole aliens into the United States on a "case-by-case" basis for "urgent humanitarian or significant public benefit" reasons.[20] Parole is explicitly not meant to circumvent the caps or mechanisms set by Congress, or otherwise to be used as a "supplement" to immigration policy.[21] The Biden administration's objectives in utilizing parole in a programmatic fashion, however, could not be more clear. Parole allows President Biden to acquiesce to mass illegal immigration while simultaneously obscuring it from public view and scrutiny.

Credible Fear Reform. On March 29, 2022, DHS and the Department of Justice published a new regulation, titled "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers", which made sweeping changes to the expedited removal process.[22] The regulation, which was issued as an interim final rule, allows asylum officers to release aliens into the United States using parole and make final asylum decisions for aliens who pass their credible fear screenings. Under this framework, if an alien is ultimately denied asylum by an asylum officer, the alien can appeal that decision in a modified version of the old process to an immigration judge. If an immigration judge denies the application as well, the alien can then appeal that decision to the Board of Immigration Appeals, giving aliens who make fear claims at the border an additional "bite at the apple".

Among the most concerning aspects of the rule is its provisions that allow asylum officers to grant asylum — placing the alien on a path to citizenship — following a "nonadversarial hearing," at which the alien could be represented by counsel, while U.S. Customs and Immigration Enforcement (ICE) prosecutors, who represent the interests of the American public, are kept out of the process. That means an alien could receive a final asylum grant without any cross-examination impeachment evidence considered, preventing a thorough review of the alien's claims. Even more concerning is that the framework excludes judicial review of cases where the asylum officer improperly granted asylum. Simply put, the Biden administration's regulation provides more protections to illegal entrants, while removing safeguards protecting the most essential of U.S. interests — citizenship. Twenty states have challenged the rule in federal court in Louisiana, while the state of Texas has filed its own suit against it in a U.S. district court there.[23]

Interior Enforcement

From day one, President Biden made it clear that his administration would only enforce U.S. immigration law in the most limited circumstances. Immediately upon taking office, President Biden issued an executive order to rescind former President Trump's directive to enforce all immigration laws and ordered a 100-day moratorium on deportations nationwide. While Biden's deportation-freeze was ultimately enjoined in federal court, his administration has since used executive action to limit immigration officers' ability to enforce the law in the interior of the United States.

Non-Enforcement Policies. Since January 2021, DHS has issued a handful of policies to restrict immigration enforcement operations. Secretary of Homeland Security Alejandro Mayorkas issued several memoranda to set DHS's "enforcement priorities". Most recently, Mayorkas issued a memorandum on September 30, 2021, titled "Guidelines for the Enforcement of Civil Immigration Law", which established a non-exhaustive list of factors that DHS officers must take into account before investigating, questioning, arresting, detaining, prosecuting, or removing aliens in the United States (collectively known as "enforcement action").[24] While the memorandum purports to not "compel a specific action to be taken", the policy directly obstructs the rule of law by explicitly assuring that an alien's illegal immigration status alone will not compel any DHS enforcement action.

Second, on October 12, 2021, Mayorkas issued a separate policy, titled "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual", which severely restricts officers' ability to enforce immigration law at an alien's place of employment.[25] This policy specifically ended ICE's practice of conducting worksite enforcement operations and directed the agency to consider "exercising prosecutorial discretion" to workers who witness or experience worksite exploitation. DHS later announced a deferred action program for aliens who report abusive employers, which would provide lawful presence and work authorization to aliens working in the United States illegally.[26]

Third, and perhaps most egregiously, DHS issued a policy on October 27, 2021, to prohibit ICE and CBP officers from initiating immigration enforcement actions in certain locations, calling these locations "protected areas".[27] This policy, titled "Guidelines for Enforcement Actions in or Near Protected Areas", prohibits ICE and CBP officers from enforcing the law at or even near an area where people engage in certain activities.

Subject to only narrow national security and public safety exceptions, the policy provided a long, non-exhaustive list of examples where enforcement actions are generally prohibited. Aside from sensitive areas that officers already are generally prohibited from initiating enforcement actions, the list also includes locations such as places where there is an ongoing parade,

demonstration, or rally; a myriad of social service establishments; colleges and vocational or trade schools; places of religious study; and places where children may generally be present.

Recent studies conducted by CIS, however, have revealed that the Biden administration's policy prohibits officers from initiating enforcement actions from large percentages of U.S. towns and cities.[28] While the Biden administration's enforcement guidelines are currently being litigated in federal court, the Biden administration's other restrictions have ensured that federal immigration enforcement actions are nearly impossible to initiate in 2023.[29]

Alternatives to Detention. In addition to issuing overbroad non-enforcement policies, the Biden administration has likewise limited its detention operations for aliens who do manage to fall within DHS's limited enforcement priorities. Data obtained by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University this fall has shown that ICE has enrolled nearly 500,000 aliens subject to mandatory detention in its Alternatives to Detention (ATD) program between August 2020 and June 2022.[30] Concerningly, the data also shows that, since 2021, ICE has drastically shortened the amount of time it monitors aliens enrolled in ATD and has ceased to monitor (or has "unenrolled") nearly 200,000 aliens who are subject to mandatory detention under federal law.

ICE uses ATD to release aliens subject to mandatory immigration detention and monitor their location, primarily with mobile device apps or ankle bracelets that enable GPS monitoring.[31] Federal law, however, requires ICE to detain certain aliens, including most recent border-crossers and certain criminal aliens, pending the completion of their removal proceedings.[32]

Congress mandated detention to guarantee that these classes of offenders appear for their removal hearings and for actual removal from the United States. The original goal of ATD, which has been used by the government to various degrees since at least 1997, was to ensure that aliens enrolled in the program show up to their immigration hearings without imposing the costs of detention on the government. In the context of border apprehensions, the Biden administration has increased its use of ATD in order to circumvent the INA's detention requirements and allow illegal entrants to live and work (not always legally) in the United States.

Immigration Benefits

In line with President Biden's minimal enforcement policies, U.S. Citizenship and Immigration Services (USCIS), under Biden administration leadership, has focused on "eliminating barriers" and expanding access to immigration benefits, often beyond the bounds of congressional authorization.

Public Charge. On September 9, 2022, the Biden administration published a new public charge regulation to govern how DHS will administer the public charge ground of inadmissibility.[33] The INA makes any alien who is an applicant for a visa, admission, or adjustment of status "inadmissible" if he or she is likely at any time to become a public charge.[34]

The Biden administration's regulation largely codifies the agency's Clinton-era approach, interpreting "public charge" to mean whether an alien is "primarily dependent" on the government (a lesser standard, not supported by statute) and excludes consideration of an alien's non-cash benefits from the analysis.[35] The Biden administration issued the regulation in large part to replace the Trump administration's 2019 public charge regulation. This rule set up a "totality of the circumstances" approach that notably abandoned the Clinton-era distinction between dependence and "partial dependence".[36] The 2019 regulation also required immigration officers to take into account a larger set of taxpayer-funded benefits when making a public charge determination, among other reforms.

Under the Biden administration's framework, immigration officers may consider only prior or current receipt of cash-based welfare or long-term institutionalization at the government's expense when considering whether an alien is likely to become a public charge.[37] All other forms of welfare usage are excluded from a public charge analysis. That means, when an officer is tasked with determining whether an alien is likely at any time to be a public charge, they are prohibited from considering the alien's past or current receipt of any non-cash benefit, such as medical care, housing assistance, or benefits provided to dependent family members.

The Biden administration's public charge regulation also excludes consideration of an alien's receipt of the Earned Income Tax Credit and Child Tax Credit programs, even though they are means-tested transfer payments for which recipients must individually qualify. Notably, officers also may not consider benefits received by an alien's family members, including dependent children.

Temporary Protected Status. In addition to expanding its use of parole for inadmissible aliens apprehended at the border, the Biden administration has more than doubled the population of aliens with Temporary Protected Status (TPS) since January 2021. TPS protects aliens who are already in the country from removal if they entered the United States prior to a country's TPS designation and provides beneficiaries work authorization. Congress limited TPS designation periods to no longer than 18 months, providing the DHS secretary options to extend or terminate given specific conditions.

The INA, however, only allows the secretary of Homeland Security to designate countries for TPS if he determines at least one of three specific circumstances exist: (1) An ongoing armed conflict within the country such that requiring the return of nationals to that country would pose a serious threat to their personal safety; (2) A natural or environment disaster resulting in a substantial, but temporary, disruption of living conditions and the foreign state is temporarily unable to adequately handle the return of their nationals; or (3) "extraordinary and temporary" conditions in the foreign state that prevent nationals of the state from returning safely (unless the secretary determines that permitting such aliens to remain temporarily in the United States is contrary to the national interest of the United States).[38]

While it generally makes sense to not deport people to a country that is experiencing a severe humanitarian crisis, the Biden administration has continued to abuse DHS's authority to prolong such protections. In recent years, DHS has turned TPS into a pseudo-immigrant status that can be expected to be extended indefinitely, long after the conditions that prompted the need for TPS subside. Some TPS designations have been extended so many times that many immigration experts have begun to refer to the program as "amnesty-lite."[39] Today, there is hardly anything temporary about TPS.

Notably, the Biden administration has revived the practice of "re-designating" countries for TPS, rather than merely extending an existing designation. Unlike extensions, this legal technicality allows aliens who have entered the United States illegally (or fell out of status) after the date of the last TPS designation of their home country to be eligible for to receive TPS. As of January 2023, Secretary Mayorkas has newly designated or re-designated 12 of the 16 countries with TPS designations, increasing the TPS population to an estimated 600,000 individuals, most of whom have lived in the United States for decades. [40]

Deferred Action for Childhood Arrivals. On August 25, 2022, as an attempt to legitimize the Deferred Action for Childhood Arrivals (DACA) program and bolster DHS's standing in litigation, the Biden administration issued a regulation to codify the program. DACA, which was created by the Obama administration via a policy memorandum on June 15, 2012, provides immigration benefits, including lawful presence, employment authorization, and forbearance from deportation, to certain aliens who are in the United States illegally. [41] In addition to other eligibility criteria, DACA recipients must have been under the age of 31 on or before June 15, 2012, and have entered United States prior to 2007 (thus the DACA-eligible population is now between the ages of 26 to 42 years old). The Biden administration's DACA regulation made almost no revisions to the framework of the original program.

The regulation was issued, however, in direct conflict with a federal court ruling holding that the program violates both procedural and subjective law.[42] The Biden administration acknowledged the full extent of the district court ruling in a footnote in the proposed DACA regulation, writing, "The district court … also concluded that 'DACA is an unreasonable interpretation of the law because it usurps the power of Congress to dictate a national scheme of immigration laws and is contrary to the INA.'"[43] Brazenly, DHS responded by stating, "The Department respectfully disagrees," and went on to reiterate the same view of DACA that the district court had rejected.[44] The legality of the DACA regulation is currently being litigated in the Fifth Circuit and is expected to make its way back to the U.S. Supreme Court to be considered on the merits.[45]

As of 2022, using DACA, DHS has allowed over 825,000 aliens in the United States illegally to work and obtain numerous public benefits, with an estimated eligible population of up to 1.7 million aliens.[46] On September 28, 2021, DHS reported that over 660,000 individuals were enrolled in the program.[47]

Withdrawal of Protections for U.S. and Foreign Workers. Finally, the Biden administration delayed and later withdrew two important regulations in 2021 that would have increased protections for both U.S. and foreign workers. Both regulations were issued during the last weeks of the Trump administration and were enjoined by the U.S. District Court for the Northern District of California during the Biden administration.

First, on December 13, 2021, the Biden administration withdrew a Department of Labor (DOL) regulation, titled "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States", that raised the wage rates employers are required to pay foreign workers.[48] Current wage levels set by DOL allow employers to, in many cases, severely underpay foreign workers below the prevailing wage for domestic jobs, and consequently provide employers with a great incentive to hire foreign workers over a U.S. workers, all while exploiting the foreign workers. DOL did not provide any reasoning for its withdrawal, simply stating that it was complying with (markedly not appealing) the Northern District of California ruling that vacated the regulation.[49]

Second, on December 22, 2021, the Biden administration withdrew the DHS regulation "Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions".[50] This reform required USCIS to prioritize higher-paid and higher-skilled foreign workers for H-1B cap-subject visas, thus ensuring U.S. businesses access to the best pool of foreign workers while also discouraging wage suppression and unfair competition for U.S. workers. Current DHS policies require USCIS to select registrations on a purely random basis, utilizing a lottery system, when demand for H-1B visas exceeds the numerical limit set by statute.[51] Here, again, the Biden administration declined to defend the regulation against its legal challenge.

The repeal of both of these regulations delivered a blow to both U.S. and foreign workers who face economic harm and exploitation as a result of inadequate worker protections in the employment-based immigration system. Furthermore, the decisions to withdraw both rules instead of defending them on appeal are early examples of the Biden administration's tactic of "rulemaking-by-collective-acquiescence", what Chief Justice John Roberts referred to as the government's strategy to accept defeat in litigation in order to make policy changes without complying with procedures required by the APA.[52] The Biden administration has, however, indicated that it plans to issue a new regulation to reform the H-1B program in the upcoming year.

End Notes

[1] "Southwest Land Border Encounters", U.S. Customs and Border Protection, January 2023.

[2] "CBP Enforcement Statistics Fiscal Year 2023", U.S. Customs and Border Protection, January 2023.

[3] "Memorandum for L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, et al., from Kirstjen M. Nielsen, Secretary, U.S. Department of Homeland Security, Re: Policy Guidance for Implementation of the Migrant Protection Protocols", January 25, 2019; the Trump administration did not place Mexican nationals, unaccompanied alien children (UACs), or other vulnerable populations into MPP.

[4] "Southwest Land Border Encounters", U.S. Customs and Border Protection, January 2023.

[5] Migrant Protection Protocols memo, at 2-4.

[6] "Creating a Comprehensive Regional Framework to Addresses 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", Executive Order 14010, February 2, 2021.

[7] "Memorandum for Troy Miller, Acting Commissioner, U.S. Customs and Border Protection, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: Termination of the Migrant Protection Protocols", June 1, 2021.

[8] *Biden v. Texas*, 142 S. Ct. 2528 (June 30, 2022).

[9] *Texas v. Biden*, Case No. 2:21-CV-067-Z (N.D. Tex. 2022).

[10] "Order Suspending the Introduction of Certain Persons From Countries Where a Communicable Disease Exists", U.S. Department of Health and Human Services, Center for Disease Control and Prevention, March 17, 2020.

[11] "CDC Orders", U.S. Department of Health and Human Services, Center for Disease Control and Prevention, December 30, 2022.

[12] "Statement by Secretary Mayorkas on CDC's Title 42 Order Termination", U.S. Department of Homeland Security, April 1, 2022.

[13] Nick Miroff and Maria Sacchetti, "Biden officials bracing for unprecendented strains at Mexico border if pandemic restrictions lifted", The Washington Post, March 29, 2022.

[14] *Ibid.*

[15] *Arizona v. Mayorkas,* No. 22A524, Order (December 19, 2022).

[16] Andrew Arthur, "Massive Spending Bill Includes $785 Million to Feed, House, and Transport Migrants", Center for Immigration Studies, December 30, 2022.

[17] "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans", U.S. Citizenship and Immigration Services, January 17, 2023; "Uniting for Ukraine", U.S. Citizenship and Immigration Services, January 6, 2023; "Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States", U.S. Citizenship and Immigration Services, September 9, 2022.

[18] "Memorandum for Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: Guidelines for the Enforcement of Civil Immigration Law", September 30, 2021.

[19] George Fishman, "The Pernicious Perversion of Parole", Center for Immigration Studies, February 2022.

[20] INA § 212(d)(5).

[21] H.R. Rep. No. 104-469, at 140 (1996).

[22] "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers", 87 Fed. Reg. 18078, March 29, 2022.

[23] See *Texas v. Mayorkas*, Case No. 2:22-CV-094-Z (N.D. Tex. 2022); *Arizona v. Garland*, Civil Action No. 6:22-cv-01130-DCJ-CBW (W.D. La. 2022).

[24] "Memorandum for Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: Guidelines for the Enforcement of Civil Immigration Law", September 30, 2021.

[25] "Memorandum for Tae Johnson, Acting Director, U.S. Immigration and Customs Enforcement, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual", October 12, 2021.

[26] "DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations", U.S. Department of Homeland Security, January 13, 2023.

[27] "Memorandum for Tae Johnson, Acting Director, U.S. Immigration and Customs Enforcement, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: 'Guidelines for Enforcement Actions in or Near Protected Areas'", October 27, 2021.

[28] Jon Feere, "Biden's DHS Has Made Every City an Illegal Alien Sanctuary, 'Protected Areas' Guidelines Shield Criminals from Enforcement", Center for Immigration Studies, October 12, 2022.

[29] *Texas v. United States*, Case No. 22-40367 (5th Cir. 2022).

[30] "Nearly 500,000 Immigrants Go Through ICE's Alternatives to Detention System in Two Years", Syracuse University, Transactional Records Access Clearinghouse, October 20, 2022.

[31] "Detention Management", U.S. Customs and Enforcement, January 19, 2023.

[32] INA § 235; INA § 236(c).

[33] Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55472, September 9, 2022.

[34] INA § 212(a)(4).

[35] See "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds", Immigration and Naturalization Service, May 26, 1999.

[36] See "Inadmissibility on Public Charge Grounds", 84 Fed. Reg. 41292, August 14, 2019.

[37] "Public Charge Ground of Inadmissibility", 87 Fed. Reg. 55472, September 9, 2022.

[38] INA § 244(b).

[39] Mark Krikorian, "Temporary Protected Status: Amnesty-Lite", Center for Immigration Studies, May 27, 2021.

[40] Afghanistan, Burma (Myanmar), Cameroon, El Salvador, Haiti, Honduras, Nepal, Nicaragua, Syria, Somalia, Sudan, South Sudan, Ukraine, Venezuela, and Yemen.

[41] "Memorandum for David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, et al., from Janet Napolitano, Secretary, U.S. Department of Homeland Security, Re: Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children", June 15, 2012.

[42] "Deferred Action for Childhood Arrivals", 87 Fed. Reg. 53152, August 10, 2022.

[43] "Deferred Action for Childhood Arrivals", 86 Fed. Reg. 53736, n.178, September 28, 2021.

[44] *Ibid.*

[45] *Texas v. United States*, 50 F.4th 498 (5th Cir. 2022).

[46] "Deferred Action for Childhood Arrivals", 86 Fed. Reg. 53736, September 28, 2021.

[47] *Ibid.*

[48] "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States", 86 Fed. Reg. 3608, January 14, 2021.

[49] See "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States, Implementation of Vacatur", 86 Fed. Reg. 70729, December 13, 2021; "Order Granting Defendants' Motion for Voluntary Remand with Vacatur", *Chamber of Commerce, et al.* v. *Dep't of Homeland Sec., et al.,* No. 20-cv-07331 (N.D. Cal. June 23, 2021), ECF No. 139.

[50] "Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions", 86 Fed. Reg. 1676, January 8, 2021.

[51] 8 C.F.R. § 214.2.

[52] *Arizona v. City & Cnty. of San Francisco*, 142 S. Ct. 1926 (2022).