



Biden Administration's January/February Executive Actions on Immigration

In the first few weeks after President Joe Biden was inaugurated, the new administration issued a series of executive actions on immigration to overturn Trump administration policies and chart a new path on immigration. These executive actions are in addition to the administration's endorsement of broad immigration [reform legislation](#) that would provide a pathway to citizenship for most of the undocumented population.

Below are summaries of key executive actions affecting immigration:

DEFERRED DEPORTATION

[Preserving and Fortifying Deferred Action for Childhood Arrivals \(DACA\)](#)

- Requires the DHS secretary, in consultation with the attorney general, to take all appropriate steps to “preserve and fortify” [Deferred Action for Childhood Arrivals \(DACA\)](#), consistent with applicable law.

[Reinstating Deferred Enforced Departure for Liberians](#)

- Defers the removal of any Liberian national through June 30, 2022 who had protection under DED through January 10, 2021.
- Grants the same Liberians employment authorization through June 30, 2022.
- Directs the Secretary of Homeland Security to make prompt notice of this in the Federal Register and provide replacement documents as need.
- Sets forth who would not qualify such as those ineligible for TPS, those who voluntarily returned to Liberia, those deported, excluded or removed, and those subject to extradition.

ENFORCEMENT

[Executive Order on the Revision of Civil Immigration Enforcement Policies and Priorities](#)

- Sets out Biden administration mission statement on interior enforcement, focused on, “protect[ing] national and border security, address[ing] the humanitarian challenges at the southern border, and ensur[ing] public health and safety.” The executive order is aimed at “adher[ing] to due process of law” and “safeguard[ing] the dignity and well-being of all families and communities.”
- Pledges to “reset” immigration enforcement policies and practices to bring enforcement policies in line with these values and priorities.
- Revokes President Trump’s [executive order on interior immigration enforcement](#) and provides for review of any agency actions arising from that EO.

Memorandum: Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities

- Under the terms of this memorandum, which was signed by Department of Homeland Security (DHS) acting secretary David Pekoske, DHS will conduct a review of its immigration enforcement policies over the next 100 days, and provide recommendations for revised policies no later than the end of the 100 days. Relevant policies under review include those relating to the prioritization of enforcement personnel, detention space, and removal assets, as well as policies concerning the use of prosecutorial discretion, detention, and interaction with state and local law enforcement.
- Requires DHS to implement a 100-day pause on removals by 1/22/21, with certain exceptions. The pause is intended to prioritize limited DHS resources towards enhancing border security, conducting immigration and asylum processing “fairly and efficiently,” and maintaining COVID-19 protocols to protect the health and safety of DHS personnel and the public.
- Excludes the following from the 100-day moratorium on deportations:
 - Terrorists/spies/national security threats, etc.
 - People who arrived in the U.S. on or after 11/1/2020
 - “Opt-outs,” those who voluntarily waive rights to remain in the U.S. after having been provided meaningful access to counsel, and
 - People required to be removed by law in accordance with an individualized determination made by the acting director of ICE.
- Rescinds various Trump administration immigration enforcement policies and memos, including February 2017 [guidance implementing](#) the Trump administration executive orders on immigration enforcement, and a June 2018 [memo](#) on the Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens.
- Creates interim enforcement priorities, which go into effect on 2/1/2020. Those interim enforcement priorities, which will be superseded by new priorities issued after the 100-day review is complete, emphasize national security, border security, and public safety.

BORDER

Executive Order on the Establishment of Interagency Task Force on the Reunification of Families

- States that the policy of the Biden administration is “to respect and value the integrity of families seeking to enter the United States.” It formally condemns the use of immigration laws “to intentionally separate children from their parents or legal guardians,” including through the Zero-Tolerance Policy. It pledges to “protect family unity and ensure that children entering the United States are not separated from their families,” except in extreme circumstances.
- Establishes an Interagency Task Force on the Reunification of Families, which is composed of the DHS Secretary (Chair); Secretary of State (Vice Chair); HHS Secretary (Vice Chair); Attorney General; State Department, DOJ, HHS, and DHS officers or employees designated by the secretaries of those agencies; and officers or employees of other departments and agencies invited to participate by the Chair or Vice Chairs.
- Requires the DHS Secretary, as Chair of the Task Force, to convene and preside over Task Force meetings. At the direction of the Chair, the Task Force may hold public meetings and engagement sessions. The Chair and Vice Chairs are responsible for

directing the Task Force's work and establishing and directing subgroups of the Task Force.

- Functions of the Task Force include identifying children separated from their families at the U.S.-Mexico border during the Trump administration (between 1/20/17 and 1/20/21) and facilitating reunifications of those families.
 - The Task Force will make recommendations to agency leaders to:
 - To carry out the reunifications under applicable law, including providing for the use of parole, the issuance of visas and other potential actions necessary to carry out the reunifications.
 - To provide services and support to impacted children and families, including mental health and trauma services.
 - To reunite additional family members of separated children where there is a compelling humanitarian need (for example, allowing siblings into the U.S. to join the rest of their families).
 - The Task Force will make recommendations to the president regarding additional use of executive actions necessary to reunite families.
 - The Task Force shall coordinate with relevant stakeholders, including NGOs and representatives of impacted children and families. The Task Force shall consult with children and families (and their representatives) to develop the above recommendations, taking into consideration their preferences, parental rights, and the children's well-being.
 - The Task Force is required to report to the president, including an initial report after 120 days and additional progress reports every 60 days following. It will also issue a report on recommendations to prevent policies that could lead to separations at the border in the future, as well as a final report after the Task Force "complete[s] its mission." The Task Force shall terminate 30 days after the delivery of the final report.
- DHS is to provide available funding and administrative support to the Task Force. Other agencies represented on the Task Force may detail staff to the Task Force or provide administrative support.
- Revokes [Executive Order 13841](#) of June 20, 2018 (Affording Congress an Opportunity To Address Family Separation), which had [stated](#) that it is "the policy of [the Trump] Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources."

[Executive Order 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](#)

Concerning management of migration at the U.S. border, the order:

- Terminates or revokes:
 - Prompt Asylum Case Review (PACR) and the Humanitarian Asylum Review Program (HARP), programs which create a radically accelerated asylum review process that restricts asylum seekers' access to legal counsel and due process.

- [Proclamation 9880](#) (or “Asylum Ban 1.0”), which bars those who enter the United States without inspection from being eligible for asylum.
- A [presidential memo](#) which makes it more difficult for asylum seekers to access work authorization.
- A [presidential memo](#) which directs officials to stop allowing unauthorized immigrants to be released while their court cases continue.
- [Executive Order 13767](#), which directs a wall to be built along the U.S.-Mexico border.
- A [presidential memo](#) which assigns National Guard troops to be sent to the U.S.-Mexico border.
- Directs multiple agencies to review whether to terminate the following policies and actions:
 - Title 42 expulsions, which are pandemic-era actions on the border that have resulted in the summary deportation of vulnerable migrants without first allowing them to request humanitarian protection or be screened for human trafficking.
 - The Migration Protection Protocols (MPP), or “Remain in Mexico,” which have required asylum seekers to wait in Mexico while their cases are heard. The order also calls for a review of how those currently in Mexico under MPP can be “phased” back in to the U.S.
 - All expedited removal procedures.
 - All current rules and regulations impacting the adjudication of asylum claims, to ensure they are consistent with international standards.
- Directs multiple agencies to begin planning the development of policies that will re-establish a functioning, safe, and orderly asylum system.

Concerning regional migration, the order:

- Directs an interagency group to prepare two strategies to address regional migration issues.
 - The first would address the root causes of migration, particularly in the Northern Triangle countries of El Salvador, Guatemala, and Honduras.
 - The second would focus on collaborative migration management in Central America, looking to expand on previous efforts to conduct in-region processing and relocation of those fleeing persecution.
- Calls for DHS and the State Department to review the following efforts and programs for processing asylum seekers and other migrants in Central America who may be eligible for resettlement in the U.S.:
 - Reinstating the Central American Minors program;
 - Exercising discretion to grant parole to certain individuals in Central America who have already been approved for family-sponsored immigrant visas;
 - Increasing access to other visa programs for individuals currently living in the Northern Triangle.

[Proclamation on the Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction](#)

- Terminates [Proclamation 9844](#), which had allowed President Trump to use emergency powers to divert funds towards construction of barriers on the U.S.-Mexico border.

- Pauses border barrier construction to the extent legally possible and calls for a review of all contractual obligations.
- Calls for the Department of Defense, Department of Homeland Security, and the Office of Management and Budget to come up with a plan within 60 days to redirect all available funds that had previously been allocated for the construction of border barriers.

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

- Suspends all new enrollments in the [Migrant Protection Protocols](#) (MPP), also known as the “Remain in Mexico” program.
- Calls for current MPP participants to remain in Mexico pending further announcements.
- Keeps other restrictions on those seeking asylum at the border, including the use of Title 42 expulsions, in place.

LEGAL IMMIGRATION

Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans

- Requires the White House Domestic Policy Council (DPC) to convene a Task Force on New Americans, which will be comprised of executive departments and agencies that implement policies impacting immigrant communities, to coordinate integration and inclusion efforts for immigrants including refugees.
- Directs the Secretary of State, the Attorney General and the Secretary of Homeland Security to review existing regulations, orders, guidance documents, policies and other agency actions to identify:
 - Barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and
 - Actions that fail to promote access to the legal immigration system — such as the final rule entitled, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 85 Fed. Reg. 46788 (Aug. 3, 2020),
 and submit a plan to the President describing agency steps for corrective action within 60 days.
- Requires the Secretary of State, the Attorney General and the Secretary of Homeland Security to develop a plan within 60 days that describes agency actions needed to improve access to naturalization and make the naturalization process more efficient.
- Establishes an Interagency Working Group on Promoting Naturalization, chaired by the Secretary of Homeland Security, to develop a national strategy, within 90 days, outlining federal actions to promote naturalization.
- Requires the Secretary of State, the Attorney General and the Secretary of Homeland Security to review all agency actions related to the implementation of the public charge provision of the Immigration and Nationality Act and the related grounds of deportability provision, evaluating its current impact on the integrity of the nation’s immigration system and public health and submit a report to the President describing corrective actions identified by the agency within 60 days.

- Revokes the [May 2019 presidential memorandum](#) (Enforcing the Legal Responsibilities of Sponsors of Aliens) which established additional procedures and guidelines for obtaining reimbursement from sponsors of immigrants in the event an immigrant receives a means tested benefit.

[Proclamation on Ending Discriminatory Bans on Entry to the United States](#)

- Revokes Trump administration travel bans impacting individuals from several majority-Muslim countries and several countries in Africa. This executive order overturns, Executive Order (EO) [13780](#), and proclamations [9645](#), [9723](#), and [9983](#).
- Resumes visa processing and clears the backlogs created by those executive actions.
- Requires the Secretary of State to provide a report to the President within 45 days that includes information about plans to quickly clear existing waiver requests, reopen the visa applications process, reconsider denied visas with a possible additional processing fee, and allow for unprejudiced visa re-applications.
- Requires the Secretaries of State and Homeland Security, in consultation with the Director of National Intelligence, within 120 days, to provide the President with a report including information about current screening and vetting procedures for immigrant and non-immigrant entry, review of foreign government screening information sharing practices, recommendations to improve the screening and vetting process, and recommendations regarding social media identifiers in the screening and vetting process.

REFUGEES

[Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration](#)

- Describes the Biden Administration’s strong support for the U.S. Refugee Admissions Programs (USRAP), stating that it should be “rebuilt and expanded.” The executive order recognizes the need to minimize delays in process, improve security vetting, treat applicants with dignity, and reunifying families in in the national interest.
- Concerning the improvement of USRAP, directs:
 - The Assistant to the President for National Security Affairs (APNSA), Secretary of State, and Secretary of Homeland Security to designate a senior staff member and Director of OMB to assign a team to focus on specific aspects of the USRAP.
 - DHS to review and enhance fraud detection in USRAP; expand refugee vetting and adjudication capacity, including potentially hiring additional adjudicators and those conducting security reviews and providing appropriate training to adjudicators, permitting the use of video and audio teleconferencing, allowing legal representation at interviews at no cost to the federal government, providing applicants a basis for a denial; consider whether to promulgate regulations or other policies to ensure an efficient and fair adjudication process, and to report on these activities to the President.
 - The Secretary of State to develop options within 180 days for improving USRAP applicants’ ability to access relevant material from their case files on an expedited basis to inform timely appeals from adverse decisions.

- Agencies responsible for the Security Advisory Opinion process to consider proposals from member agencies to adjust the list of countries and other criteria that require a Security Advisory Opinion for a refugee case within 60 days.
- The Secretary of State and the Secretary of Homeland Security to consider recognizing as “spouses,” for purposes of derivative status through USRAP, individuals who are in committed life partnerships but who are unable to marry or to register their marriage due to restrictions in their countries of origin.
- Secretary of State and HHS to deliver a plan to the President within 120 days to enhance the capacity of USRAP to welcome refugees by expanding the use of community, private, and co-sponsorship models by refugee resettlement agencies, and by entering into new public-private partnerships.
- Secretary of State to consider ways to expand mechanisms under which non-governmental organizations could identify and directly refer to USRAP particularly vulnerable individuals who have a strong possibility of qualifying for admission to the United States as refugees.
- Secretary of State and of DHS to make current and new USRAP policies and procedures publicly available on their websites.
- Requires the Secretary of State, in consultation with the Attorney General and Secretary of Homeland Security to develop a plan within 120 days that addresses USRAP processing backlogs, including conducting a review of refugee security vetting processes and developing recommendations to increase their efficiency, fairness, and effectiveness. The plan should seek to bring national average processing times to 180 days after the date of application.
- Requires the Secretary of State to review Iraqi and Afghan Special Immigrant Visa (SIV) programs, the procedures for approval of SIV applications to ensure they are fair, whether additional populations are at risk due to their services to the U.S. government, and submit a report within 180 days with recommendations to address any concerns identified.
- Requires APNSA to submit to the President a report on climate change and its impact on migration, including forced migration, internal displacement, and planned relocation within 180 days, and make it available to the public. This report shall include discussion of the international security implications of climate-related migration; options for protection and resettlement of individuals displaced directly or indirectly from climate change; mechanisms for identifying such individuals; and proposals for how these findings should affect use of United States foreign assistance to mitigate the negative impacts of climate change.
- Revokes:
 - [Executive Order 13815](#) of October 24, 2017 (Resuming the United States Refugee Admissions Program With Enhanced Vetting Capabilities) which stated the Trump Administration’s policy approach to USRAP, required the Secretaries of State and DHS to assess and address any security risks posed by USRAP.
 - [Executive Order 13888](#) of September 26, 2019 (Enhancing State and Local Involvement in Refugee Resettlement) which required written consent of governors and local government officials before refugees could be resettled in their jurisdictions.
 - [Presidential Memorandum of March 6, 2017](#) (Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People) which required the

Secretaries of State and DHS to implement protocols and procedures that enhanced the screening and vetting of applications for visas and all other immigration benefits.

MISCELLANEOUS

Executive Order on Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census

- Provides extensive background on the constitutional and legal underpinnings of the U.S. Census, including the longstanding requirement that all persons are counted for purposes of apportionment, regardless of immigration status.
- States as a matter of policy that the census count be accurate, reliable and based on "high-quality data." Orders the Secretary of Commerce to "take all necessary steps, consistent with law" to ensure an accurate count of all persons residing in the U.S. on the census date.
- Revokes President Trump's [July 21, 2020 census memorandum](#), which sought to exclude undocumented persons from the apportionment count.

Regulatory Freeze Pending Review

- Requires rules sent to the Office of the Federal Register (OFR) but not yet in Federal Register to be immediately withdrawn consistent with OFR procedures.
- Requires department and agency heads to consider postponing for 60 days rules published in the federal Register but not yet in effect pending review, and allows for a 30-day comment period. A delay beyond the 60 days may also be considered.
 - After the 60-day review actions could be taken such as having the rule go into effect, or notifying the Director of the Office of Management and Budget (OMB) for consultation and action.
- The following freeze is subject to exceptions by the Director of the Office of Management and Budget (OMB), including for emergency situations or other urgent circumstances relating to health, safety, environmental, financial, or national security matters.
- The definition of a "rule" in this memorandum includes rules defined in section 551(4), title 5, of the United States Code, but also regulatory action, substantive action by an agency such as policy on statutory, regulatory or technical issues or the interpretation of such issues.