

National Immigration Forum Score Card on President Biden's First 100 Days

April 29 marks President Biden's 100th day in office. In November 2020, after the election, the National Immigration Forum issued [Immigration Priorities for a Biden Administration](#), which included five overarching principles that the Forum believed should guide immigration policy under the Biden administration. Under each principle, the Forum listed specific actions — each possessing bipartisan support — that the Biden administration should take within the first 100 days.

As the 100th day approaches, this score card evaluates the new administration's progress on these issues.

1. Provide Opportunity for Earned Legalization

- a. **Address the situation of Dreamers.** Review and revise the existing memo authorizing Deferred Action for Childhood Arrivals (DACA). Allow new applications for DACA and restore DACA's protection from deportation to two years. Support standalone legislation or inclusion of a provision in other legislative vehicles such as government appropriations or COVID-19 relief that would provide Dreamers permanent resident status and eventual citizenship.

Did President Biden take action on this priority?

Yes, although Congress must also act to secure a permanent solution.

- President Biden issued a January 20 [Executive Order](#) on Preserving and Fortifying DACA, which directs DHS to take any actions deemed necessary to reinforce DACA. Citing the executive order, on March 26, U.S. Department of Homeland Security (DHS) Secretary Alejandro Mayorkas [announced](#) that the agency would be reissuing DACA as a formal regulation with a notice and comment period. Enshrining DACA as a regulation is intended to protect it from ongoing legal challenges.
- The Biden administration has also provided support for a permanent legislative solution for Dreamers:
 - On January 20, President Biden released a [legislative framework](#) for the [U.S. Citizenship Act, which](#) provides an immediate solution for Dreamers.
 - The White House released a [statement of support](#) prior to House vote on the Dream and Promise Act, which would provide an earned pathway to permanent status for Dreamers.

- b. **Address the situation of TPS holders.** Extend the wind-down period for existing long-term TPS holders. Support legislation that would provide long-term TPS holders permanent resident status and the possibility of citizenship, and reform the TPS system to avoid a repetition of the current situation.

Did President Biden take action on this priority?

Yes, the Biden administration has redesignated and extended TPS for a number of countries and it has supported legislation that would provide a pathway to earned legal

status for all current TPS holders. However, multiple countries —including Haiti — have not yet been redesignated for TPS status.

- On January 29, President Biden [extended and redesignated](#) TPS for Syria.
- On March 8, President Biden [designated](#) TPS for Venezuela.
- On March 12, President Biden [designated](#) TPS for Burma.
- The administration has supported a permanent legislative solution for TPS holders:
 - The Biden-backed [U.S. Citizenship Act](#) would provide an immediate solution for TPS holders.
 - The White House released a [statement of support](#) prior to the House vote on the Dream and Promise Act, which would provide an earned pathway to permanent status for TPS holders.

- c. Regularize essential workers.** Undocumented workers such as agricultural and health care workers have been essential to COVID-19 response and are key to our economic recovery as well. Support legislation that would allow them to earn permanent resident status and the possibility of citizenship.

Did President Biden take action on this priority?

Yes, the administration has supported legislation that would regularize some essential workers, although Congress needs to enact that legislation. The Biden administration could do more to prioritize passage of such legislation.

- The Biden administration has supported legislation that would allow essential workers to earn permanent resident status and the possibility of citizenship:
 - The Biden-backed [U.S. Citizenship Act](#) would provide an immediate solution for farmworkers and a path to citizenship for other undocumented individuals.
 - The White House released a [statement of support](#) prior to the House vote on Farm Workforce Modernization Act, which would provide a pathway to legalization for qualifying members of the agricultural workforce.
 - White House COVID-19 relief packages thus far have not provided for legalization of essential immigrant workers.

VERDICT: President Biden largely followed through on supporting opportunities for earned legalization during his first 100 days, but key legislative priorities providing the opportunity to legalize have not yet been passed into law.

2. Expand Opportunities for Legal Immigration

- a. Lift restrictions on immigration programs.** Revoke President Trump’s proclamation suspending many categories of immigration. Suspend rulemaking modifying the H-1B, high-skilled visa program as well as rules restricting international students. Review interim final rules narrowing the H-1B visa program and rescind the rules if conditions no longer warrant those rules to be implemented.

Did President Biden take action on this priority?

Partially. President Biden rescinded a number of the previous administration's most egregious rules and proclamations. However, he opted to allow others to remain in place or delayed their revocation so that they continued to restrict immigrants.

- The Biden administration revoked multiple Trump-era discriminatory travel bans on January 20, and in February it [revoked](#) the Trump administration's April 2020 ban on legal immigration for family members of U.S. citizens and permanent residents and on diversity visa lottery recipients.
- The Trump administration's June 2020 proclamation suspending entry of nonimmigrant workers [was allowed to](#) stay in place until it [expired](#) on March 31.
- Restrictive Trump-era H-1B regulations have [been delayed](#), but have not yet been rescinded.
- [International student restrictions](#) that were proposed by the Trump administration were not published as a final rule in the Federal Register before January 20 and [never went into effect](#).

- b. Support the Healthcare Workforce Resilience Act.** Support inclusion of the bipartisan Healthcare Workforce Resilience Act in a COVID-19 relief bill to allow more immigrant doctors and nurses to help with coronavirus health treatment and provide an example of how to achieve immigration reform that begins to address the green card backlog, supports family unity, and maximizes the number of visas going to workers by excluding family members from visa caps.

Did President Biden take action on this priority?

No. President Biden did not include the [Healthcare Workforce Resilience Act](#) in his COVID-19 relief package and has not otherwise prioritized that legislation. He also has not made it a priority to address the green card backlog by no longer counting dependents towards the green card cap.

- The Healthcare Workforce Resilience Act was [recently reintroduced](#) by a bipartisan cosponsors in both the Senate and the House, but so far the Biden administration has not taken a position on the legislation.
 - The administration has not included the Healthcare Workforce Resilience Act in proposed or enacted COVID-19 relief or infrastructure packages.
 - The Biden-backed U.S. Citizenship Act does [contain provisions](#) that would address the green card backlog.
- c. Improve USCIS processing services.** Examine the numerous USCIS policy changes implemented during the Trump administration that have resulted in more denials and a more difficult petition process across a number of visa categories, such as additional in-person interview requirements, ending deference for H-1B extensions, and rejecting applications with blank spaces. Reverse or modify those policies that are unnecessarily increasing processing times, leading to an increasing backlog for visas and other applications.

Did President Biden take action on this priority?

Partially. USCIS processing remains extremely slow, but the administration has taken some steps to improve processing.

- The Biden administration [ended](#) the Trump-era policy that required immigration officials to reject visa application forms submitted with blank spaces, even if the blanks were in response to questions that did not apply to the applicant.
- USCIS is making [an effort to be more transparent](#) about processing wait times.
- The administration also [scrapped](#) an [overly-complicated](#) new civics test for those applying for naturalization, allowing applicants to take the version that had been in place through 2020.
- Long processing delays [remain a feature of the system](#) for many visa applications and not all Trump-era policies have been rescinded.

VERDICT: President Biden made some progress on this priority, but his administration could have been more proactive in expanding opportunities for legal immigration.

3. Treating Vulnerable Migrants with Compassion

- a. End family separation.** Identify parents and children whom the Department of Homeland Security (DHS) has separated and reunite them when appropriate. Implement strict policies that allow DHS to separate children from family members crossing the border only when remaining with family would pose a significant safety risk to the children, as determined by independent experts who have training to assess such risks.

Did President Biden take action on this priority?

Yes. The Biden administration has made progress working towards this goal but many families who were separated under the Trump administration remain apart. Re-uniting families is a lengthy process, and the Biden administration must continue to make it a priority.

- On February 2, President Biden issued an [executive order](#) establishing a Task Force on the Reunification of Families, and the Biden administration is also [working to identify](#) all children who may have been separated from their parents.
- The Biden administration [has considered](#), but not yet provided parole for parents who were separated from their children under Trump-era policies.
- The parents of 61 migrant children have been located since February, but at least [445 children](#) remain separated as a result of Trump-era policies.

- b. Re-establish a functioning asylum system.** Suspend all proposed Trump-era rulemaking restricting asylum. Review interim final rules and rescind the rules if conditions no longer require those rules to be implemented. Reverse the DHS order preventing individuals from entering through the southern border to seek asylum.

Did President Biden take action on this priority?

Partially. The Biden administration has taken some steps to repair the asylum system, but the significant increase in arriving asylum seekers at the southern border in recent months has made progress on this priority more difficult.

- On February 2, the Biden administration [suspended](#) new entrants into the Migration Protection Protocols (MPP), or “Remain in Mexico,” which required asylum seekers to return and wait in [dangerous](#) areas in northern Mexico while their cases are heard in the U.S. The administration also has [begun processing](#) back into the U.S. the approximately 25,000 asylum seekers with active cases who had been forced to wait in Mexico under MPP.
 - The Trump-era Centers for Disease Control and Prevention (CDC) order preventing individuals from seeking asylum at the border (Title 42) has been only partially revoked. The Biden administration [is allowing](#) unaccompanied children and most arriving families to enter the United States to apply for asylum, but continues to apply Title 42 to summarily turn away single adults and some families.
 - The continued use of the Title 42 policy for single adults and some families is deeply problematic, [resulting](#) in asylum seekers being returned to dangerous conditions and [inflating](#) border apprehension numbers by encouraging those returned to Mexico to make multiple attempts at entry.
 - The increasing number of unaccompanied children arriving at the border has become a [significant humanitarian challenge](#), but recent signs show the administration has [made progress in expeditiously processing and safely placing them](#).
 - [Trump-era regulations](#) restricting the asylum system have been [delayed](#) by the Biden administration or [held up in the courts](#), and the administration has tasked DHS with [rolling back](#) harmful immigration regulations, including those restricting asylum.
 - President Biden issued an [executive order](#) ending Prompt Asylum Claims Review (PACR) and the Humanitarian Asylum Review Program (HARP), two Trump-era programs which resulted in expedited removals of asylum seekers without adequate access to due process.
- c. Review immigration detention conditions.** To reduce health risks and the extremely high costs of detention, release immigrants who do not pose a security threat, such as families with children, and employ alternatives to detention, such as electronic monitoring, to reduce health risks and the extremely high costs of detention. Review conditions at all immigration detention facilities and hold accountable supervisors and front-line workers who fail to comply with appropriate standards of care.

Did President Biden take action on this priority?

Yes. The Biden administration has made significant progress releasing people in immigration detention who do not need to be, which is of particular importance during the COVID-19 pandemic. However, the Biden administration could do more to hold negligent care providers accountable.

- DHS issued [interim immigration enforcement priorities](#), which were subsequently [modified by ICE](#). Under these interim priorities, ICE will focus detention and enforcement resources towards threats to public safety. The Biden administration has indicated it will be releasing final enforcement priorities this spring.
- The administration is also working to end long term family detention and transform existing family detention facilities into long-term
- The Biden administration has not taken formal action to hold [negligent care providers](#) accountable. However, the administration did [release nine detainees](#) involved in the [ongoing investigation](#) into [allegations](#) of medical abuse committed by a gynecologist in the Irwin County Detention Center in Georgia.

- d. Restore refugee resettlement.** Restore our nation's position as a global leader in welcoming refugees by revisiting and increasing the presidential determination that sets the annual ceiling for refugees. Reverse the [executive order](#) requiring consent from governors and local elected officials while maintaining robust consultation with state and local officials in deciding where to resettle refugees

Did President Biden take action on this priority?

No. The administration delayed in issuing a presidential determination on refugee resettlement and when it issued one, it kept the refugee ceiling at a historic low of 15,000. However, the administration has reversed significant Trump-era eligibility requirements that were hindering resettlement and promised to raise the ceiling in May.

- President Biden issued a February 4 [executive order](#) on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration. Among other things, this revoked the Trump-era executive order that required consent from governors and local elected officials.
- President Biden [pledged](#) to raise refugee ceiling to 62,500, quadrupling the historic-low cap set by President Trump. To date, despite consulting with Congress on raising the refugee ceiling, he has failed to follow through on this commitment by signing a presidential determination, leading to the [cancellation](#) of over 700 refugee flights in March.
- When President Biden finally issued a [presidential determination](#) on April 16, it did not increase the refugee ceiling from 15,000. The presidential determination did remove Trump-era restrictions that largely excluded refugees from the Middle East and Africa, and returned to regional allocation model based on need.
- After facing significant backlash, the administration now says it is working to increase the refugee ceiling [no later than](#) May 15.

VERDICT: Mixed. In January and February, President Biden made a number of positive commitments towards treating vulnerable migrants with compassion. However, the humanitarian situation at the border and a lack of political will to restore refugee resettlement prevented President Biden from keeping some of those commitments.

4. Provide Effective Border Security

- a. Review spending on border barriers.** Suspend funding and eminent domain actions for additional fencing and re-examine whether new fencing is operationally necessary. Restore funding taken from important Department of Defense projects and seek congressional appropriations for additional physical barrier construction.'

Did President Biden take action on this priority?

Partially. The President suspended funding on all ongoing border construction, but it did not withdraw from eminent domain cases or come to timely determinations about where to redirect border construction funds or whether new fencing is operationally necessary.

- President Biden issued a January 20 [executive order](#) suspending all border barrier construction within one week. The order also set a March 21 deadline to provide a

- plan on where to redirect funding that the Trump administration had been taken from the Department of Defense and whether additional construction was necessary.
- The administration did not meet the self-imposed March 21 deadline to provide a plan on additional construction or where to redirect funds.
 - Trump-era eminent domain cases to seize land for wall construction were largely paused, but the Department of Justice [did not withdraw](#) from them. With little input from the administration, some judges have moved cases forward, resulting in additional land being seized.
 - According to an April 5 report, the administration is [considering](#) constructing additional barriers to “plug gaps,” but it is not clear whether the administration will be redirecting existing appropriated funding or DOD funding.

- b. Increase investment at ports of entry.** Seek additional congressional funding in the next government funding bill for personnel, infrastructure, and technology that will make our ports of entry more secure and facilitate legitimate trade and transit at increased levels.

Did President Biden take action on this priority?

Yes. The President’s April 9 budget request for FY 2022 included funding for infrastructure and technology to help modernize ports of entry.

- On April 9, the administration sent a proposed “[skinny budget](#)” to Congress for FY 2022, which included \$1.2 billion for investment in modern border security such as the “modernization of land ports of entry” and providing for “the more efficient processing of legal trade, travel and commerce through land ports of entry.”
- CBP Office of Field Operations (OFO), which staffs ports of entry, continues to face a significant [workforce shortage](#). Funding for OFO was not explicitly included in the skinny budget, but it could be allocated under the modernization provision described above.

VERDICT: The Biden administration has made progress on this priority, suspending border barrier construction and calling for more funding to modernize ports of entry, but it has missed its own deadline to release a plan for the redirection of border funds and determining what additional border barrier construction may be necessary.

5. Enforce Immigration Laws Judiciously

- a. Improve the immigration adjudication system.** Seek funding for hiring additional immigration judges and support personnel, modernizing the immigration filing system, and improving facilities and infrastructure.

Did President Biden take action on this priority?

Partially. The President has included additional immigration judges in a recent request and considered more efficient asylum and immigration court processing, but other modernizing reforms have not yet been implemented.

- The administration's April 9 [budget proposal](#) for FY 2022 would provide for 100 additional immigration judges.
- The Biden administration has yet to propose or endorse significant immigration court reforms to address the massive case backlog. Because the U.S. Department of Justice oversees the immigration court system, the delayed Senate confirmation of attorney general Merrick Garland may have played a role in the delay.
- According to reports, the Biden administration is [considering](#) a plan to expedite the asylum backlog by giving USCIS asylum officers more authority. The administration may also soon be releasing additional regulatory changes to reduce the asylum backlog. Those proposals have yet to be formally announced or implemented.

b. Institute immigration enforcement priorities. Review and update the current memo on enforcement priorities, which are so broad that they are meaningless. Prioritization reflects the reality that federal immigration agencies, such as Immigration and Customs Enforcement (ICE), do not have the capacity or resources to remove all undocumented immigrants. By deprioritizing those who pose no threat, federal immigration agencies can allow law enforcement to focus limited resources on serious threats.

Did President Biden take action on this priority?

Yes. DHS issued new temporary enforcement guidance that better allows ICE to effectively manage resources and prioritize serious threats.

- The Biden administration [issued](#) interim enforcement priorities on January 20, which were supplemented by [additional ICE guidelines](#) in February and will be followed by final enforcement priorities in the coming weeks. The guidance focuses enforcement efforts on those who are deemed national security threats, those convicted of significant crimes, and those who recently crossed the border unlawfully.
- The new enforcement priorities have resulted in tangible impacts, leading to [fewer arrests](#) of those without criminal records..

c. End over-criminalization of migrants. In [2018](#), U.S. attorneys prosecuted more immigration violations than drug-related crimes or violent crimes. Customs and Border Protection (CBP) should be directed to refer for federal criminal prosecution only those cases of individuals who pose a serious threat. Prioritize prosecuting dangerous criminals and not individuals and families trying to seek a better life for themselves. Over criminalization can lead to unnecessary separation of children from their families.

Did President Biden take action on this priority?

Unclear. Many arriving migrants are still being returned under the Title 42 procedure, so they not being referred for criminal prosecution. Others are being released on alternatives to detention.

- In leaving Title 42 [in place](#) for the majority of arriving migrants, it is difficult to determine whether the Biden administration intends to deprioritize the criminal prosecutions of purely immigration offenses. Because Title 42 is an expedited procedure involving summarily returning most entrants to Mexico, and migrants processed under the policy are not documented in the same manner as traditional

- “[Title 8](#)” deportations, it remains to be seen how the Biden DOJ will treat individuals with unlawful entry and reentry offenses.
- There have been no other significant changes addressing the over-criminalization of immigration offenses, although additional reforms may follow once President Biden’s full leadership team at DOJ is in place.

VERDICT: In issuing interim enforcement priorities and calling for additional funding for immigration judges in its proposed budget, the Biden administration has taken important first steps in enforcing our immigration laws in a more judicious manner. Still, there are areas the administration should continue to build on to fix a backlogged immigration court system and reverse charging policies that lead to over-criminalizing immigration offenses.

Conclusion

The Biden administration has made real progress on a number of critical immigration-related priorities in its first 100 days, but there is still much more work to be done. The president has made clear he supports an earned pathway to legalization for DACA recipients, TPS holders and essential workers, and his administration has made significant strides on implementing pragmatic interior enforcement and detention priorities. However, in his first 100 days, President Biden did not act decisively in support of raising the refugee ceiling or supporting immigrants stuck in the green card backlog, and his early record on several other key immigration issues remains mixed.

An enduring, bipartisan immigration solution remains one that addresses the status of immigrants who are residing in the U.S. without authorization, fixes an outdated visa system, boosts our economy, values our humanitarian programs, provides effective border security, and envisions pragmatic immigration enforcement that both deters illegal immigration and protects the public. Through administrative action and support of legislative solutions, the Biden administration should continue working towards these key priorities.