



National Immigration Forum Score Card on President Biden's First Year in Office

On March 1, President Biden will deliver his second State of the Union Address. The State of the Union provides an opportunity to review the administration's progress in the past year — the president's first in office — and to consider the most pressing priorities in the coming one.

Shortly after Biden was elected in November 2020, the National Immigration Forum issued a list of [Immigration Priorities for a Biden Administration](#), which included five overarching principles that the Forum believed should guide immigration policy under the new administration. In late April, the Forum followed this list up with a [score card evaluating the new administration's progress](#) on these principles after its first 100 days.

Now, after over a year in office, this score card returns again to these key principles and evaluates the administration's progress on each of these issues.

Table of Contents

1. [Provide opportunity for earned legalization](#)
2. [Expand opportunity for legal immigration](#)
3. [Treating vulnerable migrants with compassion](#)
4. [Provide effective border security](#)
5. [Enforce immigration laws judiciously](#)

1. Provide opportunity for earned legalization

PRIORITIES	
A. Address the situation of Dreamers	
B. Address the situation of TPS holders	
C. Regularize essential workers	

A. Address the situation of Dreamers.

Forum Recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Issued an [executive order](#) preserving and fortifying the Deferred Action for Childhood Arrivals (DACA) program, and followed that up with a [proposed rule](#) to formalize DACA into regulation.
- Supported numerous legislative vehicles that would provide a pathway to citizenship for Dreamers, including the [U.S. Citizenship Act](#), the [Dream and Promise Act](#), and [multiple iterations](#) of the Build Back Better reconciliation bill.
- Publicly [urged Congress](#) “to pass legislation this year to finally secure protection for Dreamers.”

What more can be done?

- Despite the administration's support of the program, an [ongoing court case](#) has left the fate of current DACA recipients in the balance. No new applicants are able to apply for protections even if eligible, and over [80,000 Dreamers](#) with pending DACA applications remain in limbo. Congress has yet to act.
- The Biden administration should continue its defense of DACA in court and prioritize working with Congress on the swift passage of a legislative solution to provide stability and permanent status to Dreamers.

B. Address the situation of Temporary Protected Status (TPS) holders.

Forum Recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Issued new designations of TPS to [Burma](#) and [Venezuela](#), and redesignated TPS for nationals of [Haiti](#), [Somalia](#), [Syria](#), and [Yemen](#). An additional [427,000](#) people are eligible for protected status as a result of these actions, although [far fewer](#) have thus far actually received TPS.
- Supported numerous legislative vehicles that would provide a pathway to citizenship for long-term TPS holders, including the [U.S. Citizenship Act](#), the [Dream and Promise Act](#), and [early iterations](#) of the Build Back Better reconciliation bill.
- Publicly [urged Congress](#) to pass a legislative fix that would provide “permanent protections for immigrants who are here on temporary protective status who came from countries beset by man-made and natural made violence and disaster.”

What more can be done?

- The administration has not yet taken action to designate TPS for additional countries where deportations have led to [extreme persecution, harm and abuse](#).
- Congress has yet to act to protect TPS holders, and the administration should continue to work with Congress on a legislative solution that provides permanence for long-term TPS holders who have been in the U.S. for many years.

C. Regularize essential workers.

Forum Recommendation: 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.

What actions has President Biden taken on this priority?

President Biden has...

- Supported numerous legislative vehicles that would provide a pathway to citizenship for essential workers, including the [U.S. Citizenship Act](#), the [Farm Workforce Modernization Act](#), and [multiple iterations](#) of the Build Back Better reconciliation bill.
- In October, the administration announced it would no longer be conducting [mass worksite immigration raids](#) that were ramped up under the Trump administration.
- Publicly [urged Congress](#) to pass a “pathway to citizenship for farmworkers who put food on our tables.”

What more can be done?

- The administration should continue to work with Congress on a legislative solution to regularize essential workers and should consider additional executive actions that provide protection for undocumented workers.

VERDICT:

The administration has made **some progress in this area, but there is much more work to be done.**



SOME PROGRESS

President Biden largely followed through on supporting opportunities for earned legalization in his first year in office, but key legislative priorities providing the opportunity to legalize have not yet been passed into law. Working with Congress to pass legislative reform must remain a top priority if Biden intends to make real progress on legalization in year two.

2. Expand opportunities for legal immigration

PRIORITIES

A. Lift restrictions on immigration programs



B. Support the Healthcare Workforce Resilience Act and work to address the green card backlog



C. Improve USCIS Processing Services



A. Lift restrictions on immigration programs.

Forum recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Revoked or suspended [numerous Trump-era immigration restrictions](#), including multiple travel bans targeting predominantly Muslim-majority countries and the proclamations suspending many categories of immigration from overseas during the pandemic.
- Implemented a [series of reforms](#) designed to expand high-skilled immigration programs that were constrained under Trump. These include an expansion of Optional Practical Training (OPT) for international students (including the addition of 22 new fields of study to [STEM OPT](#)), the reimplementing of the International Entrepreneur Rule, and updated eligibility requirements for J-1 exchange students and O-1 individuals with extraordinary ability.

What more can be done?

- Some individuals harmed by the Trump administration's immigration restrictions have not yet received the visas they were eligible for, including [many refugees](#) and [Diversity Visa \(DV\) recipients](#). The administration should work to ensure these individuals receive the visas they are eligible for, including by settling a [prolonged court fight](#) against DV winners.
- The administration should also continue to support legislative pathways to both [expand opportunities](#) for legal immigration and [limit future unnecessary immigration bans](#).

B. Support the Healthcare Workforce Resilience Act and work to address the green card backlog.

Forum recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Supported numerous legislative vehicles that would work to address the green card backlog, including the [U.S. Citizenship Act](#) and [provisions](#) in the Build Back Better reconciliation bill.
- The administration has also proposed provisions to [recapture unused green cards](#) in annual funding legislation, although neither these provisions nor a Healthcare Workforce Resilience Act have been passed into law.

What more can be done?

- The administration should continue to support legislation like the Healthcare Workforce Resilience Act that recaptures unused green cards and uses them to address the growing green card backlog. Other examples of bipartisan legislation to protect individuals facing lengthy backlogs include [the EAGLE Act](#) and the [America's CHILDREN Act](#). The administration should also support an expanded version of the [Preserving Employment Visas Act](#).
- President Biden should also consider whether executive actions to address the green card backlog are feasible, including [protecting aging-out children](#) and [no longer counting dependents](#) towards visa limits.

C. Improve USCIS processing services.

Forum recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Ended the Trump-era “blank space” policy that [required immigration officials](#) to reject visa application forms with blank spaces, even if the blanks were in response to questions that did not apply to the applicant.
- Extended the validity of [certain employment authorization documents](#) for those with protected statuses.
- Reinstated a policy to [give deference](#) to prior visa adjudications, promoting more efficient and fair decisions.
- Eliminated mandatory [in-person interview](#) and [suspended biometric requirements](#) for certain immigrants who already had data on file.
- Improved employment-based green card processing by [surging staffing](#) to key divisions.

- Biden also made significant progress in reducing the naturalization backlog, in part by [scrapping](#) an [overly complicated](#) civics test implemented under Trump.
- Adopted a new [USCIS mission statement](#) that emphasizes “America’s promise as a nation of welcome and possibility,” typifying the series of positive reforms in this area.
- Outlined a [series of steps](#) to improve the agency’s ability to tackle backlogs and [requested additional](#) funds from Congress to carry out those objectives.

What more can be done?

- Immigration benefit backlogs at USCIS remain [near 8 million](#), and the agency failed to issue up to 230,000 green cards in FY 2021 due to inefficiency.
- The administration should take additional steps to address these issues, starting by surging staffing and resources to overburdened departments, further streamlining interview and request for evidence (RFE) processes, and increasing investment in technology transformation to move away from slow-moving, paper-based processing.
- The Biden administration should work with Congress to [secure additional funding for the agency](#) to address the backlogs and the overburdened USCIS workforce.

VERDICT:

The administration has made **substantial progress** in this area through several decisive executive actions.



While legislative change has remained elusive, the Biden administration was able to significantly expand opportunities for legal immigrants in its first year. Many Trump-era restrictions have been revoked or suspended and the administration has begun to rebuild USCIS as an immigration benefits agency that is responsive to the needs of those it serves.

3. Treat vulnerable migrants with compassion

PRIORITIES	
A. End family separation	
B. Re-establish a functioning asylum system	
C. Review immigration detention conditions	
D. Restore refugee resettlement	

A. End family separation

Forum recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Established a [Family Reunification Task Force](#), which has been effective at both identifying parents and children that were separated at the border under the Trump administration and taking steps to reunite them. As of December 10, the Task Force has [reunited](#) 63 families and is moving to reunite an additional 221. It has also improved estimates of the numbers separated, in part by establishing an online portal where separated parents can sign up for reunification.
- Issued a [call for public input](#) on how to prevent future family separations, and implemented immigration enforcement guidance which encourages immigration officers to consider an individual's family and community ties.
- Formally [rescinded](#) the Zero Tolerance Policy, which was used under the Trump administration to prosecute arriving migrants and separate families at the border.

What more can be done?

- Over 1,000 children [remain separated](#), and the administration should continue to prioritize their reunification using all available tools and processes.

B. Re-establish a functioning asylum system.

Forum recommendation: 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 and CDC rule (Title 42) preventing individuals from entering through the southern border to seek asylum.

What actions has the Biden administration taken on this priority?

President Biden has...

- Restored access to the asylum system for the most vulnerable migrants arriving at the border, including [unaccompanied children](#) and [most](#) families.
- Overturned a Trump-era policy that [limited asylum eligibility](#) for victims of gang- and gender-based violence.
- Ended 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.
- The administration also [attempted](#) to end the Migrant Protection Protocols (MPP) and begin [processing](#) over 10,000 asylum seekers who were sent back to Mexico under the policy, but an ongoing federal court litigation has [forced the administration](#) to reimplement MPP.
- Biden also issued a memo [terminating](#) the “metering” policy that has restricted access to asylum at official crossing points, although the policy remains [largely in place](#) despite the memo due to capacity issues at ports of entry.
- Issued a [proposed rule](#) to provide a more efficient, less adversarial process for asylum seekers who pass initial credible fear screenings.

What more can be done?

- The administration has extended Title 42 multiple times, and most border crossers continue to be [immediately expelled](#) under the rule without the opportunity to request asylum. The administration should rescind this policy and work to establish a more modern, efficient, and humane asylum process that is accessible at ports of entry.
- The administration should also continue litigating the status of MPP and appeal court rulings requiring it to reimplement it. To the extent possible, it should limit use of the policy consistent with all existing judicial orders. In reimplementing MPP, it should work with Mexican authorities to ensure the safety and security of migrants returned to Mexico under the program.
- The administration should continue efforts to establish additional pathways for humanitarian relief beyond asylum to those fleeing violence and persecution in the region. This should include expanding refugee resettlement from the Western hemisphere and assisting regional governments in improving their own asylum and humanitarian protection systems, including by establishing more robust protections for internally displaced persons (IDPs).

C. Review immigration detention conditions.

Forum recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Largely [ended the use](#) of long-term family immigration detention and has generally used the pre-existing family detention facilities for other purposes.
- Closed some detention facilities that were [under investigation](#) for poor conditions and inadequate medical care.
- Announced a [case review process](#) that can be used by detained individuals to request release if they do not fit into the agencies enforcement priorities.
- Expanded alternative to detention programs, including a new pilot program [focused on expanding home confinement](#), ostensibly as part of an effort to rely less heavily on private detention facilities with poor conditions.

What more can be done?

- Detention facilities continue to be [susceptible](#) to COVID-19 outbreaks and [many facilities](#) that have come under fire for poor conditions remain in operation. In addition, DHS should improve its data collection and reporting of COVID-19 cases in immigration detention, including by collecting better data on third party contractor staff and others.
- Expansion of ATDs has not always come with a decline in the use of detention, and total immigrant detention has [increased](#) since President Biden took office. The administration

should make it a priority to shift people who do not pose a flight or public safety risk out of ICE detention facilities and into reasonable, effective alternatives.

D. Restore refugee resettlement.

Forum recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Increased the refugee ceiling — after some initial [hesitation](#) — first to 62,500 for Fiscal Year (FY) 2021 and then to [125,000](#) for FY 2022.
- Oversaw the evacuation and resettlement of [over 70,000](#) Afghans following the fall of Kabul, although they are currently living in the U.S. under temporary humanitarian parole status rather than as refugees.
- Began laying the groundwork for a successful rebuild of the refugee pipeline, including by establishing [virtual interview processes](#) and [reimplementing and expanding](#) the Central American Minors (CAM) program for refugee children in the Northern Triangle.
- Planned launch of [more streamlined refugee admissions process](#) for particular populations such as Afghan evacuees.

What more can be done?

- While the refugee ceiling has been increased substantially, the actual number of refugees resettled remains at record low levels. The administration [should invest](#) in rebuilding domestic resettlement infrastructure, including creating more stable funding mechanisms that provide resettlement agencies with the confidence to rebuild capacity and reopen offices.
- Biden should also work to better streamline and coordinate the refugee vetting process, which continues to take multiple years from start to finish and results in a high frequency of opaque denials.
- The administration should also work with Congress to support an [Afghan Adjustment Act](#) for the thousands of Afghan evacuees who do not have a clear path to permanent status.
- The administration should align the resettlement system more closely to global needs by [setting annual baseline admissions levels](#) based on the estimated population of refugees most in need of resettlement or other objective measures.

VERDICT:

The administration has made [some progress](#) in this area, but it has taken some steps backwards as well.

SOME PROGRESS



President Biden has at times failed to act decisively to protect asylum seekers, refugees, and other vulnerable migrants. However, the administration still has the opportunity to build on the progress it *did* make in its first year.

4. Provide effective border security

PRIORITIES

A. Review spending on border barriers



B. Increase investments at ports of entry



A. Review spending on border barriers.

Forum Recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Conducted a [review](#) of security needs at the border, [suspended border barrier construction](#) and [reappropriated the funding](#) that had been taken from Department of Defense contracts.
- Returned [some land](#) seized on the border via eminent domain and stopped initiating new eminent domain cases.
- Continued to build levee wall fencing to mitigate flooding and [conduct other construction projects](#) at the border where deemed necessary. Some border community members [support](#) these initiatives, while others have [raised concerns](#) about their ecological impact.

What more can be done?

- As of September 2021, as many as 100 eminent domain lawsuits [remained open](#) against Texas landowners. The government has also not returned much of the land seized by the Trump administration.
- Continued use of border policies like Title 42 are [incentivizing](#) higher rates of crossing in more dangerous terrain, leading to a [record number](#) of migrant deaths.
- The administration should end ongoing eminent domain actions, stop policies that encourage repeat crossing, and expend resources to facilitate border rescues.

B. Increase investment at ports of entry

Forum recommendation: 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.

What actions has the Biden Administration taken on this priority?

President Biden has...

- Worked with Congress to pass bipartisan infrastructure legislation into law, which includes [\\$3.6 billion](#) in funding for port of entry modernization projects under Customs and Border Protection (CBP) and the General Services Administration (GSA). Some of the funding will go to help carry out CBP's "[five-year plan](#)," which calls for additional vehicle and biometric screenings for narcotics and other security threats, filling staffing vacancies at ports, and creating a modern and integrated information technology system.
- [Increased seizures](#) of drugs like fentanyl at ports of entry along the border, demonstrating both the effectiveness of existing approaches and the continued need to reinforce security at ports.

What more can be done?

- Even after funding is appropriated, port of entry modernization projects face a notorious, multi-year, backlogged [approval process](#) at GSA. Legislative reform may be necessary to expedite this process and distribute infrastructure funding efficiently.
- The administration should also prioritize staying on track with CBP's five-year plan for ports of entry, including by expanding vehicle screening, creating new asylum processes and capacity, and improving entry-exit tracking.

VERDICT:

The administration has made **some progress** in this area through early executive actions and by getting bipartisan infrastructure legislation over the finish line.

SOME PROGRESS

Despite ongoing challenges, including sustained increases in apprehensions between ports of entry, the border has [never been](#) more secure. Border towns have long been [extremely safe](#) with very low rates of violent crime. But continued investment is needed at ports of entry, where reform can be slow-moving and where [hundreds of millions of dollars of hard drugs](#) were seized in 2021.

5. Enforce immigration laws judiciously

PRIORITIES

A. Improve the immigration adjudication system



B. Institute immigration enforcement priorities



C. End over-criminalization of immigrants



A. Improve the immigration adjudication system.

Forum recommendation: Seek funding for hiring additional immigration judges and support personnel, modernizing the immigration filing system, and improving facilities and infrastructure.

What actions has the Biden administration taken on this priority?

President Biden has...

- Taken steps to address the immigration court backlog, including by adopting a [dedicated docket process](#) for migrant families and by issuing a [proposed rule](#) to provide a more efficient, less adversarial process for asylum seekers who pass initial credible fear screenings.
- Proposed hiring an [additional 100 immigration judges](#) and an [additional 1,000 asylum officers](#) in annual budget legislation.
- Provided more flexibility to immigration judges to manage their dockets after Attorney General Garland [issued a decision](#) reinstating administrative closure.
- Hired [non-enforcement personnel](#) and [updated policy guidance](#) to expedite processing of notices to appear (NTA) in immigration court.

What more can be done?

- The immigration court case backlog has continued to grow despite the administration's efforts, and policies at the border continue to raise significant due process concerns.
- The administration should prioritize legal orientation and access to counsel programs, particularly for vulnerable migrants and unaccompanied children. It should also consider supporting [legislation](#) to make the court independent from the Department of Justice continue searching for innovative ways to tackle the case backlog.

B. Institute immigration enforcement priorities.

Forum recommendations: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Issued memoranda formalizing [new enforcement guidelines](#) that prioritize those who pose a national security threat, those who pose a public safety threat, and recent border crossers. The memo further provides significant prosecutorial discretion to enforcement officers, providing them with the flexibility to balance aggravating and mitigating factors in making enforcement determinations.
- Limited ICE enforcement actions in certain [protected areas](#) like schools, churches, daycares, and courtrooms and [ended](#) mass worksite raids.

What more can be done?

- The administration should ensure that new priorities are properly followed in enforcement, detention, and deportation decisions. The administration should further monitor the impact of providing additional prosecutorial discretion to enforcement personnel.

C. End over-criminalization of migrants.

Forum recommendation: 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.

What actions has the Biden administration taken on this priority?

President Biden has...

- Formally [rescinded](#) the Zero Tolerance Policy, which was used under the Trump administration to prosecute arriving migrants and separate families at the border.

What more can be done?

- Most arriving migrants remain subject to Title 42 and are immediately expelled before being subject to criminal prosecutions. The administration should work both to eliminate Title 42 and to deprioritize migrants subject to prosecution for purely criminal offenses.

VERDICT:

The administration has made [substantial progress](#) in this area by following through on initial pledges and supporting innovative solutions.



While due process concerns persist and the immigration court backlog continues to grow, the administration has made new enforcement priorities a reality and has proposed changes to the asylum adjudication system that could — if well-implemented — create a more efficient and just process.

Conclusion

In its first year in office, the Biden administration has made [hundreds of reforms](#) to the immigration system. These changes have come in the form of executive orders, memoranda, updated guidelines, DOJ decisions, and signing legislation into law. In many cases, they have resulted in real, substantial progress towards a more just, humane immigration system that works for all Americans.

It is a testament to the damage wreaked on our immigration system by the prior administration — as well as the COVID-19 pandemic — that there remains so much more work to do. Significant challenges remain: Dreamers, TPS holders, and essential workers continue to be forced into the shadows; lengthy backlogs persist at USCIS and in the immigration courts; a million migrants were turned away last year at the border without any access to asylum and a thousand families separated by the Trump administration have not yet been reunited; refugee resettlement sits at record lows just as immigrant detention is increasing back to pre-pandemic highs.

Biden has acted on all of the five principles the Forum suggested should guide his presidency on immigration policy back in November 2020, yet all five require significant additional action. All five must remain a priority in 2022.