

Recent White House Actions on Immigration

February 10, 2021

In the past few weeks, the Biden Administration has [engaged](#) in a series of executive actions on a range of issues. Some concern the administration and enforcement of federal immigration laws. These immigration-related initiatives purport to revise substantially Trump Administration policies that generally prioritized immigration enforcement activities and restricted the ability of some non-U.S. nationals (aliens) to enter the United States or pursue immigration benefits. Some of these prior policies have been discussed and analyzed in other CRS [products which can be found here](#). This Legal Sidebar provides a brief overview of the Biden Administration’s immigration-related initiatives through February 10, 2021.

Presidential Proclamations Restricting Entry into the United States

Under [§ 212\(f\)](#) of the Immigration and Nationality Act (INA), the President may “suspend entry of all aliens or any class of aliens” whose entry he “finds . . . would be detrimental to the interests of the United States.” Relying on [§ 212\(f\)](#), President Trump issued a [series of proclamations](#) restricting the entry of aliens from designated countries on grounds [related to national security and the COVID-19 pandemic](#). Through three iterative executive actions in 2017, sometimes called the “Travel Ban,” the President provided for the exclusion of broad categories of nationals of specified countries, most of which were predominantly Muslim. Though subject to legal challenge, the Supreme Court [held](#) that these restrictions fell within the President’s [§ 212\(f\)](#) authority. President Trump also issued several proclamations restricting the entry of foreign [nationals from certain regions and countries](#) to deter the spread of the COVID-19 pandemic (President Trump later [terminated](#) some of these entry restrictions), and more generally suspended the entry of [certain immigrants and nonimmigrants](#) (subject to exceptions) to protect American workers during the COVID-19-related economic recovery.

On January 20, 2021, President Biden [revoked](#) the “Travel Ban” restrictions and directed Department of State officials to resume visa processing for immigrant visa applicants from the designated countries. But citing the ongoing COVID-19 pandemic and emerging “variant strains” of the virus, President Biden on January 25, 2021, [suspended](#) the entry of aliens who, within the prior 14 days, had been in Brazil, the European Schengen Area, Ireland, South Africa, or the United Kingdom (excluding overseas territories outside Europe), subject to certain exceptions (e.g., lawful permanent residents [LPRs], foreign government officials). President Biden has left intact former President Trump’s COVID-19-related entry restrictions for aliens who had been in Mainland China or Iran. President Biden also has not acted on the entry restrictions that aim to protect American workers by barring certain immigrants and nonimmigrants.

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But [at least one federal district court](#) has barred the government from applying these restrictions to certain individuals during the pendency of litigation, ruling that § 212(f) does not confer broad authority to suspend entry for purely domestic economic (as opposed to national security) reasons.

Immigration Enforcement Priorities

The Department of Homeland Security (DHS) is primarily [responsible for enforcing federal immigration laws](#), including arresting and initiating removal proceedings against aliens who have committed immigration violations. In 2017, former President Trump issued an [executive order](#) directing DHS officials to enforce federal immigration laws “against all removable aliens,” with a particular focus on aliens engaged in criminal activity, aliens arriving at the border and recent unlawful entrants, aliens who committed fraud or abused public benefits programs, aliens with final orders of removal, and aliens who threatened national security or public safety.

On January 20, 2021, President Biden [revoked](#) the 2017 executive order, and directed DHS officials to implement new immigration enforcement priorities. Acting Secretary of Homeland Security David Pekoske then [ordered](#) a “100-day pause” on most deportations pending DHS’s review of its immigration enforcement priorities, and established interim guidelines generally limiting immigration enforcement actions to cover only those who present threats to national security, border security, and public safety (e.g., aliens convicted of [aggravated felonies](#), recent unlawful entrants). Following a legal challenge brought by the State of Texas, a federal district court [ruled](#) that the “100-day pause” likely violates an INA provision [requiring the removal](#) of aliens subject to final orders of removal, and that the agency adopted the policy [without a reasoned explanation](#). The court [issued](#) a Temporary Restraining Order barring enforcement and implementation of the “100-day pause” as litigation in the case continues. But the new enforcement priorities in the interim guidelines otherwise may go into effect.

Deferred Enforced Departure

Deferred enforced departure (DED) is “a temporary, discretionary, administrative stay of removal” to aliens from designated countries experiencing war or instability. Unlike many other forms of immigration relief, rooted in statute, the executive branch [has characterized](#) the power to grant DED as flowing from the President’s constitutional authority in foreign relations. Certain Liberian nationals [have had DED protections since 2007](#) (previously, they had [Temporary Protected Status](#) [TPS], which confers protections similar to DED but, among other distinctions, is authorized by statute and governed by statutory parameters). In 2018, former President Trump [terminated](#) DED for Liberians, citing improved conditions in Liberia, but [repeatedly postponed](#) the termination to allow for a “wind-down period,” which ended on January 10, 2021. And in 2019, Congress passed the National Defense Authorization Act for FY2020, which included a [Liberian Refugee and Immigrant Fairness](#) (LRIF) provision that allows Liberian nationals (and their spouses and children) to adjust to [LPR status](#) if they meet specified requirements. To be eligible for adjustment, LRIF applicants [must file their applications](#) by December 20, 2021.

Apart from terminating DED (and extending the wind-down period) for Liberians, former President Trump on January 19, 2021, [granted DED](#) for a period of 18 months to Venezuelan nationals present in the United States as of January 20, 2021, with certain exceptions (e.g., those convicted of any felony).

On January 20, 2021, President Biden [reinstated DED](#) through June 30, 2022, for Liberian nationals residing in the United States who had DED on January 10, 2021. The President also directed DHS to provide DED-covered Liberian nationals employment authorization while they apply for LRIF benefits. The President excluded some Liberian nationals from DED and work authorization, including those convicted of certain criminal offenses or whose LRIF applications had been denied.

Deferred Action for Childhood Arrivals

Started in 2012, the Obama Administration’s [Deferred Action for Childhood Arrivals](#) (DACA) initiative allowed certain unlawfully present aliens who arrived in the United States as children to remain and work in the United States for renewable two-year periods. In 2017, the Trump Administration [announced](#) it would rescind DACA. But as detailed in this [Sidebar](#), several federal district courts enjoined most aspects of the rescission from taking effect. In 2020, the Supreme Court [ruled](#) that the DACA rescission was unlawful because DHS provided inadequate reasoning in support of its decision to end the initiative (notably, the Court did not rule on the legality of DACA itself, and it indicated that DHS could rescind the program if it provided an adequate explanation for its decision). As a result of the ruling by the High Court and [later lower court rulings](#), the DACA program has remained in place.

On January 20, 2021, President Biden [directed](#) the Secretary of Homeland Security “to preserve and fortify DACA,” asserting that DACA recipients “should not be a priority for removal based on humanitarian concerns and other considerations.” Thus, many expect DHS will likely announce new guidance on the continuation of DACA relief and associated benefits. Meanwhile, a lawsuit brought in 2018 by a group of states contesting the legality of DACA is [ongoing](#), with a summary judgment motion pending before a federal district court in Texas. As such, the future of DACA remains uncertain.

Construction of Additional Fencing, Walls, and Other Barriers on the Southern Border

On January 25, 2017, President Trump issued an [executive order](#) directing the securing of the southern border through “immediate construction of a physical wall.” For fiscal year (FY) 2019, Congress [appropriated](#) \$1.375 billion for that construction. The Trump Administration sought additional funding from other [sources](#)—including funds from the [Treasury Forfeiture Fund](#) and the redirecting of certain funds appropriated to the Department of Defense (DOD). In a [proclamation](#) dated February 15, 2019, President Trump declared a national emergency at the southern border under authority granted in the [National Emergencies Act](#). He then [invoked emergency powers](#) that purportedly authorized the DOD to support the response at the southern border, including redirecting funds appropriated to DOD for military construction. [Litigation](#) challenging the lawfulness of these actions is ongoing. The Trump Administration also made further requests for funding for FY2020 and 2021 as described in [this CRS product](#).

On January 20, 2021, President Biden issued a [proclamation](#) declaring that the national emergency along the southern border was terminated, and that the [authorities invoked in that proclamation](#) will no longer be used to construct a wall at the southern border. President Biden directed a pause of construction projects on the southern border pending an assessment of the legality of funding and contracting methods. Of special note, the oral arguments scheduled for February 22, 2021, before the Supreme Court in pending litigation over the use of DOD funds for construction [have been cancelled](#) pursuant to a [request](#) by the Biden Administration.

Processing of Asylum Seekers at the Southern Border

The Trump Administration took a series of actions restricting the availability of asylum and other protections for many aliens arriving at the southern border. The administration also adopted a “[zero tolerance policy](#)” to criminally prosecute aliens who unlawfully enter the United States without inspection. This policy led to the [separation of some children](#) from accompanying parents transferred to criminal custody for prosecution, and the policy was later [rescinded](#). Additionally, the administration expanded the use of a streamlined, [expedited removal](#) process typically applied to aliens at or near the border, to cover certain unlawfully present aliens in the interior of the United States. Many of these initiatives have been the subject of ongoing litigation and [are discussed in other CRS products](#).

On February 2, 2021, President Biden issued an [executive order](#) announcing the creation of a task force to reunite parents and children separated under the zero tolerance policy. A separate [executive order](#) calls for several changes to asylum processing at the border, and directs the Secretary of Homeland Security and other agency officials to take certain actions, including

- to decide whether to reinstate the [Central American Minors \(CAM\) Parole](#) program to allow lawfully present parents to bring children facing dangerous conditions in the Northern Triangle Countries to the United States as refugees or parolees;
- to resume “safe and orderly processing” of asylum claims, and decide whether to terminate, rescind, or modify a March 2020 Centers for Disease Control and Prevention directive [suspending the entry of asylum seekers](#) in response to the spread of COVID-19;
- to decide whether to end or modify the [Migrant Protection Protocols](#), which requires some arriving asylum seekers to return to Mexico pending the outcome of their formal removal proceedings;
- to determine whether to rescind a [2018 rule](#) that would have made ineligible for asylum those aliens who violated a [presidential proclamation](#) barring the entry of aliens (other than LPRs) at the southern border except at designated ports of entry;
- to cease implementation of the [Prompt Asylum Claim Review \(PACR\) and Humanitarian Asylum Review Process \(HARP\)](#), in which asylum screening interviews occur in short-term holding facilities at the border instead of in long-term detention facilities in the interior;
- to decide whether to modify, revoke, or rescind a [2019 rule](#) expanding the use of expedited removal into the interior of the United States; and
- to conduct a broad review of rules, legal precedent, and guidelines for adjudicating asylum claims brought by aliens fleeing domestic or gang violence.

Of note, the Secretary of State [announced](#) on February 6, 2021, that, consistent with this executive order, the Biden Administration would end the “[Asylum Cooperative Agreements](#)” with Guatemala, Honduras, and El Salvador that required transfer of some asylum seekers arriving at the U.S. southern border to those countries to pursue relief.

Legal Immigration and Naturalization

The Trump Administration had taken certain actions that restricted the ability of some aliens to immigrate legally to the United States. For example, in 2019, DHS [issued a final rule](#) on the public charge ground of inadmissibility that would have made it harder for some aliens to obtain LPR status due to their potential future use of public benefits. Additionally, in 2020, DHS [issued a final rule](#) that, among other things, increased the fees for some immigration benefit petitions and applications (including naturalization applications), added new fees for certain benefit requests, and limited fee waivers.

On February 2, 2021, President Biden issued an [executive order](#) directing the Secretary of Homeland Security, the Secretary of State, and the Attorney General to identify agency actions that impede access to immigration benefits, and determine whether to revise or rescind those agency actions, including the 2020 rule increasing fees for immigration benefit requests. President Biden also ordered review of agency actions related to the public charge grounds of inadmissibility or deportability (i.e., the grounds related to use of public benefits). The President also ordered the Secretary of Homeland Security, the Secretary of State, and the Attorney General to develop a plan to improve the naturalization process and make it more accessible.

Refugee Admissions

The President has [statutory authority](#) to set the number of refugees who may be admitted each fiscal year. President Trump substantially [reduced](#) refugee admission levels compared to prior administrations. He also initially [suspended](#) the refugee admissions program pending a review to improve the screening process. After later [resuming](#) refugee admissions, he directed officials to consider whether admission of certain classes of refugees endangered national security. Further, President Trump [ordered](#) officials to obtain the consent of states and localities before resettling refugees in those jurisdictions. Federal courts, however, have [barred](#) that order's implementation pending legal challenge.

On February 4, 2021, President Biden [revoked](#) President Trump's actions on refugee admissions. Seeking to expand the refugee program, President Biden directed officials to determine whether to maintain, reverse, or modify any policies adopted pursuant to President Trump's directives limiting access to refugee admission. He ordered the Secretary of State, in consultation with other agencies, to review the [Special Immigrant Visa Program](#) for certain Iraqi and Afghan nationals working for the U.S. military, and provide recommendations for improving that program. President Biden is [reportedly](#) considering raising refugee admission levels.

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