

# 100

## TRACKING THE BIDEN AGENDA ON LEGAL IMMIGRATION IN THE FIRST 100 DAYS

by **Jorge Loweree** and **Aaron Reichlin-Melnick**

SPECIAL REPORT

## About the American Immigration Council

The American Immigration Council works to strengthen America by shaping how America thinks about and acts towards immigrants and immigration and by working toward a more fair and just immigration system that opens its doors to those in need of protection and unleashes the energy and skills that immigrants bring. Through its research and analysis, the American Immigration Council provides policymakers, the media, and the general public with information about how the immigration system works, the impact of policy proposals, and the crucial role that immigration plays in our communities and workplaces.

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# Executive Summary

President Biden assumed office after making considerable commitments to implement changes to legal immigration in the United States, both to reverse harmful changes by former President Trump, but also in reforming and updating the system more broadly. Trump executed prolonged attacks on many categories of immigrants in thinly veiled attempts to limit the number of noncitizens entering the United States temporarily and permanently. These changes created a series of often duplicative barriers impacting the same populations and limiting the ability of many noncitizens to obtain or maintain immigration status in the United States. While the Biden administration has made significant progress in meeting many of its commitments in restoring and reforming legal immigration in the United States, significant barriers to access remain that will need to be addressed for the system to function in a meaningful manner.

This special report analyzes some of the most significant changes to immigration policy made by the Trump administration, as well as the subsequent commitments and accomplishments made by the Biden administration on these issues during its first 100 days. The report also provides recommendations for action throughout the remainder of the Biden presidency to foster a fair and efficient system of legal immigration.

## The Creation of Bureaucratic Barriers to Legal Immigration

- » **Public Charge**—The Trump administration issued a “public charge” rule which expanded the grounds under which visa applicants could be denied for their use of public benefits. While the rule was subjected to various lawsuits and public outcry, it nevertheless went into effect in February 2020. As a result, denials of immigrant visa petitions on public charge grounds increased by 300 percent, and the use of important public benefits by immigrant families decreased. Biden committed to repealing this rule during his campaign. Under the Biden administration, the U.S. Department of Homeland Security dismantled the rule through litigation and regulatory action.
- » **Health Insurance Visa Ban**—Trump issued an executive order in October 2019 to prevent non-citizens from entering the United States unless they could show proof of existing or forthcoming health insurance or means to pay for unforeseen health care costs. The order was met by a legal challenge in November 2019, resulting in an injunction that is currently in the appeals process. The rule nevertheless remains a threat to legal immigration in the United States, and the Biden administration has yet to announce plans for its formal revocation.
- » **“Extreme Vetting” Policy**—Trump mandated “extreme vetting” of all noncitizen applicants and beneficiaries via executive order in March 2017, despite the existence of extensive vetting mechanisms and a low vetting failure rate. This was an effort to slow legal immigration and reduce the number of immigrants and non-immigrants that can obtain or maintain immigration status. Biden then revoked the extreme vetting requirement with an executive order in February 2021.

- » **“No Blank Space” Policy**—U.S. Citizenship and Immigration Services previously announced a policy of rejecting applications and petitions with questions left blank or not properly indicated as inapplicable. While the practice was ended pursuant to litigation, the USCIS policy was formally revoked by the Biden administration on April 1, 2021.
- » **Changes to USCIS Filing Fees**—USCIS published a rule in August 2020 that would increase filing fees for certain applications and petitions and eliminate some fee exemptions. In response to a related lawsuit, the rule was enjoined before it could take effect, and the government suspended its appeal in December 2020. Nevertheless, on January 29, 2021, USCIS issued a notification formally confirming that DHS would comply with the injunction and not implement the changes.
- » **Reductions in USCIS Processing Capacity**—Changes in USCIS agency practice—such as increased in-person interview requirements—created problems of accessibility and efficiency in processing. Closures of international field offices and decreases in productivity, coupled with subsequent reductions in USCIS staffing, further reduced USCIS productivity. This led to increased processing times and a growing backlog of cases, creating further barriers to obtaining, maintaining, and changing immigration status. While Congress passed legislation to increase USCIS funding late in 2020, the agency has not taken steps to fully avail itself of its potential benefits.

## Attacks on Specific Eligibility Categories Under Current Law

- » **The COVID-19 Bans**—Under the guise of responding to the COVID-19 pandemic, Trump issued a series of proclamations barring the entry of immigrants and non-immigrants to the United States. Although lawsuits on behalf of Diversity visa lottery winners and non-immigrants saw some success, the bans—as well as suspension of visa services at consulates around the world—contributed to a large drop-off in visas issued. Biden repealed the immigrant visa ban on February 24, 2021 and allowed the non-immigrant visa ban to expire on March 31, 2021. Resumption of visa processing, however, remains inconsistent, limiting the impact of the revocation of the COVID-19 bans.
- » **Targeting Refugees**—Trump’s notorious “Muslim Ban” in January 2017 suspended refugee admissions for 120 days, and another executive order established extreme vetting of refugees when admissions resumed in October 2017. Trump also supplanted the Obama administration’s designated refugee ceiling of 110,000 for fiscal year 2017, reducing it to 50,000. He continued to further reduce the refugee ceiling throughout his tenure until reaching a low of 15,000 for fiscal year 2021. Biden committed to raise the refugee ceiling upon taking office. Although he has reiterated this intent since assuming the presidency, he has repeatedly lowered his target for the updated refugee cap and has yet to formally execute on this commitment. In April, Biden issued a determination reallocating slots in the refugee resettlement program to benefit categories shut out under Trump. The Biden administration is on pace to resettle a mere 4,510 refugees in fiscal year 2021—a figure that is considerably lower than any year during the Trump presidency. Importantly, the administration has promised that Biden will reevaluate raising the refugee cap on May 15 following the resumption of normal refugee processing.

- » **Targeting the Diversity Category**—The Trump administration repeatedly targeted the Diversity category through policies such as the Muslim Ban, the African Ban, and the COVID-19 Immigrant Visa Ban. This steadily decreased the number of new arrivals on diversity visas between 2017 and 2019. Though Biden has made progress in rescinding several policies impacting beneficiaries of the Diversity category, this progress is muted by additional barriers to entry, including the ongoing suspension of visa processing at U.S. embassies and consulates throughout much of the world due to the pandemic.
- » **Collective Impact of These Changes on Visa Processing**—These various proclamations implemented by the Trump administration suspending the entry of certain categories of immigrants, coupled with the suspension of visa services at U.S. embassies and consulates abroad, has had a pronounced impact on immigrants who are eligible to come to the United States through close family ties or through the Diversity category.
- » **Targeting H-1B Visas**—The Trump administration implemented various policy changes explicitly targeting the H-1B category for high-skilled temporary workers, beginning with the Executive Order “Buy American and Hire American” in April 2017 in which federal agencies then issued rules and policies intended to restrict H-1B approvals. USCIS issued more requests for evidence and denied more initial petitions. As such, denial rates increased drastically from fiscal year 2017 through the first half of fiscal year 2020, before falling in the second half of fiscal year 2020. Despite the administration’s efforts, the overall number of approved H-1B petitions, including new and continuing approvals, increased between the start and end of the Trump presidency.

## Restrictions for Specific Categories of Noncitizens

- » **Muslim, African, and Refugee Travel Ban**—Trump issued Executive Order 13769, or the notorious “Muslim Ban,” on January 25, 2017. The ban was amended amid legal challenges, and “Muslim Ban 3.0” ultimately went into effect on December 4, 2017 barring entry of foreign nationals from 13 predominately Muslim and/or African countries. The ban stayed in effect for the remainder of the Trump presidency. Biden insisted throughout his campaign and transition that he would repeal the Muslim Ban on his first day in office. He did so via executive order on January 20, 2021. The State Department then announced a plan to re-adjudicate some (but not all) visas denied in accordance with the ban. People subject to the prior ban nevertheless continue to face other significant barriers to entering the United States.
- » **COVID-19 Regional Bans**—Between January and May 2020, Trump issued proclamations denying entry to noncitizens arriving from or traveling through China, Iran, the Schengen Area of Europe, the United Kingdom, Ireland, and Brazil. He also signed agreements with Mexico and Canada blocking non-essential travel through shared land borders. Trump repealed the restrictions on the Schengen Area, the U.K., Ireland, and Brazil near the end of his term in office. Biden reinstated these restrictions and added South Africa. He also renewed the border agreements for another three months.

## Analysis and Recommendations

- **The Creation of Bureaucratic Barriers to Legal Immigration**

- » **Health Insurance Proclamation**—Although the Health Insurance Visa Ban is not currently in effect, related litigation remains in the appeals process and continues to pose a potential threat to noncitizens wishing to come to the United States. The Biden administration should formally rescind the Health Insurance Visa Ban through a presidential proclamation.
- » **Reductions in USCIS Processing Capacity**—The Biden administration should prioritize removing barriers to accessing the U.S. immigration system, such as duplicative interview requirements and unnecessary vetting, which contribute to delays and backlogs. It should request more funding from Congress for improvement of USCIS systems and reduction of systemic backlogs. The agency should also fully implement the terms of the Emergency Stopgap USCIS Stabilization Act, which would bolster USCIS revenues and allow it to fully lift the hiring freeze and increase processing.

- **Attacks on Specific Eligibility Categories Under Current Law**

- » **Consular Processing**—The Biden administration should take action to fully reinstate consular processing abroad, including ensuring that consular staff are vaccinated, and pursuing supplemental funding from Congress to fill any budget shortfall. It should also implement interim measures to facilitate immigration to the United States, including automatically extending the validity of expiring visas, permitting visa revalidation from within the United States, and reinstating the authority of consular officers to waive certain in-person interviews in increase efficiency.
- » **Visa Recapture**—The Biden administration should work to address the loss of over 100,000 visas for family-based and Diversity preference category visas in fiscal year 2020 due to the COVID-19 Immigrant Visa Ban and the suspension of visa processing abroad by working with Congress to recapture and reallocate the approximately 200,000 immigrant visas that were unused between 1992 to 2019.
- » **Refugees**—Biden should immediately issue an updated presidential determination raising the refugee ceiling for fiscal year 2021 above the historic low left by Trump. The administration should prioritize rescheduling refugees' flights that were cancelled as a result of delays in adjusting the ceiling. It should also request additional funding from Congress to support the promised refugee cap of 125,000 for fiscal year 2022. Biden did reallocate slots in the refugee resettlement program to compensate for the discriminatory categories of the Trump administration, but the administration should further work to repair our country's legacy of refugee resettlement by prioritizing and expediting processing for refugees impacted by the Trump administration's restrictions and the Muslim, African, and Refugee Ban.

- **Restrictions for Specific Categories of Non-Citizens**

- » **Regional Bans**—The Biden administration should consider revoking the regional COVID-19 bans and should instruct consulates that visas can still be issued for individuals subject to a regional ban.
- » **Land Border Bans**—The Biden administration should consider revoking or modifying the land border bans, in consultation with border communities that have been economically impacted by the closure of land borders.



# Introduction

President Joe Biden inherited a beleaguered immigration system, beset by delays, cuts, restrictions, and a variety of barriers to access for noncitizens in the United States and abroad. Former President Donald Trump implemented over 1,000 changes to U.S. immigration policy, including many changes impacting legal immigration, up until his final days in office. Some changes have been subtle with relatively minimal impact, while others have been sweeping in nature, with cascading effects limiting the ability of many noncitizens to obtain or maintain immigration status in the United States.

These changes include the creation of bureaucratic barriers to reduce overall approval rates and increase the amount of time required to navigate specific applications and petitions, limiting the entry of specific categories of individuals based on pretextual claims of public health during the COVID-19 pandemic, and executive actions targeting specific populations based on their country of origin. These changes created often overlapping and duplicative barriers to accessing lawful mechanisms to come to the United States, and they have had a dramatic impact on immigration trends that will take years to reverse.

In addition to promising important changes to interior enforcement as well as border processing and asylum protections, President Biden made significant commitments during his 2020 presidential campaign to repair, restore, and ultimately reform the way the U.S. temporarily or permanently grants entrance and status to immigrants and refugees—our system of legal immigration. This report seeks to analyze the progress the new administration made toward achieving these goals during its first 100 days in office. The report begins by providing an overview of the most impactful changes to the legal immigration system made by the Trump administration. It then contrasts these changes with the commitments and accomplishments of the Biden administration during its first 100 days in office. Finally, the report concludes with recommendations for next steps and areas where additional action remains necessary to help foster a fair immigration system.

## The Creation of Bureaucratic Barriers to Legal Immigration

The Trump administration successfully used the power of the federal bureaucracy to reduce legal immigration by raising the legal standard necessary for many people to obtain permanent status in the United States, increasing overall processing times, and in some cases, decreasing approval rates.

### Public Charge

Following a multi-year regulatory process and extensive litigation, the Trump administration instituted the controversial “public charge” rule that disproportionately targeted family-based immigration.

The policy implemented an expanded public charge criterion based on the actual or perceived future reliance of applicants and beneficiaries on certain public benefits. Noncitizens deemed likely to rely on public benefits could be denied lawful permanent resident status.<sup>1</sup>

First, on January 3, 2018, the State Department edited the definition of “public charge” in its Foreign Affairs Manual to expand the pool of applicants who could be denied a visa, resulting in an ongoing lawsuit filed by the City of Baltimore.<sup>2</sup> On October 10, 2018, the Trump administration doubled down on the issue by proposing a new regulation that would massively expand the criteria under which an application for lawful permanent resident status could be denied on public charge grounds.<sup>3</sup> The administration received more than 100,000 comments on this proposal, largely in opposition to the rule, but nevertheless finalized the rule on August 14, 2019 with minimal changes.<sup>4</sup> The rule was enjoined by several federal courts, but the injunctions were ultimately stayed by the Supreme Court, allowing the rule to enter into effect on February 24, 2020.<sup>5</sup>

As a result, the number of denials on public charge grounds increased significantly. In fiscal year 2017, there were 3,237 such denials. The total figure increased by approximately 300 percent the following year when there were 13,450 denials on public charge grounds.<sup>6</sup>

Studies also documented a “chilling effect” in immigrant families’ use of public benefits attributable to the rule. According to a report by the Urban Institute, 15.6 percent of adults in immigrant families admitted that they or a member of their family decided not to use a public benefit program out of fear over its effect on their immigration status.<sup>7</sup> In survey data collected by the Food Research & Action Center and the National Immigration Law Center, 27 percent of respondents answered affirmatively when asked if their family stopped using food programs they previously used for this reason.<sup>8</sup>

### **Health Insurance Visa Ban**

Trump issued a proclamation on October 4, 2019 titled “Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, in Order to Protect the Availability of Healthcare Benefits for Americans,” which required visa applicants to show proof of specific forms of existing or forthcoming health insurance coverage, or means to pay for potential healthcare costs, in order to be permitted to enter the United States.<sup>9</sup> An early estimate indicated that the proclamation could reduce immigration by two-thirds if fully implemented.<sup>10</sup> The American Immigration Lawyers Association, the Justice Action Center, the Innovation Law Lab, and the law firm Sidley Austin LLP filed the lawsuit *Doe, et. al. v. Trump, et. al.* on October 30, 2019, which ultimately preempted the implementation of the proclamation on November 3, 2019. The plaintiffs obtained a temporary restraining order delaying effect of the policy on November 2, 2019, and later a preliminary injunction on November 26, 2019. Although the United States Court of Appeals for the Ninth Circuit issued a ruling against the injunction on December 31, 2020, the injunction remains in place for now as the case continues through the appeals process.<sup>11</sup>

### **“Extreme Vetting” Policy**

The Trump administration also prioritized what it described as the “extreme vetting” of potential immigrants and non-immigrants. The administration issued an executive order titled “Protecting the Nation from Foreign Terrorist Entry” within its first 100 days on March 6, 2017. The order demanded

extensive additional screening associated with all visa-issuance processes,<sup>12</sup> and in February 2018 a presidential proclamation increased these increased vetting procedures and created a National Vetting Center to enforce them.<sup>13</sup> This call for extreme vetting was ostensibly to protect the country from terrorists entering the United States; however, immigration applications and petitions have been subjected to extensive security and fraud screening in the post-9/11 era. Between 2002 and 2016, the vetting failure rate (defined as “the rate at which immigration officials wrongly approve people to travel to the United States”)<sup>14</sup> was just 1 in 29.1 million.<sup>15</sup>

### **“No Blank Space” Policy**

On December 31, 2019, the USCIS Ombudsman announced a new agency practice of rejecting certain forms with fields left blank, under a new “no blank space” policy. This new policy applied even to questions that were not relevant, had been answered previously, or were inapplicable. Even if an applicant wrote “none” or “not applicable” when the acceptable answer would have been “N/A,” their form could be rejected.<sup>16</sup>

USCIS was forced to suspend this practice on December 23, 2020 because of a legal challenge.<sup>17</sup> However, thousands of applications and petitions were denied on blank space grounds while the policy was in effect, including nearly 12,000 U-Visa petitions during the policy’s first month.<sup>18</sup>

### **Changes to USCIS Filing Fees**

In August 2020, USCIS published a new rule to become effective in October 2020 that would increase certain filing fees, impose new fees, eliminate some exceptions to required fees, and change criteria for fee waivers. This rule would have made applying for immigration benefits harder and more costly—particularly for millions of green card holders seeking citizenship, since the rule proposed increasing the filing fee for naturalization by over 80 percent, raising the fee for requesting a hearing in naturalization proceedings by 150 percent, and abolishing fee waivers for naturalization applications. The rule would also have significantly impacted noncitizens pursuing permanent residency since it would have required additional fees to apply for employment or travel documents, related petitions that had previously been “bundled” under the adjustment application fee.<sup>19</sup> A group of organizations filed the suit *ILRC v. Wolf* on August 20, 2020 in response to publication of the rule, resulting in an injunction issued by the U.S. District Court for the Northern District of California on September 29, 2020 preventing the rule’s entry into effect. Although the government initially appealed the injunction, it voluntarily dismissed its appeal on December 28, 2020.<sup>20</sup>

### **Reductions in USCIS Processing Capacity**

A strategic shift in USCIS’ focus away from customer service in administering the U.S. system of legal immigration compounded issues of accessibility and efficiency, leading to increased processing delays.<sup>21</sup> One example of this was the expansion of duplicative in-person interview requirements for many lawful permanent resident (LPR or “green card”) petitioners and beneficiaries, a policy which served primarily to increase backlogs rather than weed out additional fraud.<sup>22</sup> In August 2017, USCIS began “phasing in” in-person interviews for certain employment-based adjustment of status beneficiaries, in what was seen by many as an attempt to lengthen the application process and delay granting of permanent status.<sup>23</sup> In May 2018, USCIS further amended its policy to require interviews for all adjustment of status applications, which could previously be waived in employment-based and some family-based

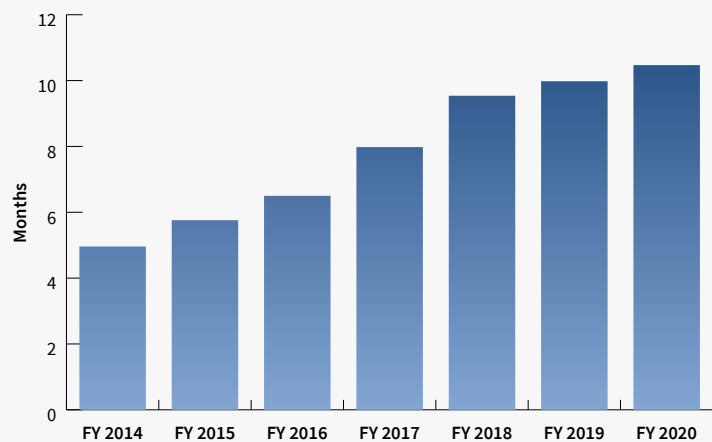
adjustment cases (such as those who originally came to the United States on fiancé visas).<sup>24</sup> In addition to imposing these redundant interview requirements, USCIS published a memorandum in October 2017 rescinding a policy of deferring to previous decisions when considering requests for extension of non-immigrant status, thereby adding more unnecessary delays and hurdles in the adjudication process.<sup>25</sup>

Additionally, in 2019, USCIS announced plans to close most of its international field offices by the end of the year.<sup>26</sup> Further, in 2020, USCIS began to experience the effects of a significant financial shortfall that agency leadership attributed to the COVID-19 pandemic. In May 2020, USCIS informally notified Congress of a massive projected budget shortfall threatening the agency’s operations and the financial wellbeing of thousands of USCIS employees and requested \$1.2 billion in emergency funding.<sup>27</sup> In reality, the agency’s financial challenges were largely attributable to a variety of policies implemented in recent years that decreased overall productivity thereby decreasing its revenues given its fee-funded structure.<sup>28</sup> Nevertheless, USCIS threatened significant furloughs, failed to renew certain contracts, and reduced processing capacity in light of these challenges, leading to significant delays in biometrics processing and document production.<sup>29</sup>

All this created a growing gridlock in USCIS processing, with average processing time increasing by 61 percent from FY 2016 to FY 2020 (see Figure 1).

In raw numbers, USCIS backlogs increased dramatically during the Trump administration, rising 66 percent from 2016 through the first quarter of fiscal year 2020.<sup>31</sup> The reduction in capacity and expansion of the processing backlog have created significant barriers to obtaining or changing immigration status in the United States.

**FIGURE 1: Average USCIS Case Processing Time (in Months), FY 2014–2020<sup>30</sup>**



Source: U.S. Citizenship and Immigration Services, “Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year”

### Reductions in State Department Processing Capacity

Beginning in 2017, the Trump administration froze hiring across the State Department for 16 months, including at consulates around the world.<sup>32</sup> The hiring freeze—along with other changes made to the State Department during Secretary of State Rex Tillerson tenure—had a significantly negative effect on the agency’s consular staff, according to a 2019 report by the State Department’s Inspector General.<sup>33</sup> By the time the Trump administration left office, there were 1,000 fewer employees at the State Department than in 2016, in what was described as a “stunning loss of expertise” by incoming Secretary of State Antony Blinken.<sup>34</sup>

# Trump Administration Actions Targeting Specific Eligibility Categories Under Current Law

## The COVID-19 Bans

Trump successfully used the COVID-19 pandemic as a pretext to implement many of the changes to legal immigration—including targeting specific eligibility categories—that his administration had sought for years. Citing a purported need to protect American workers impacted by the pandemic from foreign labor, the Trump administration formally suspended the entry of many noncitizens on immigrant visas beginning in April 2020 through Proclamation 10014 (the COVID-19 Immigrant Visa Ban), followed by non-immigrant visas in June with Proclamation 10052 (the COVID-19 Non-Immigrant Visa Ban).<sup>35</sup>

The COVID-19 Immigrant Visa Ban specifically targeted noncitizen parents, siblings, and adult children of U.S. citizens, spouses and children of green card holders, Diversity lottery winners, and some employment-based immigrants. The COVID-19 Non-Immigrant Visa Ban barred H-1B (temporary high-skilled workers), H-2B (temporary non-agricultural workers), J (exchange visitors), and L (temporary transferees) visa applicants, as well as their spouses and children. Those who could provide benefit to the country’s medical or economic fight against the COVID-19 pandemic could be exempted, along with some other limited exceptions in the national interest.<sup>36</sup>

Litigation challenging these actions received mixed success. In September 2020, a federal judge in Washington, D.C. halted the COVID-19 Immigrant Visa Ban against most diversity visa winners,<sup>37</sup> and in October a judge in California largely blocked the ban on nonimmigrant visas.<sup>38</sup>

The COVID-19 pandemic also led to a protracted suspension of visa processing at U.S. embassies and consulates abroad starting in March 2020, severely restricting the issuance of visas both for people targeted by the COVID-19 Immigrant and Non-Immigrant visa bans, as well as individuals who otherwise remained eligible to enter the United States. The impact of these closures continued through the date of publication of this report, despite indications from the State Department in July 2020 that it would resume services on a “post- by- post basis.”<sup>39</sup> As of early April 2021, 76 percent of consulates were partially or fully closed. 24 percent of offices were conducting processing activities relative to non-immigrant visas only, while only 10 percent were processing any immigrant visas. Just 41 percent overall were processing any non-emergency visas. These closures affect 71 percent of applicants, thereby preventing most would-be immigrants and non-immigrants from legally entering the United States.<sup>40</sup>

The suspension of visa services abroad led to a significant backlog of cases around the world. As of February 2021, a total of 473,000 cases were awaiting interviews at State Department embassies and consulates—an increase of about 530 percent over the number of cases awaiting interviews in January 2020.<sup>41</sup> This number does not include petitions awaiting approval for the interview stage.<sup>42</sup> Overall, as of early April 2021, the number of visa petitions delayed in the processing and adjudication backlog across USCIS and DOS was almost 2.6 million.<sup>43</sup> The Department of State has not announced a formal plan to address this backlog once visa services have fully resumed.

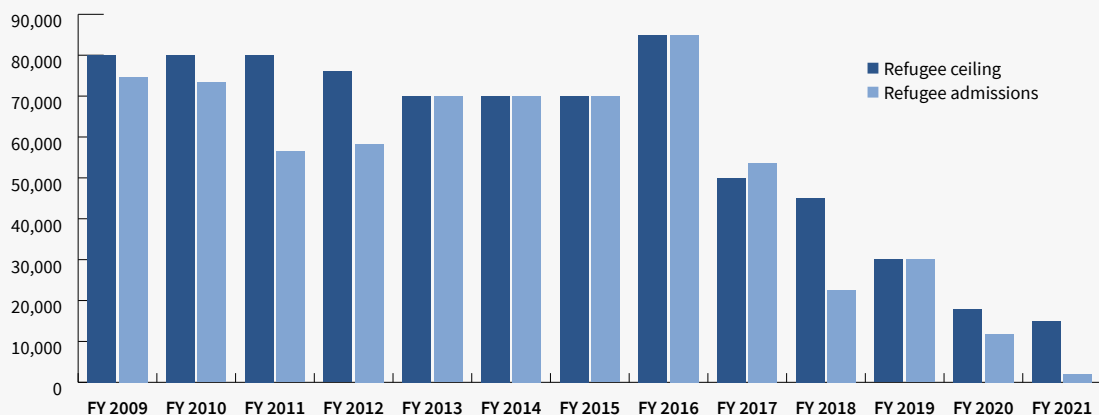
## Targeting Refugees

The Trump administration aggressively sought to limit refugee admissions. Refugees were first singled out in the initial Muslim Ban, which barred Syrian refugees permanently and suspended all refugee admissions for 120 days.<sup>44</sup> When refugee admissions resumed in October 2017, Trump issued another executive order instituting “extreme vetting” of refugees.<sup>45</sup> Between the months-long freeze and the new vetting procedures, Muslim refugee admissions dropped 91 percent between 2016 and 2018 alone.<sup>46</sup>

The original Muslim Ban also established a new refugee ceiling of 50,000 for FY 2017, superseding the cap of 110,000 for that fiscal year set by the Obama administration.<sup>47</sup> This began a significant downward trend in the refugee ceiling that persisted throughout the Trump presidency, ending with a historic low of 15,000 for FY 2021.<sup>48</sup> The final refugee ceiling signed by Trump also continued severely discriminatory “extreme vetting” measures that effectively made it impossible for most Muslim refugees to resettle in the United States.<sup>49</sup>

These policies contributed to a precipitous decline in the number of refugees admitted and resettled throughout the Trump presidency.

**FIGURE 2: Refugee Admissions and Refugee Ceilings, FY 2009- 2021 To Date<sup>50</sup>**



Source: U.S Department of State Bureau of Population, Refugees, and Migration, Refugee Processing Center, “Cumulative Summary of Refugee Admissions”

## Targeting the Diversity Category

The Diversity category provides 50,000 visas annually (by lottery) to individuals from countries with low levels of emigration to the United States. It has long been a target for elimination by both Democrats and Republicans in Congress, and Trump singled it out for criticism repeatedly throughout his time in office.

The Trump administration first targeted the Diversity category through the Muslim Ban. Numbers of new arrivals on diversity visas continued to fall steadily from the first year of Trump’s presidency through 2019, and then dropped sharply again after Trump’s COVID-19 ban on immigrant visas went into place.

The COVID-19 Immigrant Visa Ban also directly targeted the Diversity category.

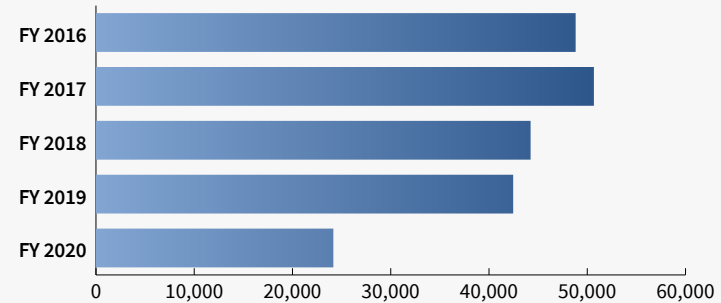
Since the COVID-19 Immigrant Visa ban prevented entry on a diversity visas, which are awarded for a given fiscal year, lottery winners who had not yet entered the U.S. by September 30, 2020 began to see their approvals expire. This led to five separate lawsuits.<sup>52</sup> On September 4, 2020 a judge issued a preliminary injunction to force the Trump administration to exempt beneficiaries of the diversity lottery from the COVID-19 Immigrant Visa Ban and instructed the Department of State to prioritize processing diversity visas before the end of the fiscal year. Given the suspension of consular services, there was a serious concern that many winners would likely still miss the cut-off.

On September 30, 2020 the judge ruled that the State Department must set aside 9,095 diversity visas for 2020 lottery beneficiaries to be processed later.<sup>53</sup> However, even if all 9,095 visas were added to the 18,288 already issued in FY 2020, that would be only 27,383 for the year—far below the previous year’s count and the ceiling of 50,000 total visas available through the program.<sup>54</sup>

### The Collective Impact of these Changes on Visa Processing

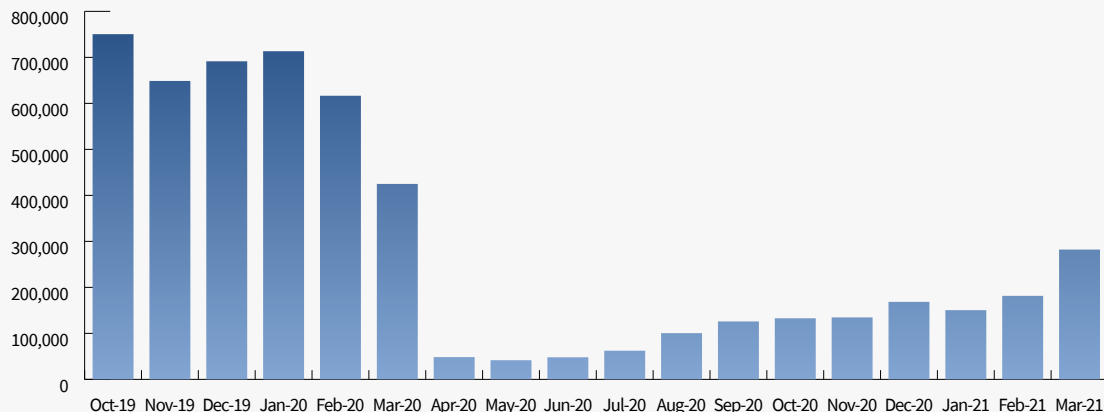
As a direct result of these combined actions, the number of immigrant and non-immigrant visas issued at foreign service posts abroad plummeted in fiscal year 2020 and remains low so far in fiscal year 2021 (see Figure 4).<sup>55</sup>

**FIGURE 3: New Arrivals on Diversity Visas, FY 2016-2020<sup>51</sup>**



Source: DHS Yearbook of Immigration Statistics, FY2016-2019, DHS Legal Immigration and Adjustment of Status Report FY 2020 Quarter 4

**FIGURE 4: Total Visas Issued at Foreign Service Posts by Month, FY 2020–March 2021<sup>56</sup>**



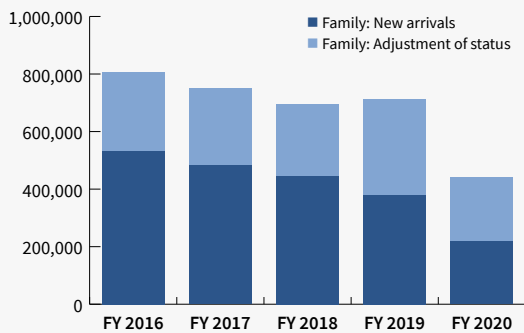
Source: State Department, Monthly Visa Statistics

The suspension of consular services and the COVID-19 Immigrant Visa Ban have disproportionately impacted family-based immigration and the Diversity Visa category. Noncitizens who obtain permanent residency in the United States through the family and diversity categories do so primarily by entering from abroad, while the vast majority of noncitizens who obtain permanent residency through employment do so from within the United States through adjustment of status.<sup>57</sup>

Combined with other bureaucratic restrictions placed on immigrant visa applicants, the number of immigrants obtaining a green card through a family member declined by 5 percent in Trump’s first three years in office, while the number of immigrants obtaining a green card through employment *increased* by 1.16 percent.<sup>58</sup>

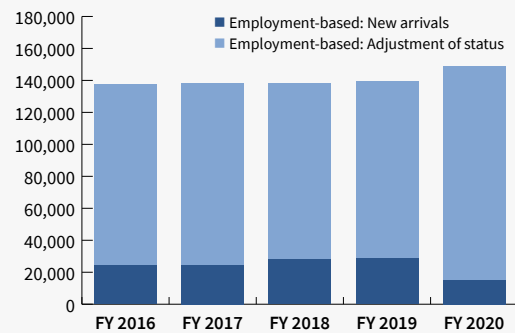
The COVID-19 entry bans and the concurrent slowdown in visa processing caused this trend to accelerate. The number of individuals obtaining permanent residency through family ties plummeted by 39.6 percent between fiscal years 2019 and 2020, while numbers on the employment-based side actually increased by 6.8 percent over the same period (see Figures 5 and 6).

**FIGURE 5: Family- Based Immigration by Class of Admission, FY 2016–2020<sup>59</sup>**



Source: DHS Yearbook of Immigration Statistics, FY2016-2019, DHS Legal Immigration and Adjustment of Status Report FY 2020 Quarter 4

**FIGURE 6: Employment-Based Immigration by Class of Admission, FY 2016–2020<sup>60</sup>**



Source: DHS Yearbook of Immigration Statistics, FY2016-2019, DHS Legal Immigration and Adjustment of Status Report FY 2020 Quarter 4

This trend is further exacerbated by the fact that unused visas in the family- preference categories “spill over” to the employment-based categories in the next fiscal year under current law. Since the COVID-19 entry bans and suspension of consular processing both significantly reduced the issuance of family-sponsored visas in 2020, the number of employment-based visas available for fiscal year 2021 has significantly increased.<sup>61</sup> DOS announced in October 2020 that fiscal year 2021 would see an “all-time high” in the annual limit of employment-based visas—a total of 261,500 for the year.<sup>62</sup> While this increase will do a great deal to reduce the backlog in the employment-based categories, it comes at the direct expense of the family-based categories, and will further increase the backlogs for people in the family-based pipeline.



## Targeting H-1B High-Skilled Worker Visas

While the Trump administration implemented policies targeting various non-immigrant visa categories, it repeatedly singled out the H-1B category for high-skilled foreign workers.

Early in his presidency, Trump issued the “Buy American and Hire American” Executive Order in April 2017 calling for reform of the H-1B visa program,<sup>63</sup> as well as another order in August 2020 ordering agencies to protect U.S. workers from displacement by temporary foreign workers.<sup>64</sup> These executive actions led to a flurry of regulatory and procedural changes designed to limit the employment of noncitizen workers in the United States.

USCIS, DHS, and the Department of Labor (DOL) published various rules on the subject, including some that: changed the H-1B visa lottery order to prioritize the selection of advanced degree holders<sup>65</sup> and later sought to eliminate the lottery altogether in favor of a wage-based cap selection system to prioritize selection of the highest paid individuals;<sup>66</sup> implemented a 10-dollar fee per H-1B registration;<sup>67</sup> modified prevailing wage minimums to “price out” noncitizen workers from the labor market;<sup>68</sup> narrowed the definitions of “specialty occupation” and “employer” for purposes of qualification for an H-1B visa; and implemented greater H-1B petition and employment contract requirements.<sup>69</sup> None of these rules have formally gone into effect yet, either because they were blocked in court before they could go into effect or subject to a regulatory freeze or delay after President Biden took office.<sup>70</sup>

USCIS also made several bureaucratic changes that increased the rate of H-1B denials. The October 2017 USCIS policy memorandum ending deference to prior agency approvals when considering requests to extend status ensured that H-1B extension requests were subjected to the same degree of scrutiny as new H-1B petitions—and as such, would take just as long to adjudicate.<sup>71</sup> USCIS also began denying more initial petitions and issuing more requests for evidence (RFEs) as part of two other changes in 2017 and 2018 which tightened the standards for H-1B petitions.<sup>72</sup>

USCIS data shows fewer initial approvals from 2017–2019 and more cases requiring RFEs.

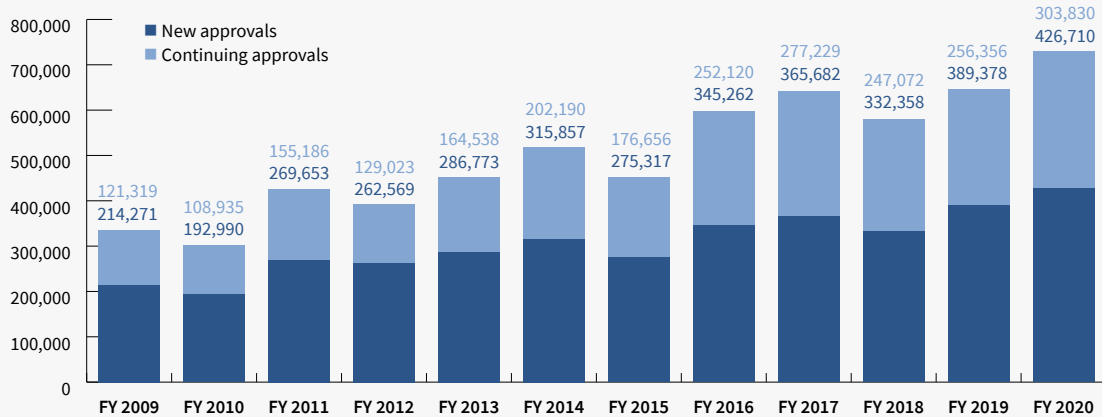
**TABLE 1: I-129 Petitions for Non-Immigrant Worker Specialty Occupations (H-1B) by Case Status, FY 2015- 2020<sup>73</sup>**

Fiscal Year	Petitions Received	Initially Approved	Initially Denied	Approved (%)	Completions with RFE	Completions with RFE (%)	Approved with RFE	Approved with RFE (%)
2015	368,150	288,501	13,072	95.7%	67,315	22.3%	56,010	83.2%
2016	398,789	357,211	23,032	93.9%	78,986	20.8%	62,352	78.9%
2017	403,118	373,392	29,857	92.6%	86,239	21.4%	63,480	73.6%
2018	418,602	334,961	61,345	84.5%	150,637	38.0%	93,937	62.4%
2019	420,522	389,379	69,513	84.9%	184,397	40.2%	120,635	65.4%
2020	427,229	426,710	39,915	91.4%	134,165	28.8%	98,509	73.4%

Despite the Trump administration’s rhetoric, and the related bureaucratic changes, the number of initial H-1B petitions approved has increased significantly over the last 10 years. According to the USCIS H-1B

Data Hub, numbers of continuing approvals of existing H-1B's have also increased. Figure 7 below shows both initial approvals and continuing approvals from fiscal year 2009 to 2020, demonstrating a rise in the overall number of noncitizens in the United States on H-1Bs.

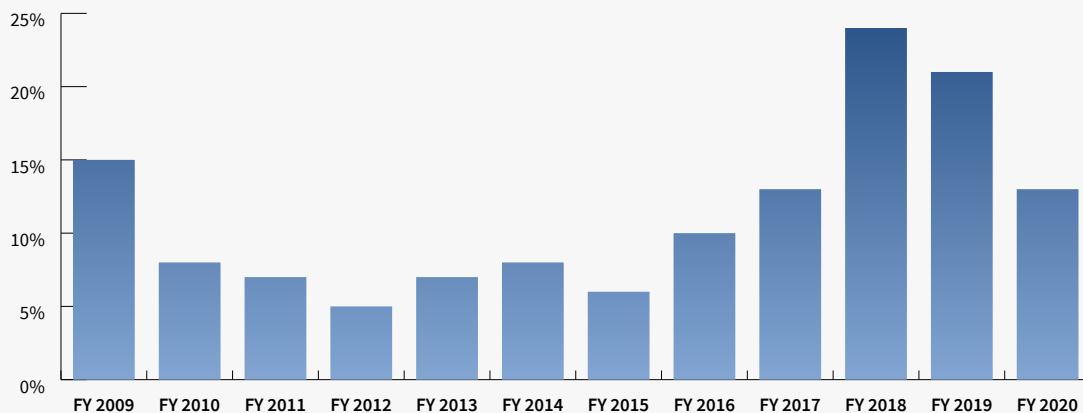
**FIGURE 7: New and Continuing Approvals of H-1B Petitions, FY 2009–2020<sup>74</sup>**



Source: U.S. Citizenship and Immigration Services, Report on H-1B Petitions; U.S. Citizenship and Immigration Services H-1B Employer Data Hub Files FY 2009-2020

The relentless attacks on the H-1B category by the Trump administration led to increased denials of initial H-1B petitions as compared to the Obama years; however, the denial rate decreased in fiscal year 2020, which a report by the National Foundation for American Policy theorizes was due to the legal challenges and injunctions that blocked some of the administration's attempts to restrict H-1B approvals.<sup>75</sup> The denial rate in the first three quarters of fiscal year 2020 was 21 percent, but dropped to just 1.5 percent in the fourth quarter,<sup>76</sup> which aligns with legal developments in the end of the year which reversed restrictive policies on the granting of H-1B petitions.<sup>77</sup>

**FIGURE 8: Denial Rate of Initial H-1B Visa Petitions, FY 2009–2020<sup>78</sup>**



Source: National Foundation for American Policy. "H-1B Denial Rates for FY 2020 and the Impact of Court Decisions"

# Trump Administration Actions Targeting Specific Categories of Noncitizens

The Trump administration also successfully implemented a number of policy changes to reduce immigration by singling out noncitizens from specific countries or regions, and some of those limitations remain in place to this day.

## Muslim, African, and Refugee Travel Ban

On January 25, 2017, Trump signed Executive Order 13769—the infamous “Muslim Ban”—to bar foreign nationals from a list of designated Muslim-majority countries from entering the United States.<sup>79</sup> The original ban was successfully challenged in court and was subsequently altered twice. “Muslim Ban 3.0” entered into effect on December 4, 2017 and remained in place through the end of Trump’s term in office. In its final form, the ban barred visa applicants from 13 countries, most of them Muslim or African.<sup>80</sup>

**TABLE 2: Impacts of the “Muslim Ban 3.0” on Specific Visa Categories<sup>81</sup>**

Visa Applicants	The Impact
Non-Immigrants	The Muslim Ban barred non-immigrant visa applicants from Iran, Libya, North Korea, Syria, and Yemen. Some nationals connected to the government in Venezuela were banned from receiving non-immigrant visas. Non-immigrant visa applicants from Somalia were also to be subjected to “enhanced screening.”
Immigrants	The Ban barred immigrant visa applicants from Eritrea, Iran, Kyrgyzstan, Libya, Myanmar, Nigeria, North Korea, Somalia, Syria, and Yemen.
Refugees	The Ban suspended all refugee admissions for 120 days and banned Syrian refugees permanently.
Diversity Lottery Applicants	Diversity visa applicants from Sudan and Tanzania were banned, as well as applicants from countries already barred from all immigrant visas.

The Muslim, African, and Refugee Travel Ban has had a pronounced effect on family reunification for people from the affected nations. According to a report by the Cato Institute, between its effective date and January 1, 2019, the Muslim Ban had already “prevented 9,284 spouses and adopted minor children from uniting with their U.S. citizen spouse or parent.”<sup>82</sup>

## COVID-19 Regional Bans

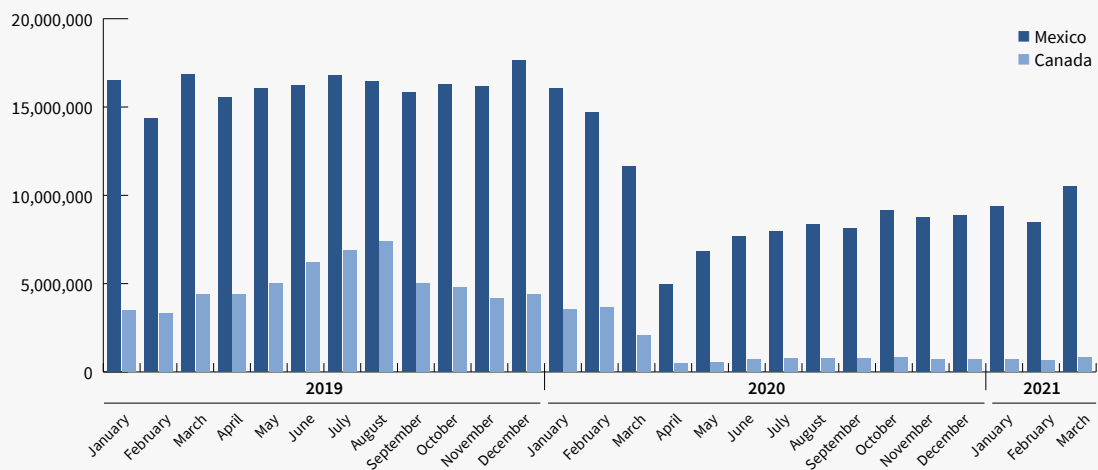
Soon after COVID-19 was deemed a national emergency, Trump issued a series of limited travel restrictions on non-U.S. nationals targeting specific countries or regions. He initially blocked noncitizens who had been present in China (January 31, 2020), Iran (February 29), the Schengen Area of Europe (March 14), the United Kingdom, Ireland, and Brazil (May 24) via a series of presidential proclamations from January through May 2020.<sup>83</sup> These restrictions applied to immigrants and non-immigrants, with some exceptions for green card holders and their spouses and young children, government officials and

their family members, U.S. military service men and women and their family members, travel crews, and government invitees considered to be of national interest.<sup>84</sup>

On January 18, 2021, in the final days of his presidency, Trump repealed the bans on noncitizens traveling from the Schengen Area, the United Kingdom, Ireland, and Brazil, to be officially lifted on January 26, 2021 during Biden’s first week in office.<sup>85</sup>

In a further effort to limit noncitizens coming from or through specific countries, the Trump administration announced separate reciprocal agreements with Canada and Mexico on March 20, 2020 to suspend non-essential travel across both borders, to be renewed on a monthly basis. Both parties continued to renew these agreements for the remainder of 2020 and into 2021. These restrictions remain in effect, having been most recently renewed in April 2021.<sup>86</sup> The restrictions have had the most impact on travel from Canada into the United States, with fewer than one million monthly entries every month since restrictions went into effect (see Figure 9). Travel between the United States and Mexico dropped significantly at the start of the pandemic but has since recovered to roughly 50 percent of normal, with between eight and nine million entries from Mexico each month, rising to over 10.5 million entries in March 2021.<sup>87</sup>

**FIGURE 9: Monthly entries through land ports of entry**



Source: Department of Transportation, Border Crossing Entry Data

**FIGURE 10: Restrictions from around the world**



**BARRIERS TO ENTRY UNDER TRUMP**

Countries	Impact
<b>MUSLIM AND AFRICAN BAN 3.0</b>	
Eritrea	Banned immigrant visa applicants
Iran	Banned immigrant and non-immigrant visa applicants
Kyrgyzstan	Banned immigrant visa applicants
Libya	Banned immigrant and non-immigrant visa applicants
Myanmar	Banned immigrant visa applicants
Nigeria	Banned immigrant visa applicants
North Korea	Banned immigrant and non-immigrant visa applicants
Somalia	Banned immigrant visa applicants, non-immigrant visa applicants to be subjected to enhanced screening
Sudan	Banned Diversity visa applicants
Syria	Banned immigrant and non-immigrant visa applicants, banned refugees
Tanzania	Banned Diversity visa applicants
Venezuela	Banned some non-immigrant applicants connected to the government
Yemen	Banned immigrant and non-immigrant visa applicants
<b>COVID-19 REGIONAL BANS</b>	
China	Suspended entry on immigrant and non-immigrant visas of non-citizens physically present in China in past 14 days
Iran	Suspended entry on immigrant and non-immigrant visas of non-citizens physically present in Iran in past 14 days
Schengen Area countries*	Suspended entry on immigrant and non-immigrant visas of non-citizens physically present in a Schengen Area country in past 14 days <i>(note: lifted by Trump in his final days in office)</i>
United Kingdom	Suspended entry on immigrant and non-immigrant visas of non-citizens physically present in the UK in past 14 days <i>(note: lifted by Trump in his final days in office)</i>
Ireland	Suspended entry on immigrant and non-immigrant visas of non-citizens physically present in Ireland in past 14 days <i>(note: lifted by Trump in his final days in office)</i>
Brazil	Suspended entry on immigrant and non-immigrant visas of non-citizens physically present in Brazil in past 14 days <i>(note: lifted by Trump in his final days in office)</i>
<b>COVID-19 IMMIGRANT VISA BAN</b>	
All	Suspension of entry on most immigrant visas
<b>COVID-19 NON-IMMIGRANT VISA BAN</b>	
All	Suspension of entry on most non-immigrant visas
<b>LAND BORDER ENTRY BANS</b>	
Mexico	Non-essential travel across land border with Mexico suspended
Canada	Non-essential travel across land border with Canada suspended



**BARRIERS TO ENTRY UNDER BIDEN IN FIRST 100 DAYS**

Countries	Impact
<b>COVID-19 REGIONAL BANS</b>	
China	Entry on immigrant and non-immigrant visas of non-citizens physically present in China in past 14 days still suspended under Trump policy
Iran	Entry on immigrant and non-immigrant visas of non-citizens physically present in Iran in past 14 days still suspended under Trump policy
Schengen Area countries*	Reinstated suspension of entry on immigrant and non-immigrant visas of non-citizens physically present in a Schengen Area country in past 14 days
United Kingdom	Reinstated suspension of entry on immigrant and non-immigrant visas of non-citizens physically present in the UK in past 14 days
Ireland	Reinstated suspension of entry on immigrant and non-immigrant visas of non-citizens physically present in Ireland in past 14 days
Brazil	Reinstated suspension of entry on immigrant and non-immigrant visas of non-citizens physically present in Brazil in past 14 days
South Africa	Suspended entry on immigrant and non-immigrant visas of non-citizens physically present in South Africa in past 14 days
<b>COVID-19 IMMIGRANT VISA BAN</b>	
All	Entry on most immigrant visas suspended for a month of Biden's presidency under Trump policy, until Biden repealed it on February 24, 2021
<b>COVID-19 NON-IMMIGRANT VISA BAN</b>	
All	Entry on most non-immigrant visas suspended for over two months of Biden's presidency under Trump policy, until Biden let it expire on March 31, 2021
<b>LAND BORDER ENTRY BANS</b>	
Mexico	Non-essential travel across land border with Mexico suspended through May 21, 2021 with 3x extension of Trump policy
Canada	Non-essential travel across land border with Canada suspended through May 21, 2021 with 3x extension of Trump policy

\*Schengen Area countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland

# President Biden's Commitments and Accomplishments on Legal Immigration

Both as a candidate and as a new president, Biden aggressively distanced himself from policies of his predecessor that had limited legal immigration. President Biden insisted that while Trump “waged an unrelenting assault on our values and our history as a nation of immigrants,” he would adopt a more open approach consistent with his belief that “immigration is essential to who we are as a nation, our core values, and our aspirations for our future.”<sup>88</sup> He quickly made it clear that under his governance, the U.S. immigration system would be less discriminatory against specific ethnic and religious groups, less restrictive on legal entry and visa issuance, and more hospitable to visa holders already present in the country. Biden has also prioritized fundamental and long-term reforms to legal immigration through legislation.

## Addressing Bureaucratic Barriers to Legal Immigration

### Freeze on Trump-Era Regulatory Changes

The Biden administration issued a memo on January 20, 2021 freezing any pending regulatory changes made at the end of the Trump administration, withdrawing unpublished rules and postponing the effective dates of published rules with reopened comment periods pending review.<sup>89</sup>

### Public Charge Rule

In his campaign platform, Biden addressed the public charge rule and its effect on immigrant families, including it in his immigration plan, his Latino agenda, and his plan for partnership with the Arab-American community.<sup>90</sup> He claimed that it “undermines America’s character as land of opportunity that is open and welcoming to all, not just the wealthy,” and committed to repealing it.<sup>91</sup>

As president, in a February 2 Executive Order “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” Biden called upon the heads of relevant federal agencies to review any actions taken to implement the public charge rule.<sup>92</sup> On March 9, the solicitor general requested that the Supreme Court dismiss the case.<sup>93</sup> Then on March 15, 2021, DHS published a rule to formally remove the public charge regulation.<sup>94</sup> A coalition of 14 states, led by Texas, filed a petition with the Supreme Court on March 19 which would allow the states to intervene in defense of the public charge rule,<sup>95</sup> but on April 8 the 9th U.S. Circuit Court of Appeals ruled against the states’ challenge.<sup>96</sup>

USCIS then sent a letter to interagency partners on April 12, 2021 to formally declare that DHS had returned to the policy in effect before the publication of the public charge rule in 2019, and to ask for support from other agencies in sharing this fact with the public so that noncitizens will feel safe taking advantage of the government benefits for which they qualify.<sup>97</sup>

### **“Extreme Vetting” Policy**

Biden signed Executive Order “Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration” on February 4, 2021, revoking Trump’s March 2017 presidential memorandum that established extreme vetting of all visa applications, and requesting reports from DOS and DHS on agency actions taken in furtherance of the repealed directive.<sup>98</sup>

### **“No Blank Space” Policy**

Although no longer in practice because of litigation, USCIS officially announced the end of its “no blank space” policy on April 1, 2021, formally reverting to the standard operating procedures regarding blank responses or those not properly indicated as inapplicable employed prior to the change in 2019.<sup>99</sup>

### **USCIS Filing Fees**

Although the rule increasing USCIS filing fees was previously enjoined by a federal court, and the government had dropped its subsequent appeal, USCIS published a formal notice in the Federal Register on January 29, 2021 to declare that DHS, in compliance with the injunction, would not implement the changes contained in the rule, and therefore that the policies in place prior to the effective date of the rule would remain.<sup>100</sup>

### **USCIS Processing Capacity**

President Biden’s budget request for fiscal year 2022 included \$345 million for USCIS to resolve backlogs in naturalization and asylum. While this does not specifically address backlogs in immigrant visa petitions, providing funding dedicated to the elimination of certain backlogs in the immigration system would allow USCIS to function more efficiently and reduce gridlock.<sup>101</sup> On April 27, USCIS formally revoked the Trump administration’s policy of requiring adjudicators to ignore prior determinations of eligibility when adjudicating renewal or extension requests, returning to a 2004 policy that directed officers to generally defer to the agency’s prior determinations.<sup>102</sup>

### **Barriers to Access**

On April 16, 2021, DHS published a request for public input in the Federal Register Input on reducing barriers to accessing USCIS immigration services. In the filing, DHS declared that it is “soliciting public input to better understand and identify administrative barriers and burdens (including paperwork requirements, waiting time, and other obstacles) that impair the functions of the USCIS process and unnecessarily impede access to USCIS immigration benefits.”<sup>103</sup> DHS explicitly stated that this request is a result of President Biden’s immigration policy objectives, including those contained in his February 2, 2021 executive order on improving legal immigration systems.<sup>104</sup>

### **Nominations**

Soon after being elected, President-elect Biden tapped Alejandro Mayorkas as his first Secretary of DHS. Then on April 12, 2021, President Biden announced his intent to nominate Ur Jaddou for Director of USCIS. Both nominees have extensive experience within DHS. Mayorkas served as the Director of USCIS during President Obama’s first term, and Jaddou was the Chief Counsel for USCIS during Obama’s second term. This experience will likely prove critical in tackling many of the problems plaguing DHS and its component agencies. Both Mayorkas and Jaddou are also children of immigrants to the United States.<sup>105</sup>

## Addressing Attacks on Specific Eligibility Categories Under Current Law

### The COVID-19 Bans

President Biden rescinded Trump's Proclamation 10014, also known as the COVID-19 Immigrant Visa Ban, on February 24, 2021, restoring eligibility for many immigrants who were previously barred from entering the United States to live or work on a permanent basis but also subject to existing restrictions and COVID-19 travel protocols.<sup>106</sup> The Biden administration also allowed Proclamation 10052, the COVID-19 Non-Immigrant Visa Ban, to expire on March 31, 2021. On April 1, DOS announced the expiration of Proclamation 10052 and the resumption of services for nonimmigrant visas, still on a post-by-post basis. It further clarified that applicants whose visas were denied in accordance with the proclamation can now reapply.<sup>107</sup> As mentioned, resumption of visa services remains a considerable challenge, with 76 percent of consulates partially or fully closed as of April 8, 2021, affecting 71 percent of visa applicants.<sup>108</sup> Although DOS March data reflects an increase in visa issuance over the previous months of the Biden presidency, with the widespread and persistent closures and wait times of up to six months for non-immigrant visas at the small number of open consular offices, it will be long before visa processing and issuance fully recovers.<sup>109</sup>

### Refugees

In the section of his platform entitled "Reassert America's Commitment to Asylum-Seekers and Refugees," Biden pledged to increase refugee admissions into the United States and thereby restore the nation's role as a sanctuary for those fleeing violence and persecution, starting with an initial refugee ceiling of 125,000 and raising it from there over the course of his tenure.<sup>110</sup>

Biden's February 4, 2021 Executive Order "Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration" revoked Trump's March 2017 presidential memorandum and October 2017 executive order on increased vetting of refugees.<sup>111</sup> In a speech to the State Department that same day, Biden again vowed to sign another order raising the refugee ceiling to 125,000, as he had promised to do during the campaign.<sup>112</sup> In the State Department's "Report to Congress on the Proposed Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021" from February 12, 2021, DOS declared that Biden would set a revised ceiling of 62,500 for fiscal year 2021.<sup>113</sup>

However, the Biden administration announced on April 16, 2021 that the president would no longer aim for 62,500 and would instead keep the cap of 15,000, claiming that the resettlement program was unable to accommodate a higher number given the changes made by the Trump administration and the impact of the COVID-19 pandemic. Biden did change the reallocation of slots in the program to benefit African and Middle Eastern refugees shut out under Trump's determinations, with 7,000 reserved for African refugees, 1,000 for East Asians, 1,500 for Europeans and Central Asians, 3,000 for Latin Americans, and 1,500 for Near East/ South Asians, with a final 1,000 unallocated.<sup>114</sup>

In response to swift pushback by civil society and elected officials, the Biden administration quickly reversed course. White House Press Secretary Jen Psaki announced later that day that the president



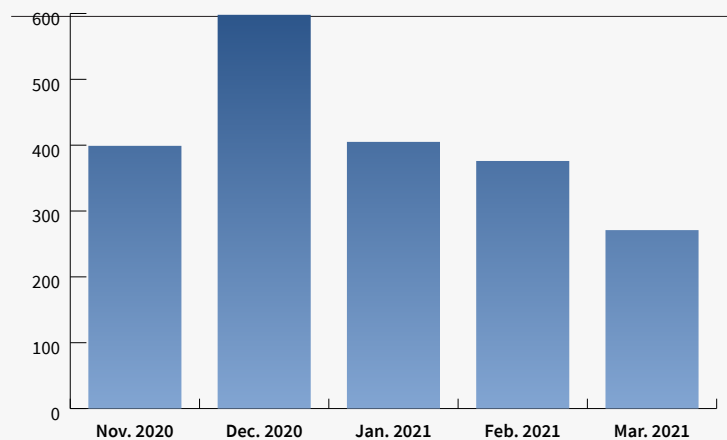
planned to raise the refugee ceiling for fiscal year 2021 above the 15,000 set by Trump, and was expected to do so by May 15, but she did not say what the new number would be.<sup>115</sup>

As of the date of publication of this report, Biden has not signed any such determination, and the cap of 15,000 is still in effect. Biden’s delays in raising the refugee ceiling has meant that more than 715 refugees have had their flights to the United States cancelled so far in 2021.<sup>116</sup>

FY 2021 has seen 2,050 refugee admissions so far as of March 31.<sup>117</sup>

As a direct result of the failure to sign the updated presidential determination expanding refugee resettlement, the Biden administration resettled a mere 647 refugees during its first two full months in office, bringing the FY 2021 total to 2,050 through the first half of the year. If it continues at this pace, the administration will be unlikely to reach the Trump-era ceiling of 15,000, and it will likely end up resettling fewer refugees in its first year than were resettled in any year during the Trump administration.<sup>119</sup> In his April 16 directive, Biden instructed that refugee processing be expedited in order to meet the maximum by the end of the fiscal year in September.<sup>120</sup>

**FIGURE 11:** Refugee Arrivals by Month, November 2020–March 2021<sup>118</sup>



Source: U.S. Department of State

The Biden administration has suggested that the President still intends to set a ceiling of 125,000 for fiscal year 2022. The President’s budget request for fiscal year (FY) 2022, published by the White House on April 9, 2021, includes \$4.3 billion for the Office of Refugee Resettlement (ORR) for the resettlement of 125,000 refugees and the rebuilding of the refugee resettlement program.<sup>121</sup> Press Secretary Psaki’s announcement on April 16 cited this proposed budget as an example of Biden acting on this commitment.<sup>122</sup>

### The Diversity Category

Biden also defended the Diversity Visa category, touting its role in “preserving a robust and vibrant immigration system,” in direct contrast to his predecessor, and announced a plan to protect and maintain the visa category.<sup>123</sup>

Upon his inauguration, Biden sent the U.S. Citizenship Act to Congress, where it was introduced in the House of Representatives on February 18, 2021.<sup>124</sup> If passed, the bill would increase the number of diversity visas allocated annually to 80,000, representing an increase of 25,000.<sup>125</sup>

Although the State Department announced a plan to reconsider immigrant visas denied under the Muslim Ban in the wake of its repeal, it also confirmed that “FY 2017 – FY 2020 Diversity Visa applicants who were not issued visas are statutorily barred from being issued visas based on their selection as Diversity Visa applicants in those fiscal years, as the deadlines for visa issuance in those fiscal years have expired.”<sup>126</sup> This decision has drawn criticism from organizations who claim that repealing the Muslim ban without allowing for the re-adjudication of diversity visas denied under it does not do enough to repair the ban’s discriminatory legacy.<sup>127</sup>

### **H-1B High-Skilled Worker Visas**

The Biden campaign’s immigration plan mentioned a number of reforms specific to non-immigrant employment-based visas, including a measure streamlining the system and allowing temporary or seasonal workers to switch jobs more easily. Yet Biden also touched upon his concern that “high skilled temporary visas should not be used to disincentivize recruiting workers already in the U.S. for in-demand occupations,”<sup>128</sup> and suggested a wage-based selection process for temporary workers. However, he diverged from Trump’s “Hire American” agenda by proposing an expansion in the number of visas issued to skilled workers and the elimination of per-country caps on employment-based visas, and advocating for an increase in temporary employment-based immigration overall.<sup>129</sup>

During the transition period, Biden vowed to sign an executive order within his first two weeks in office undoing Trump’s “Buy American and Hire American” policies.<sup>130</sup> He then did so on January 25, 2021, with the “Executive Order on Ensuring the Future Is Made in All of America by All of America’s Workers.”<sup>131</sup>

President Biden also proposed changes to the H-1B visa program through the U.S. Citizenship Act. The bill proposes that DHS and DOL employ a wage-based priority system when considering H-1B petitions. It also allows for extensions of H-1B visas, among other non-immigrant visas, if requests have not yet been processed after a year. This bill has not yet gone to a vote in the House.<sup>132</sup>

Regulatory and policy changes by the Biden administration further responded to Trump-era efforts to dismantle the H-1B visa program under the banner of “Buy American and Hire American.” On January 20, the DOL withdrew the new definitions for “employer” under the October 2020 rule designed to restrict qualification for H-1B status, and stated that companies who wish to challenge denials under this policy can file a motion for the application to be reconsidered.<sup>133</sup> Similarly, on March 12, the DOL formally delayed the effective date on its controversial rule on the computation of “prevailing wage” levels,<sup>134</sup> and on April 2<sup>135</sup> began soliciting research from the public on better means to calculate prevailing wage levels. Also, on March 12, USCIS announced that it may reopen many H-1B petitions denied under three rescinded Trump-era memoranda from 2017 and 2018.<sup>136</sup>

On February 8, USCIS and DHS delayed the effective date of its rule establishing a wage-based selection process for H-1B petitions from March 9, 2021 until December 31, 2021, to allow for “adequate time to complete system development, thoroughly test the modifications, train staff, and conduct public outreach needed to ensure an effective and orderly implementation of the H-1B Selection Final Rule.”<sup>137</sup>

## Addressing Restrictions for Specific Categories of Noncitizens

### Muslim and African Travel Ban

Biden centered the repeal of Trump’s Muslim Ban in both his plans for immigration and for partnership with the Arab-American community.<sup>138</sup> He overtly cited the ban as a manifestation of Trump’s racial bias and as an “abuse of power by the Trump Administration designed to target primarily black and brown immigrants.”<sup>139</sup> He further described it as detrimental to the American economy and counterproductive in making the country safer. Biden vowed unequivocally to “immediately” repeal the Muslim and African Ban and relevant policy developments. The Biden transition team then placed the travel bans at the forefront of its planning, with the president-elect promising to sign an executive order repealing the Muslim and African ban on his first morning in office.<sup>140</sup>

As promised, President Biden signed the “Proclamation on Ending Discriminatory Bans on Entry to The United States” on day one of his presidency, repealing the travel bans established and enforced by Trump’s Executive Order 13780 and subsequent proclamations. In doing so, he called upon the Secretary of State to oversee resumption of visa processing for countries previously affected by the bans (subject to visa moratoriums and reductions due to COVID-19), and to submit a proposal within 45 days detailing suggestions for reconsideration of prior denials based on the bans, procedures for expedited review, and a plan to ensure that beneficiaries are not disadvantaged by having relevant previous denials on their record.<sup>141</sup>

In the proclamation, Biden also requested information from relevant agencies on vetting practices, including those operationalized in accordance with the Trump-era orders rescinded therein.<sup>142</sup>

On March 8, 2021, the State Department announced that it would set up a system for re-adjudication and reconsideration of some immigrant visas denied under the Muslim and African ban. However, as mentioned previously, applicants for diversity visa in prior years whose visas were not already issued are considered to be statutorily barred from receiving them, leading to some criticism.<sup>143</sup>

### COVID-19 Regional Bans

On January 25, 2021, President Biden reinstated some of the travel restrictions related to COVID-19 that Trump had repealed near the end of his term in office. The “Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease” again barred foreign nationals who were “physically present within the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, and the Federative Republic of Brazil during the 14-day period preceding their entry or attempted entry into the United States,” and newly added South Africa to this list as well (with some national interest exceptions for certain visas).<sup>144</sup> On April 8, 2021 dozens of visa applicants, organizations, and employers filed a lawsuit against the State Department seeking to force the agency to abandon its practice of refusing to issue visas for individuals subject to the 14-day ban on entry.<sup>145</sup> The State Department then announced that it would exempt immigrant and fiancé visa applicants from the regional bans.<sup>146</sup>

Biden also continued the Trump administration's agreements with Canada and Mexico on restricting entry across both borders, now effective through May 21, 2021. As of publication, it is unclear when the Biden administration will allow these agreements to expire.<sup>147</sup>

### **Immigration Reform: the U.S. Citizenship Act**

While repealing many Trump-era policies is a critical step in making the U.S. system of legal immigration more accessible to individuals, families, and businesses, President Biden also noted a longstanding need to implement sweeping reforms to create a modern, efficient, and more functional system during his campaign and transition period.<sup>148</sup> As planned, President Biden sent a draft immigration proposal, the U.S. Citizenship Act, to Congress on his first day in office.<sup>149</sup> If enacted, the bill would create sweeping changes across the immigration system, including changes to legal immigration.

President Biden committed to working to pass legislation that “rejects the false choice between employment-based and family-based immigration.”<sup>150</sup> He specifically drew attention to the backlogs and per-country caps that keep family members separated across borders. While the bill would largely maintain the same visa categories and numbers in place and avoid major structural changes to legal immigration in the United States, it includes language intended to address backlogs and to make the current immigration system more efficient.

**Proposed Changes to Family-Based Immigration:** The U.S. Citizenship Act would do a great deal to reunify families and address the current visa backlogs. The bill would allow beneficiaries of approved immigrant visa petitions who are awaiting immigrant visas to enter the United States and reunite with their families. The bill would also treat spouses and children of lawful permanent residents the same as those of U.S. citizens in terms of visa allocation, meaning they would qualify as immediate relatives and would therefore be exempt from the annual cap on family-based visas.<sup>151</sup> While the bill would not eliminate per-country caps on family-based immigration that Biden had criticized in his platform, it does propose raising them.<sup>152</sup>

**Proposed Changes to Employment-Based Immigration:** In his speech accepting the presidential nomination at the Democratic National Convention in August 2020, Biden promised an immigration system that “powers our economy,”<sup>153</sup> indicating an interest in ceasing Trump-era restrictions on employment-based immigration and reforming employment-based immigration in the United States. Similar to its changes to family-based immigration, the U.S. Citizenship Act proposes adding unused employment-based immigrant visas from 1992 to 2020 to the annual ceiling starting from fiscal year 2022. Going one step further, it increases the cap on employment-based visas to 170,000, an increase of 30,000 visas annually. It would also eliminate entirely country-specific caps on employment-based visas.<sup>154</sup> The bill would allow DHS and DOL to reduce the allocation of certain employment-based immigrant visas due to high domestic unemployment.<sup>155</sup> The bill would also create a new kind employment-based visa that would allow certain communities in need of workers or economic development to petition for more immigrant visas and would allow visa applicants who qualify to move to and work in that community.<sup>156</sup>

# Analysis and Recommendations

After four years of the Trump administration, President Biden came into office with a mountain of problems to solve in the legal immigration system. Many of the barriers that could be lifted with the stroke of a pen, including the Muslim and African Bans, were quickly dismantled. But other executive actions, like lifting the refugee cap, remain uncompleted despite repeated promises from the administration.

The Biden administration has also struggled to respond quickly to the ongoing problems with immigration processing caused by COVID-19. Many embassies and consulates continue to severely limit visa processing, and USCIS is struggling to deal with a historic backlog in biometrics processing caused by the closure of Application Support Centers in 2020. And while the Biden administration has begun rolling back many of the Trump administration's bureaucratic barriers, there has been little immediate change in immigration processing.

## Addressing Bureaucratic Barriers to Legal Immigration

- » **Health Insurance Proclamation**—While President Biden has made meaningful progress in rescinding some of the most pernicious entry bans instituted by the Trump administration, his administration has failed to take similar action on the Trump-era Health Insurance Proclamation. While the proclamation is not in effect due to related litigation, the Biden administration should nevertheless move forward with its formal rescission by issuing a superseding proclamation.
- » **Reductions in USCIS Processing Capacity**—Although the Biden administration has begun to address the extensive bureaucratic barriers put in place by the Trump administration, many still remain in place. In order to speed up processing and begin the process of clearing backlogs, the Biden administration should immediately prioritize removing other obstacles that are still in place, like duplicative requirements for visa interviews and other “extreme vetting” barriers which primarily serve to slow down processing. While the Biden administration has indicated that it will request \$350 million in its first budget for systems modernization and clearing naturalization and affirmative asylum backlogs, that amount may not be sufficient to address the systemic backlogs present within the system today. The administration should also focus on clearing employment-authorization backlogs which have left many people without the ability to work.
- » **Emergency Stopgap USCIS Stabilization Act**—USCIS should fully implement the terms of the Emergency Stopgap USCIS Stabilization Act. This legislation was enacted by Congress last fall to address USCIS' growing budget shortfall by providing the agency immediate access to existing premium processing funds that were dedicated to infrastructure improvement to cover operating expenses. The legislation also provides measures to increase USCIS' revenue by raising existing premium processing fees and expanding premium processing to additional form types. This legislation, if fully implemented, would significantly bolster USCIS' revenues. On October 19, 2020, USCIS increased the premium processing fee for Forms I-140 and I-129 to \$2,500 from \$1,400,

but the agency has yet to announce further expansions of this process.<sup>157</sup> Doing so could help the agency in addressing its growing backlog, while also allowing it to become much more efficient and effective in its adjudication of immigration benefits, promoting greater access to the legal immigration system.

### **Addressing Attacks on Specific Eligibility Categories Under Current Law**

- » **Consular Processing**—While the Biden administration has prioritized eliminating a number of Trump-era entry bans targeting specific categories of immigrants as well as non-citizens from specific countries for exclusion from the United States, a considerable barrier to entry remains for many of the individuals previously targeted by those actions. More than 75 percent of all U.S. consular posts abroad remain fully or partially closed,<sup>158</sup> severely limiting the ability of noncitizens abroad from attending the necessary interviews to travel to the United States. The Biden administration can and must consider interim measures to facilitate immigration to the United States, including automatically extending the validity of expiring visas, permitting visa revalidation from within the United States, and reinstating the authority of consular officers to waive certain in-person interviews in increase efficiency. The administration should also consider prioritizing vaccinations for Department of State consular staff abroad in the same manner that the Department of Homeland Security has prioritized vaccinations for mission-critical personnel. The administration should seek additional funding from Congress to address any budget shortfall and the significant reduction in employees during the Trump administration that slowed consular processing.
  
- » **Visa “Recapture”**—The Trump administration successfully used the COVID-19 pandemic as a pretext to alter legal immigration in the United States without any involvement from Congress. The combined impact of the COVID-19 immigrant visa ban and the suspension of routine visa processing at embassies and consulates abroad led to a significant reduction in the number of immigrant visas issued—a net loss of over 100,000 visas—to noncitizens in the family-based and diversity preference categories in fiscal year 2020. This will further increase the years-long wait that many noncitizens have to endure when navigating the U.S. immigration system. Over 200,000 immigrant visas were unused in the period between 1992 and 2019, and there is precedent for recapturing such visas in Congress. The Biden administration should work to pursue relief for noncitizens in the family and diversity categories with Congress by “recapturing” and reallocating as many of these visas as possible.
  
- » **Refugees**—President Biden should follow through on his promise to raise the refugee cap for fiscal year 2021 to a higher level than the 15,000 record low set by Trump. The administration should ensure that agencies prioritize rescheduling flights for the more than 715 refugees whose prior plans to arrive in the United States—some after years of waiting—were put on hold when their flights were cancelled. In addition, the administration should request additional funding from Congress to meet the promised goal of 125,000 refugees for fiscal year 2022.
  
- » The Biden administration should also take concrete steps to repair the discriminatory legacy left by Trump’s Muslim and African Bans on the refugee resettlement program. It should prioritize the resettlement of refugees denied under the ban, particularly Syrians who were

permanently barred from seeking refuge in the United States and ensure that the refugee program operates fairly moving forward in order to eliminate the restrictions on specific categories of refugees put in place by the Trump administration.

### **Addressing Restrictions for Specific Categories of Noncitizens**

- » **Regional Bans**—The Biden administration should issue guidance to consulates across the world clarifying that visas can still be issued for individuals subject to a regional ban. The Biden administration should also consider lifting these restrictions, which apply in a seemingly arbitrary fashion to countries regardless of their current COVID-19 outbreak status.
  
- » **Land Border Bans**—Restrictions on travel through ports of entry along the U.S.-Mexico border have been met with opposition from communities which have seen major economic downturns as a result of reduced travel. The Biden administration should further engage with communities in the region and consider lifting or modifying restrictions that are not necessary.

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