



PRESIDENT BIDEN USHERS IN NEW HOPE ON IMMIGRATION AFTER TRUMP'S DESTRUCTIVE AND XENOPHOBIC FOUR YEARS

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There is much for all of us to be excited about after President Biden's inauguration on January 20, 2021 when he aggressively rescinded many of Trump's most damaging immigration actions. We were also relieved to wake up on Saturday morning to find that there was no Friday midnight Trump regulation night aimed to hurt immigrants or put a further roadblock on legal immigration. What a nice feeling after four nightmare years.

On his first day, President Biden proposed bold new legislation and changes to our [immigration system](#) and [reversed some of the most devastating policies](#) of the last four years. The Muslim and Africa bans were rescinded with great aplomb. We have written many blogs, [here](#), [here](#) and [here](#), for example, arguing and despairing how Trump abused his authority under INA 212(f) to ban whole countries, visa categories and millions of immigrants. While it took so much litigation challenging the Muslim ban, which the Supreme Court unfortunately upheld in [Trump v. Hawaii](#), it was so heartening to see President Biden [rescind](#) the ban with the stroke of a pen. The following words from the proclamation brought vindication to all our efforts to confirming how immoral the ban was:

The United States was built on a foundation of religious freedom and tolerance, a principle enshrined in the United States Constitution. Nevertheless, the previous administration enacted a number of Executive Orders and Presidential Proclamations that prevented certain individuals from entering the United States — first from primarily Muslim countries,

and later, from largely African countries. Those actions are a stain on our national conscience and are inconsistent with our long history of welcoming people of all faiths and no faith at all.

Beyond contravening our values, these Executive Orders and Proclamations have undermined our national security. They have jeopardized our global network of alliances and partnerships and are a moral blight that has dulled the power of our example the world over. And they have separated loved ones, inflicting pain that will ripple for years to come. They are just plain wrong.

On the last day of 2020, Trump issued a [Presidential Proclamation](#) extending two previous Proclamations – [Proclamation 10014](#) (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak) and [Proclamation 10052](#) (Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak). Proclamation 10014, signed in April 2020, suspends certain green card applications, and restricts some nonimmigrant visa categories. Proclamation 10052 of June 22, 2020, itself an expansion of Proclamation 10014, curtailed the entry of individuals who were outside the United States without a visa or other immigration document on the effective date of the proclamation and were seeking to obtain an H-1B visa, H-2B visa, L visa or certain categories of the J visa. Our [previous blog](#) discusses Proclamation 10052 in detail, and another blog discussed the fate of these [bans](#) even after the Biden administration takes over. A group of individuals who have been barred from obtaining a visa due to Proclamation 10052 have brought a [lawsuit](#) in federal court urging the Biden administration to rescind the ban and resume visa processing. It is sincerely hoped that President Biden rescinds these bans rather than waits till March 31 to allow them to lapse.

Below, is a summary of some of the salutary executive actions that have taken place thus far.

- [Revocation](#) of the [Muslim and African travel bans](#).
- [100-day pause](#) on deportations and rescission of the January 2017 Trump [order](#) announcing all- out enforcement without any prioritization

- [Declaration of the end](#) of the “[national emergency](#)” at the southern border
- [Halt](#) in [border wall construction](#)
- Preservation of and [plans to “fortify”](#) the [DACA initiative](#)
- [Suspension of new enrollments](#) in the [Migrant Protection Protocols](#) program
- [Extension of Deferred Enforced Departure \(DED\)](#) for Liberians for 18 months.
- [Halt](#) of President Trump’s [plan](#) to exclude noncitizens from the census and apportionment of congressional representatives.
- [Review of any pending regulatory actions](#) for possible withdrawal and delay of effective dates of regulations that were published but have not yet taken effect.

Below is a summary of the legislative proposals:

President Biden will soon send a proposed immigration reform bill to Congress. According to a [fact sheet](#) issued by the White House, the legislation, called the "U.S. Citizenship Act of 2021," would:

- Provide worker protections and improvements to the employment verification process.
- Clear employment-based visa backlogs by not counting family members, recapture unused visas, reduce lengthy wait times, and eliminate per-country visa caps.
- Make it easier for graduates of U.S. universities with advanced STEM degrees to stay in the United States.
- Create an earned roadmap to citizenship for undocumented individuals, allowing undocumented persons to apply for temporary legal status and apply for a green card after five years if they pass criminal and national security background checks and pay their taxes. DACA "Dreamers," temporary protected status beneficiaries, and immigrant farmworkers who meet specific requirements would be eligible for green cards immediately. After three years, all green card holders who pass additional checks and demonstrate knowledge of English and U.S. civics could apply for U.S. citizenship. Applicants must be physically present in the United States on or before January 1, 2021. A waiver is included for certain family unity or other humanitarian purposes.
- Reform family-based immigration.

- Increase diversity visas from 55,000 to 80,000.
- Promote immigrant and refugee integration and citizenship.
- Prioritize border controls that include technology and infrastructure improvements.
- Manage the border and provide various resources to protect border communities.
- Crack down on criminal organizations.
- Address underlying regional causes of migration.
- Reform immigration courts.
- Support asylum seekers and other vulnerable populations.
- Change the word "alien" to "noncitizen" in U.S. immigration laws.

While it is easier for President Biden to rescind Trump's executive actions, it will be harder to pass sweeping comprehensive immigration reform through Congress when the Senate is controlled 50-50 by Democrats and Republicans unless the filibuster is eliminated. To pass a reform bill, the administration would need to win the support of at least 10 Republican Senators, a formidable task since many Senate Republicans supported the supported Trump's draconian immigration policies. *See, e.g.,* Seung Min Kim, *Biden to propose overhaul of immigration laws on first day in office*, The Wash. Post (Jan. 18, 2021), https://www.washingtonpost.com/politics/biden-immigration-plan/2021/01/18/f0526824-59a8-11eb-a976-bad6431e03e2_story.html. However, there may be a chance for more narrow legislation to pass. Democrats have called for an agreement on the DACA program, for example, or the creation of a pathway to citizenship for [essential workers](#). Biden must also boldly press forward with executive actions if Congress does not pass meaningful reform such as [not counting family members under a reinterpretation of INA 203\(d\)](#) or [advancing filing dates](#) so that many more can file adjustment of status applications.

Some of Biden's executive actions will also be challenged in court, such as the [Texas lawsuit](#) objecting to the 100 day pause on deportations. The suit alleged that the pause violated the president's constitutional duty to execute the law, and agreement DHS had made to consult with the state of Texas and provide six months' notice before softening any immigration enforcement policies. It further alleges that the state will face irreparable harm and suffer security challenges at the border because it did not receive advance notice of the pause. This challenge should fail as a prior president cannot bind a new president to an agreement with a state to notify it on any changes in its deportation policy

and a state's objections to federal immigration policy ought to also fail under the preemption doctrine.

As a result of the 60 day pause on pending regulations, the proposed Trump midnight rule that would require secondary employers to also file H-1B petitions has been tossed, which our [previous blog](#) had discussed. The H-1B lottery rule that would select applicants based on wages will likely not take effect until March 21, 2021, which would most probably result in not taking effect this year. The DOL wage rule will still take effect on July 1, 2021 notwithstanding the 60 day pause, and we hope that there will be successful court challenges to this as well as the H-1B lottery rule as these rules are inconsistent with the Immigration and Nationality Act. See Stuart Anderson, The Biden Administration and What Happens to Trump's H-1B Visa Rules, <https://www.forbes.com/sites/stuartanderson/2021/01/21/the-biden-administration-and-what-happens-to-trumps-h-1b-visa-rules/?sh=1932b7af726b>.

All these challenges and obstacles come as no surprise and are inevitable. Still, the fact that we have a new president who has already brought about a sea change in the first few days on how the US views immigrants after Trump's four nasty years comes as welcome relief. We look forward to changes that not just reverse Trump's destructive and xenophobic policies but also usher in transformative changes, both legislative and executive, that can help millions of immigrants and also benefit America.

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