



MIGRATION IN THE TIME OF COVID-19 EBOOK – HOW MUCH HAS THE PANDEMIC REALLY SHIFTED THE IMMIGRATION LANDSCAPE?

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Together with my co-author, Shoba Sivaprasad Wadhia, Associate Dean for Diversity, Equity, and Inclusion, the Samuel Weiss Faculty Scholar, and Founder and Director of the Center for Immigrants' Rights Clinic (CIRC) at Penn State Law, I recently contributed a chapter to the [Frontiers in Human Dynamics e-book "Migration in the Time of COVID-19: Comparative Law and Policy Responses"](#). A PDF can be downloaded from the Frontiers website. The e-book "aims to provide one of the first comparative analyses of migration law and policy responses to the COVID-19 pandemic", by bringing together a collection of articles that "examine and assess destination states' responses to COVID-19 from the perspective of migration law and policy, and consider how they build upon prior exclusionary regimes, offering suggestions for reform of domestic laws in the wake of the pandemic."

Our [article](#), entitled "COVID-19 and Immigration: Reflections From the Penn State Law Center for Immigrants' Rights Clinic", provides a review of significant COVID-19 -related immigration policy changes, and uses CIRC as a case study to demonstrate how the same tools that immigration advocates have developed to respond to the ever-evolving policies of the Trump administration can also be harnessed to address COVID-related immigration policies. In particular, we discuss three of CIRC's central response tools: short, accessible fact sheets and FAQ sheets, informational "town hall" forums to discuss new immigration laws or policies as they impact the community, and direct representation of individual clients.

One central thread that emerged across the chapters of the ebook, as well as in last week's book launch [panel](#), was the idea of continuity, both in repressive immigration policies and the responses to them, both before and during the pandemic. Although the Trump administration, marked by its numerous and draconian immigration policy changes, has now been replaced by the Biden administration, many Trump-era policies still live on, situating COVID-related immigration policies within a broader harsh climate for immigration. Recent federal court decisions, for example, illustrate the revival of many of the Trump administration's policies, as well as its jaundiced view of immigrants. A federal judge in Texas, for example, recently [ordered](#) the Biden administration to reinstate the Migrant Protection Protocols, which force asylum seekers to wait in Mexico for adjudication of their cases, often placing them in grave danger. In August, the [Supreme Court](#) refused to overturn the lower court order that would revive the program. Similarly, the U.S. District Court for the Southern District of Texas recently [held](#) that Biden's immigration enforcement [priorities](#), which would have focused removal efforts on only those noncitizens who were a national security risk, entered the United States on or after November 1, 2020, or posed a threat to public safety, were a violation of the Administrative Procedure Act, at least as applied to detention cases. However, the Fifth Circuit has issued a [partial stay](#) of the S.D. Texas order, allowing the provisions that provide guidance on when enforcement actions should be initiated to go into effect, among others. The Fifth Circuit's order left in place only a handful of narrow provisions in the injunction that concern detention. The U.S. District Court for the Southern District of Texas has also [held](#) that the DACA program violates the APA, which will bar any new applications for the program.

Many of the COVID-related immigration policies outlined in the chapter continue, at least in some form, as well. For the moment, the slew of COVID travel bans continue, with the suspension on entry into the United States of nonimmigrants who have been physically present in India prior to traveling having been added by the Biden administration after publication of the ebook. As discussed in [prior blogs](#), these bans have a disproportionately harsh impact on nonimmigrants, who are no more likely to transmit COVID-19 than the numerous categories of other travelers exempted by the bans. Although the bans are projected to be [lifted in November](#), to be replaced with testing and vaccination requirements, the harm they created, particularly for nonimmigrants who traveled to be with family at the height of the pandemic

and became trapped outside the U.S., is unlikely to be immediately resolved, particularly in light of lingering vaccine inequality issues.

Similarly, the suspension of non-essential travel by land and sea between the United States and [Mexico](#) and [Canada](#) remains in place for a little while longer. This suspension also includes a number of exemptions, including for U.S. citizens and permanent residents, as well as certain categories of essential workers. First implemented in April 2020, the restrictions were [recently extended](#) until at least October 21, 2021.

The chapter also discusses the interruptions to visa processing that occurred when U.S. embassies and consulates suspended routine services. When the travel bans are lifted, some consular services may resume. However, consulates are likely to have significant backlogs and operations may still be disrupted by local COVID conditions. Thus, individuals who are waiting for visa interviews and the like are still likely to experience significant delays.

The climate for asylum seekers, too, has improved little since publication of the ebook. Our article discusses the summary removals that resulted from a CDC and U.S. Department of Health and Human Services [regulation](#) and [notice](#) that suspended the “introduction” into the United States of individuals who arrived at or between ports of entry without valid travel documents or permission. The Trump administration invoked Title 42, a [provision](#) of the 1944 Public Health Services Act permitting the federal government to prevent travel into the country in the event of a public health crisis, as the authority for this order. Despite relaxing the restrictions somewhat for unaccompanied minors and parents with children, the Biden administration has largely continued to rely on Title 42 to summarily remove adults who arrive at the border, effectively denying them any meaningful opportunity to seek asylum. This use of Title 42 plainly contradicts with the United States’ legal obligations to asylum seekers, as laid out at 8 U.S.C. § 1158, which states that any individual “who arrives in the United States...may apply for asylum”.

Although many hostile immigration policies linger on, the conclusion need not be an entirely negative one. Many of the pandemic’s most onerous restrictions, such as the travel bans, are soon to expire, which will provide relief to many. Further, one need not reinvent the wheel when responding to COVID-related immigration laws and policies. Immigration lawyers became very skilled at advising their clients about ever-evolving policies and finding creative solutions

during the Trump administration. The tools highlighted in our chapter need not apply only to law school clinics. Practitioners of all varieties continue to support and counsel individual clients as they navigate immigration policy changes, COVID-related and otherwise, and community education can take the form of articles, blogs, webinars, or even social media posts that relay the latest policies in an accurate and digestible way. The same skills and tools that have been honed in recent years can still be utilized during the pandemic, however long it may last.

(This blog is for information purposes, and should not be relied upon as a substitute for legal advice).

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