

# ISSUE BRIEF **10.20.20**

## U.S. Immigration and the 2020 Election

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Immigration was a touchstone issue in the 2016 federal election that brought President Donald Trump to office. Since then, the policy area has only become more contentious in the U.S., with unprecedented actions taken by the Trump administration to limit the number of both regular and irregular migrants. These actions have won him praise from immigration hardliners and his base but also condemnation from those concerned for the rights and well-being of immigrants and asylum seekers. The next four years will look very different for the field of immigration depending on a Trump or Joe Biden presidency. This brief summarizes changes that have occurred under the Trump administration so far and examines the repercussions of the November election on four aspects of immigration policy.

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### BORDER SECURITY

One of Trump's central campaign promises in 2016 was the enhancement of walls and fencing along the U.S. border with Mexico. As of August 7, 2020, work had been completed on approximately 300 miles of barriers, though this includes replacing old and dilapidated barriers that existed prior to Trump's presidency.<sup>1</sup> And in contrast to Trump's campaign promise that the government of Mexico would pay for this construction, the wall has been allocated \$5 billion in U.S. Customs and Border Protection (CPB) funding in addition to \$10 billion that Trump diverted from the Department of Defense budget. Only one-third of that money has been authorized by Congress,<sup>2</sup>

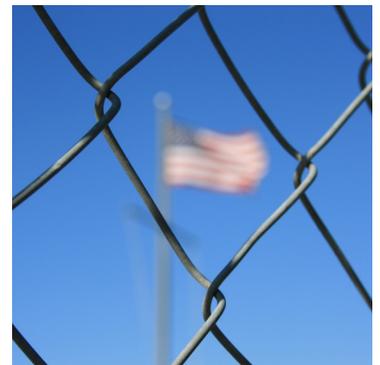
and in early October 2020 the Ninth U.S. Circuit Court of Appeals ruled that the use of defense funding for the wall is illegal, though the Supreme Court has agreed to hear the case.<sup>3</sup> And while the president attempted to speed up construction of the wall this summer ahead of November's election, progress has proved especially problematic in Texas, where much of the land slated for construction is privately-owned and would need to be seized through eminent domain.<sup>4</sup>

We can expect that a second Trump administration will press ahead with border construction, though it will have to resolve its funding issue if the Supreme Court rules against the use of Defense Department funding as well as its legal issues in the Rio Grande Valley. Conversely, if elected, Biden has promised to halt further barrier construction on the U.S. border with Mexico, but also stated that he would not tear down any of the progress made on the wall so far.<sup>5</sup> Biden would instead look to enhancing the technological capabilities of CPB at ports of entry, installing additional cameras, sensors, large-scale x-ray machines, and fixed towers.<sup>6</sup>

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### ASYLUM

There has been a sustained attack on the U.S. asylum system under Trump. One policy used by CPB since 2018 to limit access to asylum is "metering," meaning that only a specified number of individuals are allowed to enter the U.S. and claim asylum each day.<sup>7</sup> By law any individual with a credible fear is permitted to enter the U.S. and



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submit their asylum claim, but CPB officials have instead told asylum seekers to put their names on a list and wait in cities like Tijuana, where they are not guaranteed access to assistance or shelter.<sup>8</sup>

In a similar vein, in January 2019 the administration implemented the Migrant Protection Protocols (MPP, and informally the “Remain in Mexico” policy), requiring that asylum seekers arriving at a U.S. port of entry who pass a credible fear test be returned to Mexico to await their asylum hearing in a U.S. court. As of March 2020, approximately 60,000 individuals were returned to Mexico under this policy, forced to wait in unsafe and unsanitary conditions for an overcrowded judicial system to eventually hear their case.<sup>9</sup> On October 19, the Supreme Court agreed to review a federal appeals court decision that claimed the MPP violates U.S. immigration law, but the case will not likely be heard until after the January 2021 inauguration.<sup>10</sup>

The Trump administration has also utilized so-called “safe third country” agreements with Guatemala, Honduras, and El Salvador that require asylum seekers traveling through a country to first seek asylum there rather than in the U.S. For example, if an asylum seeker from El Salvador first travels through Guatemala before reaching the U.S., they can be returned to Guatemala under a safe third country agreement. Up until August 2020, the U.S. had a safe third country agreement in place with Canada, whereby asylum seekers arriving in Canada after having traveled through the U.S. can be sent back to the U.S. to have their claims assessed there, and vice-versa.<sup>11</sup> But the safe third country agreements enacted under the Trump administration are much more questionable since Guatemala, Honduras, and El Salvador lack well-functioning asylum systems and individuals returned to these countries may be subject to generalized violence.<sup>12</sup>

Finally, the extremely controversial 2018 policy that separated thousands of children from their parents was at the center of the Trump administration’s attack on the right to seek asylum under U.S. law.

While top administration officials attempted to distance themselves from the policy following a backlash and legal challenges, a draft report from the Justice Department makes it clear that the administration’s policy was intentional and implemented in the hope that such cruelty would deter future asylum seekers.<sup>13</sup>

A second Trump administration would almost certainly continue its assault on asylum, especially if the Supreme Court rules in its favor regarding the MPP, but a Biden presidency would roll back many of these changes. The Biden campaign promises to direct the “necessary resources” to ensure asylum applications are processed fairly and efficiently and would end the MPP and metering practices at the border, ensuring that asylum seekers are allowed to remain inside the U.S. but outside of private detention facilities while awaiting their hearings. In order for this to work, a Biden presidency would have to provide sufficient financial resources to the nonprofit organizations assisting asylum seekers while they await trial. Biden also promises to end Trump’s safe third country agreements with Central American countries, instead preferring a migration-for-development approach that promises \$4 billion in aid over four years to address the “root causes” of migration—including gang and gender-based violence and corruption. While it is not clear that migration-development schemes actually decrease migration in the short term,<sup>14</sup> ending Trump’s safe third country agreements would nonetheless be an important step toward reaffirming the right to seek asylum in the U.S.

### REFUGEE ADMISSIONS

In order to qualify as a refugee, an individual must first be able to leave their country of origin and arrive in a second country, which is usually a neighboring state. They must then meet a fairly narrow set of parameters defined by the 1951 Convention Relating to the Status of Refugees and must have fled their home state due to persecution on the basis of race, religion, nationality,

membership of a particular social group, or political opinion. Once an individual qualifies for refugee status, they can become eligible for resettlement, though qualification is by no means a guarantee of success, as less than 1% of the world’s refugees are resettled to a third country like the United States. In September 2020, Trump announced that the U.S. refugee admission program would only accept 15,000 refugees during FY 2021, the lowest ceiling since the refugee program was created in 1980.<sup>15</sup> The administration has tried to justify this historically low refugee cap by citing the increased number of individuals seeking asylum in the U.S., even though these systems are bureaucratically and financially separate.<sup>16</sup>

If Trump is elected for a second term, his administration may push to eliminate the refugee admissions program in its entirety. Conversely, if Biden is elected, he has promised to build the program back up to its high admission levels under the administration of Barack Obama, promising a ceiling of 125,000 admissions per year.<sup>17</sup> But doing so will take considerable time and resources given the Trump administration’s funding cuts to the U.S. government agencies and affiliates that vet and process refugees abroad, as well as the organizations that assist refugees once they arrive in the U.S.

### IMMIGRATION REFORM

Permanent immigrants to the United States generally arrive through three pathways: humanitarian arrivals (asylum seekers and refugees, as discussed above), family reunification, and employment-based visas. Each year, the U.S. also issues temporary visas to hundreds of thousands of workers, foreign students, and exchange visitors, who can sometimes change their status to permanent if they are able to find a family member or employer to sponsor them.<sup>18</sup> With guidance from White House advisor Stephen Miller, the Trump administration has attempted to minimize the number of individuals arriving across all immigration categories over the last four years. The

Migration Policy Institute documented more than 400 executive actions<sup>19</sup> taken by the Trump administration to dismantle immigration and with great effect: between 2016 and 2019, annual net immigration fell by 50% to approximately 600,000 people per year, the lowest level since the 1980s.<sup>20</sup> The president is unable to change the number of permanent residency visas granted each year without a change to the Immigration and Nationality Act, but the administration has found other ways to minimize legal migration, such as increasing the vetting of would-be migrants, lengthening processing times, and implementing administrative measures that prevent would-be migrants from applying for green cards in the first place.<sup>21</sup> The administration also barred immigrant visas to nationals of certain countries, particularly Muslim-majority countries including Iran, Libya, Somalia, Syria and Yemen (the so-called “Muslim ban”).<sup>22</sup> Further, the administration attempted to end the Deferred Action for Childhood Arrivals (DACA) program, though this was blocked by the Supreme Court in June 2020. Finally, the Covid-19 pandemic also gave Trump further cover to disallow travel and halt visa processing, alleging that doing so would preserve employment opportunities for American citizens affected by the pandemic’s economic impact.<sup>23</sup>

In contrast, the Biden campaign promises to commit significant “political capital” to deliver immigration reform, asserting that immigration is vital to the American economy and the country’s cultural foundations.<sup>24</sup> His priorities include providing a roadmap to citizenship for nearly 11 million undocumented immigrants and DACA recipients, as well as modernizing the system for employment-based permanent immigration to the U.S. Of course, Biden’s ability to successfully enact comprehensive immigration reform will likely depend on whether Democrats control the Senate after November’s election.

## CONCLUSION

A second Trump term versus a Biden presidency will have very different implications for U.S. immigration. A Trump administration emboldened by reelection will push forward with its mission to minimize both legal and irregular migration to the U.S., continuing to assert that America is better off without further immigration despite slowing population rates.<sup>25</sup> A Biden presidency promises to roll back many of the Trump administration's attacks on U.S. immigration and to return the system to its standing under Obama—though this may not be enough to pacify critics who viewed Obama's policy as too focused on enforcement and deportation, without enough political resources dedicated to ensuing legal pathways for individuals to come to or remain in the U.S. If Biden wants to chart a truly different course going forward, he will have to not only roll back changes made under the Trump administration but also actualize his promise to pursue comprehensive immigration reform and expand opportunities for legal immigration across humanitarian, family, and employment-based categories.

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