



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

A VISION FOR AMERICA AS A WELCOMING NATION

AILA Recommendations for the Future of Immigration



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“REESTABLISH AMERICA AS A WELCOMING NATION THAT EMBRACES IMMIGRANTS, PROTECTS THOSE FLEEING PERSECUTION, AND PROMOTES IMMIGRANT PARTICIPATION IN OUR SHARED PROSPERITY”

President Elect Joe Biden’s campaign website proclaims: “Immigration is essential to who we are as a nation, our core values, and our aspirations for our future ... The United States deserves an immigration policy that reflects our highest values as a nation.” The American Immigration Lawyers Association, the national voluntary bar association comprised of 15,000 practicing immigration lawyers and law teachers, calls upon the incoming Biden-Harris administration to marshal the resources and political will to implement this vision. After four years of hostile and xenophobic immigration policies, the new administration has the opportunity and the moral responsibility to restore those values and reestablish America as a welcoming nation that embraces immigrants, protects those fleeing persecution, and promotes immigrant participation in our shared prosperity.

Ultimately, Congress must pass legislation to ensure that lasting, structural changes are made to the immigration

system. President Biden should fight for legislation that builds upon the contributions of immigrants, reunites families, strengthens America’s economy, expands humanitarian protection programs, and provides legal status and ultimately citizenship for all aspiring new Americans who still live in legal limbo.

Until Congress delivers him a bill to sign, the new president has the executive power to implement the following set of urgently needed recommendations, which will significantly ameliorate the harms caused by the previous administration and revitalize our nation’s immigration system. These recommendations were developed in consultation with AILA’s national policy committees and its network of pro bono volunteer lawyers who represent people in U.S. detention centers. AILA stands ready to work with the president and his team to get the job done.



1. PROCLAIM A MESSAGE OF WELCOME

In his first week in office, President Biden should issue a proclamation declaring that America welcomes all people no matter their faith, color, or nationality, and that we, as a country, renounce the many baseless and discriminatory policies implemented by the previous administration to exclude or expel foreign nationals. The president should declare that hate crimes, violence, or scapegoating that targets immigrants or any particular group of people will not be tolerated. In particular, the proclamation should immediately terminate or announce plans to rescind the Muslim ban,¹ the refugee ban,² the asylum bans,³ the pregnancy ban,⁴ the health insurance ban,⁵ the public charge regulation,⁶ and the COVID-19 bans.⁷ All people—be they asylum seekers, refugees, entrepreneurs, workers, students, or family members with relatives in the United States—must know they will be treated with dignity and respect at our borders and throughout our nation. The president's vision must be implemented through all agencies that administer the immigration system.

- **Appoint personnel to get the job done.** The new administration should prioritize the appointment of leadership committed to the implementation of its vision, including a high-level White House position on immigration policy empowered to coordinate and restructure immigration agencies. At all levels, the president's personnel choices should be inclusive and

reflect the diversity of our nation. New leadership should conduct a full review of hiring practices and improprieties to remedy any politicized and ideologically driven personnel decisions.

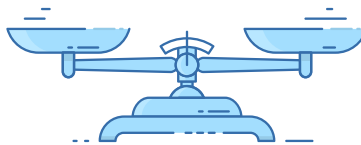
- **Foster professionalism and integrity.** After four years of leadership determined to implement an anti-immigrant agenda, it is imperative that the new administration move immediately to foster a culture in all immigration agencies that values professionalism and high-quality customer service. All immigration agencies should overhaul training protocols to ensure personnel understand their roles and responsibilities to protect due process and the dignity of human life. Training should be designed to rectify the improper biases set by the previous administration and be developed with robust stakeholder and civil society participation. Until rigorous training and standards are implemented, the hiring of CBP and Immigration and Customs Enforcement (ICE) officers and agents should be suspended.
- **Reengage with stakeholders.** The administration should reestablish the long-standing practice of engaging with diverse community-based organizations and state and local bar associations as well as ethnic bar associations to ensure that all voices are heard in setting agency policies. Agencies should resume regular meetings with AILA members and staff to share mutually beneficial information about agency policy and practice.
- **Ensure COVID-19 is not used as a pretext against immigrants.** Safeguarding our nation's health during the pandemic is an imperative. However, the now indefinite order⁸ issued by the Centers for Disease Control and Prevention (CDC) was not based on science but instead part of President Trump's anti-immigrant agenda.⁹ It has led to the expulsion of over 150,000 unaccompanied children and adults who were unlawfully denied the chance to seek asylum.¹⁰ Moreover, the presidential proclamations banning the lawful entry of foreign nationals to protect the labor market have separated thousands of families under the guise of COVID-19 safety measures.¹¹ These and all related policies should be immediately rescinded.¹²

2. ENSURE FAIRNESS, EFFICIENCY, AND ACCOUNTABILITY IN THE LEGAL IMMIGRATION SYSTEM

U.S. Citizenship and Immigration Services (USCIS), the agency charged with administering the legal immigration system, must be reformed to make it accountable to the public and true to its congressionally defined mission to provide prompt, consistent, and fair adjudications to its customers. During the Trump administration, USCIS implemented policies that have negatively impacted its revenue and efficiency, resulting in skyrocketing processing times.¹³ Drawing

upon USCIS data, AILA has documented that the average processing time for petitions and applications filed with the agency increased by 101 percent during fiscal years 2014 through 2019, while the agency's net backlog of delayed cases grew from about 544,000 to over 2.4 million as of February 2020.¹⁴ The Trump administration added bureaucratic "red tape" without evidence that the additional measures, such as extreme vetting, would result in more lawful findings of ineligibility or fraud. Finally, the Trump administration has transformed USCIS to operate more like an enforcement agency rather than a benefit adjudications agency, draining its resources and harming American families and businesses that rely upon it.

See [*AILA Resources on USCIS*](#).



**BACKLOG OF
USCIS CASES
GREW FROM
544,000
TO OVER
2.4
MILLION
2014–2019**





... UNNECESSARILY BURDENING CASE PROCESSING ACROSS ALL USCIS PRODUCT LINES

- **Get the system back on track and on time.** The new administration should rescind all policies that have harmed Americans in all walks of life by significantly and unnecessarily burdening case processing across all USCIS product lines. These are the top priorities:
 - **Reinstate the “deference” policy.** Within the first three months, USCIS should restore an adjudicator’s ability to rely on findings in previously approved cases involving the same parties and facts, beginning with the revocation of a 2017 memo¹⁵ which requires officers to needlessly duplicate past findings.
 - **Eliminate mandatory interview requirements.** Within the first month, USCIS must restore adjudicator discretion to require in-person interviews only when eligibility of an applicant is in question. The Trump administration mandated that adjudicators conduct interviews even when they deemed it unnecessary.¹⁶
 - **Ensure consistency in adjudications.** USCIS must ensure that requests for evidence and denials, as well as the exercise of discretion, are consistent with all legal standards, by retraining adjudicators on standards of proof and issuing updated guidance.
 - **Stop the “blank space” rejection policy.**¹⁷ USCIS should immediately stop wasting resources to reject applications and petitions that leave non-material spaces blank or use terminology other than “N/A,” a practice that places many categories of applicants, including highly vulnerable people, at a grave risk of denial.
 - **Increase transparency on case processing times and the backlog.** USCIS should devise clear case processing goals that inform the public on how cases are being adjudicated and the case backlog.
- **Ensure that USCIS honors its statutory mission** and undo policies that have improperly shifted USCIS toward enforcement.
 - **Forbid transfers of funds and personnel from USCIS to CBP or ICE.** Fees paid by customers to have their immigration benefits applications adjudicated should not be transferred to enforcement agencies, particularly when processing times and backlogs are at unprecedented levels.
 - **Conduct a full review of the fraud unit (FDNS)** and extreme vetting initiatives¹⁸ and rescind initiatives that reduce efficiency and fairness without significant, demonstrable impact on the identification of fraud.

- **Rescind the July 2018 Notice to Appear (NTA) guidance¹⁹** that expanded the grounds upon which USCIS adjudicators issue NTAs and that sweeps far more people into removal proceedings, including victims of violence and crime.
 - **Restore opportunities for people to integrate and naturalize** by increasing efforts to welcome new citizens and eliminating extraordinary barriers created over the past four years, including aggressive efforts to strip people of their citizenship.
 - **Strengthen naturalization, parole, and other programs to assist members of the armed forces, veterans, and their families.** Many experience obstacles in the immigration system as observed by the lawyers in AILA's Military Assistance Program.
- **Restore USCIS's commitment to customer service and public engagement.**
 - **Reopen liaison channels and improve the InfoMod program** to resolve complex cases.
 - **Restructure and empower the Customer Service Division** to ensure that the public has robust opportunities for engagement on agency matters.
 - **Make the immigration system accessible to all.** The Trump administration has made accessing immigration benefits more costly and difficult for the customers it serves.
 - **Halt the USCIS fee rule²⁰** that was enjoined in September 2020 **and issue a new rule** that reinstates fee waivers and maintains reasonable fees for naturalization and adjustment of status. Humanitarian benefits should be provided for no or low cost.
 - **Rescind the new public charge regulations** and take immediate steps to ensure the public charge inadmissibility grounds is not transformed into an overly burdensome and complicated wealth test.



See AILA Resources on [Immigration Courts](#).

3. RESTORE INTEGRITY, FAIRNESS, AND EFFICIENCY TO THE IMMIGRATION COURTS

In just four years, the Trump administration has implemented radical changes that fundamentally compromise the integrity of the immigration courts and their ability to ensure fairness and impartiality.²¹ In addition, ineffective management of the courts has impaired the quality and quantity of judicial decisions, and the court backlog has skyrocketed to over 1.2 million cases.²² America needs a just and efficient immigration judicial system. Legislatively, the Biden administration should urge Congress to create an Article I immigration court that is independent from the Department of Justice.²³ In the meantime, the new administration should take concrete steps within its executive authority to ameliorate the damage done by its predecessor and implement the following measures to increase judicial independence, fairness, and consistency in decision making.

- **Lead on judicial independence and fairness in the courts.** The president should immediately issue an Executive Order stating a commitment to reform immigration courts to ensure independence, integrity, and due process. The new administration should quickly install new leadership in all key posts and review all recent personnel decisions to address concerns that the Trump administration politicized hiring to stack the immigration courts and appeals board with ideologically-driven appointees. The Biden administration should also rescind or undo the attorney general's opinions, regulations, and other policies that stripped immigration judges of fundamental authorities to manage their dockets and provide due process, such as continuances, administrative closure, termination of proceedings, and change of venue.
- **Restore due process.** The new administration should undo and rewrite several policies that “streamline” case decisions or pressure judges to rush through cases at the expense of due process and judicial independence, including case completion quotas for judges,²⁴ unrealistic deadlines, and other performance metrics imposed on trial and appellate level judges such as the regulations finalized on July 2, 2019;²⁵ the Board of Immigration Appeals (BIA) rule published on August 26, 2020;²⁶ the proposed Executive Office

for Immigration Review (EOIR) rule on asylum published on September 23, 2020;²⁷ and the “no dark courtrooms” policy.²⁸

- **Reform notice procedures** to provide the correct date, time, and location of hearings in compliance with the Supreme Court’s decision in *Pereira v. Sessions*.²⁹ Improper notice has led to chaos when people received incorrect “dummy” dates and showed up on the wrong dates. An immediate review of all *in absentia* removal orders should be conducted to correct those issued due to government error.³⁰
- **Halt or reverse the EOIR fee rule.** On February 28, 2020, EOIR issued a notice of proposed rulemaking³¹ that would significantly increase the fees for important forms of relief and procedural protections. No immigrant or refugee should be priced out of due process or accessing the court system.
- **End the use of Immigration Adjudication Centers that deny a fair day in court.** The new administration should stop the use of Immigration Adjudication Centers,³² the “black-box” facilities where judges appear by video with little transparency or public oversight and the right to representation is severely handicapped.





IMPLEMENTING A FAIR, ORDERLY AND EFFICIENT PROCESS FOR LEGAL RELIEF

4. ENSURE THE FAIR AND HUMANE TREATMENT OF MIGRANTS AT THE BORDER

The Trump Administration has waged an all-out assault on migrants at the southern border, imposing severe restrictions or outright bans on asylum and measures to detain recent arrivals and short-circuit due process. Mr. Biden has pledged to “secure our border, while ensuring the dignity of migrants and upholding their legal right to seek asylum.” These twin aims can be accomplished by surging humanitarian personnel and resources to the border and implementing a fair, orderly, and efficient screening process for legal relief.

- **Restore protection for asylum seekers at the border.**

In the first week, President Biden should rescind or announce plans to terminate the following policies: the November 2018 asylum ban (currently enjoined),³³ the July 2019 third country transit ban,³⁴ the Migrant Protection Protocols (MPP),³⁵ the Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador (2019),³⁶ and the PACR and HARP procedures that block people from seeking relief.³⁷

- **Surge border reception capacity to ensure protection.** Within days of taking office, the Biden administration should establish an Office of Migrant Protection to coordinate with other agencies the rapid scale-up of screening and protection capacity at high-volume ports of entry. Asylum officers, medical and mental health professionals, legal and social service resources should be surged to ports of entry. To increase the efficiency of asylum adjudications while still ensuring thorough review, asylum officers should be authorized to grant asylum as part of the credible fear interview process rather than requiring them to wait several months for immigration judges to conduct a hearing. The new administration should grant humanitarian parole temporarily to asylum seekers subject to MPP and others who would be forced to wait for their hearings.³⁸ Urgent measures should be taken to pilot legal counsel programs for asylum seekers and other vulnerable border arrivals.

- **Halt unfair, inhumane border enforcement.**

The Biden administration should rescind Trump administration policies that have subjected people arriving at the border to inhumane practices and stripped them of a meaningful opportunity to seek protection and relief. Harsh deterrence tactics, such as those prescribed by the Department of Homeland Security's (DHS) Consequence Delivery System that have caused or exacerbated the denial of due process, separation of families,³⁹ excessive detention, and imposition of severe punitive measures should be halted.

- **Suspend prosecutions for illegal entry and reentry** until a full review of their use is conducted.

The review should consider the harms of the Zero Tolerance policy and the disproportionate use of federal prosecutorial resources for illegal entry and reentry (as compared to narcotics and weapons offenses) that has criminalized large numbers of people who come to the United States primarily for family unity and humanitarian reasons.

- **Halt the practice of turning back asylum seekers** and rescind the April 2018 memo⁴⁰ that authorized “metering” and “queue management” at the border. DHS should provide adequate screening and humanitarian resources at the border to reduce the wait times for those needing screening for asylum or other relief.

- **Halt the use of the fast-track expedited removal and reinstatement of removal procedures** that enable CBP and ICE officers to serve as both prosecutor and judge and singlehandedly deport people frequently in error and with little oversight or due process.⁴¹ Court removal proceedings should be the norm to afford people the opportunity to consult with legal counsel and obtain a fair hearing.

- **Restore the long-established practice of releasing recent border arrivals** while their immigration court proceedings are pending as set forth in the detention recommendations.

- **Halt wall and barrier construction.** President Biden should rescind Executive Order 13767⁴² and halt all plans for wall and barrier construction at the southern border.

5. RESTORE ASYLUM LAW AND PROTECTION FOR VICTIMS OF CRIME AND REFUGEES

- **Remove barriers to asylum.**⁴³ Through bans, regulations, and international agreements—many of which are unlawful—the Trump administration has all but eviscerated asylum. In addition to those mentioned above, the Biden administration should undo or halt policies that have rewritten asylum



... POLICIES THAT HAVE REWRITTEN ASYLUM LAW TO EXCLUDE WHOLE CATEGORIES OF PEOPLE FROM PROTECTION, INCLUDING VICTIMS OF DOMESTIC VIOLENCE AND GANG PERSECUTION

law to exclude whole categories of people from protection, including victims of domestic violence and gang persecution, which comprise many Central American claims. The new administration should also halt regulations that attack the procedural aspects of asylum law by truncating due process and making it far more difficult for asylum seekers to meet deadlines, find legal counsel, or obtain work authorization.⁴⁴

- **Revoke barriers for crime victims.** The new administration should revoke barriers erected during the Trump administration making it harder for victims of crime to obtain protection.
- **Revoke the August 2019 ICE fact sheet⁴⁵ permitting deportation of U visa applicants** before USCIS determines whether they have established prima facie eligibility. Before pursuing enforcement action, ICE should request a prima facie determination of any pending U visa application as set forth under a 2009 policy.⁴⁶
- **Dramatically reduce the U visa backlog** by hiring an additional 60 to 80 adjudicators and exploring methods to recapture the statutorily authorized 80,000 U-1 visas for fiscal years 2001 to 2009 that were not assigned due to administrative delays.
- **Implement the statutorily authorized plan to issue work authorization** to people who have filed U visa applications under INA §214(p)(6).
- **Create and implement a parole program for U visa applicants** abroad as required by 8 CFR §214.14(d)(2).
- **Recommit America to the protection of refugees.** With 80 million people forcibly displaced globally, President Biden must commit to restoring American leadership in international refugee protection and rebuilding all humanitarian programs, including the U.S. Refugee Program. The United States should resettle no less than 125,000 refugees in FY2021. It should recognize that Central and South American nations are facing humanitarian and refugee crises, and greatly increase resettlement from the region.

6. GUARANTEE LEGAL ASSISTANCE AND COUNSEL

While immigrants have long had the right to legal counsel in removal proceedings, the government does not provide counsel if the person is unable to afford one. According to a 2016 study⁴⁷ by the American Immigration Council, only 37 percent of people facing removal were represented and only 14 percent of detained people acquired legal counsel. The difference in outcomes for those represented as compared to the unrepresented is staggering: people in detention are twice as likely to win their cases if they have legal counsel. People who were never detained were five times more likely to obtain legal relief. Studies have also shown that attorneys and legal education programs make court proceedings more efficient and reduce government costs.⁴⁸



- **Guarantee legal counsel.** Within the first 30 days, the president should announce a commitment to provide every person facing immigration removal with legal counsel paid for by the government if they cannot afford it. The Office of Access to Justice created under the Obama-Biden administration should be reestablished to facilitate legal counsel and education programs.

- **Ensure people in custody have access to legal representatives.** People in immigration detention face tremendous barriers to meaningful and confidential legal representation. The new administration should ensure detainees have expanded access to their legal counsel, interpreters, mental health professionals, and other members of their legal team. This includes but is not limited to expanded visitation policies, better provision of private and confidential meeting space, and free video and telephonic services.
- **Expand legal orientation programs.** The Biden administration should expand and improve EOIR's legal orientation programs (LOP), which the previous administration attempted to defund.⁴⁹ The programs not only facilitate due process by ensuring respondents have at least a rudimentary understanding of the legal process but also improve court efficiency. LOP currently reaches only a fraction of those facing removal. It should be expanded to reach all courts and all ICE and CBP facilities and stations.

7. END INHUMANE DETENTION

In the past two decades, detention has been grossly overused for immigration purposes resulting in skyrocketing detention rates at great cost to taxpayers—over \$2 billion annually—and at great profit to private prison companies. Immigration detention is part of our nation's epidemic of mass incarceration, born out of the same “tough on crime” policies of the 1990s that doubled the U.S. prison population and criminalized communities of color. Even more important, detention has been wrongfully applied as an instrument of punishment and deterrence, aims which are inappropriate for immigration purposes. Trapped in detention, adults, children, and families are unable to communicate meaningfully with their legal counsel and, as a result, do not have a fair chance at obtaining asylum or other legal relief. Even worse, they are subjected to unsanitary and unsafe conditions, poor medical treatment, and horrendous abuses—including harassment, threats, and involuntary medical procedures such as hysterectomies⁵⁰—that are abhorrent to American values and simply cannot continue.

Read Immigrant Justice Campaign's [Reports on ICE Detention Abuse and Failure to Protect During COVID-19](#).

The system's failure to protect people in custody has been laid bare during the COVID-19 pandemic which has claimed the lives of many detainees and facility personnel—fatalities that could have been avoided.

- **Reduce detention dramatically.** To reduce immigration detention, the Biden administration should apply a standard in immigration cases that presumes release. Immediate action should be taken to scale up community-based release programs that are highly effective at ensuring appearance at court, far less costly than detention, and more humane. The administration should scale-up such programs nationwide with the ultimate goal of ending detention for immigration purposes.
- **Review all people's cases for release.** Within the first 100 days, the new administration should review all detention cases with the goal of releasing people and requiring the least onerous method of supervision to ensure appearance. Bonds should be set at far lower rates based on ability to pay at reasonable amounts.
- **End family detention and the separation of families immediately.**
- **Stop subsidizing prisons at taxpayer expense.** DHS should terminate all existing contracts with private prisons and county jails within one year and place a moratorium on future contracts or expansion of detention.





IMMIGRATION DETENTION IS PART OF OUR NATION'S EPIDEMIC OF MASS INCARCERATION.

8. SET A VISION FOR IMMIGRATION ENFORCEMENT THAT IS FAIR, HUMANE, AND EFFECTIVE

The Trump administration has erected an inhumane enforcement system characterized by the excessive use of detention, removals that violate the law, and the unwarranted use of police power. These practices, and the array of policies used to justify them, are unjust, ineffective, and impose costly burdens on American taxpayers. President Biden should send a forceful message denouncing these practices.

Now is the time to establish a new vision for enforcement based on the principle that all people subjected to immigration enforcement action must be treated fairly and respectfully as human beings. At a time when our nation is grappling with its history of racial injustice, America must change how we view undocumented immigrants. The nation can no longer treat undocumented people who have long been part of this country as unwanted and inferior second-class citizens. Enforcement decisions should take into account the compelling equities that bind people to this country, such as their length of stay in the United States, their contributions, and their family and

community ties. President Biden has the opportunity to define a vision of enforcement that is based on clear priorities and achieves the rule of law through just and compassionate means.

- **Impose a moratorium on deportations**, as President Biden has already pledged, until DHS can review pending cases and establish new enforcement priorities.
- **Implement new enforcement priorities.** The administration should establish clear enforcement priorities that give weight to the favorable equities in each person's case and balance them carefully against the enforcement interests. For people with criminal histories, consideration should be given to the severity of any offense, how long ago it occurred, and whether the person has shown rehabilitation. The consequences of immigration violations should be proportionate to the circumstances of the case and a range of options should be evaluated instead of pursuing deportation in every case.

Read the American Immigration Council's July 2020 report "[The Cost of Immigration Enforcement and Border Security](#)."

- **Conduct an immediate review of pending cases.**

All pending cases should be reviewed to determine whether continued enforcement action is justified and consistent with the Biden administration's enforcement priorities. People who are eligible for DACA or TPS should have their cases terminated.

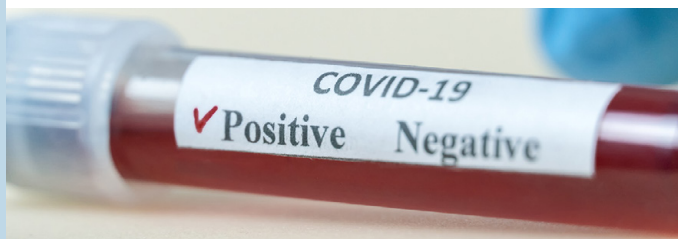
- **Apply the principle of prosecutorial discretion.** The administration should implement a robust procedure for enforcement personnel to exercise prosecutorial discretion building upon the foundation established by the Obama administration and its predecessors. Enforcement personnel should be accountable for metrics that are based on the furtherance of enforcement priorities and the conservation of finite law enforcement and judicial resources.

- **Prevent the spread of COVID-19 in all enforcement activities.** Detention, transfer, and deportation practices should be reviewed to ensure proper protocols are followed to prevent the spread of COVID-19—including testing and medical treatment, the provision of health supplies and protective equipment, and quarantine practices. The Trump administration's disregard for safe practices jeopardized the health of detained individuals, people working in and living near facilities, and nations receiving individuals who were deported.



9. IMPROVE CUSTOMS AND BORDER PROTECTION (CBP) ADJUDICATIONS AND PROCESSING AT PORTS OF ENTRY

- **Ensure consistency and transparency in adjudications.** CBP should promote uniformity in adjudications at all ports of entry by publishing non-classified Adjudication Guidance Musters on its website. The administration should also implement rigorous oversight and “guardrails” to ensure the work of the National Vetting Center and the use of biometrics is consistent with CBP's mission. CBP should publish all policy changes.
- **Provide uniform redress methods.** CBP should create a centralized national email system where travelers can request I-94 corrections, along with user-friendly FAQs that clearly describe the I-94 correction parameters. Currently, each port of entry establishes its own procedures with different standards and adjudication priorities.
- **Resume adjudications of L nonimmigrant petitions.** CBP should reestablish the practice of adjudicating reentry applications for L status at the northern border. After two decades of exercising this authority, CBP unexpectedly suspended it without notice.
- **Modernize and improve port of entry infrastructure** to support efficient and timely processing of vehicular and pedestrian traffic for local residents, visitors, merchants, and migrants. CBP should be resourced to maintain sufficient well-trained staff and provide more lanes at ports and increased hours of operation.



- **Halt collaborations of ICE and CBP with local police** for non-immigration purposes.
- **End 287(g), detainer practices, and other policies** that pressure local law enforcement to violate the Constitution or federal law and compromise their mission to ensure public safety.
- **Require enforcement officers to wear body-worn cameras** consistent with law enforcement standards that protect the privacy of the public and officers.

10. PROTECT UNDOCUMENTED PEOPLE AND OTHERS WITH DEEP TIES TO AMERICA

- **Reinstate Deferred Action for Childhood Arrivals.**

President Biden should fully reinstate the DACA program and make it fairer and more accessible by modifying criteria based on age, residency, education, and past criminal activity.

- **Grant Temporary Protected Status and Deferred Enforced Departure to nationals of countries experiencing crises.** The Biden administration would have the authority to protect foreign nationals from several countries still experiencing conflict, environmental disaster, and other temporary crises through TPS and DED authority. Within the first six months in office, President Biden should conduct a full review of these programs and reissue,

redesignate, or initiate new TPS designations for the following countries: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Sudan, Sierra Leone, Guinea, Syria, Yemen, South Sudan, Somalia, Venezuela, the Bahamas, Guatemala, and Lebanon.

- **Establish robust policies on humanitarian parole and deferred action.** The new administration should apply deferred action and humanitarian parole under INA 212(d)(5), as President Obama and his predecessors did, to protect military families, people with severe medical needs, victims of serious crime waiting for U visas, and others experiencing hardship in need of legal relief.



11. REFORM EMPLOYMENT-BASED AND FAMILY-BASED VISA PROGRAMS

- **Ensure efficient processing of work permits and employment authorization verification.** USCIS should ensure faster processing of employment authorization documents as significant detrimental consequences result from not having a work permit or when a gap is created between periods of authorization. Moreover, DHS should modernize and simplify the employment verification process to reflect technological advancements and the realities of today's business operations, particularly in light of COVID-19, to more efficiently onboard all workers.
- **Provide relief to individuals stuck in the immigrant visa backlogs.** To assist individuals who have approved immigrant visa applications but who often wait years or decades to adjust their status because of caps on immigrant visas, USCIS should revise the regulatory definition of "immediately available" at 8 CFR 245.1(g) to allow for earlier filing of adjustment of status applications. Additionally, USCIS should protect children from aging out of immigrant visa eligibility by issuing regulations on the Child Status Protection Action to ensure the greatest relief.
- **Recapture visas previously available but not allocated, as authorized in the INA.** The agencies should implement this through administrative means not requiring legislation.
- **Exempt derivatives of principal immigrant visa applicants from the total annual immigrant visa allocation (the "visa cap")** through administrative means.
- **Promote fair wages for U.S. and foreign workers.** The new administration should ensure that the required wages in our prevailing wage system reflect real-world norms by leaving in place the 2009 prevailing wage guidance and its leveling system. This means that wages should continue to be collected and scientifically calculated using statistical norms which the Department of Labor can level without political interference.
- **Promote immigrant entrepreneurship, business growth, investment, and job creation to revive the U.S. economy.** The administration should replace the Buy American, Hire American Executive Order with a new Executive Order that recognizes that foreign nationals help grow the U.S. economy and will contribute to the nation's economic recovery. The Executive Order should outline policy that would:
 - **Spur innovation and job growth.** USCIS should expand the International Entrepreneur rule, admit L-1A managers and executives opening a new office for an initial period of two years, and expand use of the National Interest Waiver for entrepreneurs who will bolster the U.S. economy.
 - **Improve the H-1B program.** The administration must ensure that H-1B adjudications are consistent with USCIS statute and regulations, such that it is a viable and flexible option for U.S. employers of all sizes and across all industries while exploring opportunities to address the needs of U.S. employers through alternative mechanisms. The administration should halt or rescind regulations published in the fall of 2020 on the H-1B program.
 - **Improve the H-2B program.** The H-2B program should have sufficient numbers based on economic need for workers as well as consistent and predictable returning worker provisions.
 - **Improve the EB-5 investor program.** Eliminate the requirement to redeploy investor capital if the petitioner has already completed the business plan in the approved I-526 and created all required jobs. EB-5 policies should be revised to allow flexibility to accommodate fluctuations in business operations and the economy.



**FOREIGN NATIONALS
HELP GROW THE
U.S. ECONOMY**

12. ENSURE THE STATE DEPARTMENT (DOS) IS PROPERLY RESOURCED TO PROVIDE FAIR AND EFFICIENT CONSULAR PROCESSING

- **Elevate the Deputy Assistant Secretary (DAS) for Consular Affairs** to be co-equal with the other DAS positions in the State Department and provide the necessary resources, including a significant increase in funding, to operate effectively and without undue political influence.

- **Employ innovative strategies to minimize bureaucracy and prepare consular posts to respond quickly to the inevitable surge in demand for consular services once the pandemic subsides.**

Individuals with expired immigrant visas (IV) who were unable to travel within their visa's six-month validity period should have their IV validity automatically granted to avoid burdening the posts. Similarly, the prior practice of permitting visa revalidation from within the United States should be reinstated to ease the burden on consulates and aid individuals who are unable to travel abroad. Additionally, lawful permanent residents who were afraid to return to the United States at the height

of the pandemic who would apply for Returning Resident Visas should be given blanket protection against abandonment to allow CBP to admit them without having to burden the posts with unnecessary Returning Resident Visa applications.

- **Restore and expand the Visa Interview Waiver program and reform visa processing at consulates.**

Immediately reinstate authority for consular officers to waive interviews for low-risk nonimmigrants to ensure efficiency in visa processing.

- **Restore transparency and institutionalize accountability in consular affairs.** To improve the consistency and quality in visa adjudications, consular officers should articulate the reasons for denying a visa beyond citing a section of law or applying a "catchall" ground for denial. This will facilitate review of the decision and enable the applicant, if eligible, to apply for a waiver.



ENDNOTES

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