



Trump's last stand on immigration

Biden has signaled a more welcoming era for immigrants — but Trump is making a last-ditch effort to push through his policy agenda.

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With less than 50 days left in office, President Donald Trump appears to be rushing to implement immigration changes. The Biden administration could unravel many of them — but the latest developments add to what will already be a monumental task of reversing Trump's nativist policy agenda.

Since the election, the Trump administration has made the citizenship test harder. It's on track to reach its stated goal of constructing 450 miles of border wall by the end of the year, a physical reminder of Trump's efforts to keep out asylum seekers and other vulnerable migrants. And on Thursday, it finalized a **regulation** that would gut the asylum system, going into effect just nine days before President-elect Joe Biden assumes office, unless anticipated legal challenges succeed in blocking it.

Other proposals could still be finalized before Inauguration Day, including regulations that would impose additional burdens on asylum seekers and foreign workers. Trump is also reportedly mulling a potential executive action aiming to put an end to birthright citizenship.

With White House senior adviser and noted immigration restrictionist Stephen Miller at his side, Trump has imposed unprecedented barriers to asylum, slashed legal immigration, vastly expanded immigration detention, and carried out wide-scale raids on unauthorized immigrants living in the US.

In the aftermath of Trump's election loss, which he still refuses to acknowledge, his last-minute push to enact the remaining items on his policy wish list no longer appears to be about rallying his base, but rather securing a legacy. Whether he will succeed is a question of the little time he has left to leave his mark and how easily the next administration can erase it.

“Even if they publish these [proposals], which are being used as scare tactics, it doesn't change anything unless it's actually a final rule that has taken effect,” Shev Dalal-Dheini, the director of government relations for the American Immigration Lawyers Association, said. “I think a lot of people are nervous when they see things. But if they don't have effect, it doesn't change anything.”

Trump has made applying for citizenship harder

Immigrants have applied to become US citizens in **increasing numbers** since **Trump** took office, which some policy analysts say is the effect of the president's anti-immigrant rhetoric. But the path hasn't been easy. They're facing ballooning processing times, higher fees, more

intensive vetting, and the possibility of later losing their citizenship at the hands of the Justice Department's "**denaturalization section**."

As of December 1, they also have to pass an **updated, more difficult citizenship test**. And on November 18, the Trump administration also **updated its policy guidance** to advise officials at US Citizenship and Immigration Services to scrutinize citizenship applicants about how they obtained their green cards, among other factors, changes that immigration advocates argue will result in longer processing times and more denials.

Both changes represent additional barriers to citizenship for the roughly **9.2 million immigrants** living in the US who are eligible to naturalize.

The new citizenship test is derived from 128 possible questions, and to pass, applicants must answer 12 of 20 questions correctly. By comparison, the previous iteration of the test featured 100 possible questions, and a passing score was six out of 10.

The administration also changed the wording of certain questions in a way that immigrant advocates see as a means of making it harder for immigrants of limited English proficiency to pass, Nicole Melaku, executive director of the National Partnership for New Americans, said in a statement.

One such question asks, "Who does a US senator represent?" The answer used to be "all people of the state," but the new answer, which has drawn criticism, is just the "citizens" in the state. Immigrant advocates have consequently urged the Biden administration to **abandon the new test** in favor of restoring its previous iteration.

Trump is trying to drastically narrow asylum eligibility

The Trump administration has pursued a vast regulatory agenda aimed at curbing asylum and other humanitarian protections for migrants arriving on the southern border.

As part of a last-minute push, it issued a death blow to the system on Thursday with a sweeping final regulation that would bar huge swaths of asylum seekers from obtaining protection, including those who face persecution on the basis of gender and resistance to gang recruitment, and as victims of criminal coercion. Those targeted by international criminal gangs like MS-13 will therefore likely face a much narrower path to asylum under the rule.

The **regulation** would allow immigration officials to discard asylum seekers' applications as "frivolous" without so much as a hearing or even a chance to respond to concerns about their applications. It would also refuse asylum to anyone coming from a country other than Canada or Mexico, who does not arrive on a direct flight to the US, who has resided in the US for more than one year, or who has failed to pay taxes, among other provisions.

First proposed in June, the regulation drew about 80,000 comments in response, the majority in opposition. Yet the administration only made five changes to it, keeping the vast majority of the original proposal intact.

"The Death to Asylum regulation will often become death to asylees," David Bier, a policy analyst at the Cato Institute, **tweeted** about the policy.

Other asylum-related regulations could still be finalized and implemented before Inauguration Day.

That includes a **proposed regulation** to expand immigration officials' ability to turn away asylum seekers on public health grounds, classifying anyone coming from a place where a contagious or infectious disease is prevalent as a threat to US national security. While that could certainly include Covid-19, the rule allows the departments of Homeland Security and Justice — not just the Centers for Disease Control and Prevention — to have input as to whether any one disease poses an international threat.

The Biden administration would have to issue new regulations to rescind any of the regulations Trump has finalized, including likely going through the burdensome process of giving the public notice and the opportunity to comment. It could also try to revise any regulations subject to ongoing litigation through a court settlement.

The Biden administration could also invoke the Congressional Review Act, which allows lawmakers to reverse regulations that were enacted in the last 60 working days of Congress, which extends back to March. However, using the act requires passing a joint resolution in both chambers of Congress, which could be difficult if Democrats don't have control of the Senate.

If the regulations have yet to go into effect, the Biden administration could also delay their effective date by 60 days and then work to rescind them in the meantime.

Trump is continuing to target immigrant workers

Though Trump has often claimed that he supports legal immigration, he has put up substantial barriers to foreign workers and is continuing to do so in his final days in office.

Trump issued an executive order earlier this year that froze the issuance of visas for most foreign workers applying from outside the US through the end of the year on account of Covid-19, and he is expected to extend that order. President-elect Joe Biden has **criticized the policy**, calling it a “yet another attempt to distract” from his administration’s “failure to lead an effective response to COVID-19.” He told **NBC News** in June that the policy “will not be in my administration.”

The Trump administration is also pursuing regulations that would hamstring the health care industry, universities, nonprofits, and businesses that rely on foreign talent.

One top-priority regulation for the Trump administration would alter the way that **H-1B skilled worker visas are distributed**: Rather than being distributed at random through a lottery process, visas would go to the applicants with the highest salaries, making it difficult for employers in specialized fields to fill entry-level jobs. Another would **limit the length of time** that noncitizens can stay in the US as students, exchange visitors, and journalists.

Other pending regulations would impose additional burdens on those applying for immigration benefits, **requiring more evidence** from US citizens or permanent residents who sponsor immigrants for green cards and additional **biometrics screening**, including DNA collection and voice prints.

Trump is rushing to finish the border wall

The border wall has represented a major political flashpoint of the Trump administration. The president invoked the wall as a rallying cry on the campaign trail in 2016, and he proved intent in bringing that vision to fruition while in office, waiving environmental and contracting laws and seizing private land to do it.

Now he's racing to finish the 450 miles of border wall he promised by the end of the year. About 415 miles of wall had been completed as of November 27, though most of that construction was to replace old, existing barriers, **CNN reported**. Despite what he promised in 2016, Mexico never paid for it; instead, the \$15 billion burden fell on taxpayers and was partially transferred from the Pentagon's budget without congressional approval.

Biden has promised to halt wall construction once he assumes office, though that might be easier said than done. There remain questions as to whether he could terminate existing construction contracts and what will be done with the unspent funds that were transferred from the Pentagon for the purposes of building the wall.

But despite Biden's **vow** that "there will not be another foot of wall constructed on my administration," the hundreds of miles of wall that has already been constructed will serve as a physical testament to Trump's restrictionist immigration policy framework. The Biden administration will likely be tasked with maintaining it.

Trump is reportedly weighing an executive order to end birthright citizenship

Over the course of his presidency, Trump has repeatedly said that he wants to end **birthright citizenship**, the constitutional guarantee to all children born in America, regardless of their parents' nationality, which he sees as a factor that draws unauthorized immigrants to come live in the US. The Hill reported that he is again weighing an **executive action** that would achieve just that in the final weeks before Inauguration Day, and that the Justice Department has been consulted on the matter.

Any such executive action would be swiftly challenged in court. Legal experts say it has little likelihood of survival given that it would require overturning a century-old interpretation of the 14th Amendment, which states that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

Courts have long taken that to mean that children of noncitizens are "born in the United States and subject to its laws" and are therefore citizens. But immigration restrictionists from organizations such as the Center for Immigration Studies and the Federation for American Immigration Reform — groups founded by the white nationalist John Tanton that have influenced Trump's immigration policy — have argued that the 14th Amendment had a much narrower purpose of ensuring that emancipated enslaved people would be recognized as US citizens and was never meant to confer citizenship on the children of unauthorized immigrants.

While any such executive action may be swiftly blocked in court or revoked by the incoming Biden administration, its potential chilling effect cannot be underestimated.

"They want to issue policies that scare people off because their primary objective is to deter illegal immigration," Dalal-Dheini said. The executive action "would serve that purpose."