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## Trump's Second Term Immigration Agenda

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On the campaign trail in 2016, Donald Trump vowed to make sweeping changes to the U.S. immigration system. If elected president, Trump said, he would build a wall spanning the entirety of the U.S.-Mexico border, ban all Muslims from entering the country, completely eliminate the resettlement of Syrian refugees, and deport millions of undocumented immigrants who have lived in the interior of the United States for years.

As his first term comes to an end, Trump has made serious progress on many of these promises. The administration has spent billions of dollars replacing chain link fences along the border with 100 miles of steel barriers, with new barriers under construction. He has banned nationals of certain Muslim-majority countries from obtaining visas. The U.S. still takes in refugees, but admissions have hit an all-time low: The resettlement cap for the 2020 fiscal year was just 18,000, a 79 percent drop from Barack Obama's last year in office. Immigration and Customs Enforcement (ICE) has carried out massive raids and opened more than a dozen new immigrant detention facilities. The administration has implemented a number of measures meant to deter asylum seekers from even trying to come—including separating migrant children from their families, a practice that continues in some cases.

Unable to pass major immigration legislation, the administration has accomplished all of this through executive action, spurring lawsuits from activists. Sometimes, the litigation has been a success. In 2019, a federal judge blocked a Trump executive order that would have barred immigration by those who could not quickly purchase U.S. health insurance, ruling that it was beyond the president's powers. Several district court judges issued an injunction against the wall, arguing that Trump was unconstitutionally violating the will of Congress.

But the Supreme Court has allowed many of the president's policies to take effect while courts consider their legality, including construction of the border wall. In a recent concurring opinion about immigration, Justices Neil Gorsuch and Clarence Thomas rebuked circuit judges who issue nationwide injunctions against the administration's policies, claiming that they are largely acting out of turn. The Court has also given Trump more decisive victories, including signing off on a modified version of his travel ban.

Should Trump win a second term, he will likely nominate at least one additional Supreme Court justice and add to the nearly 200 federal judges he has appointed so far (a quarter of all federal judges). The legal firewall that has held back the most radical of his executive orders could crumble. He will continue to target not just undocumented immigrants and asylum seekers, but legal immigrants as well.

“I don’t think there’s an end in sight,” said David Bier, an immigration policy analyst at the Cato Institute, a libertarian pro-immigration think tank. “As soon as they get these different measures approved by the courts fully, they’ll move on to the next step of expanding them. That’s what we’ve seen every step of the way with this administration.”

The president’s war on immigration is being waged on two fronts: at the border and in the interior. In both domains, he’s just getting started. In late 2019, the president created two pilot programs—the Prompt Asylum Claim Review (PACR) and the Humanitarian Asylum Review Process (HARP)—that fast-track asylum cases for Mexican and Central American migrants at the southern border. Although the ACLU and other organizations have sued the administration over these programs, which they say deny migrants a fair day in court, it’s likely they’ll be expanded further if Trump is reelected, even before courts decide their legality.

The expansion of PACR and HARP could echo the administration’s rollout of the Remain in Mexico policy, which began as a pilot program at a single port of entry in California in January 2019. It has since been expanded along the entire border, forcing roughly 60,000 migrants to wait in Mexico while an immigration judge in the United States decides their case. Originally, the policy was only applied to migrants from Spanish-speaking countries. But in January, the administration began sending Brazilian nationals seeking asylum to Mexico.

If Trump is reelected, it’s only a matter of time before the administration decides to further expand this program too. It may start with Indian nationals: According to federal data analyzed by the Migration Policy Institute, 72 percent of all extra-continental migrants apprehended at the border during the fiscal 2018 hailed from India. Migrants from Cameroon, the Democratic Republic of the Congo, and Eritrea—the most prevalent African nationalities at the border, according to the same data—could be added to the administration’s list as well.

During a second term, it is also likely that Trump would expand the border wall. With the blessing of the Supreme Court, the administration already reallocated nearly \$10 billion in military funds to pay for construction of the wall. The administration diverted another \$3.8 billion in funds from the Pentagon in February. Unless legislators explicitly forbid the administration from reprogramming funds, Trump will likely continue to use military money to fortify the border during his second term.

The wall may be a Trump original, but some of the president’s toughest policies were first proposed by influential conservative think tanks. To get a sense of what a second term might bring, it is worth looking at what those institutions are proposing. The Heritage Foundation has urged the administration to unilaterally give immigration judges the ability to decide all status cases without listening to immigrants’ testimonies, not just those of the undocumented at the border (as PACR and HARP already do). The influential right-wing think tank also wants immigration judges to have the power to rule against different forms of protection, including asylum, without hearing a full trial.

This agenda, of course, would likely encounter massive resistance by liberal municipalities. Hundreds of cities across the country, including New York City and Washington, D.C., have declared themselves “sanctuaries” for undocumented immigrants. Though there’s no legal definition of a sanctuary city, these jurisdictions typically limit their cooperation with federal immigration authorities. But this could make them a target under a second Trump term. The Department of Homeland Security is deploying 100 officers from the U.S. Border Patrol’s elite tactical unit to the interior of the country, where they’ll help ICE carry out arrests in these places.

In its official capacity, the Trump administration claims that it isn’t against immigration per se, just illegal immigration and immigration by people who are supposedly a drain on the economy. The administration says that it actually wants legal migrants, so long as they are educated or possess economic talent. The president’s signature legislative proposal, for example, wouldn’t necessarily cut immigration levels. Instead, it would largely replace family-based green cards with employment-based ones.

His actions, however, suggest that immigration at large is the target, and it’s likely that a second Trump term would enable federal immigration agencies to make life harder for documented immigrants, too. Even in sanctuary cities, ICE sometimes arrests and tries to deport green card holders who have come into contact with the criminal justice system. The administration has also signaled a desire to begin targeting naturalized citizens, creating a new denaturalization “task force” under the Department of Justice in February.

This shouldn’t come as a surprise. The think tanks and advisers who surround Trump have made it clear that they view legal immigration on the whole as an ill. Former Trump chief strategist Steve Bannon and current Trump adviser Stephen Miller agreed in a 2016 conversation that legal immigration is the “beating heart” of America’s migration “problem.” Miller has pushed repeatedly to slash green card levels.

Miller may succeed even if Democrats hold the House—and not only through the president’s executive actions. The Supreme Court is expected to rule soon on the fate of the Deferred Action for Childhood Arrivals program. If the Court lets the program end, Trump may go to Democrats in Congress and promise protection for Dreamers, but only in exchange for broader immigration cuts. The party shut down the government for several days in January 2018 to try to make sure Dreamers wouldn’t be deported, and failed. Though the party’s progressive wing would likely refuse to fall in line, it isn’t hard to imagine that to protect them, come 2021, Democrats would give Trump what he wants.