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U.S. Immigration Reform To Be A Biden Priority

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As this year comes to an end and the inauguration of Joe Biden as the next president of the United States approaches, there are rising expectations that the dysfunctional state of U.S. immigration can finally be addressed and reforms adopted to repair what is not working. Apart from what Biden promised in the campaign, several other encouraging initiatives are also being circulated in Congress. All of them contain proposals worthy of consideration.

Biden Campaign Promises

President-elect Biden outlined his program for immigration reform during the campaign. It contained the following key promises:

- Immediately reverse the Trump Administration's policies that separate parents from their children at our border.
- End Trump's asylum policies.
- End prolonged detention and reinvest in a case management program.
- Reverse Trump's public charge rule
- End the so-called National Emergency that siphons federal dollars from the Department of Defense to build a wall.
- Protect Dreamers and their families.
- Rescind the so-called "Muslim bans."
- Order an immediate review of Temporary Protected Status (TPS) for vulnerable populations who cannot find safety in their countries ripped apart by violence or disaster.
- Ensure that Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) personnel abide by professional standards and are held accountable for inhumane treatment.

The Gold Standard of Immigration Reform

Meanwhile, Progressive Democrats in the House of Representatives are gearing up to demand a comprehensive overhaul of the U.S. immigration system. This reform effort which the proponents call “The Roadmap,” goes beyond reversing the Trump administration’s anti-immigrant policies, and is far more expansive than Biden’s proposals. Washington Rep. Pramila Jayapal, chair of the Congressional Progressive Caucus, will introduce a resolution - co-sponsored by Reps. Alexandria Ocasio-Cortez and Yvette Clarke of New York, Judy Chu of California, Jesús García of Illinois, and Veronica Escobar of Texas. The hope is that it will become the “gold standard” for measuring Biden’s reforms on immigration. It includes:

- Creating a pathway to citizenship for the nation’s 10.5 million undocumented immigrants.
- Clearing the existing backlog of naturalization applications.
- Prioritizing family unity by eliminating barriers to family reunification and creating a process “for eligible individuals who are deported, detained, or in sanctuary” to reunite with their families and return to the United States.
- Establishing a system of “scalable civil consequences to immigration violations” so that detention and deportation are not the default punishment for almost every infraction of immigration law.
- Eliminating for-profit immigration detention facilities.
- Ending the use of state and local prisons and jails for immigration detention.
- Promoting alternatives to detention and ending the detention of “vulnerable populations” such as families and children.
- Ensuring that “no person is removed, expelled, or denied admission [to the United States] without guaranteed and meaningful access to legal defense.”
- Creating an “independent Immigration Court system” in which judges can exercise discretion.
- Reinventing border policies by “reversing the flow of money into harmful border walls, barriers, and ‘virtual walls’” that militarize the border and violate civil rights and liberties.
- Ending Border Patrol checkpoints in the interior of the country.
- Ensuring that “all people who are recruited to meet verifiable labor market needs are able to change employers, bring and live with their families, and earn a roadmap to citizenship.”
- Ensuring “immigrants’ access to health care and housing.”

- Creating “a truth and reconciliation process to provide justice to those who have suffered under an inhumane system for decades.”

Reasonable Measures That Can Be Implemented Now

Another package of immigration proposals was recently put forward by the CATO Institute. These proposals are a compilation of 15 essays written by top legal experts on immigration. Among the proposals brought forward are:

One proposal is put forward by Ira Kurzban — a former-president of the American Immigration Lawyers Association, and author of the Kurzban's Immigration Law Sourcebook, the most authoritative book on immigration law in the United States. Kurzban argues that the State Department should fix the problem of backlogged immigrants by ending its policy of counting spouses and minor children of immigrants against the employment, family, and diversity green card caps imposed by Congress as limits each year. According to Kurzban, only the principal applicants should be so counted and such a change would increase legal immigration by hundreds of thousands of new principal applicants each year. Kurzban points out this method of counting was used previously and should be reinstated.

Amy M. Nice — a former Attorney in the Office of the General Counsel at the Department of Homeland Security headquarters — argues that the State Department should “recapture” the green cards that went unused under the caps in past years because the agency failed to issue them. Again she points out this has been done in the past.

Cyrus D. Mehta — a practicing lawyer and well-known authority on immigration law — argues that even if not all green card applications can be approved, the government should stop not limit green card *filings*. Simply having a pending application, according to Mehta, can unlock significant benefits such as a work permit, travel authorization, a period of authorized stay, and a guarantee that the applicant’s minor children will not lose eligibility for a green card when they turn 21. The administration can allow the filings, but delay approvals until a cap slot is available. What is more, as for family members of applicants stuck abroad, Mehta argues that the administration should “parole” — the legal term for waiving restrictions on entry — the backlog of family and employment applicants waiting in other countries thus allowing them to reunite with their U.S. based families and start working for U.S. companies immediately.

Much can be done under the new administration. Expectations are high. There is plenty of room for reform. Let’s hope the new administration takes it upon itself to deliver on this key areas of concern.