



Leading legal experts urge aggressive immigration actions

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As President-elect Joe Biden prepares to assume office next month, he is already announcing his plans to reverse President Donald Trump's legal immigration restrictions. While this will be a tall order by itself, the Cato Institute has published a new compilation of essays by 15 leading legal scholars arguing that the new administration should go far beyond simply rescinding Trump's changes and adopt reforms that make legal immigration easier.

They argue that the rules were already too restrictive before President Trump tightened them to unprecedented levels and lay out authorities that President Biden can use to make life easier for legal immigrants.

The authors include several former presidents of the American Immigration Lawyers Association (AILA), a former Department of Homeland Security (DHS) official, authors of the most widely used immigration law reference text in the United States, and other well-known immigration law experts. The project offers the most compelling and sweeping legal immigration agenda for the new administration to date.

As the compilation's editor, I focused on selections that would offer the administration high impact but legally achievable options for improving the legal immigration system in a positive way. My co-authors and I felt confident that the Biden administration will reverse the damage of the last four years and has well-formed plans to address immigrants without legal status. By offering new ideas to fix the legal system, this compilation fills a gap in the administration's regulatory agenda.

The lead essay was written by Ira Kurzban — a prominent immigration attorney, former-president of AILA, and author of the Kurzban's Immigration Law Sourcebook, the most widely used one-volume immigration source in the United States. Kurzban focuses on a serious problem in the immigration system: the decades-long waits faced by legal immigrants as a result of low green card caps last set in 1990.

Kurzban argues that the State Department has the power to fix this problem by ending its policy of counting spouses and minor children of immigrants against the employment, family, and

diversity green card caps. Doing so would almost double the slots available under the caps, increasing legal immigration by hundreds of thousands each year.

It wouldn't even be the first time that the State Department had initially counted certain applicants against the caps and then changed its policy. From 1968 to 1976, it counted status awarded under the Cuban Adjustment Act against the immigration caps. But in the 1970s, it reversed that policy and removed Cubans from the caps, freeing up tens of thousands of slots per year for other applicants.

Amy M. Nice — a former Attorney Advisor in the Office of the General Counsel at DHS headquarters — follows up Kurzban's proposal with a compelling idea of her own. She 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. This would not be unprecedented either: in the 1970s, the State Department reissued green cards wrongfully counted against the caps under the Cuban counting policy.

Even these policies may not be enough to address the historic 5 million-applicant backlog for green cards caused by inadequate green card numbers. Cyrus D. Mehta — a practicing lawyer and one of the most well-known authorities on immigration law — argues that even if it must limit green card approvals, the government should stop limiting green card *filings* when the cap is unfilled.

While only an approved green card application can provide legal permanent residence, simply having a pending application can unlock significant benefits including 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 need not approve the filings until a cap slot is available, but letting immigrants file would greatly alleviate the problems caused by the low caps.

What about the 3.5 million immigrants who are waiting abroad? Mehta builds on his last idea by arguing that the administration should "parole" — the legal term for waiving restrictions on entry — the backlog of family and employment applicants waiting in other countries. This would allow them to reunite with family and start working for U.S. companies immediately under a well-known legal authority.

The compilation has more than two dozen other ideas of near-equal weight. But it does more than assert ideas like this. It provides legal arguments and specific regulatory reforms that provide a blueprint for action for the new administration. These sophisticated and developed proposals could help the millions of immigrants and Americans harmed by the current restrictive rules.

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