



Reviving DACA to reforming DHS: 5 immigration issues Biden could confront as president

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If Joe Biden wins in November, advocates who have spent the last four years suing President Donald Trump over his immigration policy are ready to hold the Democratic nominee accountable for his campaign promises.

Biden is positioning himself as former President Barack Obama's natural successor, including on immigration policy. But he has sworn he won't merely revert to the Obama-era status quo if elected.

"I was very proud to serve Barack, but even he acknowledges we can't go back to what it was," the former vice president **said** in June, pledging to send an immigration reform bill to Congress on day one of his presidency. "We have to go back and build back better. And so I have a program that is significantly different and builds upon where we left off and tries to undo the damage Trump has done."

Immigration isn't the only policy area in which Biden has made big progressive promises. But compared to health care or climate change, presidents have broad legal authority over immigration policy — as Trump has demonstrated by singlehandedly and fundamentally reshaping the immigration system during his first term, typically through executive action.

Merely undoing these changes will be a tall order if Biden claims victory in November. Advocates want to know how Biden plans to reign in the agencies tasked with immigration enforcement, which have become vessels of Trump's nativist policies, and what he would do would respond if he faces a surge of migration at the southern border.

The pandemic could change the political calculus on immigration, which is no longer one of **voters' top priorities**. In an era of mass unemployment, it might be difficult for Biden to advocate for policies vastly expanding immigration, as his **immigration plan** promises, when Americans fear they will be passed over for job opportunities, even though research shows that immigrants have essentially **no effect** on the unemployment rate.

But there are policy changes that Biden could undertake unilaterally and immediately upon assuming office: He could reverse some of Trump's signature immigration policies, including the travel ban and his pandemic-related restrictions on legal immigration, and begin the immense task of reforming the immigration agencies by installing new leadership and revising their enforcement priorities.

Here are the top immigration priorities Biden would be under pressure to address during his first days in office:

1) Undo some of Trump's biggest immigration policies

Trump has primarily pursued his agenda via executive fiat, meaning that Biden could easily reverse at least some policies as soon as he assumes office.

The presumptive Democratic nominee has already vowed to immediately end, among other policies, Trump's travel ban citizens of **13 countries** that his administration deems to be security threats; his practice of separating families in immigration detention; and restrictions on asylum including the Migrant Protection Protocols, under which Trump has sent tens of thousands of migrants back to Mexico to wait for their court hearings in the US.

Biden has also **suggested** that he would roll back the restrictions Trump recently imposed on foreign workers and immigrants applying for green cards. He has not yet said whether he would rescind Trump's pandemic-related policies at the border that allow him to rapidly return asylum seekers to Mexico, nor the president's recent **memorandum** excluding unauthorized immigrants from 2020 census population counts that will be used to draw new congressional districts in 2021. (The Biden campaign didn't immediately respond to a request for comment.)

Other Trump-era regulations may be more difficult to roll back. That includes Trump's so-called public charge rule, which imposes a **wealth test** on immigrants applying to enter the US, extend their visa, or convert their temporary immigration status into a green card.

The rule represents one of Trump's harshest blows to legal immigration yet and has had the effect of deterring immigrants from seeking out much-needed public services amid the pandemic. But Biden can't afford to rush through the process of repealing the complex, 217-page rule; he will likely have to use executive action to initially limit the effect of the rule before formally repealing it or else risk losing challenges in the courts, David Bier, a policy analyst for the libertarian Cato Institute, said.

"A hasty repeal could get hung up in the courts," he said. "As much as the immigrant advocacy community has used the courts to their advantage, the opposite will be the case [under a Biden administration]. Especially with many Trump judges on the courts, it will be hard to find a favorable ear."

2) Reform the immigration agencies and install new leadership

Unlike more progressive candidates in the primaries, Biden has said that he would reform the existing federal immigration agencies — the Department of Homeland Security (DHS) and its component agencies, US Customs and Border Protection (CBP), US Immigration and Customs Enforcement (ICE) and US Citizenship and Immigration Services (USCIS) — rather than defunding them or dismantling them and building something new in their place. That will be a difficult task given just how fundamentally Trump has altered these agencies to do his bidding on immigration.

Leadership crises have plagued the DHS, which has been without a Senate-confirmed secretary since April 2019, and a government watchdog recently finding that the appointments of two top officials were invalid. USCIS, which in the middle of a **budget crisis** of Trump's making that could hamstring its ability to process immigration applications, has **changed its mission**

statement to make clear that it no longer deigned to serve immigrants, but rather the American people.

Since Trump took office, there have been **growing reports** of abuses in ICE detention, including sexual assault, inadequate medical care, and retaliatory use of solitary confinement. CBP officers in military-style gear have been used to **quash protests** in Portland and to aid ICE in conducting routine immigration arrests in other sanctuary cities.

There have also been shifts at other agencies that preside over immigration issues: Trump's US Attorneys General have increasingly sought to **politicize immigration court proceedings**. And there has been a **mass exodus** of career officials at agencies including the State Department, which oversees consulates that process visas worldwide and refugee resettlement.

Reversing these trends in the executive branch will not happen overnight. But it needs to be a priority, Rep. Joaquin Castro, the chair of the Congressional Hispanic Caucus (CHC), said.

"I think the number one thing that he's got to do right away is to appoint a cabinet secretary at DHS, the head of the Border Patrol, the head of USCIS and the head of ICE," he said. "He's got to appoint true reformers who are willing to clean house."

But on top of that, Carlos Guevara, associate director for immigration initiatives at the advocacy group UnidosUS, said that Biden also needs to review the next layer of political appointees, such as the officials running the DHS policy shop or the general counsel's office.

"Those decisions will make a big difference," he said.

Biden has proposed some ways that he would try to change the culture at the immigration agencies. He would focus on deporting only immigrants who pose a threat to national security and public safety — a designation that relies largely on the discretion of individual immigration officers. He would also improve accountability for immigration agencies like CBP and ICE. (His plan isn't specific about what this accountability would look like.) He calls for ending for-profit detention centers, which have been sites of some of the most egregious abuses of immigrants in recent years. And he would work towards making the immigration courts more independent from the DOJ.

3) Raise the refugee admissions cap

The United States' refugee program once was considered by some as a global model of how a powerful country should support the world's most vulnerable people. But under Trump, America is now accepting fewer refugees than ever: **18,000 this year**, the fewest in history and down from a cap of 110,000 when he took office.

The refugee program has historically flourished under Republican presidents. Even in previous Republican administrations seeking to curtail immigration, no one has ever set the cap on refugee admissions as low as Trump has. Former President George W. Bush briefly cut the number of refugees admitted after the 9/11 attacks, but even then the limit was set at 70,000.

But Trump's message has been clear: The US is no longer the same safe haven it once was.

Biden will attempt to reverse that stance, promising to take in up to **125,000 refugees** in the year after he takes office and increase admissions "commensurate with our responsibility, our values and the unprecedented global need."

But it will also take time to build up the institutions that have served refugee populations once again. The Trump administration restricted organizations that resettle under 100 refugees annually from obtaining federal funding. And according to a June 2019 report by Refugee Council USA, refugee resettlement agencies have had to suspend 51 programs in 41 offices across 23 states because the US is accepting so few refugees.

4) Offer protection to DREAMers and other immigrants with temporary legal status

Almost **644,000** young immigrants who came to the US without authorization have been in limbo since Trump first tried to rescind the Obama-era Deferred Action for Childhood Arrivals (DACA) program in 2017, not knowing whether they will imminently lose their legal status and be able to continue living and working in the US free from fear of deportation. Even a **recent Supreme Court ruling** only gave them temporary reprieve as Trump proceeds forward with his **plan to end DACA** and continues to refuse new applications for the program, despite the fact that another 1.3 million immigrants are eligible.

Biden has vowed to invoke his executive authority to fully restore the program, which is **overwhelmingly popular** among both Republicans and Democrats, as well as **send a bill** to Congress that would codify permanent protections for DACA beneficiaries known as “DREAMers” on day one of his presidency.

There is one such Democrat-led bill that the House already passed last June: the **“Dream and Promise Act,”** which offers a pathway to citizenship for about 2.5 million DREAMers and other immigrants with temporary legal status (the original **DREAM Act was narrower**, covering about 1.5 million people). The bill hasn’t gotten any traction in the current Republican-led Senate, which **failed to reach a compromise** on DACA legislation during open debate last year, but that could change if Biden is elected and if Democrats seize control of the chamber.

That bill also would extend protections to beneficiaries of Temporary Protected Status (TPS), which is typically offered to citizens of countries suffering from natural disasters or armed conflict, and Deferred Enforced Departure (DED), another form of deportation relief that primarily covers Liberians. About 400,000 citizens of El Salvador, Honduras, and Haiti have been able to live and work in the US with TPS, but Trump tried to terminate their status, among nationals of other countries, starting in November 2017 **against the advice** of senior State Department officials. He argued that conditions in those countries have improved enough that their citizens can now safely return.

Biden has **said** that he won’t allow immigrants with TPS and DED status to be returned to countries where they are unsafe and that those who have lived in the US for a long time and laid roots will be offered a path to citizenship through legislative reform. Developing a path to citizenship for unauthorized immigrants is a priority for the Democratic Party as a whole. But it would likely have to be part of a broader immigration reform bill, which could prove difficult to pass, if history is any indication. And any immigration-related legislation will likely have to compete for attention among a Biden administration’s other priorities, including responding to the pandemic.

5) Push for legislation offering a path to citizenship to unauthorized immigrants

Immigration has been the subject of partisan gridlock in Congress for decades. The last time legislators passed a major immigration reform bill was in 1986, and their most recent attempt to

pass a bipartisan comprehensive immigration reform package in 2013 failed in the then-Republican-led House, despite passing in the Senate.

But widespread opposition to the punitive policies that have defined Trump's tenure — including separations of migrant families at the border and his attempts to end DACA — may create a window for long-sought reform under a Biden administration.

Biden says he would work with Congress on a more comprehensive bill that would, among other provisions, create a path to citizenship for the roughly 10.5 million unauthorized immigrants currently living in the US. Guevara said that, for now, his organization is focused on making sure that Biden follows through on that promise early on in his tenure — especially now that that immigration has been **eclipsed** by voters' other priorities, not least of all the US's response to the pandemic.

“We can debate the policy nuances, but we have to have the political will conversation first,” Guevara said.

It's possible that the pandemic might make Biden more risk-averse about prioritizing immigration amid the pandemic. But Guevara said that there are elements of immigration reform that very clearly tie into Biden's pandemic response, including the fact that many unauthorized immigrants are essential workers who have been largely overlooked by the Covid-19 relief bills passed in Congress and have limited access to health care.

Castro said he hopes that a would-be Biden administration would pass such a bill within the first six months of his administration. But in the meantime, the CHC is separately working on their own reform proposal — the centerpiece of which is similarly a path to citizenship — that they plan to deliver to Biden and discuss if he takes office.

Biden has also proposed provisions that would ensure fair wages for temporary workers and give them and their employers more flexibility; prevent companies from hiring high-skilled foreign workers over qualified US applicants; support family-based immigration; preserve a visa lottery program for citizens of countries with low levels of immigration; increase the number of employment-based visas; create a new visa program that would allow cities to petition for more immigrants; increase the number of visas for domestic violence victims; and better protect unauthorized immigrants who report labor violations.

But some lawmakers, including **Sen. Marco Rubio** (R-FL), have argued that a piecemeal approach to reform is more likely to be successful. The House has experimented with that somewhat under Trump, passing bills reforming **visas for agricultural workers** and the current system by which **green cards** are allocated. But both of those proposals have failed to gain traction in the current Republican-led Senate.