

Immigration likely to take lower profile in Biden speech after mixed year

State of the Union is unlikely to focus on immigration amid turmoil in Ukraine, a Supreme Court confirmation and other issues

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President Joe Biden entered office with big plans on the notoriously thorny issue of immigration — a sweeping bill that would legalize millions of undocumented immigrants and widespread rollbacks of Trump-era policies that Democrats castigated as inhumane.

Over a year later, his record is complicated. He has undone many of the Trump administration's famously stringent policies, including migrant family separation and border barrier construction.

But as Biden prepares to give his first State of the Union address, immigration is unlikely to be a major focus amid the Russian invasion of Ukraine, continuing pandemic and Supreme Court confirmation battle.

Biden's administrative and legislative agenda have stalled, hampered by Democrats' narrow congressional majorities as well as Republican-led states intent on blocking his efforts.

Meanwhile, Biden has struggled with the highly partisan politics surrounding the issue, at times angering both conservatives demanding tougher enforcement and liberals seeking a wholesale end to policies like immigration detention.

"They've definitely been able to get rid of some of the worst policies," said Kerri Talbot, deputy director of the advocacy group Immigration Hub. "But there definitely is more that they can do."

Patching up holes

By December 2021, Biden had terminated or revoked 235 of more than 1,000 "anti-immigrant" Trump policies, according to a report released by advocacy groups outlining their immigration priorities for Biden's second year.

One such Trump-era policy made it harder for certain low-income immigrants to apply for green cards, known as the "public charge" rule.

The Trump administration's policy, which offered a broader interpretation of a historic statute, expanded the list of benefits programs — including Medicaid and food stamps — whose usage could jeopardize an immigrant's green card application. Biden stopped enforcing that policy shortly after taking office and recently released a proposed rule solidifying his approach.

David Bier, a research fellow at the Cato Institute, called the rescission of the public charge rule expansion “one of the most positive changes” by the Biden administration.

“The amount of bureaucracy that would have added to the green card process is absolutely massive,” he said.

The Biden administration also set up a task force aimed at reunifying families separated under the Trump “zero-tolerance” policy, so far reunifying 61 children with their families, according to a December progress report. And it championed narrowed Immigrations and Customs Enforcement guidance that prioritizes immigrants who threaten national security, public safety, or border security.

Rep. Zoe Lofgren, D-Calif., chairwoman of the House Judiciary Committee's immigration panel, praised Biden's efforts to “undo the lawlessness” of the previous administration.

“President Biden has had the difficult task of restoring humanity and the rule of law to our immigration system during his first year in office,” she said in a statement.

Early in his presidency, Biden appointed Vice President Kamala Harris to tackle the administration's efforts to address the root causes of migration, mainly through diplomacy with Central American nations and private sector investments in the region. Her efforts became a potent political weapon for Republicans but won plaudits among Democrats.

“Working together, we've developed a more professional, humane, and right approach to addressing the root causes of migration and reduce the cyclical nature of mass migration,” said Rep. Raul Ruiz, D-Calif., who leads the Congressional Hispanic Caucus.

The administration has also taken steps to speed up visa processing in the face of inflated backlogs. U.S. Citizenship and Immigration Services, the Homeland Security agency that processes visa requests made within the U.S., waived interview requirements for the relatives of refugees and of those granted asylum. USCIS also reinstated a policy, terminated under the prior administration, to defer to past approvals when renewing individuals' visa requests.

“They've taken a number of steps to start reversing course to start patching up the holes in the system,” said Sharvari Dalal-Dheini, government relations director at the American Immigration Lawyers Association.

However, “you don't feel the changes on the ground,” she said, stressing the need for broader re-imagining of the system. “Serious repair needs to be done to the hull of the ship.”

Falling short

The centerpiece of Biden’s immigration platform — broad legislation to grant millions of undocumented immigrants a pathway to citizenship and smooth the way for legal immigrants — remains out of reach.

After months of largely fruitless talks with Republican senators, Democrats moved to include as much of their immigration proposal as possible in a budget reconciliation bill. But three separate versions of the plan were shot down by the Senate parliamentarian, whose approval is effectively needed for budget-only bills to pass with a simple majority.

These days, the reconciliation plan, known as “Build Back Better,” is tied up amid concerns from moderate Democrats over the overall price tag.

Advocates and some lawmakers are also deeply frustrated at Biden’s border policy. Early in his presidency, Biden exempted unaccompanied children from Title 42, a Trump-era public health directive under which migrants are expelled at the border in the name of pandemic protection. But he left the wider order in place, despite debate among public health experts over its necessity.

The Biden administration has “taken far too long to reverse the Trump administration’s dangerous and inhumane policies restricting asylum seekers at the southwest border, namely the use of Title 42 and the 'Remain in Mexico' program,” said Sen. [Bob Menendez](#), D-N.J., a top immigration voice, criticizing the administration for making “minimal progress” in restoring the nation’s asylum system.

Bier, of the Cato Institute, also blamed the continued implementation of Title 42 for much of the immigration stalemate, both in Congress and in the White House.

“What it’s done politically, and what it’s done practically, as a matter of focus and attention and resources, it’s just drained so much willingness for the administration to do anything. They’re just scared of their shadow on immigration,” he said.

Biden’s refugee policy has also fallen short, advocates say. Despite raising the refugee cap for fiscal 2021 to 65,000, the government resettled under 12,000, a historic low. Even after a massive government operation that evacuated tens of thousands of Afghans from the Taliban-overrun country last year, many vulnerable Afghans remain stranded.

“We don’t have a plan from the administration on how it can better facilitate safe pathways to exit Afghanistan,” said Meredith Owen, policy and advocacy director at the resettlement agency Church World Service.

Refugee groups also worry that resettlement — historically a bipartisan project — has been caught up in broader partisan battles over immigration.

“We’ve seen this administration continue to pit vulnerable populations against each other and operate from a scarcity frame,” Owen said, “when we know that we can and should be resettling refugees, welcoming asylum seekers at the border, and serving unaccompanied children.”

What's next

The Biden administration plans to release policies that enshrine protections for undocumented immigrants brought to the country as children, revamp the U.S. asylum system and improve the H-1B visa program for foreign-born professionals.

The Department of Homeland Security proposed a policy in September to “preserve and fortify” protections for recipients of the Deferred Action for Childhood Arrivals program, which provides work permits and deportation relief to certain undocumented immigrants who came to the U.S. as minors.

But to the dismay of advocates, the September rule did not expand eligibility for DACA, locking out immigrants who entered the U.S. – or were born – after June 2007. DHS finished accepting public comments on that rule in November and has not indicated when it will release the final version.

The administration is also soon slated to release the final version of a policy that would overhaul how asylum claims are processed at the border. Among other changes, the rule would have asylum officers approve claims, rather than sending all asylum-seekers into the clogged immigration court system.

Changes to the legal immigration system could also be on the horizon. DHS plans to issue a proposal later this year, targeted for May, to revise the criteria to qualify for H-1B visas, generally reserved for individuals with university degrees in specialty occupations.

The proposed policy would aim to “provide flexibility for start-up entrepreneurs” and address issues for international students switching to work visas, according to the budget office’s preview.

Dalal-Dheini said she hopes USCIS makes more progress in 2022 in wiping out lengthy visa backlogs. One way the agency plans to do this is by increasing immigration application fees.

“We’re going to be watching for: Is it to an extent where it prices people out of the system? And does it allow people who are the most vulnerable to still have access to the system?” she said.

However, the window of opportunity for congressional action is narrowing: Democrats are widely expected to lose control of at least one chamber after the midterms. Advocates have begun warning that lack of progress on immigration could have electoral consequences for Democrats.

“The immigrant community was promised significant changes under this administration,” said Rep. Jesus “Chuy” Garcia, D-Ill. “Because we hold, albeit slim, majorities and the White House — we continue to insist that this is the time to deliver immigration reform for the communities.”