

JACOBIN

Joe Biden Beat Donald Trump — Then Stole His Immigration Policy

Until recently, denying refugees the right of asylum, sending migrants to be killed in Mexico, and keeping kids in cages were policies considered so evil that for liberal America there was no higher priority than ending them. Then Joe Biden became president.

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Remember the US government's horrible treatment of migrants? For about four years, no issue was more important. "Kids in cages" and other monstrosities that were widely and often incorrectly cast as Donald Trump innovations served as perpetual news fodder. They were an omen of incipient US fascism, marked Trump himself a fascist dictator-to-be, and comprised one of about three or four core outrages used by Democratic partisans to stress the moral urgency of voting for Joe Biden no matter what.

Well, Biden's now been president for almost ten months now. Let's see how he's done on the issue.

Way back in April, I surveyed Biden's moves on immigration and found that, after his critical first hundred days, he'd more or less continued Trump's immigration policy with a few of its coarsest edges shaved down. The racist Muslim ban was gone, Deferred Action on Childhood Arrivals (DACA) was reinstated, Biden was reuniting separated migrant families, and he had repealed the "public charge" rule for green card holders. But his administration had also kept in place Trump's illegal Title 42 order for summarily expelling migrants (with one significant but limited tweak), its rescinding of Trump's Remain in Mexico policy was full of holes and slow to rectify, children were still being kept in said cages, families were still being separated at the border, and people were still being unfairly deported.

But that was seven months ago. How have things changed since?

Catch-42

Unfortunately for anyone hoping Biden would follow through on his promise to restore a mythical pre-Trump normal, things have continued in largely the same direction on immigration. With Biden reportedly fearing the political backlash from moving away from Trump's policies, he's kept Title 42 in place, renewing it in August and actively defending its highly dubious legality in court. I say highly dubious, because by letting authorities simply expel without due process anyone that turns up at the border — ostensibly to protect public health by preventing these migrants from coming in and spreading coronavirus in the country — they're denying them the right to asylum, an unambiguous violation of US immigration law.

Title 42 may have been the brainchild of actual white supremacist Trump advisor Stephen Miller, but it's Biden's policy now. Official CBP statistics show that of the 1.24 million people expelled via Title 42 from March 2020, when Trump put it in place, to September 2021, the vast majority, or more than 793,000, were expelled from February 2021, Biden's first full month as president, onward.

Many times, these migrants simply try to cross again and then are expelled again, which is partly why these numbers are so high. But in a lot of cases, the administration is sending them or their children to either their deaths or unspeakable violence. By the end of October, Human Rights First had found that since Biden took office, there'd been at least 7,647 instances of attacks, kidnappings, robberies, rapes, and more against people who'd been expelled under the order.

The policy crashed into public consciousness this September, when Biden used it to deal with thousands of Haitian migrants. His administration expelled nearly four thousand people to Haiti in only nine days, nearly half of them families, many of them who'd been living in various South American countries the preceding years, and whose kids had been born in those nations instead of the country they were now being sent to.

Images and video of Department of Homeland Security (DHS) officers in cowboy hats riding horseback into Haitian migrants and clearly whipping them with their horse reins went viral, quickly spawning a meta-controversy on the Right, with conservatives protesting that the agents had never held actual whips. White House press secretary Jen Psaki, meanwhile, said Biden thought the sight was "horrific and horrible," and insisted it was "not who the Biden and Harris administration is." The White House promptly banned the use of horses in the area and went on expelling thousands of Haitians.

Disgruntlement with the policy has been steadily rising. In September, the US special envoy to Haiti resigned, saying he would "not be associated with the United States' inhumane, counterproductive decision to deport thousands of Haitian refugees and illegal immigrants to Haiti," pointing to the "collapsed" Haitian government's inability "to provide security or basic services." He was followed soon after by state department advisor Harold Koh, who called the administration's use of Title 42 "illegal" and "inhumane," charging that "lawful, more humane alternatives plainly exist." Outside of government, more than a hundred organizations who work with migrants and a hundred and fifty Catholic organizations have called on the Catholic president to end the order, among other things.

Remain in Mexico Remains in Place

Another major bone of contention with immigrant advocacy groups has been the aforementioned Remain in Mexico policy, also known by the Orwellian term Migrant Protection Protocols (MPP). Here the administration was hamstrung by legal challenges to its efforts, with the courts ordering it to reinstate the policy in August — though immigration advocates and even Democratic aides have long insisted the administration has work-arounds.

Under MPP, asylum seekers don't wait to be processed from the safety of the United States. Instead, they're sent back to Mexico to wait to hear the outcome of their case, where they're either vulnerable to the country's security forces, cartels, and other criminals, or, in a lot of cases, they're being sent back to the very source of danger they were seeking asylum from in the first place. The human toll of the policy has been similar to Title 42: By August, Human Rights First had documented at least 6,356 cases of kidnappings, sexual assaults, and other violence against those sent to Mexico under the policy.

Frustration finally boiled over last month after a late-night filing from the administration revealed it was getting ready to restore the program in November. It prompted dozens of immigration advocates to organize a virtual walkout on Biden officials in protest, complaining of “having to take out the metaphoric knives from our back” and that they were “bamboozled into thinking that this was going to be the best option,” when “it's actually worse.”

Kids Still in Cages

Biden has disappointed immigrant advocates in other, less noticed ways. A combination of Trump's immigrant visa ban, the pandemic, the United States' archaic processing systems, and the Biden administration's inability to rectify all this means it allowed at least 100,000 employer-based green card slots to go unused, in what the libertarian Cato Institute's David Bier called “one of the largest cuts to legal immigration in US history.”

On the one hand, the administration has started to very slowly review and reverse some very specific deportations ordered under Trump, and has extended Temporary Protected Status to thousands of immigrants fearing danger if they return to their home countries. On the other hand, Biden has sped up deportation of asylum-seeking families, reaching an even faster pace than Trump. And in appointing new immigration judges, he's drawn solely on prosecutors, the military, and immigration officials.

Arrests of undocumented immigrants have fallen to the lowest figure in a decade, and Biden has placed limits on both where agents can make arrests and what kind of immigrants are targeted. Yet he's also defended numerous restrictionist Trump policies in court, which are aimed at cutting the number of *documented* migrants entering via legal routes, and his administration is creating an intelligence-gathering cell to identify and keep tabs on large movements of migrants coming up from south of the border.

Meanwhile, the detention conditions that sparked so much outrage under Trump go on: An Amnesty International USA report released in June determined the administration continues to rely on a blanket policy of mass detention for those turning up at the border, where migrants are kept in squalid, abusive conditions. That includes the “kids in cages” that were once a stand-in for Trump's brutal policies. Immigrant advocacy group RAICES (the Refugee and Immigrant

Center for Education and Legal Services) found “children being kept in cage-like rooms” by one contractor at a Pecos, Texas, facility, just one of many forms of mistreatment that prompted the group’s president to call it “among the harshest and most restrictive of any ORR [Office of Refugee Resettlement] or ICE [Immigration and Customs Enforcement] facility that I have visited in my career.”

Sometimes, Biden seems to have been unaware of his own administration’s policies. When asked about news that the government was looking to pay \$450,000 to migrant families whose kids had been stolen by Trump, Biden called the reports “garbage” and insisted, “That’s not going to happen.” The American Civil Liberties Union’s executive editor speculated Biden hadn’t been briefed, and a day later the White House reversed itself.

Copying Trump hasn’t yielded many political benefits yet. Biden’s approach is regularly assailed by the nativist right as an “open-borders” policy. Even Henry Cuellar, a Texas Democrat, charged mid-year that “the more ‘open borders’ vision is winning out at the White House.”

A Border Mirage

Biden’s immigration record as president has been a familiar story of liberal backsliding advancing far-right goals. While reversing a few of Trump’s most outrage-inducing measures and making some small but meaningful tweaks to the country’s deportation machine, the regime Trump reshaped in his own image remains largely in place, with Biden even outdoing his predecessor in some respects.

By far the biggest change is that, while increasingly disillusioned immigration advocates have kept the pressure on the administration, the wall-to-wall, twenty-four-hour-a-day fury from many liberal quarters at what was once the most controversial part of the Trump agenda has largely dissipated. Things have reverted back to the way they were under Barack Obama, with both liberals and conservatives emotionally invested in the same fictitious image of a Democratic president that they jointly helped create: a boldly pro-immigrant, even radical leader who’s throwing open the nation’s doors to all comers.

Short of personally mounting a horse at the border — and even then — it’s doubtful Biden will ever convince the Right he’s anything else. It remains to be seen how long Democratic voters can keep lying to themselves.