



Biden Revokes Trump's Coronavirus Immigration Bans

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This action brings to an end a period when the US was more closed off to legal immigration than at any other time in the nation's history.

Earlier today, President Joe Biden repealed Trump's coronavirus immigration bans, which barred nearly all new immigrants entering for the purpose of seeking permanent residency, and also severely restricted entry based on many types of temporary work visas. In combination with Trump's previous large-scale efforts to cut immigration of virtually all types, the 2020 executive actions had closed the US to immigration to a greater extent than at any previous time in its history, even during crises such as the world wars and the Great Depression.

I criticized the public health and economic rationales for the Trump policy in this June 2020 Atlantic article. Far from improving the economy and public health, these types of policies actually make both worse. The harm would have been much greater had the bans continued indefinitely, as Trump administration officials said they intended to do. In the long run, immigration restrictions stifle economic and scientific innovation of the very type that is essential to boosting economic growth and generating improvements in health care, such as the Covid vaccines that are our best hope for ending the pandemic.

It is possible that Biden's repeal of the Trump policy will be challenged in court by immigration restrictionists. But any such challenge is highly unlikely to succeed. If, as the Trump administration contended, these immigration bans were purely a matter of presidential discretion, then Biden has the power to repeal them as Trump had to institute them in the first place. If, on the other hand, the Trump policy was illegal, as I and other critics contended, then Biden had even more justification for repealing it. Indeed, in that scenario, he had a legal duty to do so.

In October 2020, a federal district court ruled against the Trump ban on work visas on several grounds, including that it violates constitutional nondelegation principles. I outlined the nondelegation case against Trump's Covid immigration restrictions and earlier travel bans here, here, and here.

Biden's repeal of Trump's policy will moot out the litigation against the latter, and probably prevent it from setting any lasting precedent (district court decisions are not binding precedent for future cases). But, hopefully, future court decisions will establish the principle that it is unconstitutional for Congress to give the president virtually unconstrained authority to bar any immigrants he wants, for virtually any reason—as is true under the Trump administration's

interpretation of Section 1182(f) of the Immigration and Naturalization Act. The Trump position was largely endorsed by the Court in *Trump v. Hawaii* (2018). But that ruling did not address the nondelegation issue.

Alternatively, the nondelegation problem can be solved by congressional action. The No Ban Act, introduced by congressional Democrats last year, and incorporated into the Biden administration's new US Citizenship Act, would largely fix the problem by imposing tight constraints on presidential authority in this field.

Biden's willingness to repeal the Covid immigration restrictions is a further sign that the new administration is serious about pursuing a pro-immigration agenda. Some observers doubted whether Biden would be willing to repeal these policies, lest he be accused of exacerbating the risks of the Covid emergency (even though the Trump bans did not actually help curb the spread of the virus); I admit I was among the doubters, myself. But I'm more than happy to be proven wrong on this point. I reviewed the administration's other immigration initiatives—many of which go well beyond simply repealing harsh Trump policies—here.

This is not to say that Biden's approach is ideal. Even if fully realized, it would not come close to eliminating all of the many injustices in our immigration system. I myself have pointed out how the pro-immigration policies are at odds with the the new administration's push for a \$15 minimum wage (which would lock many new immigrants out of the labor market). Fortunately, it looks like the latter idea won't get through Congress, in large part because of opposition by key moderate Democratic senators.

David Bier of the Cato Institute has a more pessimistic appraisal of the new administration's policies(though written before today's action). But, by any reasonable measure, Biden's policies are at least a vast improvement over his predecessor—admittedly a very low standard of comparison.