

February 10, 2020

Ms. Samantha Deshommes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, DC 20529

Re: U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No. USCIS-2019-0010; RIN 1615-AC18

Submitted VIA www.regulations.gov

Dear Chief Deshommes,

I am writing on behalf of Northwest Immigrant Rights Project (NWIRP) to submit this comment regarding the extended comment period announced by U.S. Citizenship and Immigration Services (USCIS) on January 24, 2020.¹ That notice re-opened the comment period for the Notice of Proposed Rule-Making (NPRM) on a proposed USCIS Fee Schedule (the “fee schedule” or “proposed rule”) originally published on November 14, 2019. NWIRP filed written comments during the earlier comment period in which we explained a number of specific concerns with the proposed fee increases and other policy changes. Here, we expand on our concerns about the inadequacy of the proposal and also the reasons that the extended comment period remains inadequate.

Interest in Proposed Rule

Northwest Immigrant Rights Project (NWIRP) is a nationally-recognized legal services organization founded in 1984. Each year, NWIRP provides direct legal assistance in immigration matters to over 15,000 low-income people from over 130 countries, speaking over 60 different languages and dialects. NWIRP also strives to achieve systemic change to policies and practices affecting immigrants through impact litigation, public policy work, and community education. NWIRP serves the community from four offices in Washington State in Seattle, Granger, Tacoma, and Wenatchee.

NWIRP has particular expertise in the topic of the proposed rule. NWIRP has been providing immigration legal services for 35 years and is currently the largest nonprofit organization focused exclusively in providing immigration legal services in the Western United States. As explained below, NWIRP is deeply

¹ 85 Fed. Reg. 4,243 (Jan. 24, 2020).

concerned about the impact the proposed rule will have on the client communities NWIRP serves as well as immigrant communities around the country. NWIRP is particularly concerned about the impact that the proposed rule will have on survivors of human trafficking, domestic violence, sexual assault, and other crimes. NWIRP provides legal assistance to hundreds of survivors of violence each year and, as outlined below, the proposed rule will deprive many of them of the opportunity to secure critically-needed humanitarian protections.

Additional Comments in Light of Extended Comment Period

1. USCIS Failed to Provide an Adequate Opportunity for NWIRP and Other Interested Parties to Comment on the Complex Changes Proposed

As we earlier explained, USCIS has not given interested parties, including NWIRP, adequate time to comment on the proposal. USCIS set a comment period that was far too short, and then exacerbated the problem by repeatedly tinkering with the comment period and the material available for comment. Initially, USCIS allowed only 32 days to comment on the principal aspects of the proposal, while giving 60 days to comment on the proposed form changes. USCIS's December 9, 2019 notice, which extended the 32-day deadline, was too little, too late. It came more than three weeks into the original comment period, after USCIS had already told scores of organizations that it would *not* extend the comment period.² It was accompanied by a *shortening* of the 60-day form-comment deadline. Further, USCIS repeatedly changed the material available for comment. The December 9, 2019 notice introduced new information about USCIS's proposal to fund ICE operations and changed its estimate of what such funding would cost.³ Moreover, across the first nine days of the comment period, USCIS put more than 150 documents in the regulations.gov docket for this proposal, without public notice of the new uploads. Among other things, USCIS took down the original economic analysis posted in the regulations.gov docket and replaced it with a new one.⁴ NWIRP's earlier comment letter is just one example of the confusion that could result. We cited to the economic analysis that USCIS first posted in the regulations.gov docket for this proposal, and only learned later that USCIS had removed that analysis and substituted it with a new one. Now that we know that USCIS changed some of the ways in which it discussed its proposal, the unexplained changes between the two economic analyses raise further questions about USCIS's intent.

USCIS's second 17-day comment period does not remedy these problems because it was not anticipated and is too short. With no advance notice of the new comment period, our ability to change our schedules and make time for a new comment letter was limited. Further, with this stop-and-start approach, we could not simply pick up our pencils where we dropped them last time; we had to spend

² See CLINIC, *USCIS Response to Advocates' Request for 60-day Comment Period to Proposed Fee Schedule* (Dec. 3, 2019), <https://cliniclegal.org/resources/federal-administrative-advocacy/uscis-response-advocates-request-60-day-comment-period>.

³ See *generally* 84 Fed. Reg. 67243 (Dec. 9, 2019).

⁴ See *generally* <https://www.regulations.gov/docket?D=USCIS-2019-0010> (with postings of "Supporting Documents").

time reorienting ourselves to the proposal and the areas we did not earlier address. As a result, once again, we have not been able to devote the time we would have liked to examine the proposal in full, identify issues, consult and engage among ourselves and with others, and draft a more complete response. In this period, as in the last, we were forced to triage among issues and have forgone analyses, including more detailed review of the extensive supplemental documentation that USCIS placed online, and additional outside research that could have shed more light on USCIS's analysis and the authorities it cites.

In other words, the combination of the first 46-day comment period and this second 17-day comment period does *not* equate to a 63-day comment period, especially when USCIS has repeatedly introduced new material, shortened one comment deadline, and given commenters no reason to anticipate or plan for the second comment period.⁵ Notably, even one continuous 60-day period would be a modest period for commenting on this proposal. Under the Paperwork Reduction Act, commenters are generally given 60 days to comment on a single proposal to change a single form.⁶ Here, USCIS's proposal implicates dozens of forms, a number of which are new or involve proposed substantive revisions.⁷ And USCIS has proposed those form changes in combination with complex regulatory changes, accompanied by lengthy supporting analyses that require substantial time to dissect.

2. USCIS Failed to Provide Adequate Notice Regarding the Proposal.

Even with more time to comment, we would not have been able to respond fully to USCIS's proposal. Though lengthy and complex, the proposal fails to explain many key details about what USCIS is proposing and why.

For starters, USCIS rests the proposed new fees on the outcome of a budget model but gives little indication of how it derived the budget in the first place. Without this information, we are unable to understand USCIS's proposal fully or provide a comprehensive assessment. For example:

- USCIS states that the budget is derived from the FY2018 annual operating plan.⁸ But it is not clear from the proposal and supplemental material what estimates, assumptions, or operating practices this plan embodies or why this plan is relevant (instead of a more recent plan or actual operating figures). The supplemental IEFA analysis states only that the plan is the "detailed budget execution plan USCIS establishes at the beginning of the fiscal year."⁹

⁵ Even in this comment period, USCIS has continue to change the scope of material available for comment. On February 4, 2020, it posted a new supporting document on regulations.gov, without notice or explanation.

⁶ See 5 C.F.R § 1320.8(d)(1).

⁷ See generally 84 Fed. Reg. at 62347-49.

⁸ 84 Fed. Reg. at 62286.

⁹ USCIS, *Immigration Examinations Fee Account Fee Review Supporting Documentation 7* (Apr. 2019) ("IEFA Analysis").

- USCIS states that its budget reflects an “adequate level of operations,” plus “funding for [certain] enhancements,” but does not explain either concept.¹⁰
- USCIS indicates that it built a model to predict staffing needs—a key aspect of the budget—based on workload receipts and target processing times.¹¹ But USCIS has not identified target processing times or described, in any detail, its method for calculating workload receipts, other than to explain that a committee looked at trends and models.¹² Further, it is not clear what outputs that model generated.
- USCIS indicates some categories of items included in the budget, such as a transfer to ICE and pay and benefits adjustments.¹³ But these indications do not give us a full understanding of what USCIS is seeking to fund. They are only examples and it is not clear how they are derived. Further, even these examples leave many unanswered questions, such as:
 - USCIS identifies budgeted amounts, such as new staff’s salaries, that reflect increases over the 2018 annual operating plan. What are the comparable figures, *e.g.*, for staff salaries, in that plan? Or in USCIS’s actual expenditures since 2018?
 - What assumptions and facts are driving the estimates of budget growth?¹⁴
 - How much of the estimated growth, over the 2018 plan, has already been realized (between 2018 and now)?
 - Why do the pay and benefits adjustments in FY2019 sum to nearly \$300 million, which appears to be an extraordinarily large figure, especially given the other staffing-cost figures cited in the proposal and the fact that USCIS’s ABC model excludes retirement, health, and life insurance benefits paid by OPM.¹⁵

USCIS’s proposal also fails to explain many aspects of how it used its ABC model and other tools to convert its budget estimate into proposed fees. USCIS states that its workload volume estimates are a key part of this distribution of costs, across benefits requests, but, as stated above, does not explain its derivation of its workload volume estimates.¹⁶ It provides only examples of how it distributes specific

¹⁰ 84 Fed. Reg. at 62286.

¹¹ See 84 Fed. Reg. at 62286 n.30.

¹² See 84 Fed. Reg. at 62289.

¹³ See 84 Fed. Reg. at 62286-87.

¹⁴ For example, how many new positions is USCIS seeking to fund and why? Appendix VII in the IEFA Analysis shows that between USCIS’s 2016/2017 projections and USCIS’s 2019/2020 projections, the greatest increases in staff would be in the Fraud Detection and National Security Directorate and the Service Center Operations Directorate. But USCIS does not compare its 2019/2020 estimates to any actual or current figures, explain which of these positions have yet to be filled, indicate why any new positions are necessary, or show how it calculated the number of new positions needed.

¹⁵ See 84 Fed. Reg. at 62286; IEFA Analysis at 15. The proposal suggests that the “adjustments” figure counts annualized salaries for part-year vacancies in 2018. We are not clear why any 2018 figures should be included—or why hiring for past vacancies should be counted as “new budget” or “adjustments.”

¹⁶ See 84 Fed. Reg. at 62289 (stating that workload volume is “the primary cost driver for assigning activity costs to immigration benefits and biometric services”).

buckets of costs to specific benefits forms.¹⁷ Other examples of USCIS's failure to explain its modeling include:

- USCIS not only fails to explain the details of how it generated its workload volume, fee-paying volume, and completion rate projections, but also fails to put the figures in relevant context. For example, it compares projected 2019/2020 figures to 2016/2017 *projections*, rather than more current estimates or actual figures, either of which would put the new projections in clearer context.¹⁸ It states that its fee-paying volume assumptions reflect “filing trends and anticipated policy changes” but it is not clear *how* USCIS took into account these factors.¹⁹ The proposal states that USCIS examined only one year of actual fee-paying receipts.²⁰ Further, the proposal raises questions about whether USCIS actually reflected the impact of all of the proposed policy changes. Though the proposal generally eliminates fee waivers for N-400s, the proposal still estimates that about 100,000 N-400s will not be fee-paying.²¹
- USCIS states that it recognizes revenue, for accounting purposes, when work is completed.²² The implications of this accounting principle on USCIS's budget and fee modeling is not clear, but could be quite significant. We cannot tell, for example, whether revenue estimates are based on actual cash flow (*e.g.*, money received in a year) or the amount of revenue that is recognized in a current year, and how the choice between either of those options would affect USCIS's calculations. Similarly, we cannot tell if USCIS's budget is inflated with the costs of processing applications for which USCIS received a fee in a prior year.
- It is not clear how much carryover USCIS is budgeting for, how that carryover affects proposed fees, whether or not USCIS has planned to spend or save any existing carryovers, or how USCIS has calculated the scenarios in which it suggests 2019 and 2020 had or would have negative carryovers.²³
- The proposal focuses on USCIS's non-premium budget. It is not clear how USCIS plans to use premium processing revenue or whether or why such revenue does not offset any of the fees that USCIS proposes based on its *non-premium* budget.

¹⁷ See generally IEFA Analysis at 15-17.

¹⁸ See 84 Fed. Reg. at 62289-91.

¹⁹ See 84 Fed. Reg. at 62289, 622891.

²⁰ 84 Fed. Reg. at 62289.

²¹ See 84 Fed. Reg. at 62289-91. The estimate of 100,000 N-400s that are not fee-paying is far larger than USCIS's estimate of 9,300 fee-exempt military naturalizations per year. Further, USCIS states that the fees for those military naturalizations are paid by DoD; in other words, while they are free to the applicants, they bring in the same amount of revenue to USCIS as any other N-400, under the proposed schedule. See *id.* at 62317 n.151.

²² See IEFA Analysis at 13.

²³ The proposal, at 62888, and the IEFA Analysis give two different sets of estimates of revenue exceeding budget for 2019 and 2020, without a change in fees. It is not clear to us why the figures are different. Further, USCIS's notice does not provide actual figures for FY 2019 or any portion of FY 2020, including any explanation of how earlier carryover funds were used or planned to be used.

Equally concerning is USCIS's failure to explain a core premise of its proposal: that without the proposed increases, USCIS would experience a shortfall that could "degrade" operations.²⁴ USCIS does not explain what "degrading" is at risk, how likely such "degrading is," and why it cannot reduce costs without risking degrading. Given that USCIS's predictions covered a period that already passed—2019—USCIS should have *actual* data about the effect of maintaining the existing fee schedule during that period, but it provides none. USCIS also does not explain what portion of the proposed new fee revenue is necessary to avoid any risk of degrading. Could USCIS, for example, continue offering fee waivers or free asylum applications, without risking degrading? Could USCIS leave ICE to rely on appropriations, rather than IEFA funds, without degrading operations? Any of this information would have enabled us to provide a more complete assessment of and response to USCIS's proposal. And absent such information in the proposal, it appears that USCIS has not meaningfully considered the alternative of operating with a smaller budget than it proposes.

Because of these and other gaps in USCIS's explanation of its proposal, we cannot fully assess the reasonability and results of USCIS's modeling.

3. USCIS's Fee Model Is Based on Unreasonable Assumptions and Inputs.

Even with further explanation, USCIS's fee model would be insufficient to support the proposed fee increases because it is based on unreasonable assumptions and inputs. Perhaps most troublingly, USCIS ignores "recent cost-saving initiatives" because data was not available "at the time it conducted this fee review."²⁵ In other words, USCIS's proposal uses a budget that USCIS *already* believes is inflated in order to calculate proposed fees that themselves would therefore be inflated. This approach is highly irresponsible, unreasonable, and harmful. It injures countless immigrants, for whom this proposal would raise fees more than necessary—even under USCIS's view about the operations it needs to fund. And it raises serious questions about whether the fee review even complies with the statutory requirement for USCIS to conduct such a review and make recommendations based on the relevant "costs incurred."²⁶ For this reason alone, USCIS should withdraw the proposal and, at minimum, wait to propose regulatory changes until it has the data necessary to assess recent cost-saving initiatives. This obvious alternative is one that USCIS does not even appear to have considered.

Relatedly, USCIS does not appear to have accounted for many recent policy changes that could change the number of people applying for immigration benefits, and thus USCIS's budget estimates and fee calculations. The baseline model, the 2018 operating plan, is one that, according to USCIS, would have been developed at the start of fiscal year 2018.²⁷ USCIS drew its fee-paying projections from even older data, from June 2016-May 2017.²⁸ These data sources preceded any number of Trump Administration

²⁴ See, e.g., 84 Fed. Reg. at 62282, 62288.

²⁵ 84 Fed. Reg. at 62286.

²⁶ 31 U.S.C. § 902(a)(8).

²⁷ See IEFA Analysis at 7.

²⁸ See 84 Fed. Reg. at 62288.

initiatives that could affect the number of people seeking benefits. Though the proposal makes vague references to trends and policy changes, it does not suggest that USCIS has estimated and taken into account the combined effect of these multiple initiatives. Nor could it have done so comprehensively; the Administration's adoption of new initiatives that could affect the number of people seeking immigration benefits has continued even since April 2019, when USCIS completed its IEFA Analysis document, and November 2019, when this proposal was released.²⁹

Importantly, we recognize that USCIS must choose some point at which to end its data collection and analysis, but we do not believe this is any excuse for USCIS ignoring recent policy changes in this context. USCIS's proposal could have lasting effects on millions of immigrants, for years to come. If USCIS cannot reasonably estimate a variable that is essential to a responsible fee calculation—the volume of immigration benefits that will be requested—because the Administration also seeks to change immigration policy in so many other ways at once, then USCIS should withdraw this proposal and wait until the relevant factors become more stable. In other words, the Administration should not attempt to pull every lever all at once.

USCIS's proposal is additionally unreasonable because it is based on projections for fiscal years 2019 and 2020, a period that has nearly passed. Fiscal year 2019 is over; USCIS *projections* for that year are irrelevant. Soon, the same will be true of fiscal year 2020 projections. That year is already nearly half through and may end before any final rule is complete or takes effect, though we cannot know for certain because USCIS's proposal did not indicate a potential effective date or implementation period, stating only vaguely that it “may affect” fiscal year 2020.³⁰ USCIS should have based its modeling on more recent data and projected results for the time period when any new fee rule would be in effect. Again, even if it decided to complete its statutorily-required a fee review on older data, it should have awaited more complete and relevant data to develop a regulatory proposal.

Also troubling is USCIS's reliance on figures that are subject to outside approval: proposed DACA fees and a proposed transfer of funds to ICE.³¹ (Earlier comment letters from NWIRP and others raised additional concerns about these aspects of USCIS's proposal.) Again, USCIS fails to explain why it could not wait for more information before rushing into a proposal. If USCIS had waited for court rulings or the outcome of Congress's deliberations, it could have reduced the uncertainty about what USCIS is actually

²⁹ See generally Sarah Pierce, *Immigration-Related Policy Changes in the First Two Years of the Trump Administration* (May 2019), <https://www.migrationpolicy.org/research/immigration-policy-changes-two-years-trump-administration> (report attached to this comment). More recent initiatives include DHS's August 2019 public charge rule and its January 2020 expansion of the travel ban to new countries. See 84 Fed. Reg. 41292 (Aug. 14, 2019); DHS, Press Release, *Raising the Global Travel Security Bar: DHS Announces New Travel Restrictions on Six Countries and Updated Process for Evaluating Foreign Country Compliance* (Jan. 31, 2020), <https://www.dhs.gov/news/2020/01/31/raising-global-travel-security-bar-dhs-announces-new-travel-restrictions-six>.

³⁰ 84 Fed. Reg. at 62282.

³¹ The proposal states that to make the proposed DACA changes, USCIS will first need to seek and receive court approval and recognizes that Congress can reject the proposed transfer of funds to ICE. See 84 Fed. Reg. at 62287 n.32, 62321, 62327..

proposing and why. Notably, the proposal cites cases regarding DACA that are already pending in the Supreme Court. And, while the proposal references the Administration's 2020 budget request, the Consolidated Appropriations Act of 2020 (H.R. 1158), became law on December 20, 2019, just shortly after USCIS published this proposal.³²

In multiple other respects, USCIS's analysis relies on assumptions and inputs that are unreasonable.

- As noted above, the proposal relies on 2018 cost projections. Because we understand more recent data and/or projections were available—or could have been if USCIS had waited just a bit longer—and USCIS provides no reason that 2018 figures are more relevant, the use of 2018 data is unreasonable.³³ As just one example: USCIS notes that one cost—related to an interagency agreement—went down between 2018 and 2019, but still it used the higher 2018 figure in its model.³⁴
- USCIS inexplicably relies on inconsistent choices about which data to use. For example: USCIS bases its workload volume estimates on statistical modeling using 15 years' worth of data, but inexplicably draws projections about fee-paying volume from June 2016-May 2017 collections. USCIS does not explain why it uses such a small sample for one set of estimates, and we can hypothesize many reasons why the 2016-2017 time period may not be representative of more recent or future operations. As noted above, that period preceeded many recent policy changes. That period also included the time immediately before and after the December 2016 USCIS fee increases and the November 2016 presidential election, either of which could have affected individuals' behavior.³⁵
- The proposal combined CBP and USCIS data to generate proposed, increased fees for four forms. But, USCIS provides no reason that this change in approach was necessary or appropriate. First, USCIS provides no assessment of whether CBP *needs* increased IEFA fees to cover its costs.

³² See <https://www.congress.gov/bill/116th-congress/house-bill/1158/actions>. Other commenters have addressed the implications of this bill for USCIS's proposal to transfer funds to ICE.

³³ The IEFA Analysis states that annual operating plans are completed at the beginning of each fiscal year. By the time this proposal was released, in November 2019, FY2020 was already underway. See IEFA Analysis at 7. USCIS's 2019 and 2020 budgets, posted online, include actual financial figures for 2018 and 2019, and DHS should have access to other, more recent operating data. See generally DHS, *DHS Budget*, <https://www.dhs.gov/dhs-budget> (last updated Nov. 5, 2019). The President plans to submit his 2021 budget request to Congress on February 10, the day this comment period closes. See David Jackson, *Trump Budget Proposal Pitches Billions for Rural America, a Key Constituency in 2020*, USA Today (Feb. 6, 2020), <https://www.usatoday.com/story/news/politics/2020/02/06/trump-budget-proposal-2021-pitches-billions-rural-america/4658740002/>.

³⁴ See 84 Fed. Reg. at 62307 n.116.

³⁵ See Gustavo Solis, *Immigration Fees to Increase*, The Desert Sun (Dec. 14, 2016), <https://www.desertsun.com/story/news/2016/12/14/immigrants-rush-apply-citizenship-before-feds-raise-application-fees/95442020/>; David K. Li, *Immigrants Rush to Become U.S. Citizens Just in Case Trump Wins* (May 2, 2016), <https://nypost.com/2016/05/02/immigrants-rush-to-become-us-citizens-just-in-case-trump-wins/>.

Second, USCIS proposes increasing fees despite lacking relevant cost data from CBP.³⁶ Third, USCIS identifies a reason for the change that makes no sense. The agency suggests that this change is necessary to reduce confusion in instances when USCIS and CBP fees are different for the same form. USCIS does not cite any data supporting this assertion, and under the current schedule, we understand that only one of the forms at issue –the I-192 fee–carries different USCIS and CBP fees. Moreover, if individuals are confused about what amount to pay, the logical solution is to clarify form instructions—not to change the way that fees are calculated.³⁷

For all of the reasons articulated above and those in our original comment, NWIRP strongly objects to the proposed rule and urges USCIS to reject the proposed revisions to the fee schedule in full.

Please do not hesitate to contact me if you have any questions. You may reach me at (206) 957-8609 or via email at jorge@nwirp.org.

Sincerely,

A handwritten signature in black ink, appearing to read "J. L. Barón". The signature is fluid and cursive, with a long horizontal stroke extending from the left.

Jorge L. Barón
Executive Director

³⁶ See 84 Fed. Reg. at 62321-22.

³⁷ See 84 Fed. Reg. at 62322; see also *id.* at 62326-27 & n.183 (listing current fees).

IMMIGRATION-RELATED POLICY CHANGES IN THE FIRST TWO YEARS OF THE TRUMP ADMINISTRATION



By Sarah Pierce

IMMIGRATION-RELATED POLICY CHANGES IN THE FIRST TWO YEARS OF THE TRUMP ADMINISTRATION

By Sarah Pierce

May 2019

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I. Introduction

The momentum built around immigration during his presidential campaign has propelled President Donald Trump to press one of the most assertive agendas on immigration of any chief executive in modern times. The administration's efforts on the southern border and in enforcing immigration laws in the U.S. interior have received the most attention, even as they have been frequently stymied by court injunctions, resource constraints, congressional inaction, and state and local government resistance.¹ Despite these highly publicized setbacks, the Trump White House has continued to push forward its enforcement agenda by a variety of means. For example, through unprecedented use of visa sanctions, the administration has pressured a record number of countries to agree to accept their nationals if they are ordered removed from the United States, allowing the administration to decrease the number of foreign nationals living in the country with unexecutable deportation orders.

Yet from the start, the administration's focus has stretched far beyond immigration enforcement. Administration officials have tapped U.S. Citizenship and Immigration Services and the State Department to increase vetting of prospective immigrants and to slow their admission to the United States. Under Trump, U.S. attorneys general have used their power as the final arbiter of the immigration court system to make historic changes to how applications for asylum are processed and to considerably limit the ability of immigration judges to exercise discretion. The administration has also been active in areas related, but less central, to immigration policy, including: attempting to add a citizenship question to the 2020 decennial census, making it more difficult for foreign nationals to serve in the U.S. military, and cracking down on unauthorized immigrants using housing assistance.

All of this has been accomplished unilaterally. Even as Congress has largely avoided taking on immigration-related legislation, the White House has advanced its agenda through hundreds of policy memos, regulatory changes, and more. While courts have limited or reversed some of the administration's actions, such as its attempt to disqualify foreign nationals who cross the border illegally from receiving asylum, most have moved forward untouched.

This report lists the major immigration actions in just over two years since the president took office, categorized by major issue area. It covers, among other things, immigration enforcement at the U.S. border and in the interior; Justice Department changes that affect the immigration courts; humanitarian programs and statuses; shifts in how the State Department adjudicates visa applications and admits foreign nationals to the country; and adjustments to a variety of immigrant and nonimmigrant visa categories.

II. Immigration Enforcement

After framing immigration as a threat to U.S. economic security and public safety during his campaign, upon taking office Trump immediately turned his administration's focus to immigration enforcement by signing two executive orders: one on border security and the other on immigration enforcement in the U.S. interior. This section will focus on the actions the administration has taken thus far in these two areas.

¹ Sarah Pierce, Jessica Bolter, and Andrew Selee, *U.S. Immigration Policy under Trump: Deep Changes and Lasting Impacts* (Washington, DC: Migration Policy Institute, 2018), www.migrationpolicy.org/research/us-immigration-policy-trump-deep-changes-impacts.



A. Border Security

While border security encompasses a broad scope of responsibilities and activities involving entry to the United States by air, land, and sea, this section will primarily focus on immigration enforcement at U.S. territorial borders—especially the southwest land border with Mexico. This has been the aspect of border security on which the administration and the public have placed the most focus. Much of the attention is due to the president’s central campaign promise to build a wall along the entirety of the southern border and to the unprecedented number of asylum seekers who have arrived along the border, with numbers especially rising towards the end of FY 2018.

Customs and Border Protection (CBP) is the agency within the Department of Homeland Security (DHS) tasked with regulating immigration at the nation’s borders, both at and in between ports of entry.

- **National Guard Deployment to Border**—April 4, 2018—Trump ordered the Department of Defense to deploy members of the National Guard to the southern border.² The original order to deploy up to 4,000 troops went through September 30, 2018; in November, DHS asked the Pentagon for an extension, at least through January 2019. According to reports, as of March 21, 2019, about 2,100 National Guard members remained stationed at the border.³ Some governors ordered their Guard troops to withdraw.⁴
- **Zero-Tolerance Policy**—April 6, 2018—The Justice Department instructed federal prosecutors to prioritize the prosecution of immigration crimes, and a month later announced that DHS would refer all individuals apprehended while illegally crossing the Southwest border to the Justice Department for prosecution.⁵ After the president’s June 20 executive order ending family separations, this policy was no longer applied to parents traveling with children.⁶
- **Family Separations**—May 7–June 20, 2018—After the attorney general’s May 7 announcement that DHS would refer all illegal border crossers for prosecution, DHS began separating thousands of families, as the parents were referred for prosecution. The practice ended when the president issued an executive order on June 20, amid a huge public outcry over the separation of more than 2,700 children from their parents and placement in government custody. Previously, family separations occurred in late 2017 as part of a pilot project in El Paso. It is unclear how many children in total were forcibly separated from their parents. The Department of Health and Human Services (HHS), which ultimately cared for the majority of the children, identified 2,737 children in its care in June 2018 who had been separated from their parents.⁷ But the HHS Office

2 Memorandum from the President to the Secretary of Defense, Attorney General, and Secretary of Homeland Security, *Securing the Southern Border of the United States*, April 4, 2018, www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-defense-attorney-general-secretary-homeland-security.

3 Ellen Mitchell, “Marine Corps Commander: Using Troops at Southern Border an ‘Unacceptable Risk’ to Readiness,” *The Hill*, March 21, 2019, <https://thehill.com/policy/defense/435203-marine-corps-commander-troops-at-southern-border-an-unacceptable-risk-to>.

4 Robert Moore, “New Mexico Governor Withdraws Most National Guard Troops from Southern Border,” *Washington Post*, February 5, 2019, www.washingtonpost.com/world/national-security/new-mexico-governor-withdraws-most-national-guard-from-states-southern-border/2019/02/05/8aec65ee-29ac-11e9-984d-9b8fba003e81_story.html; Jazmine Ullao and Taryn Luna, “Slamming Trump’s ‘Political Theater,’ California Gov. Gavin Newsom Pulls National Guard from Border,” *Los Angeles Times*, February 11, 2019, www.latimes.com/politics/la-pol-ca-gavin-newsom-california-national-guard-withdraw-immigration-20190211-story.html.

5 Justice Department, “Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry” (news release, April 6, 2018), www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry; Justice Department, “Attorney General Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration” (speech, San Diego, CA, May 7, 2018), www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions.

6 White House, “Executive Order 13841 of June 20, 2018: Affording Congress an Opportunity to Address Family Separation,” *Federal Register* 83, no. 122 (June 25, 2018): 29435–36, www.govinfo.gov/content/pkg/FR-2018-06-25/pdf/2018-13696.pdf.

7 U.S. Department of Health and Human Services (HHS) Office of Inspector General, “Separated Children Placed in Office of Refugee Resettlement Care” (issue brief, HHS, Washington, DC, January 2019), <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>. Note, unaccompanied children are cared for by the Office of Refugee Resettlement, an office within HHS.



of Inspector General in January 2019 reported that “thousands” more children may have been separated.⁸

- **“For-Cause” Separations—ongoing**—The administration can still separate families for a number of reasons: if the adult relative accompanying the child is not a parent or legal guardian, if the parent has a criminal history or for another “law enforcement purpose,” if the separation is medically necessary, or if Border Patrol determine the separation is necessary for the “welfare of the child.”⁹ According to testimony from the Government Accountability Office (GAO), such “for-cause” separations are happening at twice the rate they occurred in late 2016.¹⁰
- **Active-Duty Military Deployment to Border—October 2018**—At the president’s request, the Defense Department deployed 5,200 active-duty personnel to the U.S.-Mexico border.¹¹ The deployment was scheduled to end December 15, 2018, but some orders were extended into January. On February 3, 2019, the Defense Department announced another 3,750 troops would be deployed, bringing the total number of active-duty troops at the border to about 4,350.¹² On April 29, 2019, the Defense Department announced an approved plan to send 320 additional troops to the border.¹³
- **Increased Investigations into Family Units—April 29, 2019**—Amid unprecedented numbers of family units arriving at the southern border, Immigration and Customs Enforcement announced that it is reallocating resources to the U.S.-Mexico border to investigate human smuggling operations and the use of fraudulent documents to create fake families.¹⁴ According to reports, these investigations will include a DNA testing pilot to help identify individuals posing as families.¹⁵
- **Border Patrol Staffing Increases—ongoing**—In his January 2017 executive order on border security, Trump directed the hiring of 5,000 additional Border Patrol officers. By the end of 2018, there were 21,370 Border Patrol agents authorized by Congress (the same number as authorized since fiscal year [FY] 2011) but only about 19,500 agents were employed.¹⁶ Despite plans to add 2,700 agents annually, CBP gained just 120 agents in 2018.¹⁷
 - In its FY 2019 appropriations, Congress authorized an increase of up to 1,200 new Border Patrol officers.¹⁸

8 Ibid.

9 Testimony of Carla Provost, Border Patrol Chief, Customs and Border Protection (CBP), before the House Judiciary Committee, *Oversight of the Trump Administration’s Family Separation Policy*, 116th Cong., 1st sess., February 26, 2019, <https://judiciary.house.gov/legislation/hearings/oversight-trump-administration-s-family-separation-policy>.

10 Testimony of Kathryn A. Larin, Director of Education, Workforce, and Income Security, U.S. Government Accountability Office (GAO), before the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Examining the Failures of the Trump Administration’s Inhumane Family Separation Policy*, 116th Cong., 1st sess., February 7, 2019, <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-examining-the-failures-of-the-trump-administration-s-inhumane>.

11 U.S. Department of Defense, “More Troops Deploy to Support DHS/CBP Southwest Border Mission” (news release, October 29, 2018), www.defense.gov/explore/story/Article/1675862/more-troops-deploy-to-support-dhscbp-southwest-border-mission.

12 Daniella Silva, “Pentagon to Deploy Additional 3,750 U.S. Forces to U.S.-Mexico Border,” NBC News, February 3, 2019, www.nbcnews.com/news/us-news/pentagon-deploy-additional-3-750-u-s-forces-u-s-n966396.

13 Associated Press, “Pentagon Sending More Troops to the Southwest Border,” Associated Press, April 29, 2019, <https://apnews.com/27e34a4200a844f7b282ee7e9b7f97c6>.

14 ICE, “ICE Shifts Resources to Address Crisis at Southwest Border” (news release, April 29, 2019), www.ice.gov/news/releases/ice-shifts-resources-address-crisis-southwest-border.

15 Priscilla Alvarez and Geneva Sands, “Exclusive: DHS to Start DNA Testing to Establish Family Relationships on the Border,” CNN, May 1, 2019, www.cnn.com/2019/04/30/politics/homeland-security-dna-testing-immigration/index.html.

16 U.S. Border Patrol, “Border Patrol Agent Nationwide Staffing by Fiscal Year,” accessed February 6, 2019, www.cbp.gov/sites/default/files/assets/documents/2019-Mar/Staffing%20FY1992-FY2018.pdf; Molly O’Toole, “Trump Ordered 15,000 New Border and Immigration Officers—But Got Thousands of Vacancies Instead,” *Los Angeles Times*, January 27, 2019, www.latimes.com/politics/la-na-pol-border-patrol-hiring-20190126-story.html.

17 O’Toole, “Trump Ordered 15,000 New Border and Immigration Officers.”

18 *Consolidated Appropriations Act, 2019*, Public Law 116–6 (2019): www.congress.gov/116/bills/hjres31/BILLS-116hjres31enr.pdf.



- **Construction of Barriers along the Southern Border**—*ongoing*—Between FY 2017 and 2018, Congress appropriated \$1.68 billion for repair or new construction of physical barriers along the Southwest border.¹⁹ With these funds, DHS had built 34 miles of replacement walls and fences as of January 2019.²⁰
 - **Emergency Declaration**—*February 15, 2019*—After Congress appropriated \$1.375 billion for border barriers in FY 2019, well short of the president’s request for \$5.7 billion, Trump ordered \$3.1 billion in additional funds to build the wall be transferred from counterdrug activities and a Treasury Department fund for forfeitures, and he declared a national emergency to access \$3.6 billion from military construction projects.²¹ Since then, the Pentagon has transferred \$1 billion for wall funding from a military personnel account.²²

B. Interior Enforcement

Interior enforcement entails the investigation, arrest, detention, and removal of immigrants in the interior of the United States who are unauthorized or otherwise deportable. Promising to vigorously enforce U.S. immigration laws, upon taking office, the president began reshaping the system; this included broadening enforcement priorities to include all unauthorized or otherwise deportable noncitizens, a dramatic departure from the approach in the final years of the Obama administration, when interior enforcement was tightly focused on criminals, recent border crossers, and immigrants with recent removal orders. However, the president’s efforts to significantly increase removals have been stymied by resource constraints, court orders, and, especially, the refusal by some local jurisdictions to cooperate with federal immigration enforcement.²³

Immigration and Customs Enforcement (ICE) is the agency within DHS responsible for interior enforcement functions, including investigations and the detention and removal of unauthorized immigrants.

- **New Interior Enforcement Regime**—*January 25, 2017*—In a January 25 executive order on interior enforcement, the president initiated sweeping changes in immigration enforcement in the U.S. interior, including greatly expanding the classes of noncitizens who are priorities for removal and directing agencies to execute U.S. immigration laws against “all removable aliens.”²⁴ The order in essence abolished the prosecutorial discretion guidelines used by ICE under the Obama administration, which prioritized for removal only those noncitizens who had criminal convictions, were recent illegal border crossers, or had recently been ordered removed.

19 *Consolidated Appropriations Act, 2017*, Public Law 115–31, *U.S. Statutes* 131 (2017): 135–842, www.congress.gov/115/plaws/publ31/PLAW-115publ31.pdf; *Consolidated Appropriations Act, 2018*, Public Law 115–141 (2018), www.congress.gov/115/bills/hr1625/BILLS-115hr1625enr.pdf.

20 Dara Lind, “The Border Wall Fight at the Center of the Government Shutdown, Explained,” *Vox*, January 2, 2019, www.vox.com/policy-and-politics/2018/12/21/18151974/trump-border-wall-steel-slats-shutdown.

21 *Consolidated Appropriations Act, 2019*; White House, “Presidential Proclamation 9844 of February 15, 2019: Declaring a National Emergency Concerning the Southern Border of the United States,” *Federal Register* 84, no. 34 (February 20, 2019): 4949–50, www.govinfo.gov/content/pkg/FR-2019-02-20/pdf/2019-03011.pdf.

22 U.S. Department of Defense, “DOD Authorizes Support to Counter Drug Border Security” (press release, March 25, 2019), <https://dod.defense.gov/News/News-Releases/News-Release-View/Article/1795239/dod-authorizes-support-to-counter-drug-border-security>.

23 Randy Capps, Muzaffar Chishti, Julia Gelatt, Jessica Bolter, and Ariel G. Ruiz Soto, *Revving Up the Deportation Machinery: Enforcement and Pushback under Trump* (Washington, DC: Migration Policy Institute, 2018), www.migrationpolicy.org/research/revving-deportation-machinery-under-trump-and-pushback.

24 White House, “Executive Order 13768 of January 25, 2017: Enhancing Public Safety in the Interior of the United States,” *Federal Register* 82, no. 18 (January 25, 2017): 8799–8803, www.govinfo.gov/content/pkg/FR-2017-01-30/pdf/2017-02102.pdf.



- ***Victims of Immigration Crime Engagement (VOICE) Office***—April 26, 2017—DHS created ICE’s VOICE office to assist victims of crimes committed by removable immigrants.²⁵ Among the services offered: A new DHS-Victim Information and Notification Exchange (DHS-VINE) automated service that helps victims track the immigration custody status of foreign nationals charged or convicted of certain crimes.
- ***Limits on Privacy Rights for Nonimmigrants and Unauthorized Immigrants***—April 27, 2017—In line with the January 25 executive order on interior enforcement, which stated that agencies may no longer extend the protections of the *Privacy Act* to individuals other than U.S. citizens and lawful permanent residents (i.e., green-card holders), DHS issued a new policy on the collection, use, and dissemination of personally identifiable information.²⁶ The policy gives DHS more discretion to share the information of nonimmigrants (those on temporary visas) and unauthorized immigrants. And it permits nonimmigrants and unauthorized immigrants to access their records only through *Freedom of Information Act* (FOIA) requests and makes them ineligible to correct their personal information.
- ***Limits on Stays of Removal Related to Private Immigration Bills***—May 5, 2017—ICE limits when and for how long it will issue stays of removal in connection with private immigration bills sponsored for individuals by members of Congress and allows the agency to limit congressional requests for investigative reports.²⁷
- ***End of the Family Case Management Program***—June 20, 2017—The administration ended this alternative to detention (ATD) program for arriving families, which provided participants with case management, access to support services, and reintegration planning for those ordered removed. The Obama administration started the program in January 2016, and by its end, it had served 954 families who were approved for release from family detention.²⁸ Of the total participants, 99 percent attended their court appearances and ICE check-ins. In a reversal, the FY 2019 appropriations package approved by Congress and signed into law on February 15, 2019, provided \$30.5 million to restart the program.²⁹
- ***Narrowing of Prosecutorial Discretion***—August 15, 2017—In a memo to ICE attorneys, DHS greatly narrowed the instances in which the government should grant prosecutorial discretion to noncitizens identified for removal.³⁰ The memo also instructed ICE attorneys to review cases that the agency had administratively closed for prosecutorial discretion to determine whether the basis for closure is still appropriate under the administration’s new enforcement priorities.
- ***Enforcement Actions against U Visa Applicants***—October 26, 2017—ICE informed the American Immigration Lawyers Association (AILA) that it will take enforcement action against noncitizens with final orders of removal, even if they have pending U visa applications.³¹ U visas are reserved for victims of certain crimes who are helpful to law enforcement or government officials in the investigation or prosecution of the crime. After encountering such an immigrant,

25 DHS, “DHS Announces Launch of New Office for Victims of Illegal Immigrant Crime” (news release, April 26, 2017), www.dhs.gov/news/2017/04/26/dhs-announces-launch-new-office-victims-illegal-immigrant-crime.

26 Memorandum from Jonathan R. Cantor, Acting Chief Privacy Officer, DHS, *DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information*, April 27, 2017, www.dhs.gov/sites/default/files/publications/Privacy%20Policy%20Guidance%20Memo%202017-01%20-%20FINAL.pdf.

27 Letter from Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement (ICE), to Senator Charles E. Grassley, May 5, 2017, www.durbin.senate.gov/imo/media/doc/ICE%20Response%20to%20Letter%20on%20Private%20Immigration%20Relief%20Bills.pdf.

28 DHS Office of the Inspector General, *U.S. Immigration and Customs Enforcement’s Award of the Family Case Management Program Contract* (Washington, DC: DHS Office of the Inspector General, 2017), www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-22-Nov17.pdf.

29 Nita Lowey, “Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations Regarding H.J. Res. 31, Consolidated Appropriations Act, 2019,” accessed March 28, 2019, <https://docs.house.gov/billsthisweek/20190211/116hrpt9-JointExplanatoryStatement.pdf>.

30 Hamed Aleaziz, “An ICE Memo Lays Out the Differences between Trump and Obama on Immigration Enforcement,” BuzzFeed News, October 8, 2018, www.buzzfeednews.com/article/hamedaleaziz/trump-ice-attorneys-foia-memo-discretion.

31 American Immigration Lawyers Association (AILA), “AILA/ICE Liaison Meeting Minutes” (unpublished meeting notes, October 26, 2017).



ICE will contact U.S. Citizenship and Immigration Services (USCIS) to get a recommendation on whether the U visa application will likely be approved. If USCIS does not respond within five days, ICE will initiate removal proceedings.

- **Detention of Pregnant Women**—December 2017—ICE ended an Obama-era policy that ordered the agency to generally release pregnant women from federal custody.³²
- **E-Verify Upgrade**—2017—USCIS upgraded the E-Verify system so it can handle an increase in concurrent users.³³ E-Verify allows employers to check whether new hires are authorized to work by entering their names and other biographic information into an online system. E-Verify is a voluntary program, but some states have implemented some type of E-Verify mandate and all federal contractors and subcontractors are required to participate.
- **287(g) Expansion**—ongoing—The Trump administration has placed a high priority on expanding the 287(g) program, under which certain state or local law enforcement officers are authorized to assist with the investigation, apprehension, or detention of unauthorized immigrants. As of August 2018, ICE had 287(g) agreements with 78 law enforcement agencies in 20 states, a 160 percent increase from the 30 agreements in effect in January 2017.³⁴
- **Reinstatement of Secure Communities**—ongoing—The president's January 25, 2017 executive order on interior enforcement mandated the termination of the Priority Enforcement Program, which was a more tailored version of the Secure Communities program ended by President Obama. Secure Communities is a federal-state information-sharing program that examines the fingerprints of individuals booked into state or local custody and flags them for enforcement if they are identified as removable. From the reactivation of Secure Communities on January 25, 2017 through the end of FY17, more than 43,300 noncitizens with criminal convictions had been removed as a result of Secure Communities.³⁵
- **Funding Restrictions for "Sanctuary" Cities**—ongoing—The president's January 25, 2017 executive order on interior enforcement directed that "sanctuary" jurisdictions (those limiting their cooperation with ICE) not receive federal grants.³⁶ A district court injunction on April 25, 2017, prevented the government from carrying out this directive by making additional federal grants conditional on a jurisdiction's compliance with 8 U.S.C. 1373, a federal statute that prohibits localities from placing restrictions on sharing citizenship and immigration status information with federal authorities.³⁷ The court did, however, allow these conditions to remain in place for the two Justice Department grants to which they had been applied before the Trump administration: the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, which funds a variety of local law enforcement programs, and grants from the Office of Community Oriented Policing Services (COPS), which funds community policing officers, equipment, and training. The court made the injunction permanent on November 20, 2017, and the Ninth U.S. Circuit Court of

32 ICE, "Identification and Monitoring of Pregnant Detainees" (ICE Directive 11032.3, December 14, 2017), www.ice.gov/sites/default/files/documents/Document/2018/11032_3_PregnantDetainees.pdf.

33 Statements by Tammy M. Meckley, Associate Director of the Immigration Records and Identity Services Directorate, U.S. Citizenship and Immigration Services (USCIS), at the Citizenship and Immigration Services Ombudsman Seventh Annual Conference, Washington, DC, December 7, 2017.

34 ICE, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," updated August 10, 2018, www.ice.gov/287g.

35 ICE, "Secure Communities," updated March 20, 2018, www.ice.gov/secure-communities.

36 There is no legal definition of "sanctuary" cities or jurisdictions, but they are generally understood as jurisdictions that restrict cooperation with federal immigration authorities in some way, some more severely than others.

37 *County of Santa Clara v. Donald J. Trump, et al.*, and *City and County of San Francisco v. Donald J. Trump et al.*, Case No. 17-cv-00574-WHO and Case No. 17-cv-00485-WHO (U.S. District Court Northern District of California, order granting motions to enjoin, April 25, 2017), www.sccgov.org/sites/cco/Documents/Order%20on%20Motion%20for%20Preliminary%20Injunction.pdf.



Appeals upheld the permanent injunction on August 1, 2018.³⁸ In the wake of this injunction, the Justice Department has tried to find other ways to limit federal grants to sanctuary jurisdictions:

- Adding New Immigration Conditions to Byrne JAG Grants—July 25, 2017—The Justice Department tried to increase the number of localities that could be prohibited from receiving FY 2017 Byrne JAG funds by expanding the initial requirements for the grants: instead of just requiring recipients to comply with federal law and allow information sharing around citizenship and immigration status, the Justice Department required recipients to also allow federal immigration officials access to jails and prisons to interview detainees (known as the Access Condition), and alert ICE of the release dates of suspected removable noncitizens (the Notice Condition).³⁹ Several cities and states sued, and there are injunctions preventing the government from requiring these conditions be met in at least four cities and seven states.⁴⁰
- Prioritizing Non-Sanctuary Cities for COPS Grants—September 7, 2017—The Justice Department announced it would give priority consideration for FY 2017 COPS grants to jurisdictions that attest to their cooperation with the Notice and Access Conditions.⁴¹ Of those jurisdictions granted COPS funding two months later, the Justice Department announced that 80 percent met these conditions.⁴² In a lawsuit brought by the City of Los Angeles, a federal district judge ruled on April 11, 2018, that the Justice Department

38 *County of Santa Clara v. Donald J. Trump, et al.*, and *City and County of San Francisco v. Donald J. Trump et al.*, Case No. 17-cv-00574-WHO and Case No. 17-cv-00485-WHO (U.S. District Court for the Northern District of California, order granting motion for summary judgment, November 20, 2017), www.sccgov.org/sites/cco/Documents/Order%20Granting%20MSJ%20and%20Permanent%20Injunction.pdf; *City and County of San Francisco v. Donald J. Trump, et al.*, and *County of Santa Clara v. Donald J. Trump, et al.*, No. 17-17478 and No. 17-17480 (U.S. Court of Appeals for the Ninth Circuit, August 1, 2018), www.sccgov.org/sites/cco/overview/Documents/9th-cir-Opinion.pdf.

39 Justice Department, "Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs" (press release, July 25, 2017), www.justice.gov/opa/pr/attorney-general-sessions-announces-immigration-compliance-requirements-edward-byrne-memorial.

40 These include: the City of Chicago in *City of Chicago v. Jefferson Beauregard Sessions III*, Case No. 17 C 5720 (U.S. District Court for the Northern District of Illinois, September 15, 2017), www.clearinghouse.net/chDocs/public/IM-IL-0020-0005.pdf. The judge issued a permanent injunction in July 2018; see *City of Chicago v. Jefferson Beauregard Sessions III*, Case No. 17 C 5720 (U.S. District Court for the Northern District of Illinois, July 27, 2018), www.clearinghouse.net/chDocs/public/IM-IL-0020-0034.pdf. The City of Philadelphia in *City of Philadelphia v. Jefferson Beauregard Sessions III*, Civil Action No. 17-3894 (U.S. District Court for the Eastern District of Pennsylvania, November 15, 2017), www.clearinghouse.net/chDocs/public/IM-PA-0015-0015.pdf. The judge issued a permanent injunction in June 2018; see *City of Philadelphia v. Jefferson Beauregard Sessions III*, Civil Action No. 17-3894 (U.S. District Court for the Eastern District of Pennsylvania, June 6, 2018), www.clearinghouse.net/chDocs/public/IM-PA-0015-0026.pdf. The City of Evanston, IL, and 250 members of the U.S. Conference of Mayors in *City of Evanston and the United States Conference of Mayors*, Case No. 18 C 4853 (U.S. District Court for the Northern District of Illinois, August 9, 2018), www.courtlistener.com/recap/gov.uscourts.ilnd.354507/govuscourts.ilnd.354507.23.0.pdf. The City of Los Angeles in *City of Los Angeles v. Jefferson B. Sessions; III et al.*, Case No. CV 17-7215-R (U.S. District Court for the Central District of California, September 13, 2018), www.clearinghouse.net/chDocs/public/IM-CA-0104-0015.pdf. The City and County of San Francisco and the State of California in *City and County of San Francisco v. Jefferson Beauregard Sessions III* and *State of California v. Jefferson Beauregard Sessions III*, Case No. 17-cv-04642-WHO and Case No. 17-cv-04701-WHO (U.S. District Court for the Northern District of California, October 5, 2018), <https://assets.documentcloud.org/documents/4956379/10-5-18-San-Francisco-California-Byrne-Opinion.pdf>; *City and County of San Francisco v. Jefferson Beauregard Sessions III* and *State of California v. Jefferson Beauregard Sessions III*, Case No. 18-cv-05146-WHO and Case No. 18-cv-05169-WHO (U.S. District Court for the Northern District of California, March 4, 2019), <https://oag.ca.gov/system/files/attachments/press-docs/ecf-no.60-order-granting-pls-msj.pdf>. The States of New York, Connecticut, New Jersey, and Washington, and the Commonwealths of Virginia and Massachusetts in *States of New York, Connecticut, New Jersey, Rhode Island, and Washington, and Commonwealths of Massachusetts and Virginia v. U.S. Department of Justice and Matthew G. Whitaker* and *City of New York v. Matthew G. Whitaker and U.S. Department of Justice*, 18 Civ. 6471 (ER) and 18 Civ. 6474 (ER) (U.S. District Court for the Southern District of New York, November 30, 2018), https://ag.ny.gov/sites/default/files/opinion_and_order_on_psmj_mot.pdf.

41 Justice Department, "Department of Justice Announces Priority Consideration Criteria for COPS Office Grants" (press release, September 7, 2017), www.justice.gov/opa/pr/department-justice-announces-priority-consideration-criteria-cops-office-grants.

42 Justice Department, "Attorney General Sessions Announces \$98 Million to Hire Community Policing Officers" (press release, November 20, 2017), www.justice.gov/opa/pr/attorney-general-sessions-announces-98-million-hire-community-policing-officers.



could not prioritize COPS grants based on these immigration conditions in future funding cycles.⁴³

- **Adding New Immigration Conditions to Various Justice Department Grants—*Summer and Fall 2018***—The Justice Department took additional steps to limit grants to sanctuary jurisdictions, adding essentially the same conditions as in FY 2017 plus some new ones to a larger swath of grants, but wording them in a way that used existing immigration law to justify them.⁴⁴ Additional conditions included certifying compliance with immigration laws that prohibit harboring noncitizens who are in the country illegally and certifying that the jurisdiction is not impeding Justice Department reporting requirements on the number of unauthorized immigrants in prison. Some or all of the conditions were applied to at least five additional Justice Department grants. On February 15, 2019, a federal judge in the Los Angeles case issued a permanent nationwide injunction, preventing the Justice Department from making Byrne JAG funding and a juvenile gang prevention grant conditional on these certifications.⁴⁵
- **Limits on Visas for Nationals of Recalcitrant Countries—*ongoing***—In the president’s January 25, 2017, executive order on interior enforcement, he ordered DHS and the State Department to cooperate in refusing to grant visas to nationals of recalcitrant countries (those that systematically refuse or delay cooperation on the return of their nationals). The aim of the order was to pressure these countries to accept the return of their nationals when they are subject to removal from the United States. Much of this work appears to have occurred away from the public eye.
 - By the end of 2018, the number of recalcitrant countries had been reduced from 23 at the start of the administration to ten.⁴⁶
 - At some point in 2017, the Trump administration abandoned the U.S. government’s practice of not deporting Vietnamese nationals who arrived before 1995, pursuant to a 2008 diplomatic agreement between the United States and Vietnam.⁴⁷ Saying they were renegotiating an agreement with Vietnam, the administration began detaining Vietnamese nationals who had previously had their removals stayed, with the intention of removing them. This effort was abandoned in August 2018 when it became clear that Vietnam would not comply with the return effort.
 - During 2017, under pressure from the Trump administration, the Mauritanian embassy started issuing travel documents, called “laissez-passers,” so its nationals could be sent

43 *City of Los Angeles v. Jefferson B. Sessions, III et al.*, Case No. CV 17-7215-R (U.S. District Court Central for the District of California, April 11, 2018), www.clearinghouse.net/chDocs/public/IM-CA-0104-0011.pdf.

44 Justice Department, Office of Justice Programs, “Forms: Certifications Relating to 8 U.S.C. § 1373 and Certain Other Federal Statutes Related to Immigration,” updated November 2018, <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>.

45 *City of Los Angeles v. Jefferson B. Sessions, III, Laura Rogers, U.S. Department of Justice*, Case No. CV 18-7347-R (U.S. District Court for the Central District of California, February 15, 2019), www.courthousenews.com/wp-content/uploads/2019/02/Microsoft-Word-Order-Granting-Los-Angeles-Motion-for-Patrial-Summary-Judgment-as-to-Counte-One-Two-Three-and-Four.docx.pdf.

46 Joshua Barajas, “How Trump Has Already Changed Immigration Policy,” PBS News Hour, February 6, 2019, www.pbs.org/newshour/politics/how-trump-has-already-changed-immigration-policy. The list of the ten countries is not publicly available, but they likely include Cambodia, China, Cuba, Eritrea, Iran, Hong Kong, Laos, Myanmar (also known as Burma), and Vietnam, which were recalcitrant as of September 8, 2018. See Jill H. Wilson, *Immigration: “Recalcitrant” Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals* (Washington, DC: Congressional Research Service, 2019), <https://fas.org/sgp/crs/homesec/IF11025.pdf>.

47 The agreement provides that “Vietnamese citizens are not subject to return to Vietnam under this agreement if they arrived in the United States before July 12, 1995.” Governments of the United States and Vietnam, “Agreement between the Government of the United States of America and the Government of the Socialist Republic of Vietnam on the Acceptance of the Return of Vietnamese Citizens,” January 22, 2008, www.state.gov/documents/organization/108921.pdf. See also *Hoang Trinh et al. v. Thomas D. Homan et al.*, Case No. 8:18-cv-316 (U.S. District Court Central District of California, February 22, 2018), www.clearinghouse.net/chDocs/public/IM-CA-0115-0001.pdf.



- back.⁴⁸ This has raised serious concerns about the racial and ethnic discrimination and slavery these immigrants could face in Mauritania if deported.⁴⁹
- In September 2017, DHS announced the implementation of visa sanctions on nationals of Cambodia, Eritrea, Guinea, and Sierra Leone in an effort to pressure the countries' governments to accept their nationals ordered deported from the United States.⁵⁰
- In July 2018, DHS announced visa sanctions for certain government officials from Laos and Myanmar (also known as Burma) in an effort to pressure these governments to accept their nationals ordered deported from the United States.⁵¹
- On January 31, 2019, DHS announced visa sanctions for certain nationals of Ghana, in an effort to pressure the government to accept their nationals ordered deported from the United States.⁵²
- On January 18, 2019, DHS filed a *Federal Register* notice on countries whose nationals are eligible to participate in the H-2A and H-2B nonimmigrant worker programs. In the notice, DHS explained that Ethiopia has been removed from the list of eligible countries because it has been "at risk of noncompliance" with ICE repatriation efforts since 2016.⁵³
- On April 22, 2019, the State Department published a final rule allowing officers to suspend the issuance of a visa already in process if the applicant falls within the scope of visa sanctions placed on recalcitrant countries.⁵⁴
- **Worksite Enforcement**—ongoing—In FY 2018, the Trump administration put a much stronger emphasis on worksite enforcement, as evidenced by the promise of then-acting ICE Director Thomas Homan that his agency would quintuple worksite investigations in FY 2018.⁵⁵ Though investigations did not increase quite that sharply, they did rise fourfold:
 - FY 2017: 1,691 opened worksite investigations
 - FY 2018: 6,848 opened worksite investigations⁵⁶

48 Nellie Peyton, "Mauritanians Who Sought Refuge in U.S. Face Deportation, then Jail," Reuters, December 17, 2018, www.reuters.com/article/us-mauritania-immigration-usa/mauritanians-who-sought-refuge-in-u-s-face-deportation-then-jail-idUSKBN1OG1DA.

49 Letter from Sen. Kamala Harris et al to Homeland Security Secretary Kirstjen Nielsen and Secretary of State Mike Pompeo, October 12, 2018, www.harris.senate.gov/imo/media/doc/101218%20Mauritania%20Letter.pdf.

50 The visa restrictions were applied against certain government officials from Cambodia, Guinea, and Sierra Leone, as well as to all citizens of Eritrea. See DHS, "DHS Announces Implementation of Visa Sanctions on Four Countries" (press release, September 13, 2017), www.dhs.gov/news/2017/09/13/dhs-announces-implementation-visa-sanctions-four-countries. As the government began increasing removals to Cambodia, a federal court issued a temporary restraining order protecting nearly 2,000 Cambodian nationals from detention and removal. See *Chhoeun et al. v. Martin et al.*, No. SACV 17-01898-CJC (U.S. District Court Central District of California Southern Division, January 3, 2019), www.documentcloud.org/documents/5674430-RestrainingOrder.html.

51 DHS, "DHS Announces Implementation of Visa Sanctions" (press release, July 10, 2018), www.dhs.gov/news/2018/07/10/dhs-announces-implementation-visa-sanctions.

52 DHS, "DHS Announces Implementation of Visa Sanctions on Ghana" (press release, January 31, 2019), www.dhs.gov/news/2019/01/31/dhs-announces-implementation-visa-sanctions-ghana.

53 DHS, "Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs," *Federal Register* 84, no. 13 (January 18, 2019): 133–36, www.govinfo.gov/content/pkg/FR-2019-01-18/pdf/2019-00074.pdf.

54 State Department, "Refusal Procedures for Visas," *Federal Register* 84, no. 77 (April 22, 2019): 16610–13, www.govinfo.gov/content/pkg/FR-2019-04-22/pdf/2019-08061.pdf.

55 Tal Kopan, "ICE Chief Pledges Quadrupling or More of Workplace Crackdowns," CNN, October 17, 2017, www.cnn.com/2017/10/17/politics/ice-crackdown-workplaces/index.html.

56 ICE, "ICE Worksite Enforcement Investigations in FY18 Surge" (press release, December 11, 2018), www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge.



- **Increase in ICE officers—ongoing**—In his January 2017 executive order on interior enforcement, Trump directed DHS to hire 10,000 additional ICE officers. When the president took office there were about 5,800 deportation officers and immigration enforcement agents within ICE Enforcement and Removal Operations (ERO).⁵⁷ No additional ERO officers have been authorized under Trump. In FY18, Congress authorized the hiring of 65 additional ICE officers, but only for Homeland Security Investigations (HSI).⁵⁸ For FY 2019, the administration requested a total of 2,000 additional ERO and HSI officers, but Congress did not provide any money for those hires.⁵⁹
- **Upcoming**
 - **Public Charge**—Coinciding with the publication of a draft proposed regulation by USCIS (see Section VI), DHS announced that the Justice Department is working on a similar regulation that would detail how the finding that an immigrant is a public charge could affect whether they are considered deportable.⁶⁰ No such regulation has been released.

III. U.S. Department of Justice

While DHS houses the majority of the U.S. immigration infrastructure, the Justice Department—as the agency tasked with law enforcement and the administration of justice—influences the immigration system primarily through criminal prosecutions and management of the nation’s immigration court system. Under Trump, the Justice Department has taken on an uncommonly active role in border security and immigration policymaking. This is likely due in part to the administration’s first attorney general, Jeff Sessions, who has long been an immigration hardliner and forcefully advanced the president’s immigration agenda.

- **Changes to Immigration Judge Hiring Process—April 2017**—In a memorandum approved by then Attorney General Sessions, the Justice Department made a number of changes to the immigration judge hiring process to reduce delays, decrease the role of the immigration court’s leadership, and grant greater discretion and influence to Justice Department political appointees.⁶¹
- **Prioritization of Immigration Crime Prosecutions—April 11, 2017**—The Justice Department instructed federal prosecutors to prioritize the prosecution of immigration crimes and to appoint one “border security coordinator” per office to oversee such prosecutions and coordinate with DHS.⁶²

57 DHS, *Budget-in-Brief: Fiscal Year 2016* (Washington, DC: DHS, 2015), 47, www.dhs.gov/sites/default/files/publications/FY_2016_DHS_Budget_in_Brief.pdf.

58 U.S. Congress, “Explanatory Statement for the Homeland Security Appropriations Bill, 2018,” accessed April 29, 2019, www.appropriations.senate.gov/imo/media/doc/FY2018-Homeland-Security-Explanatory-Statement.pdf.

59 U.S. Congress, “Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations, Regarding H.J. Res. 31,” accessed April 29, 2019, <https://docs.house.gov/billsthisweek/20190211/116hrpt9-JointExplanatoryStatement-u1.pdf>.

60 Ryan McCrimmon, “‘Big Four’ Huddle Today on Farm Bill,” Politico, September 26, 2018, www.politico.com/newsletters/morning-agriculture/2018/09/26/big-four-huddle-today-on-farm-bill-352083; Justice Department, “Inadmissibility on Public Charge Grounds” (proposed rule 1125-AA84, Fall 2018), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1125-AA84.

61 The memorandum changes the multistep hiring process put in place by former Attorney General Alberto Gonzales in March 2007 after it was revealed that the Justice Department hired immigration judges and other staff based on political and ideological considerations. See memorandum from Dana J. Boente, Acting Deputy Attorney General, Justice Department, *Immigration Judge Hiring Process*, April 4, 2017, www.humanrightsfirst.org/sites/default/files/DOJ-FOIA-Results-%20Memoranda.pdf.

62 Memorandum from Jeff Sessions, Attorney General, to all federal prosecutors, *Renewed Commitment to Criminal Immigration Enforcement*, April 11, 2017, www.justice.gov/opa/press-release/file/956841/download.



- **End of a Program Providing Free Attorneys for Unaccompanied Minors**—June 2017—The administration phased out an AmeriCorps initiative that provided lawyers for thousands of unaccompanied minors.⁶³
- **Immigration Judges Allowed to Deny Cancellation Requests after Cap Reached**—January 4, 2018—The Justice Department’s Executive Office for Immigration Review (EOIR) published a final rule allowing immigration judges to issue final decisions denying non-meritorious cancellation of removal cases, regardless of whether the annual limitation has been reached.⁶⁴ Cancellation of removal allows certain immigrants to suspend removal proceedings and receive permanent residence in the United States, if they can show they have lived in the United States for an extended period of time, meet certain good moral character requirements, and, in some cases, that their removal would cause certain U.S. citizen or permanent relative relatives unusual hardship. The Justice Department is limited from cancelling the removals of more than 4,000 immigrants per year. Before this change, judges were required to suspend both negative and positive decisions on cancellation applications if the 4,000 slots were already taken for the year.
- **Zero-Tolerance Policy**—April 6, 2018—Building on an April 2017 memorandum, the Justice Department instructed federal prosecutors along the Southwest border to prosecute all illegal entry cases referred to them.⁶⁵ In May 2018, the department announced that DHS would refer 100 percent of individuals illegally crossing the Southwest border to the Justice Department for prosecution.⁶⁶ After the president’s June 20 executive order ending family separations, this policy was no longer applied to parents traveling with children (see also Section II.A.). According to reports, some areas of the border have since rolled back zero tolerance and are refraining from charging migrants who cross illegally.⁶⁷
- **Review of the Legal Orientation Program**—April 2018—In April 2018 the administration announced a pause on the Legal Orientation Program, which provides more than 50,000 noncitizens in immigration detention per year information on navigating the legal system.⁶⁸ After much public outrage over the announcement, the administration backtracked and said the program would continue while EOIR conducted a review of it.⁶⁹
 - On September 5, 2018, EOIR released the first phase of its analysis, finding that program participants have longer detention stays and were less likely to obtain representation than other detained immigrants.⁷⁰ The Vera Institute of Justice, which administers the program, said the review had “insurmountable methodological flaws.”⁷¹

63 University of Las Vegas William S. Boyd School of Law, “Trump Administration Ending AmeriCorps Legal Aid Program for Unaccompanied Children, but UNLV Law’s Work Continues” (news release, June 12, 2017), <https://law.unlv.edu/clinics/immigration/news/trump-administration-ending-ameri-corps-legal-aid-program-unaccompanied>; AILA, “AILA South Florida Chapter Board Meeting Minutes” (unpublished meeting notes, October 20, 2017).

64 Justice Department, Executive Office for Immigration Review (EOIR), “Procedures Further Implementing the Annual Limitation on Suspension of Deportation and Cancellation of Removal,” *Federal Register* 82, no. 232 (December 5, 2017): 57336–40, www.govinfo.gov/content/pkg/FR-2017-12-05/pdf/2017-26104.pdf.

65 Memorandum from Jeff Sessions, Attorney General, to federal prosecutors along the Southwest border, *Zero-Tolerance for Offenses Under 8 U.S.C. § 1325 (a)*, April 6, 2018, www.justice.gov/opa/press-release/file/1049751/download.

66 Justice Department, “Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry” (press release, April 6, 2018), www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry; Justice Department, “Attorney General Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration” (press release, May 7, 2018), www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions.

67 Alicia A. Caldwell, “Border Patrol Stops Prosecuting First-Time Border Crossers in Texas Region,” *The Wall Street Journal*, March 28, 2019, www.wsj.com/articles/border-patrol-stops-prosecuting-first-time-border-crossers-in-texas-region-11553765402.

68 *Departments of Commerce and Justice, Science, and Related Agencies Appropriations Bill, 2019*, Senate Report 115–275, 115th Cong., 2nd sess. (June 14, 2018), www.congress.gov/congressional-report/115th-congress/senate-report/275/1.

69 Testimony of Jeff Sessions, Attorney General, before U.S. Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, *Review of the FY2019 Budget Request for the U.S. Dept. of Justice*, 115th Cong., 2d sess., April 25, 2018, www.justice.gov/opa/speech/opening-statement-attorney-general-jeff-sessions-senate-appropriations-subcommittee.

70 EOIR, *LOP Cohort Analysis* (Washington, DC: EOIR, 2018), www.justice.gov/eoir/file/1091801/download.

71 Vera Institute of Justice, “Statement on DOJ Analysis of Legal Orientation Program” (press release, September 5, 2018), www.vera.org/newsroom/press-releases/statement-on-doj-analysis-of-legal-orientation-program.



- On March 7, 2019, EOIR’s director testified before the House of Representatives, saying that they had completed the second part of their review and found the program not cost effective. He declined to say whether the administration would again move to end the program, but did say he wanted to engage with Congress about it going forward.⁷²
- **Moving to an Electronic Filing System**—*July 19, 2018*—The immigration court piloted its new electronic filing system, EOIR Court and Appeals System (“ECAS”), at five immigration courts and the Board of Immigration Appeals. An electronic system should improve case scheduling and adjudication efficiency.⁷³ EOIR expects to initiate the nationwide rollout of ECAS in FY 2020.
- **Clarified and Streamlined Court Scheduling Process**—*December 21, 2018*—Following a Supreme Court decision calling into question the validity of Notices to Appear (NTAs), the document that initiates immigration removal proceedings, if they fail to designate a specific hearing date, EOIR was inundated with messages from foreign nationals who had received NTAs from DHS that had “false” dates, including dates that do not exist, such as September 31, 2018, or dates on which the court is not open.⁷⁴ In the wake of these problems, EOIR provided DHS access to its Interactive Scheduling System (ISS) to allow DHS officers who issue NTAs to control scheduling on EOIR’s dockets and determine which cases are scheduled for particular dates and times.⁷⁵ Previously, a case would not be scheduled with EOIR until the DHS officer had filed the NTA with the court.
- **Efforts to Speed up Immigration Court Cases**—*ongoing*—The administration has implemented a number of changes to speed adjudications, including decreasing the time required to hire new immigration judges, hiring back retired immigration judges, and establishing efficient nationwide scheduling and docketing standards.⁷⁶
 - **No Dark Courtrooms**—*March 29, 2019*—The director of EOIR issued a memo memorializing policy changes made since 2017 to minimize the number of immigration courtrooms that go unused each day.⁷⁷ Such changes have included increased hiring of immigration judges, increasing the availability of video conferencing, and improving scheduling and docketing practices.

A. Instructions to Immigration Judges

The Executive Office for Immigration Review (EOIR) is the office within the Justice Department that houses the immigration court system and, as such, employs more than 400 immigration judges located in 63 immigration courts and two adjudication centers throughout the United States.⁷⁸ In the interest of speeding the adjudication of immigration cases, and thus allowing the administration to deport more

⁷² Testimony of James McHenry, Director of EOIR, Justice Department, before the House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Executive Office for Immigration Review*, 116th Cong., 1st sess., March 7, 2019, <https://appropriations.house.gov/legislation/hearings/executive-office-for-immigration-review>.

⁷³ Justice Department, “EOIR Launches Electronic Filing Pilot Program” (news release, July 19, 2018), www.justice.gov/eoir/pr/eoir-launches-electronic-filing-pilot-program; Testimony of James McHenry, Director of EOIR, Justice Department, before the House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Executive Office for Immigration Review*, 116th Cong., 1st sess., March 7, 2019, <https://docs.house.gov/meetings/AP/AP19/20190307/109009/HHRG-116-AP19-Wstate-McHenry-20190307.pdf>.

⁷⁴ See Maria Gabriella Pezzo and Roberto Daza, “ICE Is Sending out Fake Court Dates to Immigrants. Here’s Why,” VICE News, November 1, 2018, https://news.vice.com/en_us/article/gyez33/ice-is-sending-out-fake-court-dates-to-immigrants-heres-why.

⁷⁵ Memorandum from James McHenry, Director of EOIR, Justice Department, to all EOIR, *Acceptance of Notices to Appear and Use of the Interactive Scheduling System*, December 21, 2018, www.justice.gov/eoir/file/1122771/download.

⁷⁶ EOIR, “Backgrounder on EOIR Strategic Caseload Reduction Plan,” accessed January 3, 2019, www.justice.gov/opa/press-release/file/1016066/download.

⁷⁷ Memorandum from James McHenry, Director of EOIR, Justice Department, to all EOIR, *No Dark Courtrooms*, March 29, 2019, www.justice.gov/eoir/file/1149286/download.

⁷⁸ Justice Department, “Office of the Chief Immigration Judge,” updated February 21, 2019, www.justice.gov/eoir/office-of-the-chief-immigration-judge.



immigrants more quickly, the Justice Department has made a number of changes to how and where immigration judges conduct adjudications. Such instructions have been handed down directly from the attorney general, the director of EOIR, and the chief immigration judge, who establishes operating policies for the immigration courts.

- **Limit Continuances**—July 31, 2017—In a memo, the chief immigration judge instructed immigration judges to limit continuances (when judges postpone case adjudications or hearings). To do so, the memo encouraged the judges to carefully consider both the number and length of continuances granted.⁷⁹
- **Weakened Child-Friendly Court Practices**—December 20, 2017—The chief immigration judge issued a memo that replaced prior guidance on children in the courtroom and weakened child-friendly court practices.⁸⁰ The memo eliminates prior language instructing judges to use the “best interests of the child” standard to ensure that a case involving a minor takes place in “child appropriate” hearing environment. The memo also failed to include prior practices designed to make court proceedings less difficult for children, such as allowing them to visit an empty courtroom before their hearing or allowing them to call in for master calendar hearings if they do not reside close to the court.
- **Discouraging Changes in Venue for Court Cases**—January 17, 2018—The chief immigration judge issued a memo instructing immigration judges to discourage changes in venue, stating they cause “problems in caseload management and operational inefficiencies” in the courts.⁸¹
- **New Court Performance Metrics**—January 17, 2018—The immigration court implemented performance measures as an accountability tool to ensure it is “operating at peak efficiency.”⁸² For example, one measure of good performance is whether 85 percent of non-detained removal cases are completed within one year of initiation.
- **Performance Standards for Immigration Judges**—October 1, 2018—The immigration court implemented performance standards for immigration judges, designating “satisfactory performance” as completing 700 cases per year and having less than 15 percent of their cases remanded from the Board of Immigration Appeals or federal courts, in addition to meeting a number of other benchmarks.⁸³
- **Mobilization of Immigration Judges**—March 2017—In his January 25, 2017, executive order on border security, the president ordered the Justice Department to assign immigration judges to particular detention facilities in order to increase the speed and efficiency of removal hearings.
 - **March 2017**—The Justice Department mobilized more than 100 immigration judges, assigning them to detention facilities across the country (including along the Southwest border).⁸⁴ The mobilization included both in-person assignments and dockets heard via video conferencing.

79 Memorandum from MaryBeth Keller, Chief Immigration Judge, Justice Department, to all immigration judges, all court administrators, all attorney advisors and judicial law clerks, and all immigration court staff, *Operating Policies and Procedures Memorandum 17-01: Continuances*, July 31, 2017, www.justice.gov/eoir/file/oppm17-01/download.

80 Memorandum from MaryBeth Keller, Chief Immigration Judge, Justice Department, to all immigration judges, all court administrators, all attorney advisors and judicial law clerks, and all immigration court staff, *Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children*, December 20, 2017, www.justice.gov/eoir/file/oppm17-03/download.

81 Memorandum from MaryBeth Keller, Chief Immigration Judge, Justice Department, to all immigration judges, all court administrators, all attorney advisors and judicial law clerks, and all immigration court staff, *Operating Policies and Procedures Memorandum 18-01: Changes of Venue*, January 17, 2018, www.justice.gov/eoir/page/file/1026726/download.

82 Memorandum from James McHenry, Director of EOIR, Justice Department, to the Office of the Chief Immigration Judge, all immigration judges, all court administrators, and all immigration court staff, *Case Priorities and Immigration Court Performance Measures*, January 17, 2018, www.justice.gov/eoir/page/file/1026721/download.

83 EOIR, “EOIR Performance Plan: Adjudicative Employees,” accessed January 3, 2019, www.abajournal.com/images/main_images/03-30-2018_EOIR_-_PWP_Element_3_new.pdf.

84 Justice Department, “Justice Department Releases Statistics on the Impact of Immigration Judge Surge” (news release, October 4, 2017), www.justice.gov/opa/pr/justice-department-releases-statistics-impact-immigration-judge-surge.



- *May 2018*—The Justice Department announced the assignment of 18 supervisory immigration judges to ten immigration courts near the Southwest border.⁸⁵ The judges were to hear cases in person and using video conferencing.
- ***Revised Case Processing Priorities***—ongoing—The administration has made a number of changes to ensure that certain types of cases receive expedited treatment.
 - *January 31, 2017*—In a memo to immigration judges, the chief immigration judge instructed them to prioritize cases involving 1) detained immigrants, 2) unaccompanied minors in Office of Refugee Resettlement (ORR) custody who do not have sponsors, and 3) foreign nationals released from custody on bond after six months or more of detention.⁸⁶ This memo removed unaccompanied minors (as a broader group), families, and recent border-crossers released from custody from the priorities.
 - *January 17, 2018*—Arguing that changes in priority designations hurt docket efficiency, the EOIR director greatly narrowed which cases were prioritized, limiting them to individuals in detention and any other cases subject to statutory or regulatory deadlines.⁸⁷
 - *November 16, 2018*— EOIR announced that it had created expedited dockets for all cases involving families at ten immigration court locations: Atlanta, Baltimore, Chicago, Denver, Houston, Los Angeles, Miami, New Orleans, New York City, and San Francisco.⁸⁸ The expectation was that such cases would be completed “within one year or less.”
 - *November 19, 2018*— EOIR announced a policy of expediting asylum applications, with the expectation that they would be adjudicated within 180 days.⁸⁹

B. Attorney General Referral and Review

As the head of the Justice Department, including the immigration court system, the U.S. attorney general is the final arbiter over administrative decision-making in immigration law. Attorneys general have the power to refer to themselves and review any decision made by the immigration appeals court, the Board of Immigration Appeals. While in the past this function was used largely as a dispute-resolution mechanism within the Justice Department, in recent years, attorneys general have used it to exert direct influence over immigration policy.⁹⁰

While this trend began before Trump entered office, his administration has taken this to a new level. Thus far, attorneys general under the Trump administration have self-referred ten immigration cases. By comparison, nine cases were self-referred during the entirety of the George W. Bush administration, and four cases were during the presidency of Barack Obama. Under Trump, these decisions have largely focused on asylum and limiting the discretion of immigration judges.

85 Justice Department, “Justice Department Announces Additional Prosecutors and Immigration Judges for Southwest Border Crisis” (news release, May 2, 2018), www.justice.gov/opa/pr/justice-department-announces-additional-prosecutors-and-immigration-judges-southwest-border.

86 Memorandum from MaryBeth Keller, Chief Immigration Judge, Justice Department, to all immigration judges, all court administrators, and all immigration court staff, *Case Processing Priorities*, January 31, 2017, www.justice.gov/sites/default/files/pages/attachments/2017/01/31/caseprocessingpriorities.pdf.

87 Memorandum from James McHenry, *Case Priorities and Immigration Court Performance Measures*.

88 Memorandum from James McHenry, Director of EOIR, Justice Department, to all of EOIR, *Tracking and Expedition of ‘Family Unit’ Cases*, November 16, 2018, www.justice.gov/eoir/page/file/1112036/download.

89 Memorandum from James McHenry, Director of EOIR, Justice Department, to all of EOIR, *Guidance Regarding the Adjudication of Asylum Applications Consistent with INA § 208(d)(5)(A)(iii)*, November 19, 2018, www.justice.gov/eoir/page/file/1112581/download.

90 See Sarah Pierce, “Sessions: The Trump Administration’s Once-Indispensable Man on Immigration,” *Migration Information Source*, November 8, 2018, www.migrationpolicy.org/article/sessions-trump-administrations-once-indispensable-man-immigration.



- **Limits on Asylum Hearings**—March 5, 2018—In *Matter of E-F-H-L*, Attorney General Sessions overruled a case that held asylum and withholding-of-removal applicants were entitled to full evidentiary hearings.⁹¹
- **End of Administrative Closure of Immigration Cases**—May 17, 2018—In *Matter of Castro-Tum*, Sessions ruled that immigration judges generally cannot administratively close cases (an option that judges had previously used to temporarily take cases off of the court docket, usually to allow for the completion of immigration processes before other agencies).⁹²
 - June 15, 2018—ICE’s Office of the Principal Legal Advisor issued a memo to ICE attorneys instructing them to file motions to place cases that had been administratively closed back on to the court docket.⁹³ At that time, there were more than 355,000 administratively closed cases.
- **Limits on Asylum for Victims of Private Violence**—June 11, 2018—In *Matter of A-B-*, Sessions limited the ability of victims of domestic or gang violence to qualify for asylum.⁹⁴ A federal district court judge later enjoined the application of this ruling to credible-fear interviews (the initial interview between a USCIS asylum officer and an asylum seeker), but it still applies at the ultimate adjudication of asylum cases.⁹⁵
- **Limits on Continuances**—August 16, 2018—In *Matter of L-A-B-R*, Sessions made it more difficult for foreign nationals to have their immigration court cases postponed (“continued,” in legal terms) while they wait for USCIS to adjudicate their applications for immigration benefits.⁹⁶
- **Limits on Terminations**—September 18, 2018—In *Matter of S-O-G- & F-D-B-*, Sessions ruled that immigration judges can only terminate cases in very specific scenarios.⁹⁷
- **End of Bond for Asylum Seekers**—April 16, 2019—In *Matter of M-S-*, Attorney General William Barr ruled that immigration judges do not have the authority to hold bond hearings for arriving asylum seekers.⁹⁸ Without this option, assuming ICE has the resources to hold them, many asylum seekers will be held in custody indefinitely while their immigration proceedings are pending. Note, however, that because of prior law, families and unaccompanied children are exempted from this decision.

91 *Matter of E-F-H-L*, 27 I&N Dec. 226 (Attorney General, March 5, 2018), www.justice.gov/eoir/page/file/1040936/download.

92 *Matter of Castro-Tum*, 27 I&N Dec. 271 (Attorney General, May 17, 2018), www.justice.gov/eoir/page/file/1064086/download. This decision ended the ability of foreign nationals in removal proceedings to apply for the provisional unlawful presence waiver, which requires any pending removal proceedings be administratively closed prior to filing. See 8 *Code of Federal Regulations* § 212.7(e)(4)(iii). As a result, foreign nationals in removal proceedings who are trying to legalize as the spouse or child of a U.S. citizen or legal permanent resident must do so by applying from within their home country.

93 Memorandum from Adam V. Loiacono, Deputy Principle Legal Advisor for Enforcement and Litigation, and Ken Padilla, Deputy Principle Legal Advisor for Field Legal Operations, Office of the Principal Legal Advisor (OPLA), ICE, to OPLA headquarters and field personnel, *OPLA Guidance: Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), June 15, 2018, www.dropbox.com/s/9h1k4942zcomwku/Castro%20Tum%20OPLA%20guidance.pdf?dl=0.

94 *Matter of A-B-*, 27 I&N Dec. 316 (Attorney General, June 11, 2018), www.justice.gov/eoir/page/file/1070866/download.

95 *Grace et al. v. Matthew G. Whitaker*, No. 18-cv-01853 (U.S. District Court for the District of Columbia, December 19, 2018), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv1853-106.

96 *Matter of L-A-B-R- et al.*, 27 I&N Dec. 405 (Attorney General, August 16, 2018), www.justice.gov/eoir/page/file/1087781/download.

97 *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (Attorney General, September 18, 2018), www.justice.gov/eoir/page/file/1095371/download.

98 *Matter of M-S-*, 27 I&N Dec. 509 (Attorney General, April 16, 2019), www.justice.gov/eoir/file/1154747/download. Before referring *Matter of M-S-* to himself, then Attorney General Jeff Sessions referred *Matter of M-G-G-* with the intention of reviewing the same issue. However, after the referral, the respondent was removed from the country, prompting the attorney general to no longer review the case. See *Matter of M-G-G-*, 27 I&N Dec. 475 (Attorney General, October 12, 2018), www.justice.gov/eoir/page/file/1100651/download; *Matter of M-S-*, 27 I&N Dec. 476 (Attorney General, October 12, 2018), www.justice.gov/eoir/page/file/1100661/download.



■ *Upcoming*

- Increased Difficulty of Exemption from the Persecutor Bar—On October 18, 2018, Sessions referred the case *Matter of Daniel Girmai Negusie* to himself to decide whether coercion and duress are relevant to the application of the persecutor bar. Individuals who commit persecution are barred from receiving asylum in the United States.⁹⁹ However, if applicants are able to show that they did so under imminent threat, they may be exempt from this ban and their claims to asylum will be considered. The attorney general may limit this exemption.
- Limits on Asylum Based on "Membership of a Particular Social Group"—On December 3, 2018, Acting Attorney General Matthew Whitaker referred the case *Matter of L-E-A-* to himself to examine whether an applicant may qualify for asylum based on persecution on account of the applicant's membership in a particular social group, if that group is the foreign national's family.¹⁰⁰ This ground has been used, for example, by victims of gang violence whose families were specifically targeted for intimidation or much worse.
- Limits on Cancellation of Removal—On December 3, 2018, Whitaker referred the case *Matter of Castillo-Perez* to himself to determine what constitutes a lack of "good moral character," something that can disqualify an applicant from receiving an immigration benefit called cancellation of removal.¹⁰¹ In addition, the case will entail examining how having multiple convictions for driving while intoxicated affects an applicant's ability to qualify for the benefit.
- Expansion of the Attorney General's Referral and Review Power—The Justice Department has indicated it intends to significantly expand the attorney general's referral and review power.¹⁰² Currently, the attorney general can only review cases that have been decided by the Board of Immigration Appeals. The Justice Department intends to introduce regulations that would enable the attorney general to also review cases pending before the Board of Immigration Appeals and those decided by immigration judges but not yet appealed. This would increase the cases on which the attorney general could rule by more than 700 percent: from an average of 33,000 cases per year to 247,000.¹⁰³

IV. Humanitarian Flows

Concerned that admitting large numbers of vulnerable migrants might pose a threat to public safety and the U.S. economy, the Trump administration has assiduously worked to reduce the inflow of humanitarian migrants. It has also increased the likelihood that humanitarian migrants already present in the United States leave or are removed. U.S. humanitarian programs include the U.S. Refugee Resettlement Program, asylum, the unaccompanied children program, and Temporary Protected Status, among others.

⁹⁹ *Matter of Daniel Girmai Negusie*, 27 I&N Dec. 481 (Attorney General, October 18, 2018), www.justice.gov/eoir/page/file/1101746/download.

¹⁰⁰ *Matter of L-E-A-*, 27 I&N Dec. 494 (Attorney General, December 3, 2018), www.justice.gov/eoir/page/file/1116866/download.

¹⁰¹ *Matter of Castillo-Perez*, 27 I&N Dec. 495 (Attorney General, December 3, 2018), www.justice.gov/eoir/page/file/1116871/download.

¹⁰² Justice Department, "Referral of Decisions in Immigration Matters to the Attorney General" (proposed rule 1125-AA86, Fall 2018), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1125-AA86.

¹⁰³ Migration Policy Institute (MPI) analysis based on EOIR, *Statistics Yearbook: Fiscal Year 2017* (Washington, DC: EOIR, 2017), 10, 36, www.justice.gov/eoir/page/file/1107056/download.



A. Refugees

During his presidential campaign, Trump repeatedly expressed concern over the speed of refugee resettlement and the ability of the U.S. government to properly vet refugees. After taking office, in line with these concerns, he suspended refugee admissions for 120 days, drastically reduced the annual refugee ceilings, and instructed his administration to increase vetting of refugees—measures that have resulted in slower processing and admissions of refugees, far below the already record-low ceilings the president has set for resettlement.

- **Refugee Ban**—June 26–October 24, 2017—Pursuant to the president’s March 2017 “travel ban” executive order (see Section V), the administration suspended the travel of refugees into the United States for 120 days, during which the administration reviewed the refugee application and adjudication process for potential security threats.¹⁰⁴
 - **Increased Vetting for Refugees**—October 23, 2017—The administration announced new vetting requirements for refugees before they can be resettled to the United States. It also deprioritized resettlement applications of refugees from 11 countries deemed a “high risk” to national security (reportedly Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria, and Yemen) while the government further reviewed these security risks.¹⁰⁵
 - **Additional Vetting for Refugees from “High Risk” Countries**—January 29, 2018—Following the second security review of refugees from the 11 countries, the administration announced it would implement additional screening measures for refugees from those countries and would periodically update the list of “high risk” countries.¹⁰⁶
- **End of the Central American Minors (CAM) Refugee and Parole Program**—August 16, 2017—The administration ended the parole portion of the CAM program, an in-country refugee processing program for minors in El Salvador, Guatemala, and Honduras.¹⁰⁷ On November 9, 2017, the State Department stopped accepting new applications for the refugee side of the program.¹⁰⁸ On January 31, 2018, USCIS stopped interviewing applicants for the CAM program altogether.
 - **March 1, 2019**—A federal district court judge in Northern California ordered DHS to continue processing the cases of 2,714 Central American minors who had been conditionally approved to be paroled into the United States, but whose approvals were terminated with the program.¹⁰⁹

104 Pursuant to the president’s March 2017 “travel ban” executive order. See White House, “Executive Order 13780 of March 6, 2017: Protecting the Nation from Foreign Terrorist Entry into the United States,” *Federal Register* 82, no. 45 (March 9, 2017): 13209–19, www.govinfo.gov/content/pkg/FR-2017-03-09/pdf/2017-04837.pdf.

105 White House, “Executive Order 13815 of October 24, 2017: Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities,” *Federal Register* 82, no. 207 (October 27, 2017): 50055–58, www.govinfo.gov/content/pkg/FR-2017-10-27/pdf/2017-23630.pdf; Memorandum from Secretary of State Rex W. Tillerson, Acting Secretary of Homeland Security Elaine Duke, and Director of the Office of the Director of National Intelligence Daniel Coats, to the president, *Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities*, October 23, 2017, www.state.gov/documents/organization/275306.pdf.

106 DHS, “DHS Announces Additional, Enhanced Security Procedures for Refugees Seeking Resettlement in the United States” (press release, January 29, 2018), www.dhs.gov/news/2018/01/29/dhs-announces-additional-enhanced-security-procedures-refugees-seeking-resettlement.

107 DHS, “Termination of the Central American Minors Parole Program,” *Federal Register* 82, no. 157 (August 16, 2017): 38926–27, www.govinfo.gov/content/pkg/FR-2017-08-16/pdf/2017-16828.pdf. However, advocates allege the program stopped much earlier, with USCIS cancelling and stopping interviews within the first week of the president taking office and stopping issuing decisions to interviewed beneficiaries. See, for example, *S.A. et al. v. Donald J. Trump et al.*, No. 18-cv-03539-LB (U.S. District Court Northern District of California, December 10, 2018), www.clearinghouse.net/chDocs/public/IM-CA-0125-0004.pdf.

108 USCIS, “Central American Minors (CAM): Information for Parole Applicants,” updated November 15, 2017, www.uscis.gov/humanitarian/humanitarian-parole/central-american-minors-cam-information-parole-applicants.

109 *S.A. et al. v. Donald J. Trump et al.*, No. 18-cv-03539-LB (U.S. District Court Northern District of California, March 1, 2019), www.courthousenews.com/wp-content/uploads/2019/03/Beeler-CAM-Order.pdf.



- **Historic Reductions in Refugee Admissions**—*ongoing*—In addition to suspending refugee admissions from June 26 to October 24, 2017, the administration has set the lowest annual refugee ceiling since the creation of the U.S. refugee resettlement program in 1980, and annual admissions of refugees have hit record low numbers.
 - FY 2017: 50,000 ceiling (lowered from 110,00 after Trump entered office), 53,716 actual admissions¹¹⁰
 - FY 2018: 45,000 ceiling, 22,491 actual admissions¹¹¹
 - FY 2019: 30,000 ceiling,¹¹² 12,154 actual admissions in the first six months of the fiscal year¹¹³

USCIS has blamed the slowing of refugee admissions, in part, on the need to reassign staff from the Refugee Affairs Division to the Asylum Division to address the backlog in asylum cases. During FY 2018, 100 of the 168 refugee officers were assigned to asylum cases.¹¹⁴ By February 2019, USCIS reported that “nearly all” refugee officers were returned to processing refugee applications.¹¹⁵

- **Closures of Refugee Resettlement Offices**—*ongoing*—At least 50 of the 350 nationwide refugee resettlement affiliates (the organizations that support refugees after arrival) have closed since the start of the Trump administration.¹¹⁶ It is unclear whether the closures were caused by a State Department decision to eliminate affiliates if they resettled fewer than 100 refugees annually or if they were forced to close because of a lack of funds due to decreasing refugee admissions (the organizations receive funding per refugee).

B. Asylum

Since taking office, Trump has consistently characterized asylum as a “loophole” in U.S. southern border security, through which unauthorized immigrants are “caught and released” into the U.S. interior.¹¹⁷ As the number of arriving asylum seekers began to increase during the second year of his presidency, the administration has actively deployed policy solutions intended to deter asylum seekers from attempting to enter the United States, limit how many can apply for asylum, and restrict how many ultimately receive it.

110 MPI analysis of data from State Department, “Worldwide Refugee Admissions Processing System (WRAPS),” accessed January 4, 2019, <http://ireports.wrapsnet.org>.

111 Ibid.

112 Executive Office of the President, “Presidential Determination on Refugee Admissions for Fiscal Year 2019,” *Federal Register* 83, no. 212 (November 1, 2018): 55091–92, www.federalregister.gov/documents/2018/11/01/2018-24135/presidential-determination-on-refugee-admissions-for-fiscal-year-2019.

113 MPI analysis of data from State Department, “Worldwide Refugee Admissions Processing System (WRAPS).”

114 Letter from USCIS, “The Department of Homeland Security’s Response to Senator Van Hollen’s June 22, 2018 Letter,” October 1, 2018, www.uscis.gov/sites/default/files/files/natedocuments/U.S._Refugee_Admissions_Program_USRAP_-_Senator_Van_Hollen.pdf.

115 USCIS, “Asylum Division Quarterly Stakeholder Meeting” (phone call, February 19, 2019).

116 Liz Robbins and Miriam Jordan, “Apartments Are Stocked, Toys Donated Only the Refugees Are Missing,” *The New York Times*, May 16, 2018, www.nytimes.com/2018/05/16/us/refugee-admissions.html.

117 See, for example, Memorandum from the President to the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Health and Human Services, and the Secretary of Homeland Security, *Ending “Catch and Release” at the Border of the United States and Directing Other Enhancements to Immigration Enforcement*, April 6, 2018, www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-defense-attorney-general-secretary-health-human-services-secretary-homeland-security.



- **Raised Standards for Credible-Fear Interviews**—February 13, 2017—USCIS released revised lesson plans for asylum officers that made the preliminary asylum interview, the “credible-fear” interview, more difficult for applicants.¹¹⁸ Changes include requiring applicants to establish their identity “by a preponderance of the evidence” (rather than the prior standard of “with a reasonable degree of certainty”) and requiring officers to conduct a full analysis of the credibility of the applicant’s claim (rather than the prior standard of finding that there is a significant possibility that the claim would be found credible during the ultimate asylum adjudication).
- **Limits on Asylum Hearings**—March 5, 2018—In *Matter of E-F-H-L-*, then Attorney General Sessions overruled a case that held asylum and withholding-of-removal applicants are entitled to full evidentiary hearings.¹¹⁹
- **Limits on Asylum for Victims of Private Violence**—June 11, 2018—In *Matter of A-B-*, Sessions limited the ability of victims of domestic or gang violence to qualify for asylum.¹²⁰ A federal court district judge later enjoined the application of this ruling to credible-fear interviews, but it still applies at the ultimate asylum adjudication.¹²¹
- **Asylum Ban**—November 9, 2018—DHS and the Justice Department published an interim final rule that would make anyone who is subject to a presidential proclamation barring their entry into the country and who enters anyway ineligible for asylum.¹²² Concurrently, the president issued a proclamation barring the entry of anyone who crosses the southern border illegally, set to expire 90 days after issuance.¹²³ As a result, anyone who crossed the U.S.-Mexico border between ports of entry was no longer eligible for asylum. On November 19, a federal district court judge in San Francisco issued a temporary restraining order, preventing the government from implementing the regulation.¹²⁴ On December 19, 2018, the same judge issued a preliminary injunction, continuing to block the change; the injunction has yet to be lifted.¹²⁵
 - February 7, 2019—The president issued a proclamation again barring entry for anyone who crosses the southern border illegally,¹²⁶ again set to expire 90 days after issuance. Because the injunction is still in place, the proclamation has thus far had no effect.
- **Migrant Protection Protocols (MPP)/Remain in Mexico**—January 28, 2019—Individuals arriving or entering the United States from Mexico who cross the border illegally or lack proper documentation, including asylum seekers, may now be returned to Mexico for the duration of

118 Memorandum from John Lafferty, Chief, Asylum Division, USCIS, to all Asylum Office personnel, *Release of Updated Asylum Division Officer Training Course (ADOTC) Lesson Plans*, February 13, 2017, https://drive.google.com/file/d/0B_6gbFPjVDoxY0FCczR00FZ4SVk/edit.

119 *Matter of E-F-H-L-*, 27 I&N Dec. 226 (Attorney General, March 5, 2018), www.justice.gov/eoir/page/file/1040936/download.

120 *Matter of A-B-*, 27 I&N Dec. 316 (Attorney General, June 11, 2018), www.justice.gov/eoir/page/file/1070866/download.

121 *Grace et al. v. Matthew G. Whitaker*, No. 18-cv-01853 (U.S. District Court for the District of Columbia, December 19, 2018), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv1853-106.

122 DHS and Justice Department, “Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims,” *Federal Register* 83, no. 218 (November 9, 2018): 55934–53, www.govinfo.gov/content/pkg/FR-2018-11-09/pdf/2018-24594.pdf.

123 White House, “Presidential Proclamation 9822 of November 9, 2018: Addressing Mass Migration through the Southern Border of the United States,” *Federal Register* 83, no. 221 (November 15, 2018): 57661–64, www.govinfo.gov/content/pkg/FR-2018-11-15/pdf/2018-25117.pdf.

124 *East Bay Sanctuary Covenant et al. v. Donald J. Trump et al.*, No. 18-cv-06810-JST (U.S. District Court Northern District of California, November 19, 2018), https://cand.uscourts.gov/filelibrary/3516/3-18-cv-06810-JST_Order_granting_temporary-res.pdf.

125 *Ibid.*, U.S. District Court Northern District of California, December 19, 2018), <https://cand.uscourts.gov/filelibrary/3533/Order-Granting-Preliminary-Injunction-Doc-99.pdf>.

126 White House, “Presidential Proclamation 9842 of February 7, 2018: Addressing Mass Migration through the Southern Border of the United States,” *Federal Register* 84, no. 29 (February 12, 2019): 3665–67, www.govinfo.gov/content/pkg/FR-2019-02-12/pdf/2019-02303.pdf.



their immigration proceedings.¹²⁷ Implementation of the MPP began at the San Ysidro port of entry on January 28, 2019, and has been expanded to several other ports of entry and border sectors.¹²⁸ DHS has indicated that it will be expanded across the entire border.

- **Metering**—ongoing—During 2018, the Trump administration began limiting the number of asylum seekers allowed to enter the United States each day at ports of entry along the southern border.¹²⁹ Under this practice, known as “metering,” there is no way for asylum seekers to know how long they will need to wait and no official way to hold their spot. While there has been nothing officially released from the administration about the effects of this practice, or even where it is being implemented, regular reports document asylum seekers waiting days, weeks, or even months.¹³⁰
- **Detention of Arriving Families, Children, and Asylum Seekers**—ongoing—Under several laws and a legal settlement in the case *Flores v. Reno*, the U.S. government is prevented from detaining all families and children while they are in immigration proceedings. The Trump administration has moved to increase detention of these immigrants, many of whom seek asylum after reaching the U.S.-Mexico border, as well as asylum seekers more broadly, but is still prevented from doing so under current laws.
 - *June 20, 2018*—In his executive order ending family separations (see Section II.A.), Trump mandated that instead all families be held together while they have immigration proceedings pending. He ordered the attorney general to ask a federal judge to relax a ruling that prevents lengthy detention of children to allow for the detention of families. The court rejected that petition on July 9, 2018.¹³¹
 - *September 7, 2018*—The administration introduced a proposed regulation to implement the *Flores* settlement, under which it would be able to indefinitely detain families.¹³² The notice and comment period for the proposed regulation ended on November 6, 2018. A final version has not yet been published.
 - *April 16, 2019*—In *Matter of M-S*, Attorney General William Barr ruled that immigration judges do not have the authority to hold bond hearings for arriving asylum seekers.¹³³

127 U.S. Department of Homeland Security (DHS), “Migrant Protection Protocols” (news release, January 24, 2019), www.dhs.gov/news/2019/01/24/migrant-protection-protocols. On April 8, 2019, a federal district court judge in California issued an injunction on the policy, but a three-judge panel of the Ninth Circuit Court of Appeals stayed the injunction before it could go into effect, meaning DHS can continue implementing Remain in Mexico. See *Innovation Law Lab, et al., v. Kirstjen Nielsen, et al.*, Case No. 19-cv-00807-RS (U.S. District Court Northern District of California, April 8, 2019), <https://www.courtlistener.com/docket/14560345/73/innovation-law-lab-v-nielsen>; *Innovation Law Lab, et al., v. Kirstjen Nielsen, et al.*, Case No. 19-15716 (U.S. Court of Appeals for the Ninth Circuit, April 12, 2019), <http://cdn.ca9.uscourts.gov/datastore/general/2019/04/13/Order.pdf>.

128 Memorandum from Kevin K. McAleenan, Commissioner of CBP, to Todd C. Owen, Executive Assistant Commissioner for Field Operations, and Carla L. Provost, Chief of U.S. Border Patrol, *Implementation of the Migrant Protection Protocols*, January 28, 2019, www.cbp.gov/sites/default/files/assets/documents/2019-Jan/Implementation%20of%20the%20Migrant%20Protection%20Protocols.pdf.

129 Dara Lind, “The US Has Made Migrants at the Border Wait Months to Apply for Asylum. Now the Dam is Breaking,” *Vox*, November 28, 2018, www.vox.com/2018/11/28/18089048/border-asylum-trump-metering-legally-ports.

130 See, for example, *Ibid*; Daniella Silva, “Trapped in Tijuana: Migrants Face a Long Dangerous Wait to Claim Asylum,” *NBC News*, March 18, 2019, www.nbcnews.com/news/latino/trapped-tijuana-migrants-face-long-dangerous-wait-claim-asylum-n981721.

131 *Jenny L. Flores et al. v. Jefferson B. Sessions, III et al.*, Case No. CV 85-4544-DMG (U.S. District Court Central District of California, July 9, 2018), www.politico.com/f/?id=00000164-8176-d66b-a166-8bf6cdaa0000.

132 DHS and HHS, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” *Federal Register* 83, no. 174 (September 7, 2018): 45486–534, www.federalregister.gov/documents/2018/09/07/2018-19052/apprehension-processing-care-and-custody-of-alien-minors-and-unaccompanied-alien-children.

133 *Matter of M-S*, 27 I&N Dec. 509 (Attorney General, April 16, 2019), www.justice.gov/eoir/file/1154747/download. Before referring *Matter of M-S* to himself, then Attorney General Jeff Sessions referred *Matter of M-G-G* with the intention of reviewing the same issue. However, after the referral, the respondent was removed from the country, prompting the attorney general to no longer review the case. See *Matter of M-G-G*, 27 I&N Dec. 475 (Attorney General, October 12, 2018), www.justice.gov/eoir/page/file/1100651/download; *Matter of M-S*, 27 I&N Dec. 476 (Attorney General, October 12, 2018), www.justice.gov/eoir/page/file/1100661/download.



Without this option, assuming ICE has the resources to hold them, many asylum seekers will be held in custody indefinitely while their immigration proceedings are pending. Note, however, that because of prior law, families and unaccompanied children are exempted from this decision. (See Section III.B.)

- ***Steps to Reduce the Affirmative Asylum Backlog—ongoing***—At the beginning of the Trump administration, the backlog of affirmative asylum cases (those of individuals who present themselves to USCIS to request asylum, rather than doing so defensively in court during a removal proceeding) was 233,389.¹³⁴ Concerned that many applicants were filing asylum applications to get the work authorization granted when an application has been pending for six months or more, and concerned that some were filing asylum applications to trigger removal proceedings in order to get immigration benefits only granted by immigration courts (cancellation of removal), the administration has enacted strategies to reduce the backlog and inflow of applications.
 - ***“Last in, First out” Processing—January 31, 2018***—In an attempt to stem the growth of its asylum backlog and deter non-meritorious claims, USCIS started scheduling asylum interviews for recent applicants ahead of older filings.¹³⁵
 - ***Interview Waiver Pilot Program—Winter 2017–18***—In Winter and Spring 2018, USCIS conducted a pilot program offering certain asylum applicants (those who likely filed their applications to trigger removal proceedings) the opportunity to waive their asylum interviews and be directly placed into removal proceedings.¹³⁶ In August 2018, USCIS issued another round of waiver offers.
 - ***Allowing Applicants to Request Placement in Removal Proceedings—June 28, 2018***—USCIS now allows immigrants whose asylum applications were denied while they held lawful immigration status to request placement in removal proceedings once they fall out of legal immigration status.¹³⁷ In “limited and extraordinary circumstances,” USCIS may also place a removable foreign national in removal proceedings, even before asylum adjudication, if requested by the foreign national.
- ***Upcoming***
 - ***Multiple Changes to Asylum Adjudications***—On April 29, 2019, the president issued a memorandum proposing a series of changes to asylum adjudications.¹³⁸ He instructs his administration to publish, within 90 days, regulations that:
 - place arriving asylum applicants in streamlined immigration court proceedings in which they may only apply for asylum, rather than the current process that allows them to apply for any immigration benefit for which they qualify;
 - ensure all asylum adjudications before the immigration court are completed within 180 days of filing;¹³⁹

¹³⁴ Affirmative asylum is a process before USCIS, available to individuals already in the United States and not in removal proceedings. See USCIS, “Affirmative Asylum Statistics” (Asylum Division Quarterly Stakeholder Meeting, USCIS, April 18, 2017), [www.uscis.gov/sites/default/files/USCIS/Outreach/PED-Affirmative Asylum Statistics - January 2017.pdf](http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-Affirmative%20Asylum%20Statistics%20-%20January%202017.pdf).

¹³⁵ USCIS, “USCIS to Take Action to Address Asylum Backlog” (news release, January 31, 2018), www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog.

¹³⁶ Applicants selected for participation are removable foreign nationals who filed their asylum applications more than ten years after their last entry into the United States. See USCIS, “Agenda” (Asylum Division Quarterly Stakeholder Meeting, USCIS, November 16, 2018), [www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED QuestionsandAnswersNov162018AsylumMeeting.pdf](http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED%20QuestionsandAnswersNov162018AsylumMeeting.pdf).

¹³⁷ USCIS, “Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens” (policy memorandum, USCIS, Washington, DC, June 28, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf.

¹³⁸ Memorandum from the president, *Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System*, April 29, 2019, www.whitehouse.gov/presidential-actions/presidential-memorandum-additional-measures-enhance-border-security-restore-integrity-immigration-system.

¹³⁹ In November 2018 the EOIR issued a memorandum instructing judges to finish asylum proceedings within 180 days (see Section III.A.).



- set a fee for applications for both asylum and employment authorization documents issued to asylum seekers; and
- bar foreign nationals who entered in between ports of entry from receiving employment authorization before their applications for asylum or other immigration benefits have been granted.

The memorandum also authorized DHS to use other employees within the department to conduct credible and reasonable fear interviews. Currently, the USCIS asylum corps conducts these interviews. This is likely a reference to the administration's reported plan to use CBP officers to perform such interviews, assuming that they will be stricter.¹⁴⁰

C. Unaccompanied Children

Federal law and legal precedent require the United States to accept unaccompanied child migrants from noncontiguous countries (i.e., all but Canada and Mexico) and to release such children to a parent or guardian during processing. The administration sees this practice as encouraging minors to attempt to cross the border without authorization, and has sought to increase enforcement both against the children and the family members with whom they seek to reunify.

- **Removal of Unaccompanied Child Designations**—*February 20, 2017*—After the president issued his January 25, 2017, executive order on border security, DHS published a related implementing memo, in which it advised that the department should establish procedures to confirm that minors initially determined to be unaccompanied alien children continue to fall within the legal definition as they move through removal processes.¹⁴¹
 - *September 2017*—The Justice Department published a legal opinion ruling that immigration judges are not bound by ICE's or CBP's original determination that a minor is an unaccompanied child and can take away the designation during the minor's immigration court proceedings.¹⁴²
 - *December 2017*—The chief immigration judge issued a memo instructing immigration judges to root out fraud and evaluate whether a child continues to meet the definition of an unaccompanied alien child.¹⁴³
 - *Upcoming*—A proposed regulation published jointly by DHS and HHS would obligate officers in both agencies to assess whether or not a minor continues to merit the designation each time they interact with the minor's case.¹⁴⁴ The comment period on the proposed rule ended on November 6, 2018. A final rule has not yet been introduced.
- **Increased Number of Unaccompanied Children in Staff Secure Facilities**—*August 16, 2017*—ORR now places all unaccompanied children with any gang-related history in staff secure

140 Julia Ainsley, Carol E. Lee, and Kristen Welker, "Trump Admin Wants to Make Asylum Harder by Putting Border Agents in Charge," NBC News, April 9, 2019, www.nbcnews.com/politics/immigration/trump-admin-wants-make-asylum-harder-putting-border-agents-charge-n992436.

141 Memorandum from John Kelly, Secretary of Homeland Security, to Kevin McAleenan, Acting Commissioner of CBP, et al., *Implementing the President's Border Security and Immigration Enforcement Improvements Policies*, February 20, 2017), www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.

142 Memorandum from Jean King, General Counsel of EOIR, Justice Department, to James McHenry, Acting Director of EOIR, *Legal Opinion Re: EOIR's Authority to Interpret the Term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA*, September 19, 2017, <https://cliniclegal.org/sites/default/files/resources/King-9-19-17-UAC-TVPRA.pdf>.

143 Memorandum from MaryBeth Keller, *Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles*.

144 DHS and HHS, "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children."



detention, whether or not they have ever been arrested or charged with a crime.¹⁴⁵ The policy also made all such children ineligible for release to sponsors, but this was enjoined by a federal district court on November 20, 2017, and the injunction remains in place.¹⁴⁶

- *June 2017*—ORR changed its policy to require that the office's director personally sign off on the release of any unaccompanied child from a secure or staff secure facility.¹⁴⁷ This policy was preliminarily enjoined in June 2018, and the injunction remains in place.¹⁴⁸
- ***Denial of Special Immigrant Juvenile (SIJ) Status Applications—February 2018***—In the first half of 2018, USCIS began systematically denying applications for SIJ status when the applicant is age 18 or older.¹⁴⁹ The status is available to children who were abused, neglected, or abandoned by one or both parents. In April 2018, a USCIS spokesman said that roughly 260 cases had been denied based on February USCIS guidance, which was not made public.¹⁵⁰
 - *October 24, 2018*—A federal district court judge in California issued a preliminary injunction, prohibiting USCIS from using the policy to deny SIJ status to 18-to-20-year-olds in California.¹⁵¹ The preliminary injunction remains in place today.
 - *April 8, 2019*—Following a summary judgement ruling that the administration's new policy was violating federal law, a federal district court judge in New York ordered the administration to refrain from using the policy to deny SIJ status to 18-to-20-year-olds in New York.¹⁵²
- ***Increased Vetting and Immigration Enforcement against Potential Sponsors—April 13, 2018***—ORR finalized a memorandum of agreement with ICE and CBP outlining policies and procedures for sharing information and conducting background checks on potential sponsors for unaccompanied minors, including ICE running a potential sponsor's information through its database to check their immigration status.¹⁵³ A subsequent *Federal Register* notice clarified that the new vetting and information-sharing procedures would apply to potential sponsors as well as other adult members of the potential sponsors' household.¹⁵⁴
 - *December 2018*—ICE stated that 170 potential sponsors had been arrested from July through November 2018, 109 of whom had no criminal record.¹⁵⁵

145 Memorandum from HHS, Administration for Children and Families, Office of Refugee Resettlement, to Domestic Policy Council, *Community Safety Initiative for the Unaccompanied Alien Children Program*, August 16, 2017, 3, www.themarshallproject.org/documents/4442396-Memo-to-Domestic-Policy-Council.

146 *Saravia v. Sessions*, No. 3:17-cv-03615-VC (U.S. District Court Northern District of California, November 20, 2017), www.clearinghouse.net/chDocs/public/IM-CA-0109-0002.pdf.

147 Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, *Oversight of the Care of Unaccompanied Alien Children* (Washington, DC: U.S. Senate, 2018), 50, www.hsgac.senate.gov/imo/media/doc/2018.08.15%20PSI%20Report%20-%20Oversight%20of%20the%20Care%20of%20UACs%20-%20FINAL.pdf.

148 *L.V.M., et al., v. Scott Lloyd, et al.*, No. 18-cv-01453 (U.S. District Court for the Southern District of New York, June 27, 2018), https://scholar.google.com/scholar_case?case=5874259017359142283&q=L.V.M.+EX+REL.+DE+GALINDO+v.+LLOYD&hl=en&as_sdt=20006&as_vis=1.

149 Austin Rose, "For Vulnerable Immigrant Children, A Longstanding Path to Protection Narrows," *Migration Information Source*, July 25, 2018, www.migrationpolicy.org/article/vulnerable-immigrant-children-longstanding-path-protection-narrows.

150 Ted Hesson, "Morning Shift," *Politico*, April 25, 2018, www.politico.com/newsletters/morning-shift/2018/04/25/travel-ban-at-scotus-182935.

151 *J.L. et al. v. Cissna et al.*, No. 5:18-cv-04914 (U.S. District Court for the Northern District of California, October 24, 2018), www.publiccounsel.org/tools/assets/files/1082.pdf.

152 *R.F.M. et al., v. Nielsen, et al.*, No. 1:18-cv-05068 (U.S. District Court for the Southern District of New York, April 8, 2019), www.courtlistener.com/docket/7077824/129/rf-m-v-nielsen.

153 HHS Office of Refugee Resettlement, ICE, and CBP, "Memorandum of Agreement Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters," April 13, 2018, www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf.

154 DHS, "Privacy Act of 1974; System of Records," *Federal Register* 83, no. 89 (May 8, 2018): 20844–50, www.govinfo.gov/content/pkg/FR-2018-05-08/pdf/2018-09902.pdf.

155 Tal Kopan, "ICE Arrested Undocumented Adults Who Sought to Take in Immigrant Children," *San Francisco Chronicle*, December 10, 2018, www.sfchronicle.com/politics/article/ICE-arrested-undocumented-adults-who-sought-to-13455142.php.



- *December 2018*—After the population of unaccompanied children in ORR custody grew alarmingly, hitting a high of almost 15,000 children in December, ORR announced that it would no longer fingerprint all adults in the household of potential sponsors. Instead, only potential sponsors would be fingerprinted.¹⁵⁶
- *February 15, 2019*—The law providing DHS with appropriations for FY 2019 prevents congressionally appropriated funds from being used to detain, remove, or begin removal proceedings against any unaccompanied minor’s sponsor, potential sponsor, or member of the sponsor’s household based on information DHS received from ORR.¹⁵⁷
- *April 9, 2019*—Testifying before Congress, Commander Jonathan White, a career public health official at HHS, the department that oversees ORR, explained that ORR now only conducts fingerprint background checks on parents if there is a specific concern with their case.¹⁵⁸

D. Temporary Protected Status

Temporary Protected Status (TPS) is a temporary form of humanitarian protection offered to nationals of certain countries who are present in the United States and unable to return to their countries due to violent conflict or natural disaster. The Trump administration has criticized past administrations, both Democratic and Republican, for extending certain TPS designations for such a long time that the benefit no longer seems temporary. As such, the administration has tried to end protections for nationals of seven countries, totaling more than 300,000 people.

- ***End of TPS Designations for Nationals of Six Countries***—*September 2017–June 2018*—The administration has ended TPS designations for nationals of Sudan (expired November 2, 2018), Nicaragua (was set to expire January 5, 2019), Nepal (expiration June 24, 2019), Haiti (expiration July 22, 2019), El Salvador (expiration September 9, 2019), and Honduras (expiration January 5, 2020).¹⁵⁹
 - *October 3, 2018*—A federal district court judge in California issued a preliminary injunction enjoining DHS from terminating TPS for nationals of El Salvador, Haiti, Nicaragua, and Sudan.¹⁶⁰ That preliminary injunction remains in place.
 - *March 12, 2019*—In a different case before the U.S. District Court in the Northern District of California, the administration agreed to put on hold plans to end TPS for nationals of Honduras and Nepal and instead link their fate to the outcome of the separate case filed on behalf of TPS for nationals of El Salvador, Haiti, Nicaragua, and Sudan.¹⁶¹

¹⁵⁶ Robert Moore, “Thousands of Migrant Children Could Be Released With Trump’s Major Policy Reversal,” *Texas Monthly*, December 18, 2018, www.texasmonthly.com/news/trump-fingerprint-policy-change-reduce-migrant-children-detention-tornillo.

¹⁵⁷ *Consolidated Appropriations Act, 2019*.

¹⁵⁸ Testimony of Commander Jonathan White, Deputy Director for Children’s Programs, HHS Office of Assistant Secretary for Preparedness and Response, before the Senate Committee on the Homeland Security and Governmental Affairs, *Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline*, 116th Cong., 1st sess., April 9, 2019, www.hsgac.senate.gov/hearings/unprecedented-migration-at-the-us-southern-border-perspectives-from-the-frontline.

¹⁵⁹ See USCIS, “Temporary Protected Status,” updated March 27, 2019, www.uscis.gov/humanitarian/temporary-protected-status.

¹⁶⁰ *Ramos, et al., v. Nielsen, et al.*, No. 3:18-cv-01554-EMC (U.S. District Court for the Northern District of California, October 3, 2018), www.clearinghouse.net/chDocs/public/IM-CA-0134-0003.pdf.

¹⁶¹ *Bhattarai, et al., v. Nielsen, et al.*, No. 3:19-cv-00731-EMC (U.S. District Court for the Northern District of California, March 12, 2019), https://cdn.vox-cdn.com/uploads/chorus_asset/file/15957390/bhattarai_stay_3_12_19.pdf.



- **Extension of TPS Designations for Nationals of Four Countries**—March 2018–April 2019—The administration has extended TPS designations for nationals of Syria (extended through September 30, 2019), Yemen (through March 3, 2020), Somalia (through March 17, 2020), and South Sudan (through November 2, 2020).
- **End of Deferred Enforced Departure for Liberia**—March 27, 2018—The administration announced that it would end Deferred Enforced Departure (DED), a TPS-like benefit, for Liberians on March 31, 2019.¹⁶² Liberians have had DED since 2007.
 - *March 28, 2019*—In a memo, Trump announced that he would extend DED for Liberians until March 30, 2020, explaining the extension was based on the fact that the “overall situation in West Africa remains concerning.”¹⁶³

V. U.S. Department of State

The U.S. Department of State’s immigration responsibilities focus around the adjudication of visa applications and dissemination of visa stamps, where approved, to foreign nationals seeking to enter the United States. As one of the final government agencies determining who is permitted to enter the country, the State Department has been a central part of the Trump administration’s efforts to increase vetting of arriving foreign nationals.

- **Travel Ban**—January 27, 2017—After issuing three versions of the travel ban (the first in January 2017) and facing multiple court injunctions along the way, the Supreme Court upheld the administration’s third iteration of the ban on June 26, 2018.¹⁶⁴ At the time of publication, under this ban nationals of seven countries (Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen) are prevented from entering the United States, to varying degrees.¹⁶⁵
- **Suspension of the Visa Interview Waiver Program**—January 27, 2017—In the president’s initial January 2017 executive order issuing the travel ban, and the subsequent March 6 executive order that revoked and replaced the prior order, the administration included near identical provisions directing the State Department to immediately suspend the Visa Interview Waiver Program.¹⁶⁶ The change was implemented in the department’s *Foreign Affairs Manual* in July 2017.¹⁶⁷ This program allowed certain travelers to renew their travel authorization without an in-person interview.
- **Slowed Pace of Nonimmigrant Visa Interviews**—June 21, 2017—Trump issued an executive order eliminating a goal put in place under the Obama administration that the State Department

162 USCIS, “DED Granted Country – Liberia,” updated March 30, 2018, www.uscis.gov/humanitarian/deferred-enforced-departure/ded-granted-country-liberia/ded-granted-country-liberia.

163 Memorandum from the President, *Memorandum on Extension of Deferred Enforced Departure for Liberians*, March 28, 2019, www.whitehouse.gov/presidential-actions/memorandum-extension-deferred-enforced-departure-liberians.

164 Muzaffar Chishti, Sarah Pierce, and Laura Plata, “In Upholding Travel Ban, Supreme Court Endorses Presidential Authority While Leaving Door Open for Future Challenges,” *Migration Information Source*, June 29, 2018, www.migrationpolicy.org/article/upholding-travel-ban-supreme-court-endorses-presidential-authority-while-leaving-door-open.

165 Muzaffar Chishti and Jessica Bolter, “The Travel Ban at Two: Rocky Implementation Settles into Deeper Impacts,” *Migration Information Source*, January 31, 2019, www.migrationpolicy.org/article/travel-ban-two-rocky-implementation-settles-deeper-impacts.

166 White House, “Executive Order 13769 of January 27, 2017: Protecting the Nation from Foreign Terrorist Entry into the United States,” *Federal Register* 82, no. 20 (February 1, 2017): 8977–82, www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf; White House, “Executive Order 13780 of March 6, 2017: Protecting the Nation from Foreign Terrorist Entry into the United States,” *Federal Register* 82, no. 45 (March 9, 2017): 13209–19, www.govinfo.gov/content/pkg/FR-2017-03-09/pdf/2017-04837.pdf.

167 State Department, “9 Foreign Affairs Manual 403.5: (U) NIV Interview by Consular Officer,” updated July 27, 2017, <https://web.archive.org/web/20170728232427/https://fam.state.gov/fam/09FAM/09FAM040305.html>.



interview 80 percent of nonimmigrant visa applicants within three weeks of receiving their applications.¹⁶⁸

- **Increased Information Requirements for Some Applicants**—August 3, 2017—In a new form (DS-5535), the State Department mandates that any visa applicant that officers decide “warrants additional scrutiny” provide 15 years of travel, housing, and employment history, among other things.¹⁶⁹
- **Changes to the 30/60-Day Rule**—September 16, 2017—For a certain period after a nonimmigrant enters the country, the State Department can declare their application to have included a material misrepresentation if the individual engages in activities inconsistent with the terms of their nonimmigrant status.¹⁷⁰ While previously the period in which this could be done was 30 or 60 days after admission, it has been extended to 90 days.
- **Public-Charge Vetting**—January 3, 2018—The State Department changed its *Foreign Affairs Manual* to instruct employees to consider an affidavit of support as just one potential factor when deciding if an applicant for a green card or a temporary visa is likely to become a public charge; in the past, an affidavit of support was on its own sufficient evidence to pass the test.¹⁷¹ Officers are now instructed to consider the applicant’s “age, health, family status, assets, resources, financial status, education, and skills,” regardless of whether an affidavit of support was filed.
- **Establishment of a National Vetting Enterprise**—February 6, 2018—Trump issued a presidential memo that gave DHS and other agencies six months to establish a National Vetting Enterprise, which administration officials said is intended to streamline vetting of would-be immigrants and nonimmigrants and to improve the flow of information between various federal agencies.¹⁷² In August, DHS finalized a plan that, among other things, described the intention to begin operations in December 2018 and consolidated existing processes that support vetting of foreign nationals as part of the Visa Waiver Program.¹⁷³
- **Heightened Nonimmigrant Intent Requirements for E-Visa Holders**—April 6, 2018—The State Department raised the level of scrutiny of E-visa applicants’ intent to depart; while previously the department instructed immigration officers to consider asking applicants for this visa (treaty traders and investors) about their plans to leave the country after it expires, they are now required to do so.¹⁷⁴
- **Additional Screenings for Chinese Nationals in Sensitive Fields**—June 11, 2018—The State Department now conducts additional screenings of Chinese nationals who are applying for visas

168 White House, “Executive Order 13802 of June 21, 2017: Amending Executive Order 13597,” *Federal Register* 82, no. 121 (June 26, 2017): 28747–48, www.govinfo.gov/content/pkg/FR-2017-06-26/pdf/2017-13458.pdf; White House, “Executive Order 13597 of January 19, 2012: Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness,” *Federal Register* 77, no. 15 (January 24, 2012): 3373–75, www.govinfo.gov/content/pkg/FR-2012-01-24/pdf/2012-1568.pdf.

169 State Department, “60-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants,” *Federal Register* 82, no. 148 (August 3, 2017): 36180–82, www.govinfo.gov/content/pkg/FR-2017-08-03/pdf/2017-16343.pdf.

170 State Department, “Change to INA 212(a)(6)(C)(i) and Introduction of 90 Day Rule” (policy update, State Department, Washington, DC, September 16, 2017), [https://travel.state.gov/content/dam/visas/policy_updates/17%20STATE%2095090%20Change%20to%20INA%20212\(a\)\(6\)\(C\)\(i\)%20and%20Introduction%20of%2090%20Day%20Rule.pdf](https://travel.state.gov/content/dam/visas/policy_updates/17%20STATE%2095090%20Change%20to%20INA%20212(a)(6)(C)(i)%20and%20Introduction%20of%2090%20Day%20Rule.pdf).

171 State Department, “9 Foreign Affairs Manual 302.8–2: (U) Public Charge,” updated January 3, 2018, <https://fam.state.gov/fam/09fam/09fam030208.html>.

172 Memorandum from the president to the vice president et al., *Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise*, February 6, 2018, www.whitehouse.gov/presidential-actions/presidential-memorandum-optimizing-use-federal-government-information-support-national-vetting-enterprise.

173 DHS, *Plan to Implement the Presidential Memorandum on Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise* (Washington, DC: DHS, 2018), www.dhs.gov/sites/default/files/publications/NSPM-9%20Implementation%20Plan.pdf.

174 State Department, “9 Foreign Affairs Manual 402.9–4(c): Treaty Traders, Investors, and Specialty Occupations—E Visas—Intent to Depart upon Termination of Status,” updated April 6, 2018, <https://fam.state.gov/fam/09FAM/09FAM040209.html>.



to study or work in certain “sensitive” fields.¹⁷⁵ There is no public guidance on what constitutes a “sensitive” field. In some cases, if these applicants do receive a visa, it may be limited to one year.

- **Denials of Visas to Same-Sex Domestic Partners of Foreign Diplomats—July 2018**—The administration began denying visas to same-sex domestic partners of foreign government officials and international organization personnel traveling to the United States.¹⁷⁶ On October 1, foreign domestic partners of diplomats based in the United States were given until December 31 to provide the State Department proof of marriage or leave the country.
- **Limits on Visas for Nationals of Recalcitrant Countries—ongoing**—Pursuant to the president’s January 25, 2017, executive order on interior enforcement, the State Department and DHS have cooperated in refusing to grant visas to nationals of recalcitrant countries (those that systematically refuse or delay cooperation on the return of their nationals). The efforts aim to pressure these countries to accept the return of their nationals when they are subject to removal from the United States. (For more see Section II.B.)
- **Upcoming**
 - **More Detailed Applicant Disclosures**—The administration has published several proposed rules that, if implemented, would require all immigrant and nonimmigrant visa applicants to disclose their social media accounts, phone numbers, and email addresses for the prior five years.¹⁷⁷
 - **Making it More Difficult for J-Visa Holders to Stay in the United States**—The administration has indicated it intends to publish a regulation that would make it harder for J-visa holders (research scholars and other temporary exchange visitors) to stay in the United States.¹⁷⁸ Certain J-visa recipients, including all international medical graduates, must return to their home countries for two years before returning to the United States with a different nonimmigrant status or as a green-card holder. While these nonimmigrants can currently apply to the State Department to request that this two-year home-residency requirement be waived, the regulation under consideration would decrease the likelihood that such waivers are granted.
 - **Efforts to Decrease Visa Overstays—April 22, 2019**—the president issued a memo ordering the State Department, DHS, and the Justice Department to initiate steps to reduce the number of nonimmigrants who overstay their permitted time in the United States.¹⁷⁹ The memo drew particular attention to countries that have tourist visa (B-1, B-2) overstay rates of 10 percent or greater, encouraging the agencies to consider consequences as serious as suspending or limiting the entry of nationals of those countries on tourist visas.

¹⁷⁵ Testimony of Edward J. Ramotowski, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, State Department, before the Senate Committee on the Judiciary, Subcommittee on Border Security and Immigration, *Student Visa Integrity: Protecting Educational Opportunity and National Security*, 115th Cong., 2d sess., June 6, 2018, www.judiciary.senate.gov/meetings/a-thousand-talents-chinas-campaign-to-infiltrate-and-exploit-us-academia.

¹⁷⁶ State Department, “Senior Administration Officials on Visas for Same-Sex Domestic Partners of G-4 and Diplomatic Visa Holders” (news release, October 2, 2018), www.state.gov/r/pa/prs/ps/2018/10/286385.htm.

¹⁷⁷ State Department, “60-Day Notice of Proposed Information Collection: Application for Immigrant Visa and Alien Registration,” *Federal Register* 83, no. 62 (March 30, 2018): 13806–07, www.govinfo.gov/content/pkg/FR-2018-03-30/pdf/2018-06490.pdf; State Department, “60-Day Notice of Proposed Information Collection: Application for Nonimmigrant Visa,” *Federal Register* 83, no. 62 (March 30, 2018): 13807–08, www.govinfo.gov/content/pkg/FR-2018-03-30/pdf/2018-06496.pdf; State Department, “30-Day Notice of Proposed Information Collection: Application for Nonimmigrant Visa,” *Federal Register* 83, no. 167 (August 28, 2018): 43951–52, www.govinfo.gov/content/pkg/FR-2018-08-28/pdf/2018-18594.pdf.

¹⁷⁸ State Department, “Visas: Two-Year Home-Country Physical Presence Requirement” (proposed rule 1400-AE48, Fall 2017), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1400-AE48.

¹⁷⁹ Memorandum from the president, *Presidential Memorandum on Combating High Nonimmigrant Overstay Rates*, April 22, 2019, www.whitehouse.gov/presidential-actions/presidential-memorandum-combating-high-nonimmigrant-overstay-rates.



VI. U.S. Citizenship and Immigration Services and U.S. Department of Labor

Trump is the first president in modern times to characterize legal immigration as detrimental to the United States. Even as Congress has avoided legislation that would adjust legal immigration levels, the administration has moved to reduce it unilaterally. USCIS and the U.S. Department of Labor, as the agencies that adjudicate nearly all immigrant and nonimmigrant petitions (with some big exceptions, including tourists), have been central to the administration's efforts in this arena.

USCIS is the agency within DHS tasked with immigration benefits adjudication, though under the Trump administration it has also become increasingly active in immigration enforcement. The Labor Department participates in the adjudication of certain employment-based immigrant and nonimmigrant petitions.

- **Continuous Immigration Vetting**—June 2017—Through an initiative entitled Continuous Immigration Vetting (CIV), USCIS has begun vetting information for certain immigration benefit applications throughout the entire application adjudication period as new information is received, rather than only performing point-in-time checks. The initiative is designed to increase national security checks.¹⁸⁰ USCIS is in the process of expanding CIV to continue screening and vetting beyond the application period and throughout the duration of the benefit status, until the applicant becomes a naturalized U.S. citizen.
- **Increased Requirements for Congressional Involvement in Immigration Cases**—December 18, 2017—USCIS added new requirements for any Congressional office inquiring about a constituent's immigration case.¹⁸¹ The new requirements include mandating that the request come with a handwritten and notarized signature from the foreign national, even if that individual is outside of the United States.
- **New USCIS Mission Statement**—February 22, 2018—USCIS changed its mission statement¹⁸² to, among other things, remove the phrase “nation of immigrants” and add a focus on protecting Americans.
- **Destruction of Returned Cards**—April 2, 2018—When a USCIS document, such as a green card or employment authorization card, bounces back to USCIS because of a mailing issue, USCIS now only holds on to the document for 60 days before destroying it; previously, they held on to it for one year.¹⁸³
- **Denial of Work Authorization Based on Arrest and Conviction Records**—May 31, 2018—USCIS revised the form used by certain foreign nationals to apply for work authorization to require them to submit documentation of all of their arrests and/or convictions.¹⁸⁴ The instructions remind applicants that USCIS may deny applications if they have been arrested and/or convicted of any crime.
- **Creation of a Denaturalization Office**—June 2018—USCIS Director L. Francis Cissna announced that he planned to hire several dozen lawyers and immigration officers to work on a team focused

180 DHS, “Privacy Impact Assessment for the Continuous Immigration Vetting” (impact assessment, DHS, Washington, DC, February 14, 2019), www.dhs.gov/sites/default/files/publications/pia-uscis-fdnsciv-february2019_0.pdf.

181 Betsy Woodruff, “Trump Administration Is Set to Add Another Burden on Immigrants,” *The Daily Beast*, December 27, 2017, www.thedailybeast.com/trump-administration-is-set-to-add-another-burden-on-immigrants.

182 USCIS, “USCIS Director L. Francis Cissna on New Agency Mission Statement” (news release, February 22, 2018), www.uscis.gov/news/news-releases/uscis-director-l-francis-cissna-new-agency-mission-statement.

183 USCIS, “Undeliverable Permanent Resident and Employment Authorization Cards and Travel Documents to be Destroyed after 60 Days” (news release, April 3, 2018), www.uscis.gov/news/alerts/undeliverable-permanent-resident-and-employment-authorization-cards-and-travel-documents-be-destroyed-after-60-days.

184 USCIS, “Instructions for Application for Employment Authorization” (guidance document, USCIS, Washington, DC, May 31, 2018), www.uscis.gov/sites/default/files/form/i-765instr.pdf. Among the classes of foreign nationals this change affects are applicants for asylum, TPS, DACA, and adjustment of status, among others.



on denaturalization in a new Los Angeles office, to launch in 2019.¹⁸⁵ The move is an extension of an effort started under Obama to find hundreds of people who received green cards and citizenship through fraudulent means after their fingerprints were not digitized.¹⁸⁶

- ***Decrease in Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs), Increase in Denials***—September 11, 2018—At their discretion, USCIS officers can now deny applications for any immigration benefits if they lack required information or are obviously ineligible.¹⁸⁷ Previously, officers were obligated to first issue an RFE or NOID, giving the applicant the opportunity to correct or supplement the record.
- ***Increase in Issuance of Notices to Appear (NTA)***—October 1, 2018—USCIS enacted new guidance instructing its officers to issue NTAs (the charging documents that initiate removal hearings) to more foreign nationals, including applicants who, upon denial of an application for immigration benefits, would become unauthorized.¹⁸⁸ When implemented, this was not applied to employment-based or humanitarian applicants.
 - November 19, 2018—USCIS expanded the policy to humanitarian applicants, including applicants for T visas (for victims of human trafficking), U visas (for victims of crime), and SIJ status (for abused or neglected children).¹⁸⁹ Applicants for employment-based visas are still exempted.
- ***Limits on Fast-Track Naturalizations for Spouses of U.S. Citizens***—October 12, 2018—USCIS updated the policy manual that governs the adjudication of citizenship applications to clarify that permanent residents who are married to U.S. citizens may only naturalize on an accelerated basis if they have lived with their U.S.-citizen spouse for three years prior to filing and the marriage is not terminated prior to taking the Oath of Allegiance for naturalization.¹⁹⁰ If permanent residents have not been married to and living with their U.S.-citizen spouses for three years or the marriage is terminated before the oath ceremony, they must wait five years after receiving permanent residence to file for naturalization.
- ***Clarified Policy on Violations of Federal Controlled Substance Law and Marijuana-Related Activities***—April 19, 2019—USCIS issued a memo clarifying that violations of federal controlled substance law, including violations involving marijuana, are generally a bar for receiving citizenship, even if the conduct is not an offense under state law.¹⁹¹ The guidance also clarifies that applicants involved in certain marijuana-related activities, including work, may be barred from receiving citizenship if they are found to have violated federal law.
- ***Slowed Adjudications of Immigration Benefits Applications***—ongoing—A mix of changed policies (such as interviewing all employment-based applicants; see Section VI.B.), new vetting

185 Amy Taxin, “APNewsBreak: US Launches Bid to Find Citizenship Cheaters,” Associated Press, June 11, 2018, <https://apnews.com/1da389a535684a5f9d0da74081c242f3>.

186 See DHS Office of the Inspector General, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records* (Washington, DC: USCIS, 2016), www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf.

187 USCIS, “Issuance of Certain RFEs and NOIDs; Revisions to *Adjudicator’s Field Manual (AFM)* Chapter 10.5(a), Chapter 10.5(b)” (policy memorandum, USCIS, Washington, DC, July 13, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf.

188 USCIS, “Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens” (policy memorandum, USCIS, Washington, DC, June 28, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf.

189 USCIS, “USCIS to Continue Implementing New Policy Memorandum on Notices to Appear” (news release, November 8, 2018), www.uscis.gov/news/alerts/uscis-continue-implementing-new-policy-memorandum-notices-appear.

190 USCIS, “Marriage and Living in Marital Union Requirements for Naturalization” (policy alert, USCIS, Washington, DC, October 12, 2018), www.uscis.gov/policymanual/Updates/20181012-MaritalUnion.pdf.

191 USCIS, “Controlled Substance-Related Activity and Good Moral Character Determinations” (policy alert, USCIS, Washington, DC, April 19, 2019), www.uscis.gov/sites/default/files/policymanual/updates/20190419-ControlledSubstanceViolations.pdf.



procedures, and a failure to hire new staff has caused adjudications of immigration benefits applications to slow down significantly.¹⁹²

- **Termination of Certain Parole Programs**—*ongoing*—In his January 25, 2017, executive order on border security, Trump mandated that parole only be used on a case-by-case basis, rather than for predesignated categories of immigrants.¹⁹³ Since then, the administration has announced the termination, or upcoming termination, of multiple parole programs:
 - **End of the CAM refugee and parole program**—*August 16 and November 16, 2017*—The administration ended first the parole and later this program for Central American minors (see Section IV.A.).
 - **End of Categorical Parole Programs for the Commonwealth of the Northern Mariana Islands**—*December 27, 2018*—The administration announced the immediate termination of parole programs for individuals in the Commonwealth of the Northern Mariana Islands.¹⁹⁴ These programs provided parole for immediate relatives of U.S. citizens, certain stateless individuals, and caregivers of individuals with critical medical or special needs. They were created by the Obama administration in 2011 in recognition of the fact that the U.S. commonwealth's incorporation into federal immigration law in 2009 left many in uncertain immigration statuses, without the possibility of legalizing.
 - **End of the International Entrepreneur Parole Program**—*upcoming*—On May 29, 2018, the Trump administration issued proposed regulations to eliminate the International Entrepreneur Parole program, which grants parole to certain foreign entrepreneurs.¹⁹⁵ The notice and comment period for the proposed regulation ended on June 28, 2018. A final version has not yet been published.
- **Streamlining of Requests for Case Assistance**—*ongoing*—USCIS has changed the way it interacts with the public in ways that both limit immigrants' ability to communicate with the agency and decrease the agency's workload.
 - **Information Services Modernization Program**—*March 2018*—Under USCIS's InfoPass appointment system, foreign nationals could go online to self-schedule appointments with a USCIS officer, at which they could inquire about a delayed case, provide key updates after filing, request emergency document services, and submit other urgent requests. In March 2018, USCIS began moving away from the self-scheduling system and to the Information Services Modernization Program (ISMP), which gives USCIS the discretion to decide whether an InfoPass appointment is warranted.¹⁹⁶ By the end of September 2019, all offices should be transferred over to the new system. Under ISMP, foreign nationals request appointments by calling USCIS or submitting an online request.

192 See Muzaffar Chishti, Sarah Pierce, and Jessica Bolter, "Even as Congress Remains on Sidelines, the Trump Administration Slows Legal Immigration," *Migration Information Source*, March 22, 2018, www.migrationpolicy.org/article/even-congress-remains-sidelines-trump-administration-slows-legal-immigration. As of the end of December 2018, the backlog of pending cases at USCIS had grown by more than 930,000 since the start of the Trump administration. MPI analysis of data from USCIS, "Number of Service-wide Forms by Fiscal Year to-Date (multiple years)," accessed April 15, 2019, www.uscis.gov/tools/reports-studies/immigration-forms-data.

193 White House, "Executive Order 13767 of January 25, 2017: Border Security and Immigration Enforcement Improvements," *Federal Register* vol. 82, no. 18 (January 30, 2017): 8793–97, www.govinfo.gov/content/pkg/FR-2017-01-30/pdf/2017-02095.pdf; Memorandum from John Kelly, *Implementing the President's Border Security and Immigration Enforcement Improvements Policies*.

194 USCIS, "Termination of the Categorical Parole Programs for Certain Individuals Present in the Commonwealth of the Northern Mariana Islands (CNMI)" (news release, December 27, 2018), www.uscis.gov/news/alerts/termination-categorical-parole-programs-certain-individuals-present-commonwealth-northern-mariana-islands-cnmi.

195 USCIS, "Removal of International Entrepreneur Parole Program," *Federal Register* 83, no. 103 (May 29, 2018): 24415–27, www.govinfo.gov/content/pkg/FR-2018-05-29/pdf/2018-11348.pdf.

196 USCIS, "USCIS to Expand Information Services Modernization Program to Key Locations" (news release, October 30, 2018), www.uscis.gov/news/news-releases/uscis-expand-information-services-modernization-program-key-locations.



- Discontinuation of Service Center E-Mail Boxes for Case-Specific Questions—January 21, 2019—USCIS Service Centers no longer manage email inboxes to address case-specific questions.¹⁹⁷ Instead, foreign nationals have the option of submitting an online request or calling a central USCIS call center.

■ **Upcoming**

- Increased Standards for Fee Waivers—September 28, 2018—USCIS proposed changes to fee waivers that would make the application process more rigid and reduce applicants' options for demonstrating eligibility.¹⁹⁸
- Public-Charge Rule—October 10, 2018—USCIS published a draft proposed regulation that would require USCIS officers to consider whether an applicant for a green card is likely to become a public charge; the rule would also allow USCIS officers to consider it when adjudicating nonimmigrant changes of status or extension applications.¹⁹⁹ To determine whether someone is likely to become a public charge (defined by the proposed rule as someone who receives one or more specified public benefits), it directs USCIS officers to weigh a number of factors, including the applicant's income, level of education, health, family size, and past benefits use. The notice and comment period for the proposed regulation ended on December 10, 2018. A final version has not yet been published.
- Increased Vetting of Naturalization Applicants—November 21, 2018—USCIS published a draft proposed regulation that would increase the evidentiary requirements for immigrants applying to naturalize, including requiring applicants to provide details on arrests abroad, up to a decade of international travel history (instead of the current five years), and other documents (e.g., tax returns and children's birth certificates).²⁰⁰
- Creation of a USCIS Tip Form—February 15, 2019—USCIS published a 60-day notice saying that it would make available a form that members of the public could submit if they believe someone is committing immigration benefit fraud, including whether they are misrepresenting themselves when applying for an immigration benefit or are violating the terms of their immigration status.²⁰¹

A. **Deferred Action for Childhood Arrivals**

Having repeatedly voiced criticism of the use of administrative benefits by prior administrations, Trump has taken steps to end benefits granted to unauthorized immigrants. This includes formally ending Obama-era programs to protect some unauthorized immigrants from deportation—the Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) programs.

- **Rescission of DAPA—June 15, 2017**—The administration officially rescinded Obama's 2014 memorandum creating a deferred action program for parents of U.S. citizens and permanent residents and expanding Deferred Action for Childhood Arrivals.²⁰²

197 USCIS, "Update on Case Assistance by Service Centers" (news release, December 21, 2018), www.uscis.gov/news/alerts/update-case-assistance-service-centers.

198 USCIS, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," *Federal Register* 83, no. 189 (September 28, 2018): 49120–21, www.govinfo.gov/content/pkg/FR-2018-09-28/pdf/2018-21101.pdf.

199 USCIS, "Inadmissibility on Public Charge Grounds," *Federal Register* 83, no. 196 (October 10, 2018): 51114–296, www.govinfo.gov/content/pkg/FR-2018-10-10/pdf/2018-21106.pdf.

200 USCIS, "Agency Information Collection Activities; New Collection: USCIS Tip Form," *Federal Register* 84, no. 32 (February 15, 2019): 4518–19, www.govinfo.gov/content/pkg/FR-2019-02-15/pdf/2019-02381.pdf.

201 Ibid.

202 Memorandum from John F. Kelly, Secretary of Homeland Security, to Kevin K. McAleenan, Acting Commissioner of CBP, et al., *Rescission of November 20, 2014 Memorandum Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA")*, June 15, 2017, www.dhs.gov/sites/default/files/publications/DAPA%20Cancellation%20Memo.pdf.



- **Rescission of DACA**—September 5, 2017—The administration announced a staggered end to the DACA program.²⁰³ Starting immediately on the date of the announcement, USCIS stopped accepting all applications, except for those to renew DACA benefits that would expire on or before March 5, 2018. On October 5, 2017, USCIS stopped accepting all DACA renewal applications.
 - January 9, 2018—Three federal district courts blocked the program’s termination.²⁰⁴ A federal appeals court upheld one of these injunctions.²⁰⁵ The Trump administration has appealed these cases to the Supreme Court, which may hear the case during its 2019–20 term. To date, the injunctions remain in effect, forcing USCIS to continue granting DACA to any individual who had received it prior to the administration’s rescission.

B. Immigrant Visas

Immigrants, as opposed to *nonimmigrants* (see the next section), are foreign nationals who come to the United States to reside permanently. The number of grants of permanent residence (i.e., green cards) each year is set in statute for most family-based and employment-based categories, meaning it would require an act of Congress to change them. However, by increasing the vetting immigration applications undergo, the administration may be able to reduce the number of foreign nationals ultimately permitted to immigrate.

- **Mandatory Interviews for Employment-Based Visa Applicants**—October 1, 2017—USCIS now mandates that all applicants for employment-based permanent residency attend an in-person interview.²⁰⁶ Previously, face-to-face interviews were only required if there was a specific concern related to the foreign national’s application. The interview requirement was also extended to relatives of refugees and asylees who are petitioning to join the principal asylee/refugee in the United States.
- **Decreased Interview Waivers for Certain Green Card Applicants**—November 30, 2018—USCIS issued a new memo limiting instances in which applicants to remove conditions on permanent residence may request waivers.²⁰⁷ Foreign nationals applying for permanent residence through a qualifying marriage that is less than two years old at the time of the application are granted lawful permanent resident status on a conditional basis. To avoid having their status terminated after two years, conditional permanent residents must request that USCIS remove the conditions on their status. As part of that request, the applicant must appear for an interview. While USCIS may waive the requirement for an interview, this new memo further narrows the instances in which USCIS officers may consider such a waiver.

203 Memorandum from Elaine C. Duke, Acting Secretary of Homeland Security, to James W. McCament, Acting Director of USCIS, et al., *Rescission of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,”* September 5, 2017, www.dhs.gov/news/2017/09/05/memorandum-rescission-daca.

204 *Regents of the University of California, et al., U.S. Department of Homeland Security, et al.*, No. 3:17-cv-05211-WHA (U.S. District Court for the Northern District of California, January 9, 2018), www.clearinghouse.net/chDocs/public/IM-CA-0095-0005.pdf; *Batalla Vidal, et al., v. Nielsen, et al., State of New York, et al., v. Donald Trump, et al.*, No. 1:16-cv-04756-NGG-JO (U.S. District Court for the Eastern District of New York, February 13, 2018), www.clearinghouse.net/chDocs/public/IM-NY-0051-0029.pdf; *National Association for the Advancement of Colored People, et al., v. Trump, Trustees of Princeton University, et al., v. United States of America, et al.*, No. 1:17-cv-02325-JDB (U.S. District Court for the District of Columbia, April 24, 2018), www.clearinghouse.net/chDocs/public/IM-DC-0038-0009.pdf.

205 *Regents of the University of California, et al., U.S. Department of Homeland Security, et al.*, No. 18-15068 (U.S. Court of Appeals for the Ninth Circuit, November 8, 2018), www.clearinghouse.net/chDocs/public/IM-CA-0095-0041.pdf.

206 USCIS, “USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants” (news release, August 28, 2017), www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants.

207 USCIS, “Revised Interview Waiver Guidance for Form I-751, Petition to Remove Conditions on Residence” (policy memorandum, November 30, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-11-30-PM-602-0168-revised-interview-waiver-guidance-for-form-i-751.pdf.



- **Increased Scrutiny for Marriage Petitions Involving Minors**—February 15, 2019—USCIS published new guidance instructing adjudicators to pay special attention to marriage petitions involving minors.²⁰⁸ Adjudicators must ensure that the marriage was lawful where it was celebrated and is legal in the U.S. state where the applicants will live.
 - April 12, 2019—USCIS further supplemented the guidance, instructing officers to conduct an additional interview for certain spousal petitions involving a minor.²⁰⁹ Such applicants will thus generally have to interview in person twice before being approved.
- **Increased Scrutiny for EB-5 Regional Centers**—ongoing—The administration has begun a compliance review program for regional centers and has begun terminating regional centers on an accelerated basis. Regional centers allow EB-5 investors, foreign nationals who invest in commercial projects in the United States in order to receive permanent residence, to pool their resources into a larger project coordinated by the center. The vast majority of EB-5 immigrant visa applicants apply using regional centers. As of December 31, 2018, the Trump administration has terminated 218 regional centers.²¹⁰ To compare, during the entirety of the Obama administration 73 regional centers were terminated.
- **Upcoming**
 - **Slowing the Green-Card Application Process**—USCIS has indicated that it will eliminate the option to concurrently file an immigrant visa petition and an application to adjust to permanent residence status.²¹¹ Right now, green-card applicants who have an immigrant visa immediately available (such as immediate relatives of U.S. citizens) can file both their petition for the immigrant visa and the application to receive the green card (i.e., adjust status) at the same time, allowing USCIS to efficiently process one after the other. Ending concurrent filing will make the green-card application process slower and more burdensome for applicants. After filing to adjust status, applicants qualify to apply for work and travel authorization; thus, eliminating concurrent filing will also delay the receipt of these benefits.

C. Nonimmigrant Visas

In overseeing the nation's nonimmigrant visa programs, which allow foreign nationals to enter the United States temporarily for specific purposes (e.g., education or work), the administration has focused on protecting the interests of U.S. workers. This effort has focused around the president's April 2017 executive order, "Buy American and Hire American," which encouraged agencies to "rigorously enforce" and administer U.S. immigration laws in an effort to create higher wages and employment rates for U.S. workers.²¹² As such, USCIS and the Labor Department have increased the scrutiny with which new nonimmigrant applications are processed and intensified efforts to ensure that nonimmigrants already inside the United States are adhering to the terms of their visa status.

- **Disqualification of Some Computer Programmers from H-1B Visas**—March 31, 2017—USCIS rescinded prior guidance recognizing "computer programmer" as a position eligible for the H-1B

208 USCIS, "Marriage Involving Minor(s)" (policy alert, USCIS, Washington, DC, February 15, 2019), www.uscis.gov/sites/default/files/USCIS/files/2019-0215_AFM21-3.pdf.

209 USCIS, "Marriage Involving Minor(s)" (policy alert, USCIS, Washington, DC, April 12, 2019), www.uscis.gov/sites/default/files/USCIS/20190412-Marriage_Involving_Minors.pdf.

210 USCIS, "Regional Center Terminations," updated December 31, 2018, www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process/regional-center-terminations.

211 DHS, "Updating Adjustment of Status Procedures for More Efficient Processing of Immigrant Visa Usage" (proposed rule 1615-AC22, Fall 2018), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1615-AC22.

212 White House, "Executive Order 13788 of April 18, 2017: Buy American and Hire American," *Federal Register* 82, no. 76 (April 21, 2017): 18837–39, www.govinfo.gov/content/pkg/FR-2017-04-21/pdf/2017-08311.pdf.



visa program for professionals in certain high-skilled occupations.²¹³ USCIS advised adjudicators that an entry-level computer programmer position would generally not qualify for an H-1B visa.

- ***Suspension of Premium Processing of H-1B Petitions***—April 3–September 18, 2017; April 2, 2018–February 15, 2019; April 1, 2019—USCIS receives an influx of applications during the H-1B cap application period each April. Under the Trump administration, USCIS has suspended premium processing multiple times, focusing on this peak period.²¹⁴ Premium processing allows employers or foreign nationals to pay an extra fee to have their applications adjudicated within 15 days. Without premium processing, H-1B applications may pend for a year or more.
- ***Increased H-2B Cap***—July 19, 2017—For FYs 2017, 2018, and 2019, Congress allowed DHS to decide whether to increase the annual 66,000 cap on H-2B visas for temporary non-agricultural workers, and if so, by how much. For both FY 2017 and FY 2018, DHS increased the cap by 15,000 visas.²¹⁵ In FY 2019, following increased pressure from Congress, DHS indicated it would increase the cap by 30,000 visas, but the visas would only be available for beneficiaries who had previously entered on H-2B visas.²¹⁶ To receive the additional visas, DHS required businesses to show that without foreign workers, they would likely suffer irreparable harm, such as permanent and severe financial loss.
- ***Elimination of Deference to Prior Approvals***—October 23, 2017—USCIS rescinded its policy of deferring to prior approvals of nonimmigrant visas, meaning the process of renewing a visa was often easier than applying for a new one. Now, renewals are subject to as much scrutiny as new applications.²¹⁷
- ***Restrictions on the TN Visa Category for Economists***—November 20, 2017—USCIS restricted the TN (Treaty National) temporary work visa category for economists, clarifying that individuals in occupations related to the field of economics, such as financial analysts, marketing analysts, and market research analysts, no longer qualify.²¹⁸ The TN visa allows some qualified citizens of Canada and Mexico to work in the United States pursuant to the North American Free Trade Agreement (NAFTA).

²¹³ USCIS, “Rescission of the December 22, 2000 ‘Guidance Memo on H1B Computer Related Positions’” (policy memorandum, March 31, 2017), www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf.

²¹⁴ USCIS, “USCIS Will Temporarily Suspend Premium Processing for All H-1B Petitions” (news release, March 3, 2017), www.uscis.gov/archive/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions; USCIS, “USCIS Resumes Premium Processing for Some Categories of Applicants Seeking H-1B Visas” (news release, September 18, 2017), www.uscis.gov/news/news-releases/uscis-resumes-premium-processing-some-categories-applicants-seeking-h-1b-visas; USCIS, “USCIS Will Temporarily Suspend Premium Processing for Fiscal Year 2019 H-1B Cap Petitions” (news release, March 20, 2018), www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-fiscal-year-2019-h-1b-cap-petitions; USCIS, “USCIS Resumes Premium Processing for Fiscal Year 2019 H-1B Cap Petitions” (news release, January 25, 2019), www.uscis.gov/news/alerts/uscis-resumes-premium-processing-fiscal-year-2019-h-1b-cap-petitions; USCIS, “USCIS Resumes Premium Processing for H-1B Petitions Filed on or before Dec. 21, 2018” (news release, February 15, 2019), www.uscis.gov/news/news-releases/uscis-resumes-premium-processing-h-1b-petitions-filed-or-dec-21-2018; USCIS, “USCIS Announces FY 2020 H-1B Cap Season Start, Updates, and Changes” (news release, March 19, 2019), www.uscis.gov/news/news-releases/uscis-announces-fy-2020-h-1b-cap-season-start-updates-and-changes.

²¹⁵ DHS and Department of Labor, “Exercise of Time-Limited Authority to Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program,” *Federal Register* 82, no. 137 (July 19, 2017): 32987–33000, www.govinfo.gov/content/pkg/FR-2017-07-19/pdf/2017-15208.pdf; DHS and Department of Labor, “Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program,” *Federal Register* 83, no. 105 (May 31, 2018): 24905–19, www.govinfo.gov/content/pkg/FR-2018-05-31/pdf/2018-11732.pdf.

²¹⁶ USCIS, “Exercise of Time-Limited Authority to Increase the Fiscal Year 2019 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program” (final rule 1615-AC38, April 22, 2019), www.reginfo.gov/public/do/eoDetails?rrid=129045.

²¹⁷ USCIS, “Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status” (policy memorandum, USCIS, Washington, DC, October 23, 2017), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf.

²¹⁸ USCIS, “TN Nonimmigrant Economists Are Defined by Qualifying Business Activity” (policy memorandum, USCIS, Washington, DC, November 20, 2017), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-1120-PM-602-0153-TN-Economists.pdf.



- **Increased Scrutiny of H-1B Visa Holders Working at Third-Party Worksites**—February 22, 2018—USCIS now requires H-1B applicants to submit contracts covering the entirety of the time requested on their H-1B visa application if they will be working at third-party worksites.²¹⁹
- **Limits on Double-Filings of H-1B Cap Petitions**—March 23, 2018—USCIS adopted a policy making it more difficult for related companies to file multiple H-1B cap petitions for the same individual, a strategy sometimes used to increase the odds of receiving H-1B visas in the annual lottery.²²⁰
- **Accrual of Unlawful Presence for Students**—August 9, 2018—USCIS changed how the agency calculates unlawful presence for international students and exchange visitors.²²¹ Previously, such foreign nationals would start to accrue unlawful presence when USCIS found a status violation or an immigration judge ordered them removed. Under the new policy, they begin accruing unlawful presence on the day they are no longer pursuing their authorized course of study or are otherwise violating the terms of their status. Accruing a certain number of days of unlawful presence can have severe consequences for a foreign national's ability to re-enter the United States in the future.
 - May 3, 2019—A federal district court judge in North Carolina issued a preliminary nationwide injunction, preventing USCIS from implementing this new policy; the injunction has yet to be lifted.²²²
- **Labor Union Participation Allowed in O-Visa Adjudications**—September 14, 2018—In order to receive a temporary O visa (for individuals with extraordinary ability or achievement in sciences, arts, education, business, athletics, or entertainment), applicants must submit a written advisory opinion from the relevant labor union. Previously, if the applicant never submitted a negative advisory opinion, USCIS would never know it existed. Under this changed policy, labor unions can now submit negative O-visa opinions directly to USCIS.²²³
 - February 8, 2019—USCIS extended this policy to P visas (for athletes, artists, entertainers, and their essential support personnel).²²⁴
- **Limits on L-1 Visa Applications**—November 15, 2018—This policy change limits the ability of foreign nationals to qualify for L-1 intracompany transferee visas if they worked in the United States under a different visa status prior to their application for an L-1 visa.²²⁵

219 USCIS, "Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites" (policy memorandum, USCIS, Washington, DC, February 22, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-02-22-PM-602-0157-Contracts-and-Itineraries-Requirements-for-H-1B.pdf.

220 USCIS, "Matter of S- Inc., Adopted Decision 2018-02 (AAO Mar. 23, 2018)" (policy memorandum, USCIS, Washington, DC, March 23, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-3-23-PM-602-0159-Matter-of-S-Inc-Adopted-Decision-Package.pdf.

221 USCIS, "Accrual of Unlawful Presence and F, J, and M Nonimmigrants" (policy memorandum, USCIS, Washington, DC, August 9, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-08-09-PM-602-1060.1-Accrual-of-Unlawful-Presence-and-F-J-and-M-Nonimmigrants.pdf.

222 *Guilford College, et al., v. Kevin McAleenan, et al.*, Case No. 1:18-cv-00891-LCB-JEP (U.S. District Court for the Middle District of North Carolina, May 3, 2019), www.bloomberglaw.com/public/desktop/document/GUILFORDCOLLEGEetalvNIELSENetalDocketNo118cv00891MDNCOct232018Cou5?1556980550.

223 USCIS, "USCIS Now Accepting Copies of Negative O Visa Consultations Directly from Labor Unions" (news release, September 14, 2018), www.uscis.gov/news/alerts/uscis-now-accepting-copies-negative-o-visa-consultations-directly-labor-unions.

224 USCIS, "USCIS Now Accepting Copies of Negative P Visa Consultations Directly from Labor Unions" (news release, February 8, 2019), www.uscis.gov/news/alerts/uscis-now-accepting-copies-negative-p-visa-consultations-directly-labor-unions.

225 USCIS, "Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)" (policy memorandum, USCIS, Washington, DC, November 15, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-11-15-PM-602-0167-L-1-foreign-employment-requirement.pdf.



- ***Collection of Information on Third-Party Users of H-1B Visa Holders***—November 19, 2018—As part of the H-1B application process, the Department of Labor now requires employers to name any companies where an H-1B visa holder will perform work on a contract.²²⁶
- ***Changed Processing Order of H-2B Applications***—February 26, 2019—Following a series of problems related to H-2B filings, including having their application website crash, the Department of Labor changed how it processes the temporary labor certifications for H-2B visas.²²⁷ In the past, the department would process the applications in batches based on the date filed but irrespective of the time of day filed. Then, the Trump administration in January 2018 said it would release the certifications in sequential order based on both the day and time applications were filed.²²⁸ And in February 2019, the administration announced that the Labor Department will process the applications in batches based on whether the application was filed within the first three days of the application period and the work start date designated for the H-2B beneficiaries.
- ***Increased Hurdles for Canadian Intracompany Transferees***—March 2019—In response to a nonpublic directive from its headquarters, CBP ceased adjudicating extensions or renewals for Canadians trying to return to the United States on L-1 visas for intracompany transferees.²²⁹ Such applicants will first need to have their applications adjudicated by USCIS before returning to the United States. Unlike nationals of other countries, Canadians enjoy some increased privileges when it comes to U.S. immigration, including on-the-spot adjudications with CBP for some visa applications.
- ***Increased Vetting for Nonimmigrants Already in the United States***—March 21, 2019—USCIS will require nonimmigrants seeking to extend or change their status, as well as their dependent spouses and minor children, to each file separate forms and each be fingerprinted, regardless of age.²³⁰
- ***Changes to the H-1B Visa Lottery***—April 1, 2019—In an effort to increase the number of H-1B visa recipients with advanced degrees, USCIS has changed how the annual lottery that selects initial H-1B visas works.²³¹ Starting in April 2019, when the lottery selected applications for processing under the FY 2020 H-1B cap, USCIS first conducted a lottery for the 65,000 general slots, drawing from all H-1B visa applicants, including those with advanced degrees. Afterwards, it conducted a lottery for the 25,000 additional “master’s cap” slots, drawing only from the remaining applicants with advanced degrees. Previously, the “master’s cap” lottery went first. The change resulted in an 11 percent increase in the number of selected petitions for applicants a master’s or higher degree.²³²
- ***Detection and Elimination of Fraud and Abuse of Foreign Workers***—ongoing—Trump’s April 18, 2017, executive order, “Buy American and Hire American,” seeks to protect the economic interests of U.S. workers by, among other things, preventing fraud and abuse within

226 Department of Labor, “Side-by-Side: Major Changes to Labor Condition Application (LCA) ETA Form 9035/9035E” (fact sheet, Department of Labor, Washington, DC, November 2018), www.foreignlaborcert.doleta.gov/pdf/Major_Changes_9035_Side_by_Side_Nov_2018.pdf.

227 Department of Labor, “U.S. Department of Labor Announces Updates to the H-2B Temporary Labor Certification Program” (guidance document, Department of Labor, Washington, DC, February 26, 2019), https://foreignlaborcert.doleta.gov/pdf/OFLC_Procedural-Change_H-2B_Application-Assignment_02.26.19.pdf.

228 Department of Labor, “Labor Certification Process for the Temporary Employment of Aliens in Non-Agricultural Employment in the United States,” *Federal Register* 83, no. 15 (January 23, 2018): 3189–90, www.govinfo.gov/content/pkg/FR-2018-01-23/pdf/2018-01166.pdf.

229 AILA, “Practice Alert: Filing Subsequent L-1 Petitions for Canadian Applicants at Ports of Entry” (unpublished practice alert, April 25, 2019).

230 USCIS, “USCIS to Public Revised Form I-539 and New Form I-539A” (news release, February 11, 2019), www.uscis.gov/news/alerts/uscis-publish-revised-form-i-539-and-new-form-i-539a.

231 USCIS, “Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens,” *Federal Register* 84, no. 21 (January 31, 2019): 888–957, www.govinfo.gov/content/pkg/FR-2019-01-31/pdf/2019-00302.pdf.

232 Rani Molla, “New Immigration Rules Could Prevent Our Next Elon Musk,” *Vox*, April 15, 2019, www.vox.com/2019/4/15/18306724/trump-immigration-rules-h1b-elon-musk-masters-degree.



the immigration system.²³³ As a result, USCIS and the Department of Labor have increased their efforts to root out fraud and abuse of foreign workers.

- Targeted Site Visits for H-1B Visas—April 3, 2017—USCIS began targeting site visits of specific employers in the H-1B program, rather than conducting such visits at random.²³⁴ Investigators use site visits to verify information in certain visa petitions. Such investigations are now focusing more on employers whose basic business information cannot be validated through commercially available data, H-1B employers whose staff consist of more than 15 percent H-1B holders, and employers petitioning for H-1B workers who would work offsite.
- Justice Department and USCIS Sign Memorandum of Understanding (MOU) on Protecting U.S. Workers—May 11, 2018—The Justice Department and USCIS signed an MOU expanding their collaboration to better detect and eliminate fraud, abuse, and discrimination by employers bringing foreign workers to the United States.²³⁵ The MOU improves collaboration by establishing a framework that the agencies can use to manage and maintain information sharing and interagency case referrals.
- Justice and Labor Departments Sign MOU on Protecting U.S. Workers—July 31, 2018—The Justice and Labor Departments signed an MOU expanding the range of situations in which the agencies will refer to each other cases of discrimination on the basis of citizenship status or noncompliance with laws and regulations on wages and working conditions, and the procedures for such referrals.²³⁶
- Expanded Site Visits for L Visas—ongoing—USCIS has expanded its site visit program to include employers who have petitioned for L-1B visas for intracompany transferees with specialized knowledge who work offsite.²³⁷

■ *Upcoming*

- Changes to the H-1B Visa Cap Application Process—April 1, 2020—Currently, employers interested in applying for one of the capped 85,000 H-1B visas must file full applications before the annual April lottery, even though the majority of those applications will likely not be selected in the lottery and never read. Starting with the FY 2021 cap, applicants for initial H-1B visas will first file an online registration.²³⁸ If USCIS receives more applications than the available 85,000 H-1B visas, USCIS will conduct a lottery of the registrations and invite only those chosen to submit a full application.
- Modernization of H-2B and H-2A Recruiting—The Department of Labor has proposed updating the recruitment requirements for employers applying for H-2A visas (for temporary agricultural workers) or for H-2B visas (for temporary non-agricultural workers).²³⁹ If finalized, the regulation would replace the requirement that employers

²³³ White House, “Executive Order 13788 of April 18, 2017: Buy American and Hire American.”

²³⁴ USCIS, “Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse” (news release, April 3, 2017), www.uscis.gov/news/news-releases/putting-american-workers-first-uscis-announces-further-measures-detect-h-1b-visa-fraud-and-abuse.

²³⁵ Justice Department Civil Rights Division and DHS USCIS, “Memorandum of Understanding Regarding Information Sharing and Case Referrals,” May 11, 2018, www.justice.gov/opa/press-release/file/1062251/download.

²³⁶ Justice Department, Civil Rights Division, Immigrant and Employee Rights Section, and Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, “Memorandum of Understanding Regarding Information Sharing and Case Referral,” July 31, 2018, www.justice.gov/opa/press-release/file/1083951/download.

²³⁷ USCIS, “Buy American and Hire American: Putting American Workers First,” updated April 12, 2019, www.uscis.gov/legal-resources/buy-american-hire-american-putting-american-workers-first.

²³⁸ USCIS, “Registration Requirement for Petitioners Seeking to File H-1B Petitions.”

²³⁹ Department of Labor, “Modernizing Recruitment Requirements for the Temporary Employment of H-2A Foreign Workers in the United States; Extension of Comment Period,” *Federal Register* 83, no. 236 (December 10, 2018): 63456–57, www.govinfo.gov/content/pkg/FR-2018-12-10/pdf/2018-26766.pdf; Department of Labor, “Modernizing Recruitment Requirements for the Temporary Employment of H-2B Foreign Workers in the United States; Extension of Comment Period,” *Federal Register* 83, no. 236 (December 10, 2018): 63430–31, www.govinfo.gov/content/pkg/FR-2018-12-10/pdf/2018-26767.pdf.



publish print newspaper advertisements to first attempt to attract U.S. workers before applying to bring in foreign workers; instead, they would be required to post online job advertisements. The notice and comment period for the proposed regulation ended on December 28, 2018. A final version has not yet been published.

- Rescission of Employment Authorization for H-4 Visas—DHS has indicated it will propose a rule to end an Obama-era program that grants work authorization to certain spouses of H-1B visa holders.²⁴⁰ Currently, the program is only available to spouses of H-1B visa holders who have been in the United States for at least six years and are on track to get a green card.
- Major Reforms of the H-1B Visa—DHS has indicated it will propose a regulation that would make a number of changes to the H-1B visa, including redefining “specialty occupation,” redefining “employer-employee relationship,” and adding requirements to ensure that visa holders receive adequate wages.²⁴¹
- Comprehensive Reforms to Optional Practical Training (OPT)—DHS has indicated that it will propose a regulation that will be a “comprehensive reform” to practical training options, including OPT (a temporary employment authorization program offered to foreign students).²⁴²
- Closing International Offices—In March 2019, USCIS announced that the agency is in “preliminary discussions” to close its international offices and delegate its international responsibilities to the State Department or to its own personnel stationed in the United States.²⁴³ USCIS has 23 international offices in 20 countries that, among other responsibilities, assist with refugee applications, family-based immigration, and foreign adoptions, as well as urgent requests for parole and naturalization applications for military members and their family abroad.

VII. Other

The administration’s expansive efforts on immigration have also included areas more peripheral to immigrants, including: the census, the U.S. military, social security records, and housing assistance.

- ***Addition of a Citizenship Question to the 2020 Decennial Census***—March 26, 2018—The Commerce Department announced that a question on citizenship status would be added to the 2020 decennial census.²⁴⁴

240 DHS, “Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization” (proposed rule 1615-AC15, Fall 2017), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC15.

241 DHS, “Strengthening the H-1B Nonimmigrant Visa Classification Program” (proposed rule 1615-AC13, Fall 2018), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1615-AC13.

242 Note, Optional Practical Training (OPT) is run by ICE, not USCIS, but because its participants are all nonimmigrants it was included in this section. See DHS, “Practical Training Reform” (proposed rule 1653-AA76, Spring 2018), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1653-AA76.

243 Vanessa Romo, “Trump Administration Seeks to Close International Immigration Offices” NPR, March 12, 2019, www.npr.org/2019/03/12/702807908/trump-administration-seeks-to-close-international-immigration-offices.

244 Memorandum from Wilbur Ross, Secretary of Commerce, to Karen Dunn Kelley, Undersecretary for Economic Affairs, Department of Commerce, *Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire*, March 26, 2018, https://web.archive.org/web/20180328002956/https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf.



- *January 15, 2019*—A federal district court judge in New York issued a preliminary injunction, stopping the Commerce Department from including the question.²⁴⁵ That preliminary injunction remains in place. Since then, two other federal judges have ruled against the addition.²⁴⁶
- *February 15, 2019*—The Supreme Court announced it would hear arguments in the New York case in late April, bypassing the typical appeals process, and would decide the issue by June 2019.²⁴⁷ A hearing on the case occurred before the Supreme Court on April 23, 2019.
- **Social Security Number “No Match” Letters**—*July 2018*—The Social Security Administration (SSA) began sending “informational notifications” to employers and third-party providers who submitted wage and tax statements that contained name and Social Security number combinations that do not match SSA records.²⁴⁸ The Obama administration had suspended this practice in 2012.²⁴⁹
 - *Upcoming*—SSA has indicated that in Spring 2019 they will notify all employers with at least one W-2 form on which the name and Social Security number do not match SSA records.
- **Disruptions for Foreign Nationals in the U.S. Military**—*ongoing*—Citing national security concerns, the Department of Defense has made it more difficult for foreign nationals recruited to the U.S. military to naturalize (a long-standing incentive for noncitizens to serve) or even start their basic training.
 - *May 19, 2017*—A Department of Defense memo suggested canceling the enlistment contracts of approximately 4,000 recruits through the Military Accessions Vital to the National Interest (MAVNI) program for noncitizens with certain in-demand skills who had not yet been trained or naturalized.²⁵⁰ Subsequently, 502 MAVNI recruits were discharged between July 2017 and July 2018.²⁵¹ After a federal lawsuit challenged the discharges, the Army announced in August 2018 that it had reinstated more than 30 MAVNI soldiers and halted the discharge of additional 149.²⁵²

245 *State of New York, et al. v. U.S. Department of Commerce, et al., New York Immigration Coalition, et al. v. U.S. Department of Commerce, et al.*, No. 1:18-cv-02921-JMF (U.S. District Court Southern District of New York, January 15, 2019), <https://lawprofessors.typepad.com/files/2019-01-15-574-findings-of-fact.pdf>.

246 *State of California, et al., v. Wilbur Ross, et al., City of San Jose, et al., v. Wilbur Ross, et al.*, Case No. 3:18-cv-01865-RS (U.S. District Court Northern District of California, March 6, 2019), <https://assets.documentcloud.org/documents/5760836/March-6-2019-Opinion-by-U-S-District-Judge.pdf>; Kravitz, *et al. v. U.S. Department of Commerce, et al.*, Case No. 8:18-cv-01041-GJH (U.S. District Court for the District of Maryland, April 5, 2019), described in Hansi Lo Wang, “Trump Administration’s Census Citizenship Question Plans Halted by 3rd Judge,” NPR, April 5, 2019, www.npr.org/2019/04/05/700982993/trump-administrations-census-citizenship-question-plans-halted-by-third-judge.

247 *Department of Commerce, et al. v. New York, et al.*, Docket No. 18-966 (U.S. Supreme Court, grant of certiorari, February 15, 2019), www.supremecourt.gov/orders/courtorders/021519zr_n6io.pdf.

248 Social Security Administration, “Employer Correction Request Notices,” accessed February 1, 2019, www.ssa.gov/employer/notices.html.

249 Social Security Administration, “RM 01105.027 Educational Correspondence (EDCOR) and Decentralized Correspondence (DECOR) Letters Mailed When Names and SSNs Do Not Match Our Records—DECOR Letters to Employees, Self-Employed Workers, and Employers,” Program Operations Manual System, updated March 22, 2019, <https://secure.ssa.gov/poms.nsf/lnx/0101105027>.

250 Memorandum from Tony Kurta, Acting Undersecretary of Defense for Personnel and Readiness, and Todd R. Lowery, Acting Undersecretary of Defense for Intelligence, to the Secretary of Defense, *Military Accessions Vital to the National Interest (MAVNI) Pilot Program*, May 19, 2017, included as Exhibit 23 to Plaintiffs’ Memorandum in Support of a Temporary Restraining Order and Motion for a Preliminary Injunction, *Kusuma Nio et al. v. United States Department of Homeland Security et al.*, No. 1:17-cv-00998-ESH-RMM (U.S. District Court for the District of Columbia, March 16, 2018), 322-324, <http://dcfederalcourtmavniclasslitigation.org/wp-content/uploads/2018/03/Pacer119-Exhibits.pdf>.

251 Ellen Mitchell, “Army Discharged More than 500 Immigrant Recruits in One Year,” The Hill, October 12, 2018, <https://thehill.com/policy/defense/411143-army-discharged-more-than-500-immigrant-recruits-in-one-year>.

252 *Lucas Calixto, et. al. v. United States Department of the Army, et. al.*, Civil Action No. 1:18-cv-01551 (U.S. District Court for the District of Columbia, Declaration of Lin H. St. Clair, August 20, 2018), www.courtlistener.com/docket/7312924/24/1/calixto-v-united-states-department-of-the-army; Garance Burke and Martha Mendoza, “Army Reinstates at Least 36 Discharged Immigrant Recruits,” AP News, August 20, 2018, <https://apnews.com/3c40731b98aa4ffb8f4c35e8b68bc0b>.



- *October 13, 2017*—The Department of Defense issued a series of memos formalizing new vetting standards first put into place under the Obama administration.²⁵³ The memos also ordered military branches to withhold the “certification of honorable service” form (N-426) needed for citizenship applications from all noncitizen recruits until they complete basic training and a certain number of days of service. Because of this change, as well as changes made by Congress and the administration requiring vetting to be completed prior to basic training, applications for citizenship based on military service have fallen significantly.²⁵⁴

■ **Upcoming**

- Screening Housing-Assistance Residents for Immigration Violations—On April 17, 2019, the Department of Housing and Urban Development (HUD) sent Congress a proposed rule aimed at eliminating the ability of unauthorized immigrants to live in subsidized housing.²⁵⁵ Under the proposal, all HUD-assisted residents under the age of 62 would be screened through DHS’s Systematic Alien Verification for Entitlements, which helps benefit-granting agencies determine applicants’ eligibility for benefits.

253 Memorandum from Department of Defense, Office of Secretary of Defense, to Secretaries of the Military Departments, Commandant of the Coast Guard, *Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization*, October 13, 2017, <https://dod.defense.gov/Portals/1/Documents/pubs/Naturalization-Honorable-Service-Certification.pdf>.

254 Muzaffar Chishti, Austin Rose, and Stephen Yale-Loehr, *Immigrants in the Military* (Washington, DC: MPI, forthcoming).

255 Katy O’Donnell, “HUD Moves to Crack Down on Undocumented Immigrants in Public Housing,” Politico, April 18, 2019, www.politico.com/story/2019/04/18/hud-immigrants-public-housing-1367559.



About the Author



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Prior to joining MPI, Ms. Pierce practiced immigration law with a Chicago-based law firm, practicing before the immigration court, Board of Immigration Appeals, U.S. Citizenship and Immigration Services (USCIS), and U.S. consulate offices abroad. Her common areas of practice included family- and employment-based immigration, such as nonimmigrant visas; waivers of inadmissibility; and employment-based permanent residency petitions. Ms. Pierce has also worked for and volunteered with a number of nonprofit organizations and government entities, including Human Rights Watch, the National Immigrant Justice Center, and the U.S. Department of Labor.

Ms. Pierce holds a master of arts in international affairs from the George Washington University, with a focus on migration and development. Her master's research included travel to El Salvador and the United Arab Emirates, and work on remittances, outmigration policies, and the relationship between labor rights and remittances. She also holds a JD from the University of Iowa College of Law and a BA from Grinnell College.



The Migration Policy Institute is a nonprofit, nonpartisan think tank dedicated to the study of the movement of people worldwide. MPI provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

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