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U.S. IMMIGRATION POLICY UNDER TRUMP: DEEP CHANGES AND LASTING IMPACTS

By Sarah Pierce, Jessica Bolter, and Andrew Selee

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Executive Summary

From his earliest days in office, President Donald Trump signaled his intention to make taking a tough stance on immigration—the rallying cry of his campaign—a focus of his administration. Within five days, he issued a series of executive orders promising major changes to the U.S. immigration system, ranging from sharp cuts to legal immigration and the building of “the wall” across the entire U.S.-Mexico border, to “extreme” vetting of all applicants for admission. A year and a half on, this momentum continues at full force.

While the full extent of his ambitious promises has yet to be realized, the Trump administration has set in motion significant changes, including increasing immigration enforcement in the interior of the country by broadening enforcement priorities, eliminating temporary protections for some noncitizens, and reducing refugee admissions to their lowest levels since the U.S. resettlement program began in 1980. After a lengthy legal struggle, the administration has also successfully banned nationals of seven countries from entering the United States, citing security concerns.

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These high-profile policy shifts have been coupled with more subtle adjustments across federal agencies that have an immigration role. Among them: mandating interviews for all visa applicants (including all green-card applicants), increasing the scrutiny applied to temporary visa applicants, and drastically narrowing the eligibility criteria for asylum. By increasing application requirements and adding new vetting procedures, the administration has also slowed visa processing. All of these actions move the United States toward the administration’s ultimate goals of decreasing immigrant admissions and expanding deportations. Many of these measures have already begun affecting immigrants, their families, employers, and the communities in which they reside.

But despite the president’s rapt focus on immigration, legal and political challenges have created obstacles for many of the administration’s efforts. Growing numbers of states and localities are refusing to cooperate with federal immigration authorities. A series of court rulings have suspended or enjoined several of the administration’s policies, including early iterations of the travel ban, efforts to end the Deferred Action for Childhood Arrivals (DACA) program, and the separation of unauthorized migrant parents and children apprehended at the southwest border, a result of the “zero-tolerance” policy that calls for blanket criminal prosecutions of all adults who enter the country illegally. And none of the administration’s legislative proposals have been approved by Congress, nor have lawmakers yet appropriated the billions of dollars needed to fund the president’s signature initiative, a wall along the U.S.-Mexico border (though testing of prototypes has been completed).

Nonetheless, the president and his allies have dramatically changed the conversation around immigration. In a sharp break from the longstanding and generally bipartisan consensus among the leaders of both major political parties that immigration is a net positive for society and the economy, the White House has framed immigrants, legal and unauthorized alike, as a threat to Americans’ economic and national security, and embraced the idea of making deep cuts to legal immigration. The president’s words and deeds on immigration signify a fundamental shift in thinking and policy about the direction of immigration and America’s future.



I. Introduction

U.S. immigration policy has undergone a sea change since the inauguration of Donald Trump in January 2017. The framing of immigration as a major threat to U.S. security and employment is a break from recent history; politicians have, until recently, largely characterized immigration as overwhelmingly positive for the country and an integral part of its heritage, even while they differed on the details of specific policies. Today that consensus has broken down. Policymakers have come to advocate wildly divergent views on the goals of immigration policy as well as the policies that should be pursued to reach them.

However, there are important differences between President Trump's forceful rhetoric and what the administration is actually doing. While his public statements largely focus on a few major objectives toward which he has made only limited headway—building a wall on the southern border with Mexico, cutting legal immigration, deporting millions of unauthorized immigrants, and banning refugee admissions from certain Muslim-majority countries—the administration has taken other important steps to redefine U.S. immigration policies that are less visible but no less important. These include broadening who is prioritized for deportation, dramatically reducing refugee admissions, narrowing the eligibility criteria for asylum, ending temporary protections that shielded more than 1 million immigrants from deportation and allowed them to work legally, and slowing visa processing.

Politicians have, until recently, largely characterized immigration as overwhelmingly positive for the country and an integral part of its heritage.

The fragmented nature of the U.S. political system, in which the executive, the legislature, and the courts—as well as federal, state, and local governments—all have overlapping responsibilities for policy decisions, has made it hard for the Trump administration to pursue its most ambitious initiatives. Congress has had no appetite thus far for major legislation that would decrease the overall number of annual grants of permanent residence or fund a wall; some state and local governments have resisted cooperation with the administration's deportation priorities, blunting their effect; and the courts have stymied a number of the president's other immigration initiatives. As a result, it seems unlikely that President Trump will be able to reshape U.S. immigration policies to the extent he would like. Yet the broad discretion that presidents have to implement immigration policy gives his administration significant levers to redefine who comes to the country and who is removed from it. Over time, this authority may be sufficient to create important changes in line with the president's stated policy preferences, even without significant legislation.

II. What Has Changed

The approach President Trump has taken to immigration policy is distinct from that of his predecessors, both in his negative framing of immigration and its effects on the country, and the level of attention he has given the topic while on the campaign trail and in office. Since his inauguration, Trump has signed nine



executive orders related to immigration.¹ These orders have promised broad changes to the immigration system, including: building a wall along the entirety of the southern border; hiring 15,000 additional border and interior enforcement officers; and eliminating so-called “sanctuary cities,” that is, cities that refuse to cooperate proactively with U.S. immigration enforcement officers to detain unauthorized immigrants. What began as a campaign promise to ban Muslim individuals from entering the country also transformed into a series of three executive orders attempting to initiate a travel ban on visitors, immigrants, and refugees from select Muslim-majority countries.

A. Enhancing Immigration Enforcement

While the changes to the immigration system on the ground have been more modest than the president’s sweeping promises, the administration has successfully stepped up enforcement against noncitizens in the interior of the country. Between President Trump’s first day in office and the end of fiscal year (FY) 2017 (January 20 to September 30, 2017), U.S. Immigration and Customs Enforcement (ICE) removed 61,000 immigrants from the interior of the country, a 37 percent increase from those months in 2016.² During the same period, ICE arrested more than 110,000 people, a 42 percent increase over that period in 2016.³ This trend continued through the last three months of calendar year 2017, with ICE arresting 39,000 more people, 43 percent more than in the same period in 2016.⁴

By prioritizing an expanded population of noncitizens for removal, and by resuming the practice of arresting people who do not have criminal records or pose a danger to society, the Trump administration has significantly broadened the makeup of who is being removed.⁵ Of the 110,000 noncitizens arrested

- 1 White House, “Executive Order 13767 of January 25, 2017: Border Security and Immigration Enforcement Improvements,” *Federal Register* 82, no. 18 (January 30, 2017): 8793–97, www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02095.pdf; 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 30, 2017): 8799–8803, www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02102.pdf; White House, “Executive Order 13769 of January 27, 2017: Protecting the Nation from Foreign Terrorist Entry into the United States,” *Federal Register* 82, vol. 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.gpo.gov/fdsys/pkg/FR-2017-03-09/pdf/2017-04837.pdf; 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.gpo.gov/fdsys/pkg/FR-2017-04-21/pdf/2017-08311.pdf; White House, “Presidential Proclamation 9645 of September 24, 2017: Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats,” *Federal Register* 82, no. 186 (September 27, 2017): 45161–72, www.gpo.gov/fdsys/pkg/FR-2017-09-27/pdf/2017-20899.pdf; 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.gpo.gov/fdsys/pkg/FR-2017-10-27/pdf/2017-23630.pdf; White House, “Presidential Proclamation 9723 of April 10, 2018: Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats,” *Federal Register* 83, no. 72 (April 13, 2018): 15937–40, www.gpo.gov/fdsys/pkg/FR-2018-04-13/pdf/2018-07864.pdf; 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.gpo.gov/fdsys/pkg/FR-2018-06-25/pdf/2018-13696.pdf.
- 2 Maria Sacchetti, “Deportations from the Interior of the United States Are Rising under Trump,” *The Washington Post*, October 7, 2017, www.washingtonpost.com/local/immigration/deportations-from-the-interior-of-the-united-states-are-rising-under-trump/2017/10/07/44a14224-a912-11e7-b3aa-c0e2e1d41e38_story.html.
- 3 U.S. Immigration and Customs Enforcement (ICE), *Fiscal Year 2017 ICE Enforcement and Removal Operations Report* (Washington, DC: ICE, 2017), www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf.
- 4 Elliot Spagat, “US Deportations Targeting More People with No Crime Records,” Associated Press, February 24, 2018, <https://apnews.com/190edc48461f4006a97b217c26005128/US-deportations-targeting-more-people-with-no-crime-records>.
- 5 In the January 25, 2017 executive order entitled “Enhancing Public Safety in the Interior of the United States,” the president expanded the list of noncitizens prioritized for removal to include all of those with removal orders, convicted or charged with any criminal offense, and those who have abused public benefits. The president also authorized immigration enforcement officers to enforce immigration laws against all removable immigrants, regardless of whether they fall within one of these priority categories. See White House, “Executive Order 13768.” This stands in stark contrast to the approach taken in President Obama’s final years in office, which strictly prioritized enforcing immigration laws against unauthorized immigrants who fell into a limited number of categories.



between the Trump administration's entry into office and the end of FY 2017, 32,000 (29 percent) had no criminal convictions. In all of FY 2017, which included slightly less than four months of the Obama administration, ICE arrested 38,000 immigrants with no criminal convictions, a 146 percent increase over the 15,000 such arrests in FY 2016.⁶ This reflects the new administration's sharp break from the enforcement priorities of President Obama, who, by the end of his administration, focused interior enforcement almost exclusively on criminals. During FY 2016, more than 90 percent of the individuals removed from the interior had been convicted of what the administration deemed "serious crimes."⁷

Overall ICE removals, which include removals of individuals intercepted at the border, were much lower than in recent years, partly because fewer people tried to cross the border illegally in Trump's first year in office. ICE removed 143,000 individuals through September 9, 2017, bringing the total for all of FY 2017 to 226,000.⁸ Comparatively, during Barack Obama's presidency, ICE removals averaged 344,000 per year.⁹ The difference is partly attributable to the reduced number of individuals crossing the southern border. Excluding border removals, ICE's removal of 61,000 immigrants from the interior between January and September 2017 was an increase from the final years of the Obama administration, but it was still much lower than President Obama's most enforcement-focused years, which peaked at 238,000 interior ICE removals in 2009.¹⁰

Increasing removals, especially in the interior of the country, is a slow process that requires increasing resources.

The Trump administration thus oversaw, in its first year, lower numbers of both border and interior removals than past administrations, but is making a concerted effort to increase these numbers. In order to speed the pace of interior removals, the administration is hiring additional immigration judges and requiring judges to complete cases quickly.¹¹ However, increasing removals, especially in the interior of the country, is a slow process that requires increasing resources. As will be discussed below, the administration's difficulties establishing cooperation with law enforcement agencies in some states and localities may also hinder attempts to increase removals.

As border apprehensions have risen in 2018, the administration has attempted to implement policies to deter future unauthorized border crossers and make life more difficult for those who do cross.¹² In May, the Justice Department and the Department of Homeland Security (DHS) implemented a "zero-

6 ICE, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*.

7 The U.S. government's federal fiscal year (FY) runs from October 1 to September 30. For example, fiscal year 2018 runs from October 1, 2017 to September 30, 2018.

8 Sacchetti, "Deportations from the Interior of the United States Are Rising under Trump"; ICE, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*. ICE statistics fail to distinguish between "removals," the compulsory movement of a noncitizen based on a formal removal order, and "returns," the movement of a noncitizen based on permission to withdraw their application for removal or an order of voluntary departure.

9 Migration Policy Institute (MPI) analysis of data from ICE, *Fiscal Year 2016 ICE Enforcement and Removal Operations Report* (Washington, DC: ICE, 2016), www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf.

10 ICE, *Fiscal Year 2015 ICE Enforcement and Removal Operations Report* (Washington, DC: ICE, 2015), www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf.

11 The Acting Director of the Executive Office for Immigration Review, James McHenry, testified in November 2017 that 61 immigration judges had been hired since January 2017, and that the pace of hiring would increase in 2018. See Testimony of James McHenry, Acting Director of Executive Office for Immigration Review, before the House Judiciary Committee, Subcommittee on Immigration and Border Security, *Overview of the Executive Office for Immigration Review*, 115th Cong., 1st sess., November 1, 2017, <https://judiciary.house.gov/wp-content/uploads/2017/10/Witness-Testimony-James-McHenry-EIOR-11-01-2017.pdf>. On case completion quotas, see Laura Meckler, "New Quotas for Immigration Judges as Trump Administration Seeks Faster Deportations," *The Wall Street Journal*, April 2, 2018, www.wsj.com/articles/immigration-judges-face-new-quotas-in-bid-to-speed-deportations-1522696158.

12 U.S. Customs and Border Protection (CBP), "Southwest Border Migration FY2018," updated July 5, 2018, www.cbp.gov/newsroom/stats/sw-border-migration.



tolerance” policy at the U.S.-Mexico border, under which they pledged to work together to criminally prosecute everyone who crossed the border without authorization for the crimes of illegal entry or re-entry.¹³ Yet the agencies do not have the capacity to fully implement the policy at present, as prosecuting all border crossers would require increased numbers of federal judges and defense lawyers, U.S. Marshals personnel to transport the migrants, and ICE detention capacity. The most controversial aspect of the zero-tolerance policy was its separation of migrant children from their parents when taken into custody. Parents were transferred to U.S. Marshals custody in advance of their criminal proceedings, and their children, who cannot be held in criminal custody, were placed in shelters run by a separate government agency. This put parents and children on separate legal tracks, making it difficult for the government to reunite them following parents’ criminal proceedings.

The most controversial aspect of the zero-tolerance policy was its separation of migrant children from their parents.

The government expected the policy to deter families, which made up more than one-third of all migrants apprehended at the U.S.-Mexico border in the first nine months of FY 2018. Yet family arrests held steady in June, after the policy had been in effect for a full month.¹⁴ It is uncertain what its longer-term effect would have been as on June 26, 2018, a federal district judge in California paused the separations and ordered the government to reunite the more than 2,500 separated children with their parents.¹⁵ The government has indicated it intends to use extended family detention as an alternative to family separation, though this too may be limited by capacity constraints.

In another move aimed at deterring arrivals at the southwest border, the administration has taken steps to limit who is considered eligible for asylum. In June 2018, a decision by U.S. Attorney General Jeff Sessions made it harder for migrants fleeing private crimes—specifically domestic violence and gang violence—to gain asylum in the United States.¹⁶ While the decision applies to all asylum seekers, Central Americans who file for asylum after crossing the U.S.-Mexico border are commonly fleeing these types of violence, rather than other grounds for asylum, such as political persecution, that are more firmly established in asylum law. A leaked draft of a rule under consideration by the Justice Department has also revealed the administration is contemplating barring anyone who is criminally prosecuted for illegal entry from applying for asylum.¹⁷ These measures could drastically reduce the number of asylum requests filed by Central Americans, which numbered almost 20,000 in the first four months of FY 2018.¹⁸

13 U.S. Department of Justice, “Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration” (news release, Washington, DC, May 7, 2018), www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions. Previously, CBP tended to refer a smaller portion of migrants who crossed illegally for prosecution, but rarely referred parents with children. The Justice Department, which receives the referrals and decides whether to prosecute, also generally did not prioritize first-time border crossers for prosecution. These prosecutions were restricted due to resource limitations. Even so, criminal immigration prosecutions reached a peak of 97,000 in FY 2013. See Muzaffar Chishti and Jessica Bolter, “Family Separation and ‘Zero-Tolerance’ Policies Rolled out to Stem Unwanted Migrants, but May Face Challenges,” *Migration Information Source*, May 24, 2018, www.migrationpolicy.org/article/family-separation-and-zero-tolerance-policies-rolled-out-stem-unwanted-migrants-may-face.

14 CBP, “Southwest Border Migration FY2018.”

15 *Ms. L. et al. v. ICE et al.*, No. 18cv0428 DMS (MDD) (Southern District of California, Order Granting Plaintiffs’ Motion for Class-wide Preliminary Injunction, June 26, 2018), www.aclu.org/sites/default/files/field_document/83_order_granting_pi.pdf; Tal Kopan and Catherine E. Shoichet, “More than 2,500 Immigrant Kids Are Awaiting Reunification with Parents,” CNN, July 13, 2018, www.cnn.com/2018/07/13/politics/separated-families-reunification-children/index.html.

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

17 Dara Lind, “Exclusive: Trump Administration Plan Would Bar People Who Enter Illegally from Getting Asylum,” Vox, June 29, 2018, www.vox.com/policy-and-politics/2018/6/29/17514590/asylum-illegal-central-american-immigration-trump.

18 U.S. Citizenship and Immigration Services (USCIS), “Credible Fear and Reasonable Fear Statistics and Nationality Report” (data tables, USCIS, Washington, DC, May 1, 2018), www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_CFandRFstatsJan2018.pdf.



B. Cutting Back on Humanitarian Programs

The administration has also made historic reductions to the number of refugees the United States will accept for resettlement. In recognition of the worldwide refugee crisis, the Obama administration increased the refugee admission ceiling from 70,000 in FY 2013–15 to 85,000 in FY 2016 and further to 110,000 in FY 2017.¹⁹ Citing security concerns about the program, the Trump administration immediately took steps to scale it back, temporarily suspending the program and attempting to limit FY 2017 admissions to 50,000.²⁰ In the end, 53,716 refugees were admitted during FY 2017.²¹ For FY 2018, the administration lowered the ceiling even further to 45,000 refugees, the lowest level since the current U.S. resettlement program began in 1980.²² However, the actual number of admissions is likely to be even lower. In the first nine months of FY 2018, the United States admitted only 16,000 refugees; if resettlement continues at the same rate, this is likely to amount to slightly more than 20,000 admissions for the whole fiscal year.²³

As part of their review of the U.S. refugee program, the Trump administration ended a refugee and parole program designated for vulnerable youth in need of protection in Central America. The Central American Minors (CAM) refugee and parole program²⁴ was created by the Obama administration in response to the surge in unaccompanied Central American minors who arrived at the border starting in 2014. In an effort to reach children with legitimate claims for protection, and to deter them from undertaking the dangerous journey through Mexico to the United States, the program allowed certain parents lawfully present in the United States to request a refugee resettlement interview for their children if they were nationals of El Salvador, Guatemala, or Honduras. As of August 2017, more than 1,500 children and eligible family members had arrived in the United States as refugees under the program.²⁵ Another 2,700 had been conditionally approved to enter the United States, only to have that approval revoked prior to their arrival because of the termination of the program.

For FY 2018, the administration lowered the ceiling even further to 45,000 refugees, the lowest level since the current U.S. resettlement program began in 1980.

The administration has also terminated humanitarian protections, in the form of Temporary Protected Status (TPS), for hundreds of thousands of migrants, many of whom have lived in the United States for decades. TPS is a temporary form of 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. As of July 2018, TPS covered 317,000 immigrants from ten countries; among them, some entered the United States illegally and others arrived with visas, all before the U.S. government determined conditions in

19 Juliet Eilperin, "White House Raises Refugee Target to 110,000," *The Washington Post*, September 14, 2016, www.washingtonpost.com/news/post-politics/wp/2016/09/14/white-house-plans-to-accept-at-least-110000-refugees-in-2017/.

20 White House, "Executive Order 13769."

21 Refugee Processing Center, "Interactive Reporting: Admissions and Arrivals," accessed July 5, 2018, <http://ireports.wrapsnet.org>.

22 White House "Presidential Determination on Refugee Admissions for Fiscal Year 2018," *Federal Register* 82, no. 203 (October 23, 2017): 49083–84, www.gpo.gov/fdsys/pkg/FR-2017-10-23/pdf/2017-23140.pdf.

23 Refugee Processing Center, "Interactive Reporting: Admissions and Arrivals."

24 Parole is an exercise of executive discretion that allows lawful entry and permission to stay in the United States for a temporary period.

25 Mica Rosenberg, "U.S. Ends Program for Central American Minors Fleeing Violence," Reuters, August 16, 2017, www.reuters.com/article/us-usa-immigration-minors/u-s-ends-program-for-central-american-minors-fleeing-violence-idUSKCN1AW20Z.



their countries were dangerous enough to merit a TPS designation.²⁶ TPS beneficiaries receive provisional protection against removal and are granted permission to work in the United States for a limited period, with renewals dependent on whether the U.S. government continues to designate the country for TPS. So far, the Trump administration has ended TPS for nationals of El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, and has ended similar protections for several thousand Liberians. By January 2020, approximately 310,000 TPS holders (98 percent of total TPS holders) will lose their benefits.²⁷ For those ineligible for another status, this will mean losing their work authorization and protection from removal from the United States.

C. Increasing Vetting and Obstacles for Legal Immigration

While congressional inaction has impeded the ability of the Trump administration to substantively reform the legal immigration system, the administration has made several changes that increase the vetting of potential immigrants and slow legal admissions. To fulfill campaign promises, Trump issued executive orders promising “enhanced vetting” that would focus on preventing the entry of people deemed to be threats to public safety and on ensuring that foreign countries share information with U.S. officials about their nationals if they apply for entry into the United States.²⁸ Along these lines, the administration has significantly increased the number of interviews applicants must undergo prior to being approved for immigration or travel to the United States. By executive order, the president suspended the Visa Interview Waiver Program, which allowed certain travelers to renew their travel authorizations without an in-person interview. The administration also mandated that all applicants for employment-based permanent residency (a “green card”) attend an in-person interview. Previously, such face-to-face interviews were only required if there was a specific concern related to the person’s application. This heightened requirement very quickly increased the workload of U.S. immigrant visa adjudicators and has likely reduced their capacity to adjudicate family-based immigration and naturalization applications.²⁹ And indeed, the adjudication rate of nonimmediate relative immigration applications, a category the president has said he would like to eliminate, dropped from 22 percent in FY 2016 to 9 percent in FY 2017.³⁰

26 As of mid-July 2018, countries designated for TPS included Syria, Yemen, Somalia, South Sudan, Sudan (termination effective November 2018), Nicaragua (termination effective January 2019), Nepal (termination effective June 2019), Haiti (termination effective July 2019), El Salvador (termination effective September 2019), and Honduras (termination effective January 2020). See USCIS, “Extension of the Designation of Syria for Temporary Protected Status,” *Federal Register* 83, no. 43 (March 5, 2018): 9329–36, www.gpo.gov/fdsys/pkg/FR-2018-03-05/pdf/2018-04454.pdf; DHS, “Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for Yemen” (press release, July 5, 2018), www.dhs.gov/news/2018/07/05/secretary-nielsen-announcement-temporary-protected-status-yemen; USCIS, “Extension of the Designation of Somalia for Temporary Protected Status,” *Federal Register* 82, no. 10 (January 17, 2017): 4905–11, www.gpo.gov/fdsys/pkg/FR-2017-01-17/pdf/2016-31861.pdf; USCIS, “Extension of South Sudan for Temporary Protected Status,” *Federal Register* 82, no. 182 (September 21, 2017): 44205–11, www.gpo.gov/fdsys/pkg/FR-2017-09-21/pdf/2017-20174.pdf; USCIS, “Termination of the Designation of Sudan for Temporary Protected Status,” *Federal Register* 82, no. 195 (October 11, 2017): 47228–34, www.gpo.gov/fdsys/pkg/FR-2017-10-11/pdf/2017-22074.pdf; USCIS, “Termination of the Designation of Nicaragua for Temporary Protected Status,” *Federal Register* 82, no. 240 (December 15, 2017): 59636–42, www.gpo.gov/fdsys/pkg/FR-2017-12-15/pdf/2017-27141.pdf; USCIS, “Termination of the Designation of Nepal for Temporary Protected Status,” *Federal Register* 83, no. 99 (May 22, 2018): 23705–10, www.gpo.gov/fdsys/pkg/FR-2018-05-22/pdf/2018-10868.pdf; USCIS, “Termination of the Designation of Haiti for Temporary Protected Status,” *Federal Register* 83, no. 12 (January 18, 2018): 2648–54, www.gpo.gov/fdsys/pkg/FR-2018-01-18/pdf/2018-00886.pdf; USCIS, “Termination of the Designation of El Salvador for Temporary Protected Status,” *Federal Register* 83, no. 12 (January 18, 2018): 2654–60, www.gpo.gov/fdsys/pkg/FR-2018-01-18/pdf/2018-00885.pdf; USCIS, “Termination of the Designation of El Salvador for Temporary Protected Status (Correction),” *Federal Register* 83, no. 14 (January 22, 2018): 3014, www.gpo.gov/fdsys/pkg/FR-2018-01-22/pdf/C1-2018-00885.pdf; USCIS, “Termination of the Designation of Honduras for Temporary Protected Status,” *Federal Register* 83, no. 108 (June 5, 2018): 26074–80, www.gpo.gov/fdsys/pkg/FR-2018-06-05/pdf/2018-12161.pdf.

27 Authors’ calculations based on data from *ibid.*

28 White House, “Presidential Proclamation 9645”; White House, “Executive Order 13815”; White House, “Presidential Proclamation 9723.”

29 In a statement to stakeholders, the USCIS Ombudsman office suggested this will be the case, at least in the short term. 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.

30 *Ibid.*



The administration is also expanding vetting by increasing the amount of information visa applicants must provide. Some applicants must now fill out a supplemental questionnaire, on which they must provide 15 years' worth of travel and employment histories and residential addresses. Some are also asked for the usernames they have used on all social media accounts within the last five years. While many applicants are not currently required to provide this information, the administration has signaled it eventually plans to make it mandatory for most.³¹ Applicants for refugee resettlement from countries considered to be “high risk” are also now subject to more stringent screening measures, such as additional interviews with family members.³² And in February 2018, the president issued a memorandum ordering the creation of a National Vetting Center, which will streamline the immigration vetting process by combining data and coordinating operations across agencies.³³

With the stated aim of protecting American workers, the Trump administration has also encouraged U.S. Citizenship and Immigration Services (USCIS), the agency that adjudicates visa applications, to be more discriminating in approving applications. On April 18, 2017, President Trump signed an executive order entitled “Buy American and Hire American” in which he pushed the Departments of State, Justice, Labor, and Homeland Security to issue new rules and guidance to protect the interests of U.S. workers and to prevent fraud and abuse in the immigration system.³⁴

Since then, the administration has taken a number of steps to fulfill these aims, including:

- increasing scrutiny of employer applications to bring temporary workers into the country, making the process lengthier and more burdensome and increasing the number of applications denied;³⁵
- increasing and reprioritizing workplace site visits to ensure temporary workers and employers are abiding by U.S. laws;³⁶
- raising the evidentiary requirements for employers to petition for certain categories of temporary workers;³⁷
- ending an Obama-era program that allowed DHS to grant foreign-born entrepreneurs parole into the country for a certain period if doing so was judged to hold economic benefits for the country;³⁸

31 U.S. Department of State, “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.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06490.pdf; U.S. Department of State, “60-Day Notice of Proposed Information Collection: Application for Nonimmigrant Visa,” *Federal Register* 83, no. 62 (March 30, 2018): 13807–08, www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06496.pdf.

32 While the U.S. government has not named which countries are on this list, officials have said anonymously that they are Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria, and Yemen. See Nick Miroff, “U.S. Lifts Ban on Refugees from ‘High-Risk’ Nations but Pledges Tougher Scrutiny,” *The Washington Post*, January 29, 2018, www.washingtonpost.com/world/national-security/us-lifts-ban-on-refugees-from-high-risk-nations-but-pledges-tougher-scrutiny/2018/01/29/1c8a33f4-051a-11e8-8777-2a059f168dd2_story.html.

33 White House, “Presidential Memorandum on Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise,” updated February 6, 2018, www.whitehouse.gov/presidential-actions/presidential-memorandum-optimizing-use-federal-government-information-support-national-vetting-enterprise/.

34 White House, “Executive Order 13788.”

35 Yeganeh Torbati, “Trump Administration Red Tape Tangles up Visas for Skilled Foreigners, Data Shows,” Reuters, September 20, 2017, www.reuters.com/article/us-usa-immigration-employment-insight/trump-administration-red-tape-tangles-up-visas-for-skilled-foreigners-data-shows-idUSKCN1BV0G8; 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.

36 USCIS, “Combatting Fraud and Abuse in the H-1B Visa Program,” updated February 22, 2018, www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/combatting-fraud-and-abuse-h-1b-visa-program.

37 USCIS, “USCIS Strengthens Protections to Combat H-1B Abuses” (press release, Washington, DC, February 22, 2018), www.uscis.gov/node/65799.

38 USCIS, “International Entrepreneur Parole,” updated May 25, 2018, www.uscis.gov/humanitarian/humanitarian-parole/international-entrepreneur-parole.



- more quickly denying applications to enter or remain in the country by refusing applicants the opportunity to supplement supporting evidence; and³⁹
- directing immigration officials to place all immigrants whose applications are denied for any reason in removal proceedings if, upon denial, they are unlawfully present in the country.⁴⁰

The administration has also taken a number of additional steps to cut back on the number of visas issued. These include its announcement that it plans to make changes to the H-1B program, the temporary visa program employers use to bring in high-skilled employees,⁴¹ by redefining who and what types of employment qualify for the visa, and by ending the related H-4 program that grants work authorization to dependent spouses of H-1B visa holders.⁴² The administration has also announced that it intends to make it more difficult for immigrants to get green cards or extend their visas if they or their dependents make use of any of an expanded array of public benefits and tax credits for which they are eligible.⁴³

D. Ending DACA

In line with promises made on the campaign trail, Trump is also working to end the Obama-era Deferred Action for Childhood Arrivals (DACA) program, which currently provides protection from removal and work authorization to nearly 700,000 unauthorized individuals who were brought to the United States as children. After seeming to waver on this promise in the early months of his presidency, he announced the “unwinding” of the program in September 2017. DACA holders were to no longer have their two-year status renewed when it expired, meaning that all participants would lose protections within two years.⁴⁴

A number of courts have since weighed in on this action. Two federal court rulings, in January and February 2018, put this decision on hold and ordered USCIS to continue accepting renewal applications from people who currently hold or have in the past held DACA protections, although the agency does not have to consider new applications—decisions the administration appealed.⁴⁵ Then in March 2018, another federal court upheld the administration’s rescission of DACA, but prohibited the government from using information provided on DACA applications for immigration enforcement.⁴⁶ A fourth federal court, in April 2018, ordered USCIS to continue accepting DACA applications, even from new applicants—an order that will go into effect on July 23 unless DHS can offer a fuller explanation of the program’s unlawfulness and

39 USCIS, “USCIS Updates Policy Guidance for Certain Requests for Evidence and Notices of Intent to Deny,” updated July 13, 2018, www.uscis.gov/news/news-releases/uscis-updates-policy-guidance-certain-requests-evidence-and-notices-intent-deny.

40 This order also broadened the cases in which officials must place immigrants in removal proceedings if their applications are denied due to fraud or criminal history. See 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.

41 Sarah Pierce and Julia Gelatt, *Evolution of the H-1B: Latest Trends in a Program on the Brink of Reform* (Washington, DC: MPI, 2018), www.migrationpolicy.org/research/evolution-h-1b-latest-trends-program-brink-reform.

42 U.S. Department of Homeland Security (DHS), “Fall 2017 Agency Statements of Regulatory Priorities,” accessed January 31, 2018, www.reginfo.gov/public/jsp/eAgenda/StaticContent/201710/Statement_1600.html.

43 Jeanne Batalova, Michael Fix, and Mark Greenberg, *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use* (Washington, DC: MPI, 2018), www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

44 U.S. Department of Justice, “Attorney General Sessions Delivers Remarks on DACA” (news release, Washington, DC, September 5, 2017), www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-daca.

45 *The Regents of the University of California and Janet Reno v. United States*, No. C 17-05211 WHA, No. C 17-05235 WHA, No. C 17-05329 WHA, No. C 17-05380 WHA, No. C 17-05813 WHA (Northern District of California, Order, January 9, 2018), www.nilc.org/wp-content/uploads/2018/01/Regents-v-DHS-prelim-injunction-2018-01-09.pdf; *Batala Vidal et al. v. Nielsen; State of New York v. Trump*, Nos. 16-CV-4756 (NGG) (JO) and 17-CV-5228 (NGG) (JO) (Eastern District of New York, Amended Memorandum, Order, and Preliminary Injunction, February 13, 2018), www.nilc.org/wp-content/uploads/2018/02/Batala-Vidal-v-Nielsen-updated-pi-order-2018-02-13.pdf.

46 Proponents of the DACA program have appealed this decision. For the original case, see *CASA de Maryland, et al. v. Dept. of Homeland Security, et al.*, Civil No. RWT-17-2942 (District of Maryland, March 5, 2018), <https://cdn.cnn.com/cnn/2018/images/03/06/maryland-daca-opinion.pdf>.



unconstitutionality.⁴⁷ Finally, in May 2018, Texas and six other states sued the federal government, arguing the creation of the program in 2012 was unlawful and unconstitutional.⁴⁸ This slew of cases has built up a complicated legal landscape and uncertainty in government and communities across the country amid awareness that future court orders could continue to shift the terrain.

One way to smooth this fragmented landscape would be to address the matter legislatively. Congress worked for several months in late 2017 and early 2018 to pass legislation that would provide legal status and/or a path to citizenship to DACA recipients and other unauthorized immigrants brought to the country as children, often bundled together with measures that would increase border security. In the end, lawmakers were unable to resolve disagreements on several key issues—among them, whether only DACA recipients or a broader population of childhood arrivals would be eligible for legal status, and whether the border security measures would encompass changes to asylum laws and an expansion of the criteria for which immigrants can be mandatorily detained at the U.S. border and rapidly removed. As of early July 2018, Congress had not passed legislation on these issues, and the debate had slipped from its priorities. This will almost certainly return as a major political discussion if the lawsuits reach the Supreme Court.

III. The Impact of Expectations and Anxiety

There is strong evidence that the prevalence of harsh rhetoric about immigration and policy changes on the ground have had serious effects on the behavior of individuals both inside and outside the United States. Within the country, as immigrant communities try to stay “under the radar,” there have been reports of a dip in crime reporting, including on domestic violence; fewer applications for public benefits to which immigrants or their U.S.-born children are entitled; and rising no-shows at health care appointments.⁴⁹ While such behavioral changes are hard to document systematically, these accounts suggest a significant change in the way that the estimated 11 million unauthorized immigrants in the United States live their lives.

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In addition, there has been a sharp uptick in the number of individuals who have entered Canada from the United States to seek asylum. Between President Trump’s entry into office and the end of calendar year 2017, more than 20,000 asylum seekers were apprehended between ports of entry at the U.S.-Canada

47 *NAACP, et al. v. Trump, et al.; Trustees of Princeton University, et al. v. United States, et al.*, Civil Action Nos. 17-1907 (JDB) and 17-2325 (JDB) (District of Columbia, April 24, 2018), www.clearinghouse.net/chDocs/public/IM-DC-0038-0009.pdf.

48 *Texas et al. v. United States et al.*, No. 1:18-cv-00068 (Southern District of Texas, Motion for Preliminary Injunction and Memorandum in Support, May 2, 2018), www.texasattorneygeneral.gov/files/epress/Mt_for_PL.pdf.

49 See, for example, Jennifer Medina, “Too Scared to Report Sexual Abuse. The Fear: Deportation,” *The New York Times*, April 30, 2017, www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html; Molly Redden, “Undocumented Immigrants Avoid Vital Nutrition Services for Fear of Deportation,” *The Guardian*, May 9, 2017, www.theguardian.com/us-news/2017/may/09/undocumented-immigrants-wic-nutrition-services-deportation; Jan Hoffman, “Sick and Afraid, Some Immigrants Forgo Medical Care,” *The New York Times*, June 26, 2017, www.nytimes.com/2017/06/26/health/undocumented-immigrants-health-care.html.



border—more than eight times the number apprehended in 2016.⁵⁰ In 2018, these numbers have continued to climb; as of June, more than 10,000 asylum seekers had been apprehended between ports of entry, an increase of more than 140 percent compared to the same period in 2017.⁵¹ Many of the asylum seekers have been Haitians who, early in the year, feared a loss of TPS or who travelled north following its termination by the administration in November 2017.⁵²

The rhetoric and policies of the Trump administration also appear to be among the factors that initially suppressed already reduced flows of unauthorized immigrants from Mexico and Central America. During FY 2017, apprehensions of unauthorized immigrants at the U.S.-Mexico border fell by more than one-quarter compared to the year before—to the lowest amount recorded since 1971.⁵³ With no real additional enforcement efforts at the border to explain such a dramatic year-to-year shift, this points to a change in perceptions about enforcement among potential unauthorized border crossers. However, after the first year of his administration, this “Trump effect” seems to have dissipated. Monthly apprehensions have since increased slightly, returning to levels seen in 2013, 2015, and 2016—indicating that harsh rhetoric alone may not affect potential migrants’ decisions about whether to attempt to cross the border in the long term.⁵⁴

The administration’s positions on immigration may also be having a broader chilling effect on immigration and tourism to the United States. In the first three quarters of calendar year 2017, the most recent data available, international arrivals to the United States dropped by 2.3 million compared to the same period the prior year.⁵⁵ A coalition of higher education associations also found that nearly 40 percent of colleges and universities that responded to a 2017 survey reported a drop in international applications, and that the largest decrease came from students in the Middle East.⁵⁶ New H-1B applications have also declined for the first time since the 2008–09 recession: 199,000 applications were submitted for the FY 2018 cap, a decrease of 15 percent from the prior year, and 190,000 were submitted for the FY 2019 cap.⁵⁷

50 Government of Canada, “2017 Asylum Claims,” updated July 13, 2018, www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims-2017.html; Stephanie Levitz, “Border Crossers Caught so Far in 2017 Nearly Half of 2016 Total,” *Maclean’s*, March 21, 2017, www.macleans.ca/news/border-crossers-caught-so-far-in-2017-nearly-half-of-2016-total.

51 Government of Canada, “Asylum Claims,” updated July 13, 2018, www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims.html.

52 Haitians made up the largest national group among asylum seekers crossing from the United States into Canada, with 6,869 claims in 2017. See Ashlyn Still and Anna Mehler Paperny, “Canada’s New Wave of Asylum Seekers,” *Reuters*, March 19, 2018, <http://fingfx.thomsonreuters.com/gfx/rngs/TRUMP-EFFECT-CANADA-IMMIGRATION/0100617F2J1/index.html>.

53 U.S. Border Patrol, “Southwest Border Sectors” (data table, U.S. Border Patrol, Washington, DC, December 2017), www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2017.pdf.

54 CBP, “Southwest Border Migration FY2018”; U.S. Border Patrol, “Total Illegal Alien Apprehensions by Month – FY 2000–FY 2017” (data table, U.S. Border Patrol, Washington, DC, December 2017), www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Total%20Monthly%20Apps%20by%20Sector%20and%20Area%2C%20FY2000-FY2017.pdf.

55 U.S. Department of Commerce, National Travel and Tourism Office, “2017 Monthly Arrivals Data,” accessed July 6, 2018, <https://travel.trade.gov/view/m-2017-l-001/index.asp>.

56 Lauren Camera, “Survey Finds College Applications from International Students Down,” *U.S. News*, March 13, 2017, www.usnews.com/news/education-news/articles/2017-03-13/college-applications-from-international-students-down.

57 The H-1B visa is the temporary visa employers, particularly those in the IT industry, most commonly use to bring skilled foreign workers into the United States. H-1B visa application rates have historically tracked closely with the strength of the economy. See Laura Meckler, “H-1B Visa Applications Drop,” *The Wall Street Journal*, April 17, 2017, www.wsj.com/articles/h-1b-visa-applications-drop-1492472611; USCIS, “USCIS Completes the H-1B Cap Random Selection Process for FY 2019” (press release, Washington, DC, April 12, 2018), www.uscis.gov/news/alerts/uscis-completes-h-1b-cap-random-selection-process-fy-2019.



IV. Congressional Inaction and Resistance

Although the Republican Party is both represented in the White House and in control of the legislative branch, President Trump and Congress have yet to agree on changes to U.S. immigration laws. Beginning on the campaign trail, Trump has expressed a number of immigration policy aims that would require legislation, including ramping up immigration enforcement and decreasing levels of legal immigration into the country (see Box 1).

Box 1. Presidential Priorities and Congressional Inaction

In a highly publicized August 2016 campaign speech in Arizona, then-presidential candidate Donald Trump laid out ten detailed steps he intended to take to reshape immigration to the United States if elected. Migration Policy Institute (MPI) analysis of changes to immigration policy during the president's first year in office found that while the Trump administration made significant headway on some of these steps, those that would require changes to U.S. immigration law had largely stalled. Congress has thus far proven unwilling or unable to pass legislation on goals such as:

- creating mandatory minimum punishments for migrants who re-enter the country illegally after having previously been removed;
- authorizing states and localities to enforce immigration laws (currently, this responsibility lies solely with the federal government);
- expanding the grounds on which a noncitizen can be deported from the United States;
- expanding the use of the government's employment verification program, E-Verify;
- decreasing the number of annual grants of permanent residence;
- selecting immigrants for admission based on their likely success in U.S. society and ability to be financially self-sufficient (thus reducing the dominance of family-based admissions); and
- creating an expiration date for all immigration laws to ensure that Congress revisits them regularly.

After taking office, and particularly amid negotiations of a resolution for recipients of Deferred Action for Childhood Arrivals (DACA), the president has articulated other legislative goals that similarly have yet to move in Congress, including:

- enhancing border security by, among other things, increasing infrastructure and personnel resources, restricting the ability of arriving immigrants to apply for asylum, and increasing the use of detention;
- limiting family admissions by eliminating the ability of U.S. citizens to sponsor parents, siblings, and adult or married children, and of legal permanent residents to sponsor their adult children; and
- ending the Diversity Visa Lottery.

Sources: Speech by Donald J. Trump, Republican Presidential Candidate, on Immigration, Phoenix, Arizona, August 31, 2016, www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html; Sarah Pierce, Jessica Bolter, and Andrew Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality* (Washington, DC: MPI, 2018), www.migrationpolicy.org/research/trump-first-year-immigration-policy-rhetoric-vs-reality; White House, "White House Framework on Immigration and Border Security" (briefing statement, January 25, 2018), www.whitehouse.gov/briefings-statements/white-house-framework-immigration-reform-border-security.



In addition, many of the items included in the president's immigration-related executive orders hint at legislation or require the participation of Congress to enact. For example, in his April 2017 executive order, "Buy American and Hire American," President Trump called on relevant federal agencies to suggest reforms to the process of issuing H-1B visas that would ensure they are "awarded to the most-skilled or highest-paid petition beneficiaries."⁵⁸ Such reforms would require an act of Congress.

Many of President Trump's other mandated changes, including the hiring of 15,000 additional border and interior enforcement officers, the expansion of an electronic system that enables employers to verify the work eligibility of employees (E-Verify),⁵⁹ and the building of a border wall, require funds that would need to be appropriated by Congress. Thus far, the compromise required in the bipartisan appropriations process has meant that such funds have not been approved.

There appears to be little appetite for legislation on immigration in Congress, despite the emphasis the president has placed on it. In fact, Congress has not passed into law any significant bill related to immigration since his inauguration.⁶⁰ While President Trump did throw his support behind the RAISE Act, a bill before Congress that would cut legal immigration levels in half and implement a points-based visa system that takes into account education, skills, and English-language proficiency,⁶¹ it has yet to move forward and appears to lack support even among key Republicans.

Many of President Trump's other mandated changes ... require funds that would need to be appropriated by Congress.

Following the administration's announcement that the DACA program would be phased out, both houses of Congress separately considered and failed to pass bills to create a legislative fix. During negotiations in the Senate, the president supported a bill by Senator Chuck Grassley that would have, among other things, cut several family-based immigration categories. However, the bill failed a vote in the Senate, receiving the least number of votes of the three DACA-related bills considered.⁶² When the House took on the issue in June 2018, the president supported both bills under consideration—a hardline immigration bill introduced by Judiciary Committee Chairman Bob Goodlatte and a "compromise" proposal introduced by Republican leadership.⁶³ Both failed to secure the necessary votes.

Without this avenue for change, the ability of the president to act on immigration is limited to what he can accomplish administratively, and the overall contours of the U.S. legal immigration system are likely to remain the same.

58 White House, "Executive Order 13788."

59 The E-Verify system is currently mostly voluntary and enables employers to check the names and identity data of potential hires against federal databases. At present, some states have made it mandatory, and more than 745,000 employers have enrolled. Making its use mandatory at the national level would require an act of Congress. See E-Verify, "History and Milestones—2017," accessed July 6, 2018, www.e-verify.gov/about-e-verify/history-and-milestones#y2017.

60 While the Senate and the House of Representatives have each passed several bills relating to immigration, the only ones that have passed both chambers are the FY 2018 appropriations bill and a bill increasing fees and setting caps on nonimmigrant workers in the Northern Mariana Islands. See *Consolidated Appropriations Act, 2018*, HR 1625, 115th Cong., 1st sess. (March 20, 2017), www.congress.gov/bill/115th-congress/house-bill/1625; *Northern Mariana Islands U.S. Workforce Act of 2018*, HR 5956, 115th Cong., 2nd sess., *Congressional Record* 164, no. 86, daily ed. (May 24, 2018): H 4728, www.congress.gov/bill/115th-congress/house-bill/5956.

61 *RAISE Act of 2017*, S 354, 115th Cong., 1st sess., *Congressional Record* 163, no. 25, daily ed. (February 13, 2017): S1129, www.congress.gov/bill/115th-congress/senate-bill/354.

62 Kelsey Snell, "Senate Fails to Advance Any Immigration Proposals," NPR, February 15, 2018, www.npr.org/2018/02/15/585794696/immigration-push-hits-a-wall-as-senate-deadline-nears.

63 *Securing America's Future Act of 2018*, HR 4760, 115th Cong., 2nd sess., *Congressional Record* 164 no. 6, daily ed. (January 10, 2018): H 131, www.congress.gov/bill/115th-congress/house-bill/4760; *Border Security and Immigration Reform Act*, HR 6136, 115th Cong., 2nd sess., *Congressional Record* 164, no. 102, daily ed. (June 19, 2018): H 5284, www.congress.gov/bill/115th-congress/house-bill/4760/all-info.



V. Pushback from Local and State Governments

President Trump's enforcement initiatives emphasize and depend on collaboration from state and local jurisdictions. Under U.S. law, immigration enforcement is a responsibility of the federal government. However, the federal immigration enforcement agency, ICE, relies heavily on cooperation from state and local law enforcement agencies that notify it when they come into contact with an unauthorized immigrant. At times, ICE responds by issuing a detainer (a request to hold a deportable noncitizen in state or local custody up to an additional 48 hours), providing time for the agency to take them into custody. There is increasing variation in the degree to which jurisdictions are willing to cooperate with ICE. While some comply routinely with immigration detainers, a growing number of state and municipal governments have enacted "sanctuary" policies, which prohibit police and jail officials from doing so.⁶⁴

State legislatures have jumped in on both sides of the debate, with some passing or considering laws that limit local law enforcement compliance with ICE, while others ban or limit sanctuary policies and practices. In the two highest profile cases, the State of California prohibited any local jurisdiction from collaborating with ICE, while the State of Texas required law enforcement agencies to comply with ICE detainers.⁶⁵

After having promised on the campaign trail to end sanctuary cities, the Trump administration has set its sights on challenging California's statewide sanctuary policies. In March 2018, the administration sued California, arguing that the abovementioned law and two other state laws were preempted by federal law.⁶⁶ The court upheld the law prohibiting local collaboration with ICE—a win for California—but did temporarily bar the state from enforcing some provisions of one of the other challenged laws, which aim to limit the degree to which employers allow ICE access to their employees, while the case goes forward.⁶⁷

VI. The Role of the Courts

The judicial system has blocked some of the president's administrative immigration changes from being implemented—perhaps more so than any prior president. This is especially true regarding the president's initial efforts to implement a ban on entry into the United States for nationals of several countries. After trying to execute the policy three times, only to face court challenges at each turn, the latest of the three orders was eventually upheld by the U.S. Supreme Court.

Prior to his inauguration, Trump repeatedly promised a ban on Muslim individuals entering the country as a means of enhancing national security. By the time he took office and began issuing executive orders, this had become a travel ban on visitors, immigrants, and refugees from seven countries, all of which were Muslim majority. Executive Order 13769, "Protecting the Nation from Foreign Terrorist Entry into the United States," signed January 27, 2017, was effective immediately and included a suspension of entries of

64 Randy Capps et al., *Reving Up the Deportation Machinery: Enforcement under Trump and the Pushback* (Washington, DC: MPI, 2018), www.migrationpolicy.org/research/revving-deportation-machinery-under-trump-and-pushback.

65 For a discussion of state immigration and integration policy under the Trump administration, see Margie McHugh, *Immigrant Integration in the Age of Trump: Populist Backlash and Progressive Resistance Create Widely Divergent Contexts for Integration Across States* (Washington, DC: MPI, 2018), www.migrationpolicy.org/research/age-trump-populist-backlash-and-progressive-resistance-create-divergent-state-immigrant.

66 *United States v. California*, No. 18-264 (Eastern District of California, March 6, 2018), www.justice.gov/opa/press-release/file/1041436/download.

67 *United States v. California*, No. 2:18-cv-490-JAM-KJN (Eastern District of California, Order, July 5, 2018), www.caed.uscourts.gov/caednew/assets/File/18cv490%20doc%20193.pdf; *United States v. California*, No. 2:18-cv-490-JAM-KJN (Eastern District of California, Order, July 9, 2018), www.caed.uscourts.gov/caednew/assets/File/18cv490%20doc%20197.pdf.



nearly all nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.⁶⁸ From the outset, the order faced legal challenges, several of which resulted in court orders that temporarily restrained or enjoined key parts. The courts relied on a variety of legal justifications, including finding that the order violated the U.S. Constitution's prohibition on the government establishing or favoring a particular religion.

As the cases moved through the court system, the president signed a revised executive order on March 6, 2017.⁶⁹ The new order removed Iraq from the list of countries, set a delayed implementation date, and exempted individuals who had previously received authorization to travel to the United States, such as individuals who at the time of the order held student, employment, or other visas. Even though the new order was designed to avoid the legal pitfalls of its predecessor, on March 15—the day before the revised executive order was set to take effect—it was subject to a nationwide temporary restraining order that prevented the implementation of some of its key elements, including the travel ban. Litigation on this and subsequent temporary restraining orders made their way quickly through the court system. In June 2017, the Supreme Court eventually allowed for the partial implementation of the travel ban, except as it applied to visa applicants with close relationships to U.S. persons or entities.⁷⁰

On September 24, 2017, the Trump administration tried for a third time, issuing a proclamation that placed varying visa restrictions on individuals from Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen.⁷¹ Again, prior to the ban's implementation, courts issued nationwide injunctions, this time suspending the ban for all of the listed countries except North Korea and Venezuela. The administration appealed the injunctions, and the Supreme Court allowed the full travel ban to go into effect while the cases against it proceeded through the courts. On April 10, the administration lifted the ban for one of the affected countries—Chad—stating that its government had taken steps to make its passports more secure and to improve information sharing on known or suspected terrorists.⁷² Finally, on June 26, the Supreme Court likely ended the travel ban's year-and-a-half-long entanglement with the court system, ruling that its third iteration did not violate federal law or the U.S. Constitution.⁷³

VII. Conclusion

No administration in modern U.S. history has placed such a high priority on immigration policy or had an almost exclusive focus on restricting immigration flows, legal and unauthorized alike. This, in and of itself, marks a major departure in how immigration is discussed and managed in the United States. To date, the Trump administration has expanded the reach of interior enforcement, reduced refugee admissions dramatically, and slowed visa processing times, with a modest but noticeable effect on the number of people admitted in some visa categories. In the short term, the effects of these measures are incremental, but over time they could reshape U.S. immigration policy significantly, even in the absence of legislation on any of the president's major priorities.

But Congress, local and state governments, and the courts have in some cases acted as countervailing forces, slowing the implementation of some measures and stopping others. Only Congress has the

68 White House, "Executive Order 13769."

69 White House, "Executive Order 13780."

70 *Trump v. IRAP; Trump v. Hawaii*, Nos. 16–1436 (16A1190) and 16–1540 (16A1191) (Supreme Court of the United States, June 26, 2017), www.supremecourt.gov/opinions/16pdf/16-1436_l6hc.pdf.

71 White House, "Presidential Proclamation 9645."

72 White House, "Presidential Proclamation 9723."

73 While it is possible that there will be further litigation, either on remand from the Supreme Court's decision or in the form of new litigation related to how the executive order is implemented, for the moment the administration is free to move forward with the current ban, or even to expand it to more countries. See *Trump v. Hawaii*, No. 17–965 (Supreme Court of the United States, June 26, 2018), www.supremecourt.gov/opinions/17pdf/17-965_h315.pdf.



authority to pass legislation that would reshape the country's legal immigration policies and appropriate the federal budget needed to, among other things, fund the president's wall. The courts have at times stayed and even permanently blocked some of the administration's initiatives. And while state and local governments have far less authority to contravene federal immigration policies, the unwillingness by some to collaborate on enforcement has significantly stymied these efforts.⁷⁴

Polls show that U.S. public opinion remains divided on immigration, with a majority of the population expressing generally positive opinions about current immigration levels and skepticism about enhanced enforcement, but a substantial minority supports the Trump administration's efforts to restrict immigration and increase enforcement measures.⁷⁵ In this polarized environment, the president has significant incentives to double-down on his rhetoric about restricting immigration. For similar reasons, Congress has little reason to act, and states and local governments are likely to remain divided. Barring a major compromise between the president and Congress, the stalemate on major legislation is likely to continue, leaving the administration to do what it can to implement the president's vision through administrative measures.

Trump may not succeed in remaking the immigration system in law, but he might well end up significantly reducing immigration in practice.

While Trump may not be able to reshape the U.S. immigration system to quite the extent he would like, over time he may be able to reduce overall immigration admissions simply by limiting refugee numbers and slowing down family petitions, while forcing other immigrants out by intensifying implementation of existing laws on detention and deportation. In short, Trump may not succeed in remaking the immigration system in law, but he might well end up significantly reducing immigration in practice.

⁷⁴ Capps et al., *Revvig Up the Deportation Machinery*.

⁷⁵ For data on how public opinion has changed over time, see Gallup, "In Depth Topics: Immigration," accessed July 6, 2018, <http://news.gallup.com/poll/1660/immigration.aspx>. As of June 2018, Gallup polls showed that 29 percent of respondents supported decreasing immigration, the lowest level in decades. For a reading of several polls that closely track the Gallup findings, see Kathryn Bowman, "Reading the Polls: Welcome to America? What Americans Say about Immigration," *Forbes*, February 14, 2017, www.forbes.com/sites/bowmanmarsico/2017/02/14/reading-the-polls-welcome-to-america-what-americans-say-about-immigration/. Ipsos finds slightly less support for current immigration levels and slightly more who are uneasy with immigration than who think it is a positive contribution, but also find an increase in positive views. See Ipsos, "Global Views on Immigration and the Refugee Crisis," updated September 2017, www.ipsos.com/sites/default/files/ct/news/documents/2017-09/Global%20%40advisor_Immigration_Slides%20-%20US%20Deck%20FINAL.pdf. The Public Religion Research Institute (PRRI) has published a data series from their American Values Atlas that shows consistently more positive than negative opinion of immigrants' contributions to U.S. society. See Betsy Cooper, Daniel Cox, Rachel Lienesch, and Robert P. Jones, *How Americans View Immigrants, and What They Want from Immigration Reform: Findings from the 2015 American Values Atlas* (Washington, DC: PRRI, 2016), www.prri.org/research/poll-immigration-reform-views-on-immigrants/. A September 2017 poll by Fox News also found that 83 percent of voters favored legislation to legalize the status of unauthorized immigrants brought to the United States as children. See Victoria Balara, "Fox News Poll: 83 Percent Support Pathway to Citizenship for Illegal Immigrants," Fox News, September 28, 2017, www.foxnews.com/politics/2017/09/28/fox-news-poll-83-percent-support-pathway-to-citizenship-for-illegal-immigrants.html.



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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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