



America as a Welcoming Nation

The First 100 Days of the Biden Administration

Upon entering office President Biden promised bold, swift action in the immigration arena to undo the years of harm caused by the Trump administration. The previous administration's policies ravaged the immigration system itself and had devastating consequences for American families, businesses and others who rely upon immigrants. At the 100-day mark, AILA evaluates the new administration's progress based on AILA's comprehensive recommendations published in November 2020, [A Vision for America as a Welcoming Nation](#).

AILA urged President Biden to set forth a new vision for the U.S. immigration system animated by the principle that the nation must welcome all people regardless of faith, nationality or income level. AILA's recommendations include repealing the discriminatory travel bans on majority-Muslim and African nations, rescinding the public charge wealth test and stopping use of COVID-19 as a false pretext to keep people out of the country. Since entering office, the president [delivered](#) on many of these recommendations with actions that carry both symbolic force and the power to impact the lives of thousands of people. The president called for reforms "[to restore humanity and American values](#) to our immigration system" and rescinded the discriminatory travel bans and immigrant visa ban, allowed the nonimmigrant visa ban to expire, and removed the public charge regulations.

In the areas of detention reform, immigration courts and humanitarian protection the administration has shown the least progress and has even begun backing away from campaign pledges he made, such as the commitment to end family detention and resettle more refugees, when controversy has mounted. In the face of the significant political pressure on these issues, the president should continue implementing practical solutions that adhere to his principles of making the system fairer, more humane and efficient.

While the Biden Administration has implemented many reforms, the reality is that significant and lasting change will take sustained leadership well beyond 100 days. The President inherited an immigration system that is hamstrung by more than 1,000 deleterious immigration policies and procedures his predecessor put in place. In the short term, the administration has restarted dialogue on immigration with AILA and other stakeholders and halted harmful regulations by delaying their effective dates or through litigation. AILA will continue to champion necessary reforms and work with the Administration on issues that are essential to our members, including the dismantling of the invisible wall around the legal immigration

benefits system, reforming the immigration courts, ensuring just and humane immigration detention and enforcement, and providing humanitarian protection..

The Immigration Benefits System

From the start of his term, President Trump effectively built an “invisible wall” to immigration by introducing policies at every level--from executive orders down to detailed agency procedures--that were designed to block access to legal immigration benefits and slow down processing of applications. During this time there was a well-documented shift in USCIS’s priorities from an agency charged with the effective and efficient administration of immigration benefits to one that had distanced itself from its customer service roots and that honored our nation’s rich history of immigration. Some changes were overtly anti-immigrant, such as changing the agency’s mission statement, creating a public charge wealth test, increasing fees, and issuing the Buy American, Hire American (BAHA) Executive Order. Other changes were subtle, but equally impactful, such as the rescission of adjudicator deference, mandating interviews even when unnecessary, and closing off avenues of redress. Each of these changes, and hundreds of others, deliberately slowed down USCIS processing of legal immigration benefits, leading to a [101% overall increase](#) in case processing times from fiscal years 2014 to 2019. That astounding increase occurred even as [case numbers decreased by 10 percent](#) from 2017 to 2019. These delays have resulted in individuals falling out of lawful status, being separated from their families, and losing their jobs due to no fault of their own.

To bring fairness and transparency back into the legal immigration system, AILA called for greater accountability and accessibility at USCIS, the restoration of consistency and due process at Department of State and CBP, while strengthening naturalization, family-based and employment-based immigration programs.

During his first few weeks in office, President Biden began taking steps to dismantle the invisible wall by [ordering](#) agencies to identify barriers that impede access to immigration benefits and fair and efficient adjudications, such as the USCIS Fee Rule, and ordered the immediate review of the Public Charge Regulations. In response, USCIS [halted implementation](#) of the fee increase rule and the Department of Justice [stopped defending](#) the unlawful Public Charge regulations. Similarly, President Biden issued an Executive Order [rescinding BAHA](#), which led to the reversal or delay of some restrictive H-1B policies. In an important step towards more efficient and fair processing of adjudications, USCIS also [reinstated its deference policy](#) to ensure consistency for individuals who have been living and working in this country and [removed barriers to naturalization](#) by reinstating a fairer civics exam.

However, USCIS processing times remain at crisis-levels and many of the detrimental policies that have led to unlawful and inconsistent adjudications are still in place. USCIS must take steps to reduce these delays by rescinding these policies and streamlining the adjudications process by adjudicating related cases together, requiring biometrics appointments only when necessary, reducing unnecessary Requests for Evidence, ensuring that staffing is properly

allocated to reduce backlogs, and fully implementing the Emergency Stopgap USCIS Stabilization Act. USCIS must return to its customer-service mission and become a more accessible agency.

Similarly, delays at DOS Consulates are at record levels, with visa backlogs exacerbated by travel bans and pandemic-related closures. Despite rescinding certain travel bans, President Biden [resurrected regional travel bans](#) that have created a confusing and arbitrary visa process at consulates within the affected countries. DOS must take steps to ensure that visa processing is expedited and transparent. Moreover, the President must immediately rescind the [Healthcare Insurance Proclamation](#), which is one the final vestige of President Trump's "[wealth test](#)" for immigration. Finally, the Administration must take decisive action to ensure that immigrant visas do not go unused and protect individuals whose lives are in limbo due to [immigrant visa backlogs](#), by recapturing visas, protecting aging out children, and exempting derivatives from numerical limitations. While years of disfunction in our legal immigration system, compounded by restrictive policies, cannot be undone and improved upon overnight, or even in 100 days, time and effective leadership will be necessary to fully dismantle the invisible wall.

Immigration Court Reform

President Trump implemented [radical changes](#) that fundamentally compromised the integrity of the immigration courts and their ability to ensure fairness and impartiality in immigration cases. In a single term, the previous administration [transformed the courts](#) into a slide to deportation with only the thinnest veneer of process. Ironically, President Trump's attempts to rush people through the court system has not made the courts more efficient. From the time he took office, the court backlog more than doubled to an astounding 1.3 million cases.

Unfortunately, the Attorney General has yet to announce any major policy on immigration. To make the courts fairer and more functional, it is imperative that he [rescind the opinions](#) issued by former attorneys general Sessions and Barr and Trump-era regulations that strip immigration judges of power to effectively manage their dockets and undermine asylum law and due process. With more than half of the sitting immigration judges now appointed by President Trump and the courts' leadership still dominated by his appointees (with the exception of the acting director), the Attorney General must conduct a review of all personnel decisions and ensure training protocols advance fair adjudications that are consistent with the law. Failure to act will allow the entrenchment of the previous administration's practices that resulted in the highest asylum denial rates in history—[72 percent in 2020](#).

To properly address the court backlog, the Attorney General must not only restore fundamental authorities to judges but also order an examination [of cases on the dockets that removes non-priority cases --](#) which could number as many as 700,000 cases. On Day 1, the president called upon the Attorney General to set clear enforcement priorities but after 100 days that still has not happened while DHS has already issued [two memos](#). Recognizing the critical role that the

courts play in the immigration system, the President and Attorney General can no longer delay the urgently needed [reforms](#).

Detention and Enforcement

Over the past two decades detention rates skyrocketed from an average of about 7,000 people detained in the mid-1990s to a height of about [50,000 people](#) detained per day in 2019. In 2020, detention numbers dropped to significantly reduced levels, and are currently at about 14,000 people per day. With the lower numbers, the President should implement major reforms that reduce overall detention levels closer to where they were before they escalated (about 7,500 people per day). To accomplish this, new standards are needed that establish a presumption to release people from detention as well as a review of all detained cases to ensure no one is unnecessarily deprived of their liberty. The administration's preliminary fiscal year [2022 budget](#) did not signal plans to reduce detention funding. That's a missed opportunity but can still be corrected when the president submits his final budget. The initial budget does recognize the benefits of [community-based case management](#) as a highly effective alternative to detention that ensures appearances at court hearings.

The president has not yet fulfilled his pledges to end the use of private for-profit facilities and family detention. Unfortunately administration officials recently indicated they are [not planning](#) to end family detention, and the president's order on racial equity would terminate prison contracts but [does not apply](#) to private immigration detention.

Early on the Biden administration issued new DHS and ICE [interim enforcement policies](#) and attempted to pause deportations for 100 days, though a federal court subsequently enjoined that portion of the memo. While the new priorities are a significant improvement over the Trump administration's indiscriminate enforcement methods, ICE continues to rely upon discredited approaches, such as defining public safety threat based on gang member identification and overly broad terms such as aggravated felony. AILA members report inconsistent implementation of the priorities and that ICE attorneys are refusing to follow the guidance altogether. ICE needs to give more clear direction to officers in the field and implement more accountability measures to ensure these and future policy changes are effective.

Asylum and humanitarian protection

On humanitarian protection, the President's response has been weaker. While he has taken some steps to [improve asylum procedures](#) and rescinded agreements with countries that restricted asylum access, he has not executed the promises he made to welcome asylum seekers and refugees. Notably he has left in place the [discredited Title 42 ban](#) the Trump administration pressured the Center for Disease Control to issue under the false pretext of protecting public health during the COVID-19 pandemic. The ban has resulted in the wrongful [expulsion of asylum seekers](#) from Mexico, El Salvador, Guatemala, Honduras, Haiti and other countries without giving them an opportunity to seek asylum. On April 16, he [abandoned his](#)

[pledge](#) to increase the number of refugees he would resettle to the United States from 15,000 to 62,500. After Democratic leaders and human rights groups expressed outrage, the White House walked back that decision and will announce a final figure in May.

The administration has [slowly but steadily](#) begun allowing people formerly in the Migration Protection Protocols (MPP) program to enter the country. With COVID-19 testing, social distancing measures, and the support of humanitarian groups, some migrants are being given access to the U.S. asylum system. Importantly, the Biden administration is not funneling these people into ICE detention. These are elements of what could be a more [humane and welcoming border](#) processing system.

Conclusion

The Biden Administration has taken a number of important steps to begin the process of reestablishing America as a Welcoming Nation that values the contributions of immigrants from all walks of life; however, there are many more that need to be taken quickly and decisively to stop the continuing damage from the former Administration's policies and to realize the President's immigration vision.