



# A GUIDE TO PRESIDENT BIDEN'S EXECUTIVE ORDERS, PROCLAMATIONS & AGENCY ANNOUNCEMENTS ON IMMIGRATION



Photo Credit: Molly Adams, flickr

# A POPULAR GUIDE TO PRESIDENT BIDEN'S EXECUTIVE ORDERS, PROCLAMATIONS & AGENCY ANNOUNCEMENTS ON IMMIGRATION

This guide was last updated on February 9, 2021. There may be more immigration-related executive orders (EOs) or agency announcements and NNIRR will add to this guide as more roll out.

President Biden also signed a number of EOs regarding climate change, gender equity, racial justice and more, issues that intersect with migrant rights advocacy and have an impact on our communities. This guide focuses on the EOs related to the policies and administrative changes specific to immigrants, migrants, and refugees and makes note of human rights concerns related to the EOs where we must continue to be vigilant and advocate for immigrant rights.

- **Restore an Inclusive Count for the 2020 Census**
- **End Muslim & Africa Travel Bans**
- **100 Day Moratorium on Deportations & Revoke Immigration Enforcement Protocols**
- **Reinstate DACA**
- **Reinstate Deferred Enforced Departure (DED) for Liberians**
- **End Border Wall Construction**
- **Covid-19 Travel Restrictions**
- **End the Use of Private Prisons**
- **DOJ Rescinds 'Zero Tolerance'**
- **DHS Redesignates TPS for Syria**
- **Reunite Families Separated at the Border**
- **Review, Restore and/or Revise Legal Immigration Policies (Including Public Charge)**
- **Address the Root Causes of Migration in Central America**
- **Restore Refugee Admissions & Address Climate Change Impact on Migration**



# QUESTIONS FOR COMMUNITY DIALOGUE

*The following is a list of suggested questions that may be useful to facilitate community dialogue and analysis on the scope and impact of these executive orders. Additionally, these questions could help shape a community agenda for protecting the human rights of migrants.*

- What impacts does this EO have for my community? And for my family?
- Where does my organization stand on this EO?
- How does this impact the human rights of migrants?
- How does this protect LGBTQIA+ communities?
- How does this impact indigenous peoples?
- Does this protect migrant children?
- What impact will this EO have on future migration flows?
- How does this protect the rights of migrant women?
- How does this enhance or deter the social, economic and cultural rights of border communities?
- Does this address the racism inherent in immigration policy?
- How does this protect black migrants and diasporas?
- What actions do we want to take to advocate for stronger human rights protections?

# Restore an Inclusive Count for the 2020 Census

*Ensuring a Lawful & Accurate Enumeration and Apportionment Pursuant to the Decennial Census*

On July 21, 2020, former President Trump released a memo unconstitutionally calling for undocumented immigrants to be excluded in the national census. Such an exclusion would have diminished federal aid to states with higher migrant populations and changed the allocation of seats in the House of Representatives.

This EO overturns former President Trump's directive to the U.S. Census Bureau to exclude non-U.S. citizens from the census count, and **ensures a complete count of all individuals, regardless of citizenship or immigration status.**

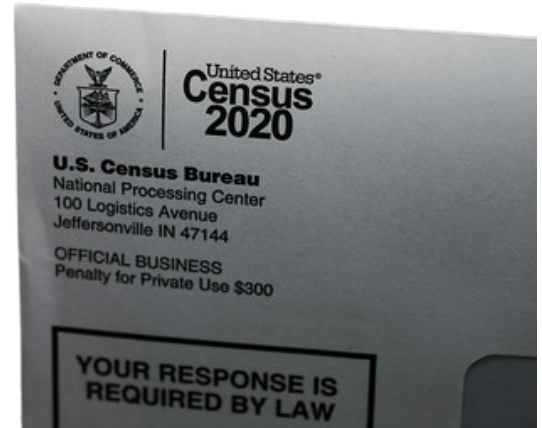


Photo: Tony Webster flickr

# End Muslim & Africa Travel Bans

*Ending Discriminatory Bans on Entry to The United States*

Under the guise of national security, but clearly intended to stir up nationalism and anti-black racism, the Trump administration implemented several travel bans. The first bans were on many Muslim-majority countries like Iran and Yemen; later African countries like Eritrea and Nigeria were added. Biden describes the bans as “a stain on our national conscience.” The Biden EO:

- Revokes former President Trump's EOs and proclamations regarding the Muslim and Africa Bans.
- Orders the resumption of visa processing of previously ineligible individuals.
- Requires the Secretary of State to produce a report in the next 45 days detailing a plan for allowing applicants denied under the previous orders.
- Requires the Secretary of State and Secretary of Homeland Security to produce a report in the next 120 days reviewing current screening practices, their effectiveness, and possible improvements.

# Establish a 100 Day Moratorium on Deportations & Revoke Immigration Enforcement Protocols

## *Revision of Civil Immigration Enforcement Policies & Priorities*

Former President Trump's EO broadly prioritized the deportation of all undocumented immigrants, directed ICE to hire 10,000 additional agents, and restricted federal aid when possible to cities and states which did not assist federal immigration enforcement. This EO revokes Trump's policy and:

- Requires a department-wide review of immigration enforcement practices at the Department of Homeland Security within 100 days.
- Issues interim enforcement guide for national security, border security & public safety.
- Orders a 100 day pause on removals of non-citizens *unless* an individual:
  - Has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to the national security of the United States according to a written finding by the Director of ICE; or
  - Was not physically present in the United States before November 1, 2020; or
  - Has voluntarily agreed to waive any rights to remain in the United States, provided that he or she has been made fully aware of the consequences of waiver and has been given a meaningful opportunity to access counsel prior to signing the waiver; or
  - For whom the Acting Director of ICE, following consultation with the General Counsel, makes an individualized determination that removal is required by law.

### **Human Rights Concerns:**

There are categories of people not protected by this order, which is cause for concern given ICE and CBP routine practice --who have the discretion of determining who is a threat to national security in order to proceed with deportation orders. After this order was issued, a judge in Texas temporarily blocked the moratorium for those with orders for removal. Meanwhile, ICE has continued daily deportation flights, impacting thousands of people from Central America and black migrants from Haiti, Cameroon, Angola, the Democratic Republic of Congo and other countries.

## Reinstate DACA

### *Preserving & Fortifying Deferred Action for Childhood Arrivals (DACA)*



Photo Credit: Victoria Pickering

Deferred Action for Childhood Arrivals (DACA) is a temporary administrative relief from deportation for immigrant youth who came to the US as children. DACA gives eligible undocumented immigrants protection from deportation and a work permit. Trump repeatedly tried to dismantle DACA, leaving the status of 650,000 recipients in limbo and fearful for their futures.

This EO directs the Secretary of Homeland Security to take “all actions he deems appropriate” to preserve and fortify DACA and calls on Congress to enact legislation that will provide permanent status and a pathway to citizenship for people who came to the United States as children.

## Reinstate Deferred Enforced Departure (DED) for Liberians

In light of the first Liberian Civil War, the U.S. granted Temporary Protected Status (TPS) to Liberians in 1991. After this TPS ran out in 2007, the Bush administration, followed by the Obama administration, implemented a Deferred Enforcement Departure (DED) program. The Trump administration intended to end this status.

- This EO reinstates DED and authorized employment for eligible Liberians through June 30, 2022. Eligibility restrictions can be found [here](#).

Photo Credit: Fibonacci Blue



## End Border Wall Construction

*Termination Of Emergency With Respect To The Southern Border Of The United States  
& Redirection Of Funds Diverted To Border Wall Construction*

On February 20, 2019, President Trump declared a National Emergency at the U.S. southern border on the grounds of a national security crisis caused by migrants illegally entering the country. This EO terminates such a status and:

- Pauses construction of the southern border wall and assesses the legal and administrative consequences of cancelling building contracts.
- Requires development of a plan within the next 60 days regarding the redirection of funds previously intended for border wall construction.

### Human Rights Concerns:

We welcome the proclamation to pause the construction of the border wall, and hope this leads to the permanent suspension of all border work construction and to move away from using walls, whether physical or virtual, to address migration flows.

The Biden administration needs to thoroughly consult with community groups and indigenous leaders to restore local ecosystems and cultural territories of indigenous peoples. Similarly, the administration must take steps towards addressing the humanitarian crisis of migrant deaths resulting from hardening of the U.S.-Mexico border through walls and militarized deterrence strategies.

## Covid-19 Travel Restrictions

*Suspension of Entry as Immigrants & Non-Immigrants of Certain Additional Persons  
Who Pose a Risk of Transmitting Coronavirus Disease*

Due to the ongoing pandemic caused by the spread of Covid-19, the Biden administration has implemented a travel ban on select countries with high incidence rates of the virus. The EO:

- Bars the entrance of individuals (immigrants and non-immigrants) located in the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, the Federative Republic of Brazil, and the Republic of South Africa in the 14 days preceding their attempted entry into the U.S to mitigate the spread of Covid-19.
- Such restrictions do not apply to legal permanent residents in the U.S. A full list of exceptions can be found [here](#).

# End the Use of Private Prisons

*Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities*

In 2016, the Obama administration attempted to phase out Department of Justice (DOJ) use of private prisons. The Trump administration reversed this action in 2017. Now, the Biden administration is reverting back to the Obama-era memorandum. This EO:

- Directs the Attorney General not to renew Department of Justice contracts with privately operated criminal detention facilities.

While an important step, only 9% of the federal prison population is kept in private detention centers, meaning the scope of this action is limited and does not apply to immigration detention facilities.

## Human Rights Concerns:

This is an important step towards racial justice for black and brown communities. However, this move does not end the for-profit detention system built upon the criminalization of migrants and refugees, including children, and the systematic human rights abuses occurring in these facilities. For a good opinion piece on what this means, go [here](#).

# DOJ Rescinds ‘Zero Tolerance’ Immigration Rule that Led to Family Separations

On May 7, 2018, the DOJ implemented a “zero tolerance” rule which held that they would prosecute all adult undocumented immigrants even if they were seeking asylum or came with minor children. This policy led to family separation as minors could not be held at adult detention facilities. Prosecutors are no longer required to automatically charge people who cross the border unlawfully as criminals, giving discretion to assess each individual case on the factors or merits of its circumstances.

## Human Rights Concerns:

While this is definitely a good step, discretionary ruling on “merits” of cases can be arbitrary and problematic and will require oversight and vigilance of rights advocates.



## DHS Announced the Redesignation of TPS for Syria



Photo Credit: Victoria Pickering

For the past four years, the Trump administration has tried to dismantle Temporary Protected Status (TPS), despite

the unsafe conditions and humanitarian crises in many countries identified by the US State Department. Over 400,000 people are current TPS recipients and there is a call for the Biden administration to protect and expand TPS for unsafe countries, and to create a permanent pathway to citizenship for TPS holders.

On January 29, DHS Acting Secretary Pekoske announced an 18-month extension and re-designation of Syria's TPS. This extension means 6,700 eligible Syrians will retain their TPS through September 2022, and 1,800 additional Syrians are able to file new applications.

In addition to Syria, TPS status covers Haiti, El Salvador, Nepal, Honduras, Yemen, Somalia, Sudan, Nicaragua and South Sudan, however all but Syria remain set to expire, putting hundreds of thousands in fear of deportation once their TPS has ended.

Under the TPS statute, a country's TPS designation can be extended for a period of 6, 12, or 18 months. A country can also be re-designated for TPS, which allows eligible individuals to obtain TPS even if they entered the United States after the effective date of the prior designation.

### Human Rights Concerns:

There is an urgent need to extend TPS protections to the above listed countries that are set to expire, and a longer-term permanent and swift pathway to citizenship for all TPS recipients.



Photo Credit: John MacDonald

## Reunite Families Separated at the Border

*Establishment of  
Interagency Task Force on  
the Reunification of  
Families*

Due to the “zero tolerance” policy of the Trump administration, many immigrant children were intentionally separated from their parents or legal guardians. The New York Times reported in October, 2020 that the parents of 545 children separated at the border have yet to be identified. This EO:

- Ensures that children are not separated from their families except under the most extreme of circumstances.
- Establishes a task force with the goals of:
  - Identifying all children who were separated from their families at the United States-Mexico border between January 20, 2017, and January 20, 2021, in connection with the operation of the Zero-Tolerance Policy;
  - To the greatest extent possible, facilitating and enabling the reunification of each of the identified children with their families.

### **Human Rights Concerns:**

Although the order is an important step forward, the logistical and legal processes for families to reclaim their children are very complicated, and it puts indigenous and poor people in a precarious situation to access technologies, organizations or lawyers to represent them. Immediate reunification must be accompanied by economic, legal and social support, as well as reparations such as access to regularization of the immigration status of these families and comprehensive support to address the trauma caused to separated families.

# Review, restore and/or revise legal immigration policies, including steps to reverse public charge and other barriers

*Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*

The order reads:

*it is essential to ensure that our laws and policies encourage full participation by immigrants, including refugees, in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them.*

This EO includes a review of all administrative policy changes and directives put in place by the prior administration, including public charge policies.

- Creates a “Task Force for New Americans” of agencies that implement policies that impact immigrants.
- Mandates an interagency review of all regulations, orders and “guidance documents” that are inconsistent with the EO’s principles of welcoming and inclusion and identify any agency actions that fail to promote access to the legal immigration system – such as the final rule entitled, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements.”
  - Orders interagency review to recommend steps to rescind or revise such policies and agency actions within 90 days.
  - Requires a progress report within 180 days on steps towards making changes to these barriers, to be presented to the President by the Secretary of State, the Attorney General, and the Secretary of Homeland Security.
- Mandates an immediate review of the public charge rule.
- Establish steps to promote naturalization, including:
  - System improvements to reduce processing time.
  - Make the process more accessible, including reducing fees and restoring fee waivers.

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- Facilitate naturalization for eligible candidates born abroad and members of the military.
- Review denaturalization and passport revocations to ensure the process did not exceed authority or was done excessively or inappropriately.
- Establish a “Working Group on Promoting Naturalization”.

## Human Rights Concerns:

There is still a lot of confusion on eligibility and barriers, and communities continue waiting for regularization of their status due to backlogs. The review process to rescind public charge and other barriers to legal status and naturalization should be as swift as possible, and with a subsequent communications campaign that has broad community reach. It is important to remember that tests, treatment and support related to Covid-19 does not impact migration status. For a guide to access to health care, testing and public assistance during Covid, go [here](#).

## Address the Root Causes of Migration in Central America

*Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*

In an effort to tackle the root causes of migration from the Northern Triangle, the U.S. will coordinate with El Salvador, Guatemala, and Honduras (the Northern Triangle) to:

- Combat corruption, strengthen democratic governance, and advance the rule of law;
- Promote respect for human rights, labor rights, and a free press;
- Counter and preventing violence, extortion, and other crimes perpetrated by criminal gangs, trafficking networks, and other organized criminal organizations
- Combat sexual, gender-based, and domestic violence;
- Address economic insecurity and inequality;
- Work with Mexico and other stakeholders in the region to improve asylum systems, humanitarian assistance, and internal relocation to provide assistance closer to home for displaced individuals.

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- Require the Secretary of State and Secretary of Homeland Security to review mechanisms for better identifying and processing individuals from the Northern Triangle who are eligible for refugee resettlement to the United States.
- Order the Secretary of Homeland Security to submit a report within 180 days to evaluate whether the United States provides protection for those fleeing domestic or gang violence in a manner consistent with international standards.

### **Human Rights Concerns:**

Previous attempts to address the "causes and roots" of migration in the region have resulted in economic packages that provide military aid and development funds to repressive governments that systematically violate human rights and provide little or no relief to families living in poverty, facing state and non-state actor violence.

## **Restore Refugee Admissions & Address Climate Change Impact on Migration**

*Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration*

Pledges to increase the annual refugee admissions cap to 125,000 in the 12-month period starting Oct. 1 and take measures to restore the refugee admissions program.

- Restores the refugee admissions program, and other humanitarian programs, to be administered in a manner consistent with domestic law, international obligations, and the humanitarian purposes expressed by the Congress in enacting the Refugee Act of 1980.
- Restores access to the program for those vulnerable to persecution, including women, children, and other individuals who are at risk due to their gender, gender expression, or sexual orientation.
- Reinstates the Special Immigrant Visa programs giving humanitarian protection to nationals of Iraq and Afghanistan experiencing an ongoing, serious threat because they provided services to the United States and the US military, including forced migration, internal displacement, and planned relocation, and will address options for protection and resettlement of individuals displaced directly or indirectly from climate change.

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Photo Credit: Eino Sierpe

- Requires the Secretary of State and Secretary of Homeland Security to review mechanisms for better identifying and processing individuals from the Northern Triangle who are eligible for refugee resettlement to the United States.
- Mandates a review of policies and procedures, and seeks to improve the efficiency of the program.
- Within 180 days of the date of this order, assigned agencies will submit a report to the President on climate change and its impact on migration, including forced migration, internal displacement, and planned relocation, and will address options for protection and resettlement of individuals displaced directly or indirectly from climate change.

### **Human Rights Concerns:**

This is a major step in the right direction and should engage in dialogue with civil society organizations facing these crises to establish avenues of protection and regular migration for communities at risk from climate change. The Biden Administration must also act quickly to address the situation of more than 60,000 asylum seekers who are waiting in Mexico in not only precarious but dangerous circumstances due to the "Migrant Protection Protocols" combined with the crisis of violence in the country. In addition, the administration should rescind Title 42, the CDC's public health order that closed the border and imposed severe restrictions on entry into the U.S., in violation of binding obligations under international law and domestic refugee laws that supersede this order.

**Are there any additional human rights concerns you have identified that are missing?**



**Se puede mandar sus comentarios y sugerencias para mejorar este documento a: [jferrigno@nnirr.org](mailto:jferrigno@nnirr.org)**

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