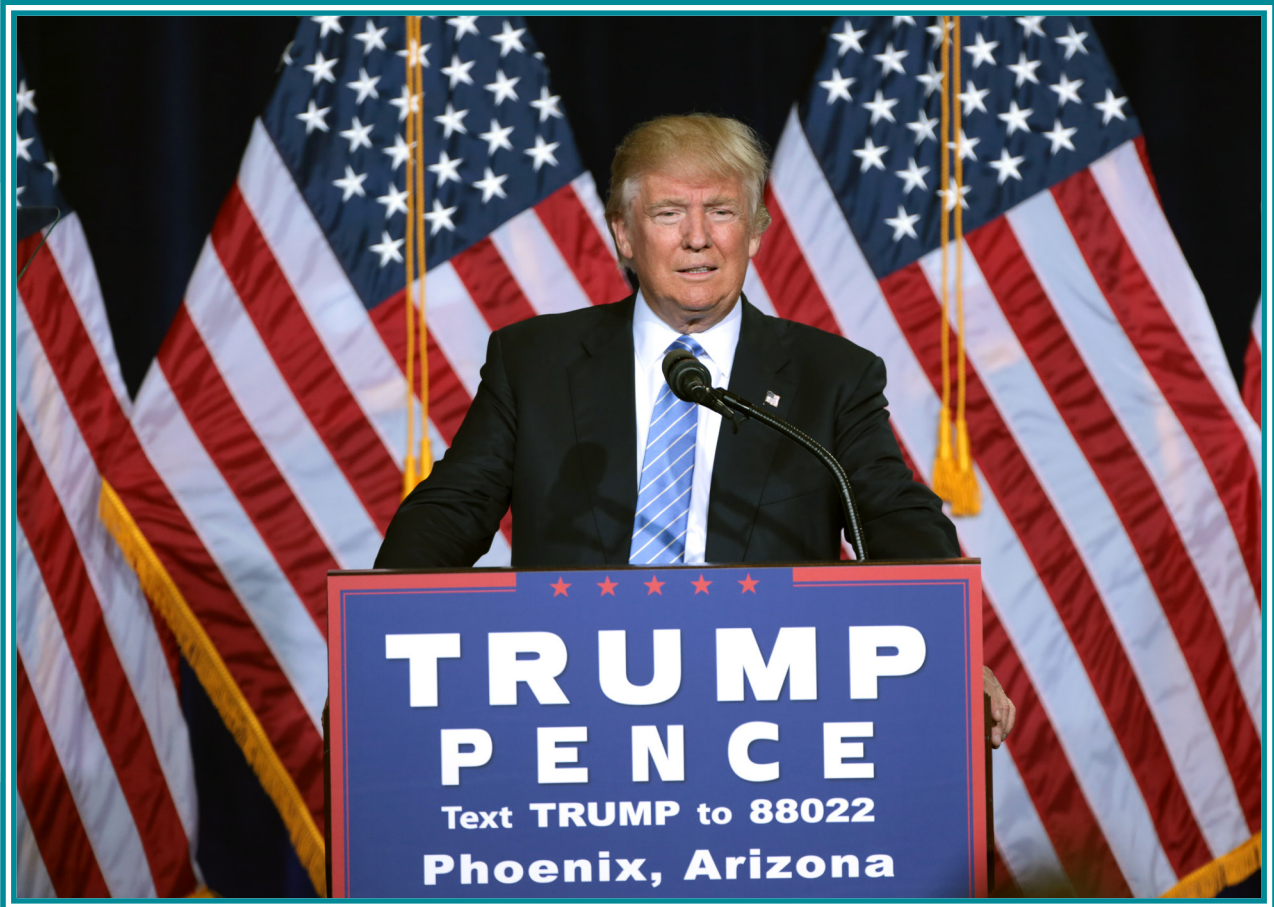


# TRUMP'S FIRST YEAR ON IMMIGRATION POLICY

Rhetoric vs. Reality



By Sarah Pierce, Jessica Bolter, and Andrew Selee

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January 2018

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## Executive Summary

Donald Trump laid out his proposals for immigration policy in an unusually detailed campaign speech in Arizona on August 31, 2016. The proposals described in that speech—ten in all—were focused on reducing immigration to the United States and more aggressively enforcing existing laws against unauthorized entry. The approach he put forward in those proposals contrasted sharply with those of previous administrations, which largely sought to balance robust immigration with targeted enforcement, yet it helped propel his campaign into the White House.

A year into his presidency, the ten points proposed in that speech have largely framed President Trump's approach to immigration policy. While some of the most memorable promises in the Arizona speech, such as building a wall along the U.S.-Mexico border or cutting legal immigration levels, remain unfulfilled (in large part because of differences within Congress or objections from the courts), many other pledges from that speech have been realized.

The most significant changes to date are the increase and broadening of immigration enforcement priorities, the elimination of temporary protections for noncitizens implemented by prior administrations, and the reduction in refugee admissions. The Trump administration has not only broadened the discretion of immigration enforcement agents to detain unauthorized immigrants far beyond those who have committed crimes, but it has also restored a nationwide system (known as Secure Communities) for identifying unauthorized immigrants stopped by local police and insisted on greater institutional cooperation from local law enforcement in identifying and holding them. In addition, the administration has cancelled several measures that currently shield more than 1 million unauthorized immigrants from deportation—from the Deferred Action for Childhood Arrivals (DACA) program to designations for Temporary Protected Status (TPS). The Trump administration, in its first year, also sharply reduced refugee admissions to their lowest levels since the formal U.S. refugee resettlement program was launched in 1980, and there are indications that it has slowed the processing of some family-based immigration applications, leading to a lower number of immigrant admissions overall.

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*It is a significantly different approach to immigration than any other administration in recent memory has taken, and it seems likely to redefine some of the boundaries of immigration policy.*

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With an eye to decreasing both unauthorized entries and legal admissions, the Trump administration has remained firm in its commitment to build additional barriers along the U.S.-Mexico border, hire additional border and immigration enforcement agents, and eliminate some admissions categories entirely—although these are decisions that ultimately have to be made by Congress. So far, Congress has been unwilling to appropriate additional funding for these priorities or to address reform of the immigration system itself, though these issues remain in active negotiation between the administration and congressional leaders. It is likely that some elements of these proposals may move forward in his second year in office.

Overall, the actions of the Trump administration in its first year have proved quite consistent with the priorities laid out in the Arizona campaign speech. It is a significantly different approach to immigration than any other administration in recent memory has taken, and it seems likely to redefine some of the boundaries of immigration policy going forward. At the same time, Congress and the courts have limited some of the administration's more ambitious and far-reaching proposals. In a country that prides itself



on divided government and a system of checks and balances, it is unlikely that all ten of the points enumerated in the Arizona speech will eventually be implemented as proposed, even if the administration makes significant headway on many of these.

## I. Introduction

On August 31, 2016, after a quick visit to Mexico to meet with Mexican President Enrique Peña Nieto, Republican presidential candidate Donald Trump flew to Phoenix, Arizona, where he gave perhaps the most detailed policy speech of his campaign. There, he laid out in ten points the immigration policy he intended to pursue if elected President. He argued that these policies, if “rigorously followed and enforced,” would “accomplish more in a matter of months than our politicians have accomplished on this issue in the last 50 years.”<sup>1</sup>

This report will revisit these ten points and assess how far the administration has come on each during the first year since the President’s inauguration. While it is unreasonable to hold a President accountable for every promise made on the campaign trail, especially after only one year in office, President Trump’s speech on immigration has provided a remarkably clear roadmap for his priorities since entering the White House. As a result, the ten points it centered on help to explain some of the administration’s actions thus far, and perhaps also shed light on its future plans. Where appropriate, this report also discusses some of the other actions undertaken in the first year that follow the spirit of the ten points even if they were not explicitly mentioned in that speech.

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*President Trump’s speech on immigration has provided a remarkably clear roadmap for his priorities since entering the White House.*

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While the full extent of his ambitious promises, such as building a wall along the entirety of the southern border or creating a special “deportation task force,” are far from being accomplished, the administration has set in motion a range of significant changes during its first year in office. These actions have included increasing arrests and removals of unauthorized immigrants within the U.S. interior, banning nationals of eight countries from entering the United States, canceling the Deferred Action for Childhood Arrivals (DACA) program and Temporary Protected Status (TPS) designations for nationals of several countries, and reducing refugee admissions to the lowest numbers since the resettlement program began in 1980. These first-year changes have also included more subtle, yet still impactful, shifts that seek to increase the obstacles for individuals trying to enter the United States and to expedite the removal process for those within the country without authorization.

U.S. Presidents and their cabinets have broad discretion to shape how immigration policies are implemented, and over time the Trump administration is likely to be able to impose a more restrictive approach to immigration through executive actions. However, some of the most important changes that the White House would like to enact—from cutting overall legal immigration rates in half to building a wall on the U.S. border with Mexico—require congressional approval. Congress alone can change federal laws and is solely responsible for appropriating the annual federal budget.

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<sup>1</sup> Donald J. Trump, “Transcript of Donald Trump’s Immigration Speech,” *The New York Times*, September 1, 2016, [www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html](http://www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html).



So far, Congress has not taken the legislative action necessary to see through many of the President's proposals, in large part because its members are deeply divided on these issues. The courts have also stepped in to block some of the President's administrative measures. And a range of state and local governments have challenged some of the administration's enforcement measures, often sparking court battles over jurisdiction.

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, makes it hard to enact rapid changes in any area of public policy. The framers of the U.S. Constitution created these “checks and balances” precisely to avoid radical shifts in the governing of the country. As a result, it seems unlikely that Trump will be able to reshape U.S. immigration policies to quite the extent he would like.

Yet there is no question that his election and first year in office have marked a dramatic change in momentum, both in the political debate on immigration and the way that policies are implemented. These changes are likely to have major long-term consequences that could, over time, come close to the vision that Trump laid out in his campaign-trail speech in Arizona.

## II. Build the Border Wall

*“On Day One, we will begin working on an impenetrable, physical, tall, power, beautiful southern border wall. We will use the best technology, including above and below ground sensors, that’s the tunnels.”*

*“Mexico will pay for the wall.”*

Without question, this promise of a border wall is the most memorable and visually striking of the ten proposals Trump made on the campaign trail, and the one he repeated most frequently. Many analysts expected him, as President, to downplay this proposal in favor of a more general plan to fortify the border with Mexico, especially as unauthorized flows across the border have continued to drop. Yet he shows no signs of backing off his commitment to this idea.

Repurposing existing funds that were appropriated for fiscal year (FY) 2017, the Department of Homeland Security (DHS), at the White House's insistence, opened a bidding process for models of the border wall, and eventually awarded eight contracts to companies to build a prototype near San Diego. These prototypes were finished in October 2017.

The administration has made a strong case for additional funding to start building the wall in FY 2018, proposing an appropriation of \$18 billion over ten years to construct 316 miles of new fencing and to repair or reinforce a further 407 miles. With such investments, fencing along the border would cover somewhere around half the almost 2,000-mile border between the two countries.<sup>2</sup>

This request appears to have become tied up with negotiations of a legislative fix for young people who were protected under the Obama-era DACA program. Democrats and a number of Republicans have made creating a legislative pathway to legalization for those covered by DACA a priority, while the White House and Republican leadership in Congress are pushing to get funding for part or all of the border fencing the President would like to see built. At the time of publication, it is impossible to know what the outcome of these negotiations will be. It is likely, however, that some amount of funding for border infrastructure will come through that could be used for physical fencing or border technology, although the end result will almost certainly be far shy of the original promise of a wall along the entire length of the border.

2 Elliot Spagat, “Trump Seeks \$18 Billion to Extend Border Wall over 10 Years,” Associated Press, January 6, 2018, [https://apnews.com/7fa49dc692154358b730220a763b8b7c/Trump-seeks-\\$18-billion-to-extend-border-wall-over-10-years](https://apnews.com/7fa49dc692154358b730220a763b8b7c/Trump-seeks-$18-billion-to-extend-border-wall-over-10-years).





During the Arizona speech—as well as several other campaign speeches—Trump adamantly stated that Mexico would pay for the construction of the border wall. That idea was never taken seriously by most observers, and there seems to be no realistic way this could happen. In fact, the statement appears to have significantly soured relations with Mexico and seriously affected Mexican public opinion of the United States. However, it is possible that the Trump administration may at some date claim other changes in the relationship between the two countries—such as a shift in the balance of trade in favor of the United States—as “compensation” for the wall.<sup>3</sup>

Despite little real progress on border fencing or change in border enforcement, there has been a significant decrease in flows at the border. From January to August 2017, apprehensions of unauthorized immigrants at the U.S. border with Mexico fell by about half, compared to the same period in 2016. While a long-term decline in apprehensions at the border was already underway, especially of Mexicans, this was the steepest drop in decades.<sup>4</sup> With no real additional border enforcement efforts to explain such a dramatic year-to-year shift, this drop points to a change in how potential unauthorized border-crossers perceive enforcement efforts under the Trump administration.

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*Trump, both as a candidate and now as President, has prioritized ending practices that seem to encourage illegal entry into the country.*

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### III. End Catch-and-Release

*“[W]e are going to end catch and release.”*

Trump, both as a candidate and now as President, has prioritized ending practices that seem to encourage illegal entry into the country. One of the areas his administration has focused on is “catch and release,” a term with no clear definition but that, as used by the President, appears to refer to a series of U.S. government policies and practices that allow unaccompanied minors, some families, and some asylum seekers to be released into the community during their asylum and/or removal proceedings. The border security executive order Trump signed in January 2017 instructed DHS to terminate this practice; however, it did not explicitly define the measures to which the directive referred.<sup>5</sup> A main concern for the Trump administration appears to be unaccompanied child migrants, as federal law and legal precedent currently require officials to release such children to a parent or guardian during processing. The administration sees this practice as encouraging minors to attempt to cross the border without authorization.

The Justice Department has administratively implemented two policies that appear to respond to this directive. In April 2017, Attorney General Jeff Sessions issued a memo instructing federal prosecutors to prioritize the prosecution of criminal immigration violations, such as illegal entry, illegal reentry, and smuggling.<sup>6</sup> Concurrently, U.S. Immigration and Customs Enforcement (ICE) began to target for arrest

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3 Christopher Wilson, Pablo Paras, and Enrique Enriquez, *A Critical Juncture: Public Opinion in US-Mexico Relations* (Washington, DC: Woodrow Wilson Center, 2017), [www.wilsoncenter.org/sites/default/files/us\\_mx\\_public\\_opinion\\_final\\_2.pdf](http://www.wilsoncenter.org/sites/default/files/us_mx_public_opinion_final_2.pdf).

4 Authors’ calculations based on U.S. Customs and Border Protection (CBP), “Southwest Border Migration: CBP Southwest Border Apprehensions,” updated November 3, 2017, [www.cbp.gov/newsroom/stats/sw-border-migration](http://www.cbp.gov/newsroom/stats/sw-border-migration).

5 Donald J. Trump, “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](http://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02095.pdf).

6 Jeff Sessions, “Renewed Commitment to Criminal Immigration Enforcement” (Memorandum for All Federal Prosecutors, U.S. Department of Justice, Washington, DC, April 11, 2017), [www.justice.gov/opa/press-release/file/956841/download](http://www.justice.gov/opa/press-release/file/956841/download).



sponsors of unaccompanied minors, usually parents, who paid to have their children brought to the United States and to refer them for prosecution for one of these crimes.<sup>7</sup> By taking sponsors away from their children, or scaring them from coming forward as sponsors, the administration appears to hope that fewer children will be released from federal custody. It is hard to know if this has worked as intended. Yet by the end of 2017, government shelters for immigrant children were near capacity, despite the decrease in apprehensions of unaccompanied minors at the U.S.-Mexico border compared to the prior year, which suggests that more may be staying in custody instead of being released to family members.<sup>8</sup>

A month later, in May 2017, the Attorney General directed federal prosecutors to pursue “the most serious, readily provable offense” in all cases where a variety of charges may be applicable, including those related to immigration, with the aim of enforcing the law to the maximum extent.<sup>9</sup> Within immigration cases, this means that instead of simply deporting someone apprehended crossing the border illegally back to Mexico, ICE or CBP may refer them for federal prosecution for illegal entry. Reports indicate that parents who cross the border illegally with their children are increasingly being prosecuted for illegal entry.<sup>10</sup> This shift separates families; whereas ICE may detain families together or release them pending their proceedings, when parents are detained for federal prosecution, children are transferred to the custody of the Office of Refugee Resettlement (ORR). They may be released to a relative or friend, to foster care, or may remain in ORR custody if no other options are available. The Justice Department has thus been able to affect catch-and-release practices solely by adjusting its internal policies.

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*By the end of 2017, government shelters for immigrant children were near capacity, despite the decrease in apprehensions of unaccompanied minors.*

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In addition to adjusting administrative practices, the administration has recommended pursuing two legal changes that would make it easier to keep unaccompanied children and youth in custody and to hasten their removal to their country of origin. The first is an amendment to the provisions of the *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, which currently allows DHS to quickly return minors from contiguous countries (Mexico and Canada), but requires the agency to put all other minors detained into a formal removal process that can take months or years.<sup>11</sup> Under the amendment advocated for by the administration, all unaccompanied children would receive the treatment currently reserved for children from Mexico and Canada. This act was originally designed to prevent human smuggling by ensuring that child migrants had access to a more robust process before they were subject to deportation. The administration believes that this provision has encouraged some minors, especially those in Central America, to try to enter the country illegally because they know they will not be subjected to a quick removal.

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7 Caitlin Dickerson, “Trump Administration Targets Parents in New Immigration Crackdown,” *The New York Times*, July 1, 2017, [www.nytimes.com/2017/07/01/us/trump-arrest-undocumented-immigrants.html](http://www.nytimes.com/2017/07/01/us/trump-arrest-undocumented-immigrants.html).

8 Nick Miroff, “To Curb Illegal Border Crossings, Trump Administration Weighs New Measures Targeting Families,” *The Washington Post*, December 21, 2017, [www.washingtonpost.com/world/national-security/to-curb-illegal-border-crossings-trump-administration-weighs-new-measures-targeting-families/2017/12/21/19300dc2-e66c-11e7-9ec2-518810e7d44d\\_story.html](http://www.washingtonpost.com/world/national-security/to-curb-illegal-border-crossings-trump-administration-weighs-new-measures-targeting-families/2017/12/21/19300dc2-e66c-11e7-9ec2-518810e7d44d_story.html).

9 Jeff Sessions, “Department Charging and Sentencing Policy” (Memorandum for All Federal Prosecutors, U.S. Department of Justice, Washington, DC, May 10, 2017), [www.justice.gov/opa/press-release/file/965896/download](http://www.justice.gov/opa/press-release/file/965896/download).

10 Lomi Kriel, “Trump Moves to End ‘Catch and Release’, Prosecuting Parents and Removing Children Who Cross Border,” *Houston Chronicle*, November 25, 2017, [www.houstonchronicle.com/news/houston-texas/houston/article/Trump-moves-to-end-catch-and-release-12383666.php](http://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-moves-to-end-catch-and-release-12383666.php).

11 White House, “President Donald J. Trump’s Letter to House and Senate Leaders and Immigration Principles and Policies” (statement, October 8, 2017), [www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies/](http://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies/).



The second legal change advocated for by the administration is the termination of the 1997 *Flores* settlement agreement. The result of a court case, this agreement requires the government to hold minors in the “least restrictive” setting, including releasing them to a family member or other adult sponsor if appropriate, and to give children bond hearings in front of immigration judges.<sup>12</sup> Subsequent litigation has determined that *Flores* applies both to unaccompanied children and to minors traveling with their parents.<sup>13</sup> In its Unified Agenda for FY 2018, published in Fall 2017, DHS proposed a rule to “codify the substantive terms” of the settlement,<sup>14</sup> aiming to eliminate interpretations of the agreement that are not explicitly included in the text of the settlement and to allow for increased detention of family units.

Shortly after taking office, the administration also took steps to ratchet up interior enforcement. In a January 25 executive order, the President directed DHS to return individuals from any country arriving via land from Mexico or Canada to the country through which they entered, pending their long-term removal proceedings. This policy would mostly affect Central American asylum seekers, who are automatically put into long-term proceedings. It also represents another point of tension with Mexico. The Mexican foreign minister has previously stated that Mexico will not accept people of other nationalities if the United States tries to send them back, so it appears unlikely that this initiative will take effect, even as the Trump administration plans to publish an interim final rule in early 2018 to put it into motion.<sup>15</sup>

Whether these efforts have affected the number of migrants crossing the U.S. border is unclear. Border apprehensions dropped precipitously from January through April of 2017, but have been increasing since May, particularly among unaccompanied children and families. In the latter part of 2017, monthly apprehensions of families crossing the border illegally increased from 1,000 in April to 8,000 in December, and apprehensions of unaccompanied child migrants increased from 1,000 in April to 4,000 in December.<sup>16</sup>

## IV. Enhance the Pursuit of Unauthorized Immigrants Who Have Committed Crimes

*“We will terminate the Obama administration’s deadly, and it is deadly, nonenforcement policies that allow thousands of criminal aliens to freely roam our streets, walk around, do whatever they want to do, crime all over the place.”*

While some aspects of interior enforcement—such as increasing penalties for certain immigration crimes or hiring additional ICE officers—require an act of Congress, others are determined by the executive branch. It is here that the Trump administration has been able to effect the most change thus far.

In his January 25 executive order, Enhancing Public Safety in the Interior of the United States, Trump set new, expansive priorities for enforcement, including such broad categories as noncitizens charged or convicted of a crime, as well as those who have committed acts that could result in criminal charges,

12 U.S. District Court Central District of California, “Jenny Lisette Flores, et al. vs. Janet Reno, Attorney General of the United States, et al.” (settlement agreement and extension of settlement, January 17, 1997), [www.aclu.org/sites/default/files/assets/flores\\_settlement\\_final\\_plus\\_extension\\_of\\_settlement011797.pdf](http://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf).

13 U.S. Court of Appeals for the Ninth Circuit, “Flores v. Lynch, et al.” (opinion, Ninth Circuit Court, San Francisco, July 6, 2016), [www.clearinghouse.net/chDocs/public/IM-CA-0002-0031.pdf](http://www.clearinghouse.net/chDocs/public/IM-CA-0002-0031.pdf).

14 U.S. Immigration and Customs Enforcement (ICE), “Apprehension, Processing, Care, and Custody of Alien Minors” (proposed rule 1653-AA75, Fall 2017), [www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1653-AA75](http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1653-AA75).

15 David Agren and Doug Stanglin, “Mexico Says No to Trump’s New Deportation Rules,” *USA Today*, February 22, 2017, [www.usatoday.com/story/news/world/2017/02/22/foreign-minister-mexico-immigrations-proposals/98252710/](http://www.usatoday.com/story/news/world/2017/02/22/foreign-minister-mexico-immigrations-proposals/98252710/); CBP, “Return to Territory” (final rule 1651-AB13, Fall 2017), [www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1651-AB13](http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1651-AB13).

16 CBP, “U.S. Border Patrol Southwest Border Apprehensions by Sector FY2017,” updated December 15, 2017, [www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017](http://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017); CBP, “U.S. Border Patrol Southwest Border Apprehensions by Sector FY2018,” updated January 9, 2018, [www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions](http://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions).



among others.<sup>17</sup> This was a drastic change from the narrow priorities the Obama administration had established in its final two years, which focused on noncitizens who committed felonies or significant misdemeanors.<sup>18</sup> (See Section VI for more on this).

The expanded priorities mean that efforts to increase interior enforcement, detailed in the subsections to follow, when successfully implemented have come to target a larger population of immigrants.

### A. Increase ICE Detainers

*“We will issue detainers for illegal immigrants who are arrested for any crime whatsoever, and they will be placed into immediate removal proceedings if we even have to do that.”*

From the Trump administration’s January 20 inauguration through September 2017, ICE (the agency within DHS responsible for immigration enforcement) issued almost double the number of detainers issued in the same period the year before.<sup>19</sup> A detainer is a request that a state or local law enforcement agency either a) hold someone who has been arrested and is suspected of being a removable noncitizen for up to 48 hours past their release date to give ICE time to dispatch resources to take them into federal custody, or b) notify ICE in advance of their release date. The acting Director of ICE published a new policy in March 2017 directing ICE agents to issue detainers on all removable noncitizens.<sup>20</sup> By comparison, the previous policy was less all-encompassing, stating that ICE agents should issue detainers on removable noncitizens when doing so advanced the agency’s priorities.<sup>21</sup>

While ICE can increase its detainer issuance, it is up to states and localities to decide whether they will comply with these requests and, thus, whether removable immigrants are placed into removal proceedings through this mechanism. In an attempt to pressure states and localities to increase their cooperation with detainer requests, the President’s executive order on interior enforcement instructed ICE to publish a weekly report detailing which localities had released people subject to detainers. After releasing several such reports in February and March 2017,<sup>22</sup> future publication was suspended when they turned out to be riddled with errors.<sup>23</sup>

### B. Restore Secure Communities

*“We will restore the highly successful Secure Communities Program.”*

The Trump administration has endeavored to expand the ties between the criminal justice system and immigration enforcement in ways the Obama administration had tried to curtail in its final years. This includes by reintroducing Secure Communities, an information-sharing program that crosschecks the fingerprints of people booked into state or local police custody against Federal Bureau of Investigation (FBI) and DHS databases for indications that someone may be a removable noncitizen.

17 Donald J. Trump, “Executive Order: Enhancing Public Safety in the Interior of the United States” (executive order 13768, White House, Office of the Press Secretary, Washington, DC, January 25, 2017), [www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united](http://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united).

18 Jeh Charles Johnson, “Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants” (Memorandum for Thomas S. Winkowski, R. Gil Kerlikowske, Leon Rodriguez, and Alan D. Bersin, U.S. Department of Homeland Security, Washington, DC, November 20, 2014), [www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf).

19 ICE, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report* (Washington, DC: U.S. Department of Homeland Security, 2017), [www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf](http://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf).

20 ICE, “Policy 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers,” March 24, 2017, [www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf](http://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf).

21 ICE, “Interim Policy Number 10074.1: Detainers,” August 2, 2010, [www.courts.wa.gov/content/manuals/Immigration/appendixG.pdf](http://www.courts.wa.gov/content/manuals/Immigration/appendixG.pdf).

22 ICE, “Declined Detainer Outcome Report,” updated April 13, 2017, [www.ice.gov/declined-detainer-outcome-report](http://www.ice.gov/declined-detainer-outcome-report).

23 Ron Nixon, “Trump Administration Halts Reports on Immigration Cooperation,” *The New York Times*, April 10, 2017, [www.nytimes.com/2017/04/10/us/politics/trump-administration-immigration.html](http://www.nytimes.com/2017/04/10/us/politics/trump-administration-immigration.html).



The program was deactivated during the final two years of the Obama administration in favor of the Priority Enforcement Program (PEP), which allowed local jurisdictions to determine the parameters of their cooperation with ICE. This level of discretion allowed localities to cooperate to various degrees: they could decide to either hold people past their release dates or just notify ICE in advance of someone's release, and they could choose whether to take these steps in all, some, or only rare cases. Prior to establishing PEP in late 2014, 377 jurisdictions had refused to honor some or all detainers; by the beginning of 2016, slightly more than a year after its introduction, 277 of those jurisdictions had agreed to honor requests for notification or detention.<sup>24</sup>

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*Since many local jurisdictions refuse to honor ICE detainers for less severe crimes, the impact of Secure Communities is generally more limited than expected.*

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Trump, in his January 25 interior enforcement executive order, directed DHS to reactivate Secure Communities. This took place shortly thereafter. Because Secure Communities identifies any noncitizen likely to be removable, without prioritizing based on the severity of the charges in question or giving local jurisdictions the power to prioritize, its reactivation increases the chances of removal for any unauthorized immigrant who interacts with the criminal justice system. However, since many local jurisdictions refuse to honor ICE detainers for less severe crimes, the impact of Secure Communities is generally more limited than expected. (See Section V for more on this.)

### C. **Expand 287(g) Partnerships**

*"We will expand and revitalize the popular 287(g) partnerships, which will help to identify hundreds of thousands of deportable aliens in local jails that we don't even know about."*

While some local jurisdictions have limited cooperation with ICE, others are looking for ways to cooperate more fully and are being encouraged to do so by the administration. Section 287(g) of the *Immigration and Nationality Act* allows the federal government to enter into agreements with state and local law enforcement to allow trained officers from those agencies to assist with the investigation, apprehension, or detention of removable noncitizens. The President's interior enforcement executive order directed DHS to increase outreach to states and localities to encourage them to establish 287(g) agreements. Between January and August 2017, the U.S. government signed 29 new 287(g) agreements, bringing the total number of agreements on the books to 60.<sup>25</sup> According to news reports, ICE approved 23 additional jurisdictions to form partnerships in November 2017, though none of them had been implemented as of early January 2018.<sup>26</sup> If all of the approved partnerships come to fruition, ICE will be overseeing the most active portfolio of agreements in the program's history, surpassing its previous peak of 72 in 2011.

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24 U.S. Department of Homeland Security (DHS), *Congressional Budget Justification FY 2017—Volume II* (Washington, DC: DHS, 2016), 40, [www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%202\\_1.pdf](http://www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%202_1.pdf).

25 ICE, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," updated January 10, 2018, [www.ice.gov/287g](http://www.ice.gov/287g).

26 Ivan Moreno, "Milwaukee Not among 23 Places OK'd for Immigration Training," Associated Press, November 15, 2017, <https://apnews.com/49af58e622824eaabd16433f34b87b8d/Milwaukee-not-among-23-places-OK'd-for-immigration-training>.



## D. Increase Mandatory Minimum Sentences for Illegal Reentry

*“On my first day in office I am also going to ask Congress to pass Kate’s Law...”*

The proposed legislation in question, Kate’s Law, would increase the mandatory minimum sentences for immigrants convicted of crimes who reentered the United States illegally after deportation.<sup>27</sup> The bill arose out of a 2015 incident in which an unauthorized immigrant man shot 32-year-old Kate Steinle in San Francisco.<sup>28</sup> The man had crossed into the United States multiple times in the two decades prior to the shooting—and had been imprisoned three times for the crime of reentry.<sup>29</sup> The bill has been introduced in both chambers of Congress in both sessions since Steinle’s death. In 2017, it passed the House for the first time, but stalled in the Senate.

Trump did not ask Congress to pass the bill on his first day in office, nor was he a particularly forceful advocate for it in the subsequent months. In June 2017, however, after the bill was introduced, the White House released a statement saying that the President would likely sign the bill if it reached his desk.<sup>30</sup>

## E. Reform the Laws on Interior Enforcement

*“Another reform I’m proposing is the passage of legislation named for Detective Michael Davis and Deputy Sheriff Danny Oliver, two law enforcement officers recently killed by a previously deported illegal immigrant.”*

The *Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act* (Davis-Oliver Act) was introduced in May 2017 by Rep. Raúl Labrador (R-ID), after having been previously introduced several times in the years since the 2014 killing of two California sheriff’s deputies by an unauthorized immigrant. The bill aims to increase interior enforcement in a range of areas, including by:

- making unlawful presence a criminal misdemeanor instead of a civil violation;
- allowing local law enforcement agencies to enact, implement, and enforce criminal penalties for federal immigration violations—a provision that, combined with the one above, could allow local law enforcement agents to arrest people simply for being unauthorized;
- permitting ICE officers to carry firearms;
- requiring state and local law enforcement to provide a range of information to federal authorities about individuals apprehended who are suspected of being unauthorized immigrants; and
- prohibiting states and localities from restricting cooperation with federal immigration enforcement agencies, and making those that do restrict cooperation—so-called sanctuary jurisdictions—ineligible for certain Justice Department and DHS grants. (See Section V for more on this.)

The bill would both exert pressure on localities to boost immigration enforcement and constitute a massive transfer of decision-making power away from states and localities to the federal government.

Trump invited the two slain deputies’ wives as guests to his February 28 speech in front of a joint session of Congress.<sup>31</sup> He also included them in a June meeting with “immigrant crime victims,” during which he

27 *Kate’s Law*, H.R.3004, 115th Cong., 1st sess. (June 22, 2017).

28 The man, Jose Ines Garcia Zarate, was acquitted of murder and involuntary manslaughter charges on November 30, 2017. See Holly Yan and Dan Simon, “Undocumented Immigrant Acquitted in Kate Steinle Death,” CNN, December 1, 2017, [www.cnn.com/2017/11/30/us/kate-steinle-murder-trial-verdict/index.html](http://www.cnn.com/2017/11/30/us/kate-steinle-murder-trial-verdict/index.html).

29 David Bier, “Kate Steinle and San Francisco’s ‘Sanctuary City’ Policy,” Cato at Liberty, April 27, 2017, [www.cato.org/blog/kate-steinle-san-franciscos-sanctuary-city-policy](http://www.cato.org/blog/kate-steinle-san-franciscos-sanctuary-city-policy).

30 White House, “H.R. 3004 – Kate’s Law” (statement of administration policy, June 27, 2017), [www.whitehouse.gov/briefings-statements/h-r-3004-kates-law/](http://www.whitehouse.gov/briefings-statements/h-r-3004-kates-law/).

31 Donald J. Trump, “Donald Trump’s Congress Speech (Full Text),” CNN, March 1, 2017, [www.cnn.com/2017/02/28/politics/donald-trump-speech-transcript-full-text/index.html](http://www.cnn.com/2017/02/28/politics/donald-trump-speech-transcript-full-text/index.html).



called for the passage of the Davis-Oliver Act.<sup>32</sup> The bill passed out of the House Judiciary Committee, but has since stalled.

## F. Hire More ICE and Border Patrol Agents

*“We’re going to triple the number of ICE deportation officers. ... We’re also going to hire 5,000 more Border Patrol agents.”*

In his executive orders aimed at interior enforcement and border security, Trump directed DHS to hire 10,000 additional ICE officers (which would increase the number of current officers by about half) and 5,000 additional Border Patrol agents. However, not only has Congress not appropriated the funds for such an increase, but the relevant agencies are struggling to hire and retain enough staff to maintain their currently authorized numbers.

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*It is notoriously difficult both to hire and to retain  
Border Patrol agents.*

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Since FY 2011, the number of Border Patrol agents has been set at 21,370, and Congress has not yet appropriated the funds necessary to hire additional agents. The number of agents did increase by about 200 over the course of 2017, but by the end of the year, 1,900 positions were still vacant. It is notoriously difficult both to hire and to retain Border Patrol agents: the hiring process includes a lengthy polygraph exam that two-thirds of applicants fail;<sup>33</sup> DHS lacks sufficient human resources staff to conduct efficient hiring, taking more than nine months on average to hire a new agent;<sup>34</sup> and while the agency hires approximately 523 agents per year, it also loses an average of 904 agents.<sup>35</sup> According to the DHS Office of Inspector General, U.S. Customs and Border Protection (CBP) would have to receive 750,000 applications to hire the requested 5,000 Border Patrol agents.<sup>36</sup>

Lawmakers introduced several bills in 2017 that aimed to speed up the hiring process by waiving the polygraph exam for certain applicants. Two of these bills passed out of committee, and one, the *Anti-Border Corruption Reauthorization Act of 2017*, passed the House in June, though it has not moved in the Senate.<sup>37</sup> Opponents of these measures have expressed concern that the hiring process will not be secure enough without a strict and universal application of the polygraph exam.

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32 White House, “Remarks by President Trump during Meeting with Immigration Crime Victims” (remarks, June 28, 2017, [www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-immigration-crime-victims/](http://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-immigration-crime-victims/)).

33 Elliot Spagat, “AP Exclusive: Lie Detectors Trip Applicants at Border Agency,” Associated Press, January 13, 2017, <https://apnews.com/7e5bc0d98dd849a88043d8c40a74e56f>.

34 DHS, Office of Inspector General, *DHS Is Slow to Hire Law Enforcement Personnel* (Washington, DC: DHS, 2016), [www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-05-Oct16.pdf](http://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-05-Oct16.pdf); Remarks by Martha McSally, Subcommittee Chairwoman and Representative from Arizona, before the House Homeland Security Committee, Subcommittee on Border and Maritime Security, *On the Line: Border Security from an Agent and Officer Perspective*, 115th Cong., 2d sess., January 9, 2018, <https://homeland.house.gov/wp-content/uploads/2018/01/1-9-18-McSally-Open.pdf>.

35 U.S. Government Accountability Office (GAO), *Border Patrol: Issues Related to Agent Deployment Strategy and Immigration Checkpoints* (Washington, DC: GAO, 2017), [www.gao.gov/assets/690/688201.pdf](http://www.gao.gov/assets/690/688201.pdf).

36 DHS, Office of Inspector General, *Special Report: Challenges Facing DHS in Its Attempt to Hire 15,000 Border Patrol Agents and Immigration Officers* (Washington, DC: DHS, 2017), [www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-98-SR-Jul17.pdf](http://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-98-SR-Jul17.pdf).

37 *Border Security for America Act of 2017*, H.R.3548, 115th Cong., 1st sess. (July 28, 2017); *Anti-Border Corruption Reauthorization Act of 2017*, S.595, 115th Cong., 1st sess. (March 9, 2017); *Anti-Border Corruption Reauthorization Act of 2017*, H.R.2213, 115th Cong., 1st sess. (April 27, 2017).



In FY 2017, Congress authorized 20,570 ICE personnel, a similar number to past years. ICE did not fill all of these positions and was estimated to have more than 1,000 vacancies at the end of the fiscal year.<sup>38</sup> While ICE has also had some hiring difficulties, they are not as pronounced as those experienced by CBP. To hire the additional 10,000 agents that the President requested in the executive order, DHS Office of Inspector General has estimated that ICE would have to receive 501,750 applications.<sup>39</sup>

As lawmakers negotiate FY 2018 spending, Trump has requested \$314 million to authorize the hiring of 500 new Border Patrol agents and 1,000 new ICE personnel—10 percent of his stated hiring goals.<sup>40</sup> Both the House and the Senate supported the request for 500 Border Patrol agents in their appropriations bills.<sup>41</sup> The House also supported the request for 1,000 ICE personnel, but the Senate's bill would authorize only 150 additional ICE criminal investigators, denying the President's request for 850 deportation officers.<sup>42</sup>

## G. Create a Deportation Task Force

*“Within ICE, I am going to create a new special deportation task force focused on identifying and quickly removing the most dangerous criminal illegal immigrants in America who have evaded justice.”*

As a candidate, Trump's promise of a deportation task force garnered considerable media attention. And while Speaker of the House Paul Ryan (R-WI) stated at a televised town hall in January 2017 that such a force “is not happening,”<sup>43</sup> the idea reemerged shortly thereafter. In February, the Associated Press reported that DHS had considered a proposal to enter into 287(g) agreements with the National Guard in 11 border states to give those troops the authority to arrest unauthorized immigrants.<sup>44</sup> DHS contended that the document was a “predecisional draft” that did not reach the secretary and that was not being seriously considered at the time of the report.<sup>45</sup> There have been no further developments since then.

Although Trump has not created a designated deportation task force, his administration has drastically increased ICE arrests and removals in the interior of the country (as opposed to at the border). Indeed, between Trump's January 20 inauguration and the end of FY 2017 on September 30, 2017, arrests of immigrants in the interior of the country have increased 42 percent over the same period in 2016.<sup>46</sup> Despite this dramatic increase in overall interior arrests, the number of arrests of immigrants with criminal convictions increased at a much slower rate, in a divergence from Trump's promise as a candidate.<sup>47</sup>

38 Department of Homeland Security Appropriations Bill, 2018 Report, 115th Cong., 1st sess. (2017), <https://appropriations.house.gov/uploadedfiles/23916.pdf>.

39 DHS, Office of Inspector General, *Special Report: Challenges Facing DHS*.

40 Donald J. Trump, *America First: A Budget Blueprint to Make America Great Again* (Washington, DC: Office of Management and Budget, 2017), 23, [www.whitehouse.gov/wp-content/uploads/2017/11/2018\\_blueprint.pdf](http://www.whitehouse.gov/wp-content/uploads/2017/11/2018_blueprint.pdf).

41 Department of Homeland Security Appropriations Bill, 2018 Report; U.S. Senate Committee on Appropriations, “FY2018 Homeland Security Appropriations Bill Released” (news release, November 21, 2017), [www.appropriations.senate.gov/news/majority/fy2018-homeland-security-appropriations-bill-released](http://www.appropriations.senate.gov/news/majority/fy2018-homeland-security-appropriations-bill-released).

42 U.S. Senate Committee on Appropriations, “SUMMARY: FY 2018 Department of Homeland Security Chairman's Mark Released” (news release, November 21, 2017), [www.appropriations.senate.gov/news/minority/summary-fy-2018-department-of-homeland-security-chairmans-mark-released](http://www.appropriations.senate.gov/news/minority/summary-fy-2018-department-of-homeland-security-chairmans-mark-released).

43 Mike DeBonis, “Deportation Force Is ‘Not Happening,’ Paul Ryan Tells Undocumented Family,” *The Washington Post*, January 12, 2017, [www.washingtonpost.com/news/powerpost/wp/2017/01/12/deportation-force-is-not-happening-paul-ryan-tells-undocumented-family/](http://www.washingtonpost.com/news/powerpost/wp/2017/01/12/deportation-force-is-not-happening-paul-ryan-tells-undocumented-family/).

44 Garance Burke, “AP Exclusive: DHS Weighed Nat Guard for Immigration Roundups,” Associated Press, February 18, 2017, <https://apnews.com/5508111d59554a33be8001bdac4ef830/trump-weighs-mobilizing-nat-guard-immigration-roundups>.

45 Aaron Blake, “The White House's Strangely Strong Denial that its ‘Deportation Force’ Idea Is Back,” *The Washington Post*, February 17, 2017, [www.washingtonpost.com/news/the-fix/wp/2017/02/17/deportation-force-redux-white-house-denies-report-that-its-back-but-trump-never-really-killed-it/](http://www.washingtonpost.com/news/the-fix/wp/2017/02/17/deportation-force-redux-white-house-denies-report-that-its-back-but-trump-never-really-killed-it/).

46 ICE, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*, 2.

47 While the total number of ICE arrests increased 30 percent—from 110,000 in FY 2016 to 143,000 in FY 2017—the number of arrests of people with criminal convictions increased by 12 percent. Note that these rates include the entire fiscal year, rather than solely January through September 2017, as they are the only data points available. See *ibid*.





While overall removals have dropped under the Trump administration, largely due to the decrease in border crossings, removals of people from the interior of the country increased by 37 percent in the first nine months of the Trump administration, compared to the same period in 2016, likely due to the broadened enforcement priorities and increased attention to interior enforcement.<sup>48</sup>

#### H. Increase Border Agents and Stations

*“Put more [Border Patrol agents] on the border instead of behind desks. ... We will expand the number of border patrol stations significantly.”*

There is no indication that the number of Border Patrol agents at the border has increased or that Border Patrol agents have been shifted from desk jobs to positions at the border. However, the Trump administration’s request for \$33 billion in border security funds over a decade reportedly included a plan to cut the number of canine units by 40 percent and send their handlers to perform customs duties at the Southwest border.<sup>49</sup> This proposal is a shift from what Trump outlined in his speech as a candidate: instead of moving officers from desk jobs to the border, it proposes redistributing officers already in the field. Similarly, the Trump administration has continued the Obama administration’s practice of sending customs officers from other ports to ports of entry at the Southwest border on temporary assignments to fill critical vacancies.<sup>50</sup>

Several construction projects that had begun under the previous administration have also continued under the Trump administration. These include a project to expand the San Ysidro Port of Entry, which began in 2016, and the planned creation of a new port of entry in San Diego called Otay East.<sup>51</sup>

## V. Crack down on Sanctuary Cities

*“We will end the sanctuary cities that have resulted in so many needless deaths. Cities that refuse to cooperate with federal authorities will not receive taxpayer dollars, and we will work with Congress to pass legislation to protect those jurisdictions that do assist federal authorities.”*

After one year as president, not only has Trump not ended sanctuary cities, but there is also no evidence to suggest that he has reduced the overall number of jurisdictions resisting cooperation with ICE.

While there is no legal definition of a sanctuary city, the term is broadly used to refer to cities—and sometimes counties and states—that limit their assistance and cooperation with ICE on enforcing immigration laws. This can range from local law enforcement agencies refusing to hold people for ICE past their release date (though still providing ICE with other information) to prohibiting ICE from entering city jails or refusing to provide ICE with information about those in police custody. The degree of cooperation that localities provide ICE is largely left up to them; the only federal statute regulating cooperation prohibits states and localities from limiting the information about immigration status they share with ICE. In effect, this means that while local jurisdictions are not required to share someone’s home address, for example, or other personal information, they cannot restrict any local government officials or officers from sharing information that indicates whether someone is in the country illegally if ICE requests it.

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48 Ibid.

49 Ron Nixon, “To Pay for Wall, Trump Would Cut Proven Border Security Measures,” *The New York Times*, January 8, 2018, [www.nytimes.com/2018/01/08/us/politics/trump-border-wall-funding-surveillance.html](http://www.nytimes.com/2018/01/08/us/politics/trump-border-wall-funding-surveillance.html).

50 Testimony of Anthony M. Reardon, National President of the National Treasury Employees Union, before the House Homeland Security Committee, Subcommittee on Border and Maritime Security, *On the Line: Border Security from an Agent and Officer Perspective*, 115th Cong., 2d sess., January 9, 2018, <http://docs.house.gov/meetings/HM/HM11/20180109/106754/HHRG-115-HM11-Wstate-ReardonA-20180109.pdf>.

51 City News Service, “San Ysidro Border Crossing Construction to Be Completed Ahead of Schedule,” Fox5, September 23, 2017, <http://fox5sandiego.com/2017/09/23/san-ysidro-port-of-entry-closed-through-weekend-for-expansion-project/>.



The existence of so-called sanctuary cities has frustrated both the Obama and Trump administrations. Yet the two administrations have taken different approaches to dealing with them. While DHS under President Obama tried to strike compromises that would ensure greater cooperation on terms acceptable to both the local jurisdictions and the administration, the Trump administration has endeavored to compel cooperation by punishing noncompliance.

In his executive order on interior enforcement, Trump attempted to limit the federal grant funding available to localities that do not fully cooperate with ICE. The order also directs that the U.S. Attorney General should take enforcement action against any jurisdiction that violates the federal information-sharing statute or otherwise has in effect “a statute, policy, or practice that prevents or hinders the enforcement of Federal law”—a very broad mandate.<sup>52</sup> In April 2017, this section of the executive order was enjoined by a U.S. district judge in California, who said the administration could not condition all federal grants on compliance with this law. According to the ruling, existing DHS and Justice Department grants that require information-sharing can continue to be conditioned on the willingness of local jurisdictions to cooperate with this narrow statute, but other federal grants cannot.<sup>53</sup>

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*While DHS under President Obama tried to strike compromises  
... the Trump administration has endeavored to compel  
cooperation by punishing noncompliance.*

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In July and August, the Justice Department did attempt to add new requirements to two of the three grants already conditioned on information-sharing compliance, requiring cities to give ICE agents access to jails and requiring law enforcement and jail officials to notify ICE at least 48 hours prior to the release of anyone suspected to be a removable noncitizen. U.S. district judges in both Illinois and Pennsylvania stopped the enforcement of these provisions, but even so, as of early January 2018, only two localities had been awarded the FY 2017 funding designated for them under the affected grants.<sup>54</sup> While it is unclear how many total jurisdictions applied for the funding in FY 2017, in FY 2016, 1,011 cities and counties and 56 states and territories received funding.

As these steps to block the flow of grant funding to less cooperative jurisdictions have stalled in court, the Trump administration has adopted other strategies to pressure localities to cooperate with ICE. In September 2017, ICE announced that it had conducted a four-day nationwide enforcement operation focusing specifically on noncooperative cities, which resulted in the arrest of almost 500 immigrants. Cities targeted included Chicago, Los Angeles, New York, and Philadelphia.<sup>55</sup> Nevertheless, only four

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<sup>52</sup> Trump, “Executive Order: Enhancing Public Safety in the Interior of the United States.”

<sup>53</sup> *County of Santa Clara v. Donald J. Trump, et al.*, No. 17-cv-00574-WHO (N.D. Cal. April 25, 2017); *City and County of San Francisco v. Donald J. Trump, et al.*, No. 17-cv-00485-WHO (N.D. Cal. April 25, 2017).

<sup>54</sup> U.S. Department of Justice, “Awards Made for ‘BJA FY 17 Edward Byrne Memorial Justice Assistance Grant (JAG) Program – Local Solicitation,’” accessed January 9, 2018, [https://external.ojp.usdoj.gov/selector/title?solicitationTitle=BJA%20FY%2017%20Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20\(JAG\)%20Program%20-%20Local%20Solicitation&po=All](https://external.ojp.usdoj.gov/selector/title?solicitationTitle=BJA%20FY%2017%20Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20(JAG)%20Program%20-%20Local%20Solicitation&po=All).

<sup>55</sup> ICE, “ICE Arrests over 450 on Federal Immigration Charges During Operation ‘Safe City’” (news release, September 28, 2017), [www.ice.gov/news/releases/ice-arrests-over-450-federal-immigration-charges-during-operation-safe-city](http://www.ice.gov/news/releases/ice-arrests-over-450-federal-immigration-charges-during-operation-safe-city).



counties have changed their policies to cooperate more fully with ICE: Miami-Dade County, Florida; Clark County, Nevada (home to Las Vegas); Suffolk County, New York; and Clarke County, Georgia.<sup>56</sup>

At least nine bills specifically targeting sanctuary cities were introduced in Congress in 2017, and many broader bills included measures that aimed to increase localities' cooperation with ICE. Some, such as the Davis-Oliver Act, include provisions protecting jurisdictions that cooperate with ICE by holding people suspected to be removable noncitizens in local or state custody beyond their release date; under this legislation, cooperative jurisdictions would not be held liable in any lawsuit arising from their compliance with ICE detainers. One bill, which is likely to die in committee, would compensate state or local law enforcement officials for any costs they have to pay as a result of harm caused by their compliance with an ICE detainer.<sup>57</sup>

The *No Sanctuary for Criminals Act*, which would both punish less cooperative jurisdictions and protect cooperative ones, passed the House in June 2017, but has seen no further action. There is no indication that the President worked specifically to pass this bill, as he signaled he would, but he did release a statement applauding its passage.<sup>58</sup>

## VI. End Obama-Era Programs that Protect Unauthorized Immigrants

Criticizing the use of administrative benefits by prior administrations, the Trump administration has taken steps to end longstanding benefits granted to unauthorized immigrants, as well as some authorized immigrants. This includes formally ending President Obama's programs to protect some unauthorized immigrants from deportation—the Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) programs, which Trump referenced explicitly in his Arizona speech—as well as other benefits originating from the executive branch, including TPS designations, a parole program for international entrepreneurs, and work authorizations for spouses of temporary skilled workers.

### A. Terminate DACA and DAPA

*"We will immediately terminate President Obama's two illegal executive amnesties..."*

Despite a strong promise on the campaign trail to end the original DACA program, Trump delayed this decision once in office, in apparent hopes that Congress would reach consensus on a more permanent solution for the population of young adults who currently benefit from the program. Started under President Obama in 2012, DACA provides work authorization and protection from deportation to nearly

56 Douglas Hanks, "Miami-Dade Complied with Trump to Change Its 'Sanctuary' Status. It Worked," *Miami Herald*, August 7, 2017, [www.miamiherald.com/news/local/community/miami-dade/article165837497.html](http://www.miamiherald.com/news/local/community/miami-dade/article165837497.html); Megan Messerly, "Clark County Rejects 'Sanctuary County' Label in Letter to Justice Department," *The Nevada Independent*, June 23, 2017, <https://thenevadaindependent.com/article/clark-county-rejects-sanctuary-county-suggestion-in-letter-to-justice-department>; Victor Manuel Ramos, "Suffolk Sheriff Reverses Policy on Holding Immigrant Inmates," *Newsday*, December 25, 2016, [www.newsday.com/long-island/suffolk/suffolk-sheriff-reverses-policy-on-holding-immigrant-inmates-1.12799163](http://www.newsday.com/long-island/suffolk/suffolk-sheriff-reverses-policy-on-holding-immigrant-inmates-1.12799163); Charlotte Norsworthy, "Clarke County Sheriff's Office Reverses Policy on Undocumented Immigrants," *The Red & Black*, December 5, 2017, [www.redandblack.com/athensnews/clarke-county-sherrif-s-office-reverses-pol-icy-on-undocumented-immigrants/article\\_678f4d70-d9d3-11e7-acd9-37117357dfec.html](http://www.redandblack.com/athensnews/clarke-county-sherrif-s-office-reverses-pol-icy-on-undocumented-immigrants/article_678f4d70-d9d3-11e7-acd9-37117357dfec.html).

57 *A Bill to Indemnify Local Law Enforcement Entities for Complying with Valid Detainers Issued by Immigration Officers*, S.1039, 115th Cong., 1st sess. (May 4, 2017).

58 White House, "Statement from President Donald J. Trump on House Passage of Kate's Law and No Sanctuary for Criminals Act" (statement, June 29, 2017), [www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-house-passage-kates-law-no-sanctuary-criminals-act/](http://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-house-passage-kates-law-no-sanctuary-criminals-act/).



690,000 unauthorized immigrants who were brought to the United States as children and meet specific program criteria.<sup>59</sup> Under pressure from his base, as well as from officials from at least ten states who promised to sue to end the program if nothing was done, the administration announced the rescission of the program on September 5, 2017.<sup>60</sup> On that date, the government stopped granting DACA benefits to new applicants and renewals to individuals whose DACA benefits would expire after March 5, 2018. On October 5, the government stopped granting all renewals regardless of expiration date.

Under the administration's planned end to the program, an average of 915 immigrants would lose their DACA benefits each day beginning on March 6, 2018.<sup>61</sup> However, on January 9, 2018 a federal district court judge in San Francisco issued a nationwide injunction ordering the government to resume granting DACA renewals.<sup>62</sup> The Department of Justice has appealed this decision, and on January 13, U.S. Citizenship and Immigration Services (USCIS) began accepting applications for DACA renewals.<sup>63</sup>

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Congress is currently debating legislation to provide some form of legal status to current DACA recipients and, perhaps, to other unauthorized immigrants who fall into the broader category of people who came to the country as minors, known as "DREAMers." Trump has encouraged members of Congress to reach an agreement and expressed his willingness to sign legislation if approved; however, he has also given conflicting impressions of what else must be included in such a bill to earn his cooperation, such as funding for the border wall or the elimination of the Diversity Visa Lottery.

The administration also ended two other Obama-era deportation-relief programs, though neither was ever implemented. On June 15, DHS Secretary John F. Kelly formally rescinded the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program and an expansion of the existing DACA program.<sup>64</sup> These programs would have provided protection from deportation, as well as work authorization, for up to 4 million unauthorized immigrants in the United States, but never went into effect due to a court injunction.<sup>65</sup>

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59 For more on the specific program criteria, see U.S. Citizenship and Immigration Services (USCIS), "Consideration of Deferred Action for Childhood Arrivals (DACA)," updated January 13, 2018, [www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca](http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca). For an in-depth analysis of the educational and occupational characteristics of the 690,000 DACA beneficiaries, see Jie Zong et al., *A Profile of Current DACA Recipients by Education, Industry, and Occupation* (Washington, DC: Migration Policy Institute, 2017), [www.migrationpolicy.org/research/profile-current-daca-recipients-education-industry-and-occupation](http://www.migrationpolicy.org/research/profile-current-daca-recipients-education-industry-and-occupation).

60 Ken Paxton, "Re: *Texas, et al. v. United States, et al.*, No. 1:14-cv-00254 (S.D. Tex.);" (letter to Jeff Sessions, Office of the Attorney General of Texas, Austin, June 29, 2017), [www.texasattorneygeneral.gov/files/epress/DACA\\_letter\\_6\\_29\\_2017.pdf](http://www.texasattorneygeneral.gov/files/epress/DACA_letter_6_29_2017.pdf); DHS, "Rescission of Deferred Action For Childhood Arrivals (DACA)" (news release, September 5, 2017), [www.dhs.gov/news/2017/09/05/rescission-deferred-action-childhood-arrivals-daca](http://www.dhs.gov/news/2017/09/05/rescission-deferred-action-childhood-arrivals-daca).

61 Zong et al., *A Profile of Current DACA Recipients*.

62 *Regents of University of California v. U.S. Department of Homeland Security*, 3:17-cv-05211 (N.D. Cal., January 9, 2018).

63 USCIS, "Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction," updated January 13, 2018, [www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction](http://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction).

64 John F. Kelly, "Rescission of November 20, 2014 Memorandum Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents" (Memorandum for Kevin K. McAleenan, James W. McCament, Thomas D. Homan, Joseph B. Maher, and Michael T. Dougherty, DHS, Washington, DC, June 15, 2017), [www.dhs.gov/sites/default/files/publications/DAPA%20Cancellation%20Memo.pdf](http://www.dhs.gov/sites/default/files/publications/DAPA%20Cancellation%20Memo.pdf).

65 Randy Capps et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children* (Washington, DC: Migration Policy Institute, 2016), [www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effects-families](http://www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effects-families).



## B. *End TPS Designations and Obama-Era Executive Actions*

Though not mentioned explicitly as a priority in the 2016 Arizona speech, the Trump administration has also ended temporary protections for approximately 327,000 beneficiaries of Temporary Protected Status (TPS).<sup>66</sup> TPS is a temporary form of humanitarian protection offered to nationals of certain countries who are present in the United States and unable to return to their countries due to violent conflict or natural disaster. It currently covers over 436,000 immigrants from ten countries.<sup>67</sup>

While the TPS category itself was a creation of Congress under the *Immigration Act of 1990*, each administration is charged with designating the countries whose nationals should be eligible for the benefit and with extending or terminating those designations every six to eighteen months. Immigration hardliners have criticized past administrations, both Democratic and Republican, for extending certain TPS designations for such a long time that the benefit no longer seems temporary. For example, El Salvador was originally designated for TPS after a series of earthquakes in 2001, meaning that some Salvadorans have held the benefit for more than 17 years.

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*Hardliners have criticized past administrations ... for extending certain TPS designations for such a long time that the benefit no longer seems temporary.*

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The Trump administration has taken a stricter view of the statutory language to justify its termination of TPS designations for certain countries as they come up for renewal. So far, the administration has ended TPS benefits for El Salvador (which alone has 263,000 beneficiaries), Haiti (with 58,557 beneficiaries), Nicaragua (5,306), and Sudan (1,048), and signaled that they may also end TPS for Honduras (with 86,031 beneficiaries).<sup>68</sup> For those individuals ineligible for another status, this will mean a loss of work authorization and protection from removal from the United States.

The administration has also indicated it will end the following other immigration programs that were instituted by the Obama administration through executive action and without explicit Congressional approval:

- ***H-4 Employment Authorization Documents (EADs)***. The Trump administration has signaled it plans to end an Obama administration program to give work authorization to spouses of H-1B visa holders (temporary visas granted to immigrants in certain professional categories).<sup>69</sup> Because of per country backlogs in the green card process, many foreign-born professionals remain on an H-1B visa for years or even decades while waiting for permanent residency. Spouses of H-1B visa holders (who hold H-4 visas) are not permitted to work during the extent of that time. The Obama administration put into place a program to grant work authorization to some H-4 visa holders whose spouses had been on an H-1B visa for more than six years and were in the process of

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66 This includes 262,528 beneficiaries from El Salvador, 58,557 beneficiaries from Haiti, 5,306 beneficiaries from Nicaragua, and 1,048 beneficiaries from Sudan. See Jill H. Wilson, *Temporary Protected Status: Overview and Current Issues* (Washington, DC: Congressional Research Service, 2017), <https://fas.org/sgp/crs/homesecc/RS20844.pdf>.

67 As of January 2018, countries designated for TPS include El Salvador (termination effective September 2019), Haiti (termination effective July 2019), Honduras, Nepal, Nicaragua (termination effective January 2019), Somalia, South Sudan, Sudan (termination effective November 2018), Syria, and Yemen.

68 Wilson, *Temporary Protected Status*.

69 USCIS, "Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization" (proposed rule 1615-AC15, Fall 2017), [www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC15](http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC15).



applying for a green card. Since the program was put into place in 2015, USCIS has granted 104,750 EADs to H-4 spouses.<sup>70</sup>

- **International Entrepreneur Parole.** After attempting to delay an Obama-era program that allowed DHS to grant foreign-born entrepreneurs a period of authorized stay if doing so was judged to hold economic benefits for the country, and then being forced by a court decision to implement the program, the administration has signaled that it intends to end the program in 2018.<sup>71</sup>
- **Central American Minors (CAM) Refugee and Parole<sup>72</sup> Program.** The Trump administration ended a refugee and parole program for youth in Central America. The program was created by the Obama administration to allow parents lawfully present in the United States to request a refugee resettlement interview for their children if they are nationals of El Salvador, Guatemala, and Honduras. Between its launch in November 2014 and August 2017, more than 1,500 children and eligible family members arrived in the United States as refugees under the program.<sup>73</sup> Another 2,700 were conditionally granted permission to enter and temporarily reside in the country, only to have those applications revoked when the program was ended and before they could travel to the United States.

### C. Expand Enforcement Priorities

*"[U]nlike [under the Obama] administration, no one will be immune or exempt from enforcement. ... Anyone who has entered the United States illegally is subject to deportation."*

*"Our enforcement priorities will include removing criminals, gang members, security threats, visa overstays, public charges. That is those relying on public welfare or straining the safety net along with millions of recent illegal arrivals and overstays who've come here under this current corrupt administration."*

In addition to Obama-era policies that provided more formal means of protection for some unauthorized immigrants, such as DACA, Trump has also set his sights on his predecessor's removal priorities, which, by narrowing immigration enforcement to recent border crossers and those who were convicted of certain major crimes, effectively exempted most unauthorized immigrants from enforcement.<sup>74</sup>

In his January 25 executive order on interior enforcement, the President enumerated what would be his administration's priorities, all of which were listed in his Arizona speech. These include unauthorized immigrants who have been convicted of any criminal offense, those who have been charged with any criminal offense or have committed a chargeable offense, those who have abused any program related to the receipt of public benefits, and those who, in the judgment of an immigration officer, pose a risk to public safety or national security. In the same executive order, the President also instructed federal agencies to enforce

<sup>70</sup> USCIS, "Number of Approved Employment Authorization Documents, by Classification and Basis for Eligibility, October 1, 2012–June 29, 2017," accessed January 11, 2018, [www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/eads-by-basis-for-eligibility.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/eads-by-basis-for-eligibility.pdf).

<sup>71</sup> A federal district court has ordered DHS to rescind its delay of the rule. See U.S. District Court for the District of Columbia, "National Venture Capital Association, et al., v. Elaine Duke, et al." (memorandum opinion, U.S. District Court for the District of Columbia, Washington, DC, December 1, 2017), [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2017cv1912-29](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2017cv1912-29). In the Fall 2017 Unified Agenda, DHS announced that it would be terminating the program in 2018. See DHS, "Fall 2017 Agency Statements of Regulatory Priorities," accessed December 18, 2017, [www.reginfo.gov/public/jsp/eAgenda/StaticContent/201710/Statement\\_1600.html](http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201710/Statement_1600.html).

<sup>72</sup> Parole is an exercise of executive discretion that allows lawful entry and permission to stay in the United States for a temporary period.

<sup>73</sup> 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-idUSKCN1AW2OZ](http://www.reuters.com/article/us-usa-immigration-minors/u-s-ends-program-for-central-american-minors-fleeing-violence-idUSKCN1AW2OZ).

<sup>74</sup> According to Migration Policy Institute (MPI) estimates, 87 percent of unauthorized migrants were not priorities for removal under the Obama administration's 2014 policy guidance. See Marc R. Rosenblum, *Understanding the Potential Impact of Executive Action on Immigration Enforcement* (Washington, DC: MPI, 2015), [www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement](http://www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement).



U.S. immigration laws against “all removable aliens.” This is a notable distinction from the approaches taken by prior administrations, which generally used their discretionary authority to focus immigration enforcement against certain target groups within the unauthorized population.

As a result of this shift in priorities, the Trump administration has significantly widened the pool of those eligible for removal and diversified the makeup of those being removed. As noted above, between the administration’s first day in office and the end of FY 2017 (January 20 to September 30, 2017), ICE removed 61,094 noncitizens from the interior of the country, a 37 percent increase over the same period in 2016.<sup>75</sup> During the same period, ICE made 110,568 arrests, a 42 percent increase over that period in 2016.<sup>76</sup> Of these 110,568 arrests, more than 31,888 (29 percent) were of individuals with no criminal conviction. This is a sharp break from the end of the Obama administration, during which interior enforcement focused 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.”<sup>77</sup>

While Trump has accomplished his goal of expanding who is detained and removed, he has yet to make much headway on increasing the number of individuals removed. Overall, when removals of individuals intercepted at the border are added to those from the interior, 226,119 individuals were removed during FY 2017.<sup>78</sup> These numbers are still far lower than those from the final years of the George W. Bush presidency and the annual average for all of Barack Obama’s presidency (347,000 removals per year).<sup>79</sup>

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The difference is partly attributable to decrease in the number of individuals crossing the southern border. In addition, stepping up removals, especially in the interior of the country, is a slow process that requires increasing resources and establishing cooperation with local law enforcement agencies. Even though the Trump administration’s removal of 61,094 immigrants from the interior between January and September 2017 is an increase from the final years of the Obama administration, it is still much lower than totals from President Obama’s most enforcement-focused years, which peaked at at 237,941 interior removals in 2009.<sup>80</sup>

There is strong evidence to suggest that the President’s enforcement tactics, in addition to his harsh rhetoric on immigration, have had significant effects on the behavior of immigrants and the Hispanic community in the United States. As immigrant communities endeavor to stay “under the radar,” there have been reports of a dip in crime reporting, including of domestic violence; fewer applications for the public benefits for which immigrants or their U.S.-born children are entitled; and rising no-shows at health-care

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<sup>75</sup> ICE, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*.

<sup>76</sup> Ibid.

<sup>77</sup> DHS, “DHS Releases End of the Year Fiscal Year 2016 Statistics” (news release, December 30, 2016), [www.dhs.gov/news/2016/12/30/dhs-releases-end-year-fiscal-year-2016-statistics](http://www.dhs.gov/news/2016/12/30/dhs-releases-end-year-fiscal-year-2016-statistics).

<sup>78</sup> 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.

<sup>79</sup> 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](http://www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf).

<sup>80</sup> ICE, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*; ICE, *ICE Enforcement and Removal Operations Report, Fiscal Year 2015* (Washington, DC: ICE, 2015), [www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf](http://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf).



appointments.<sup>81</sup> While these changes in behavior are hard to document in any systematic way, it seems clear the estimated 11 million unauthorized immigrants in the United States are making adjustments in how they live their lives.

In addition, there has been a sharp uptick in the number of individuals entering Canada from the United States to seek asylum.<sup>82</sup> Many have been Haitians who, early in the year, feared a loss of TPS or who have travelled north following its termination by the administration in November 2017. Canadian asylum applications (processed at land ports of entry) through November 2017 already exceeded the year-end total for 2016 by 70 percent, while monthly apprehensions of asylum seekers crossing the border between ports of entry peaked in August 2017 at 5,712.<sup>83</sup>

## VII. Introduce a Travel Ban and Extreme Vetting

As a presidential candidate, Trump promised to implement “extreme vetting” to increase the security of the United States through with measures such as ideological tests to ensure that each individual arriving in the country presents no public safety threat and “loves” the United States. As part of such efforts, entry would be suspended for individuals from certain countries where infrastructure failures made it impossible to thoroughly complete such vetting. The Trump administration has attempted to implement each of these promises in its first year to mixed results that include a plethora of court cases, drastically reduced refugee admissions, and contested claims of increased security.

### A. Suspend Entry for Certain Nationalities and Curb Refugee Resettlement

*“[W]e are going to suspend the issuance of visas to any place where adequate screening cannot occur.”*

Both before and after his policy speech in Arizona, presidential candidate Donald Trump repeatedly promised to ban Muslim individuals from entering the country as a means of enhancing national security. By the time he took office and began issuing executive orders, the promised “Muslim ban” had morphed into a travel ban on visitors, immigrants, and refugees from seven countries, all of which were majority Muslim. Executive Order 13769, Protecting the Nation from Foreign Terrorist Entry into the United States, which the President signed on January 27, 2017, was effective immediately and included a suspension of entries for nearly all nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.<sup>84</sup> The order caused chaos and confusion at airports and incited demonstrations across the country.

81 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](http://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](http://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](http://www.nytimes.com/2017/06/26/health/undocumented-immigrants-health-care.html).

82 Reports suggest many of these asylum seekers are Haitian. See, for example, Anna Mehler Paperny and Allison Lampert, “Canada Sees ‘Unsustainable’ Spike in Asylum Seekers at U.S. Border,” Reuters, August 17, 2017, [www.reuters.com/article/us-canada-immigration/canada-sees-unsustainable-spike-in-asylum-seekers-at-u-s-border-idUSKCN1AX1PO](http://www.reuters.com/article/us-canada-immigration/canada-sees-unsustainable-spike-in-asylum-seekers-at-u-s-border-idUSKCN1AX1PO).

83 Canada’s border agency received 19,350 asylum applications from January through November of 2017, a 70 percent increase over the number filed for all of 2016. See Government of Canada, “Asylum Claimants Processed by Canada Border Services Agency (CBSA) and Immigration, Refugees and Citizenship Canada (IRCC) Offices, January 2011 - November 2017,” updated December 19, 2017, [www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/processed-claims.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/processed-claims.html). Meanwhile, the apprehensions of asylum seekers between ports of entry rose from 315 in January 2017 to a peak of 5,712 during August, before easing to a still-high 1,623 in November. See Government of Canada, “Asylum Claims,” updated December 19, 2017, [www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims.html).

84 White House, “Executive Order 13769 of January 27, 2017, Protecting the Nation from Foreign Terrorist Entry into the United States,” *Federal Register* 82, no. 20 (February 1, 2017): 8977-82, [www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf](http://www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf).





Within hours of its signing, the order faced legal challenges, several of which resulted in court orders that temporarily restrained or enjoined some of its key elements. 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.<sup>85</sup>

As the litigation moved through the court system, the President signed Executive Order 13780, with the same title, on March 6.<sup>86</sup> In replacing the prior travel ban, the new order removed Iraq from the list of countries, set a delayed implementation date, and exempted individuals who were previously authorized to travel to the United States.

Even though the new order was designed to avoid the legal pitfalls encountered by its predecessor, on March 15—the day before the revised executive order was set to take effect—it too was subject to a nationwide temporary restraining order preventing its implementation. Litigation on this and subsequent temporary restraining orders quickly made its way through the legal system. The Supreme Court eventually allowed for the partial implementation of the travel ban, except as it applied to visa applicants with “bona fide” relationships to U.S. persons or entities.<sup>87</sup>

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*After a Justice Department appeal, the Supreme Court allowed the travel ban to be fully implemented as the case continues to wind its way through the judicial system.*

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On September 24, 2017, the Trump administration tried for a third time, issuing Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats.<sup>88</sup> This time the ban was limited to barring the entry of groups from Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. Again, prior to the ban's implementation, courts issued nationwide injunctions, this time suspending the ban for nationals of all of the listed countries except North Korea and Venezuela. After a Justice Department appeal, the Supreme Court allowed the travel ban to be fully implemented as the case continues to wind its way through the judicial system.<sup>89</sup>

Similarly justifying its actions with concerns about inadequate screening, the administration has 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 to 85,000 in FY 2016 and further to 110,000 in FY 2017.<sup>90</sup> Citing security concerns about the program, the Trump administration immediately took steps to scale it back, temporarily

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<sup>85</sup> See, for example, *State of Washington v. Donald J. Trump et al.*, c17-0141JLR (W.D. Wash., February 3, 2017).

<sup>86</sup> 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](http://www.gpo.gov/fdsys/pkg/FR-2017-03-09/pdf/2017-04837.pdf).

<sup>87</sup> *Trump, President of U.S., et al. v. International Refugee Assistance, et al.* 583 U.S. \_\_ (2017), [www.supremecourt.gov/orders/courtorders/120417zr1\\_j4ek.pdf](http://www.supremecourt.gov/orders/courtorders/120417zr1_j4ek.pdf).

<sup>88</sup> 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](http://www.gpo.gov/fdsys/pkg/FR-2017-09-27/pdf/2017-20899.pdf).

<sup>89</sup> *Trump, President of U.S., et al. v. International Refugee Assistance, et al.*; *Trump, President of the U.S., et al. v. Hawaii, et al.* 583 U.S. \_\_ (2017), [www.supremecourt.gov/orders/courtorders/120417zr\\_4gd5.pdf](http://www.supremecourt.gov/orders/courtorders/120417zr_4gd5.pdf).

<sup>90</sup> 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/?utm\\_term=.c18d43b1a144](http://www.washingtonpost.com/news/post-politics/wp/2016/09/14/white-house-plans-to-accept-at-least-110000-refugees-in-2017/?utm_term=.c18d43b1a144).



suspending the program and then reducing the FY 2017 ceiling to 50,000.<sup>91</sup> In the end, 53,716 refugees were admitted during FY 2017.<sup>92</sup>

For FY 2018, the administration lowered the resettlement ceiling even further to 45,000 refugees, the lowest ceiling on refugee admissions since the start of the program in 1980.<sup>93</sup> As of January 10, 2018, the United States has admitted 5,495 refugees thus far in FY 2018.<sup>94</sup>

The administration also has increased vetting for refugee applicants from 11 countries deemed high risk, drastically reducing refugee admissions from those countries.<sup>95</sup> And it attempted to indefinitely suspend entries by family members of refugees already within the United States, only for this move to be subject to a nationwide preliminary injunction by a federal district court judge in December 2017 that forced the administration to again start adjudicating family applications.<sup>96</sup>

## B. Encourage Countries to Assist in Vetting

*“As soon as I enter office I am going to ask the Department of State...Homeland Security and the Department of Justice to begin a comprehensive review of these cases in order to develop a list of regions and countries from which immigration must be suspended until proven and effective vetting mechanisms can be put in place.”*

In the first two iterations of the travel ban, the President ordered DHS to submit a report that establishes global requirements for what information countries need to provide the United States to help it determine that applicants for admission are not threats to public safety. Within the report, DHS was required to list the countries that did not currently provide adequate information on their nationals. Listed countries would then have 50 days to begin providing the requested information, and if they failed to do so, their nationals would be subject to a travel ban.

In the third iteration of the travel ban, the September 24 Presidential Proclamation, the President explained that DHS established global requirements for information sharing to improve immigration screening and vetting, and that the State Department engaged with 47 countries that were “inadequate” or “at risk” of failing to comply with these requirements. While many countries addressed the issues required of them, the proclamation explained, eight countries remained deficient with respect to their identity-management and information-sharing capabilities, protocols, and practices and were thus subject to the latest travel ban.

91 White House, “Executive Order 13769 of January 27, 2017.”

92 Refugee Processing Center, “Interactive Reporting: Admissions and Arrivals,” accessed November 14, 2017, <http://ireports.wrapsnet.org>. For a summary of the reduction in refugee admissions after the October 24, 2017 executive order, see Yeganeh Torbati, “Trump Lifts Refugee Ban, but Admissions Still Plummet, Data Shows,” Reuters, December 8, 2017, [www.reuters.com/article/us-trump-effect-refugees/trump-lifts-refugee-ban-but-admissions-still-plummet-data-shows-idUSKBN1E21CR](http://www.reuters.com/article/us-trump-effect-refugees/trump-lifts-refugee-ban-but-admissions-still-plummet-data-shows-idUSKBN1E21CR).

93 White House “Presidential Memorandum 2017-13 of September 29, 2017, 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](http://www.gpo.gov/fdsys/pkg/FR-2017-10-23/pdf/2017-23140.pdf).

94 Refugee Processing Center, “Interactive Reporting: Admissions and Arrivals.”

95 While the administration did not disclose the names of the 11 countries, officials said they matched a 2015 list of countries identified for tougher screening: Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria, and Yemen. See Ted Hesson, “Trump Targets 11 Nations in Refugee Order,” Politico, October 24, 2017, [www.politico.com/story/2017/10/24/refugee-nations-trump-administration-muslim-244135](http://www.politico.com/story/2017/10/24/refugee-nations-trump-administration-muslim-244135).

96 Rex W. Tillerson, Elaine Duke, and Daniel Coats, “Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities” (Memorandum to the President, Washington, DC, October 23, 2017), [www.state.gov/documents/organization/275306.pdf](http://www.state.gov/documents/organization/275306.pdf); *Jewish Family Service of Seattle, et al. v. Trump, et al.*, 2:17-cv-01707 (W.D. Wash., December 23, 2017).



### C. Introduce Ideological Screening

*“Another reform involves new screening tests for all applicants that include...ideological certification to make sure that those we are admitting to our country share our values and love our people.”*

Continuing his framing of immigration as a security threat to the United States, the President has maintained his campaign promise to increase the vetting of applicants for admission, but none of the measures have included ideological certification or testing.

The new screening and vetting measures introduced to date included:

- **Suspension of the Visa Interview Waiver Program.** 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.<sup>97</sup>
- **Expanding Interview Requirements for Certain Permanent Residents.** The administration has mandated that all applicants for employment-based permanent residency (or a “green card”) attend an in-person interview.<sup>98</sup> Previously, employment-based applicants were only required to attend an interview for a green card if there was a specific concern related to their application.
- **Supplemental Questionnaire.** The administration is also expanding vetting by increasing the amount of information applicants for admission must provide. Some applicants must now fill out a supplemental questionnaire, on which they must provide 15 years’ worth of travel history, residential addresses, and employment history.
- **Social Media Vetting.** Some visa applicants are also now asked to provide their usernames on all social media accounts they have used within the last five years.

## VIII. Ensure Countries Accept their Deported Nationals

*“[W]e will insure that other countries take their people back when they order them deported.”*

While details are sparse, it does appear that the Trump administration has had some success in reducing the number of recalcitrant countries, meaning those that fail to cooperate or accept the return of their nationals from the United States. In the President’s January 25 executive order on interior enforcement, he ordered DHS and the State Department to cooperate in refusing to grant visas to nationals of such countries. Under the Obama administration, there were 23 countries considered recalcitrant as of May 2, 2016, including Afghanistan, Algeria, the People’s Republic of China, Cuba, Iran, Iraq, Libya, Somalia, and Zimbabwe.<sup>99</sup>

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<sup>97</sup> White House, “Executive Order 13769 of January 27, 2017.”

<sup>98</sup> USCIS, “USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants” (news release, August 28, 2017), [www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants](http://www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants).

<sup>99</sup> Testimony of Daniel H. Ragsdale, Deputy Director of ICE, before the U.S. Congress, House of Representatives, House Oversight and Government Reform Committee, *Recalcitrant Countries*, 114th Cong., 2d sess., July 14, 2016, <https://oversight.house.gov/wp-content/uploads/2016/07/Ragsdale-ICE-Recalcitrant-Countries-7-14.pdf>.



In June 2017, ICE Director Thomas Homan testified before the House of Representatives that ICE had reduced the number of recalcitrant countries from 23 to 11, but provided no details on which countries remained on the list.<sup>100</sup>

Since then, the State Department has stopped issuing certain kinds of visas to nationals of four countries—Cambodia, Eritrea, Guinea, and Sierra Leone—due to their lack of cooperation in accepting their nationals ordered removed from the United States.<sup>101</sup> There has been no update on whether these four countries have increased their cooperation since.

## IX. Complete the Biometric Entry-Exit System

*“[W]e will finally complete the biometric entry-exit visa tracking system which we need desperately.”*

There has been no evidence that the Trump administration has accelerated the process of completing the biometric entry-exit system. Since 1996, Congress has enacted several laws requiring the creation of a biometric entry-exit tracking system to identify noncitizens who enter the country on a visa and later overstay once it expires. While an entry system was established after 9/11, a counterpart exit system has not been built for a variety of reasons, including airport space constraints. The executive order that Trump signed on January 27, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States—the first so-called travel ban) included, among many other provisions, an order that DHS “expedite” the completion and implementation of a biometric entry-exit tracking system. The mandate was also included in the revised version of the executive order, signed on March 6.

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*While an entry system was established after 9/11, a counterpart exit system has not been built for a variety of reasons.*

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Despite this directive, the only public evidence of progress on such a system has been pilot programs that were already initiated under the Obama administration. These pilots have proceeded at Washington Dulles International Airport; Boston Logan International Airport; Hartsfield–Jackson Atlanta International Airport; George Bush Intercontinental Airport in Houston; and John F. Kennedy International Airport in New York City.<sup>102</sup>

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<sup>100</sup> Testimony of Thomas D. Homan, Acting Director of ICE before the U.S. Congress, House of Representatives, Appropriations Committee, *Immigration and Customs Enforcement & Customs and Border Protection FY18 Budget Request*, 115th Cong., 1st sess., 2018, <https://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=394892>.

<sup>101</sup> DHS, “DHS Announces Implementation of Visa Sanctions on Four Countries” (news release, September 13, 2017), [www.dhs.gov/news/2017/09/13/dhs-announces-implementation-visa-sanctions-four-countries](http://www.dhs.gov/news/2017/09/13/dhs-announces-implementation-visa-sanctions-four-countries).

<sup>102</sup> CBP, “CBP Deploys Biometric Exit Technology to Washington Dulles International Airport” (news release, June 2, 2017), [www.cbp.gov/newsroom/national-media-release/cbp-deploys-biometric-exit-technology-washington-dulles](http://www.cbp.gov/newsroom/national-media-release/cbp-deploys-biometric-exit-technology-washington-dulles); CBP, “CBP Deploys Biometric Exit Technology to George Bush Intercontinental Airport,” (news release, June 27, 2017), [www.cbp.gov/newsroom/local-media-release/cbp-deploys-biometric-exit-technology-george-bush-intercontinental](http://www.cbp.gov/newsroom/local-media-release/cbp-deploys-biometric-exit-technology-george-bush-intercontinental); CBP, “CBP Deploys Facial Recognition Biometric Technology at 1 TSA Checkpoint at JFK Airport” (news release, October 11, 2017), [www.cbp.gov/newsroom/national-media-release/cbp-deploys-facial-recognition-biometric-technology-1-tsa-checkpoint](http://www.cbp.gov/newsroom/national-media-release/cbp-deploys-facial-recognition-biometric-technology-1-tsa-checkpoint).



In the administration's fall 2017 Unified Agenda, CBP announced that it will issue an interim final rule to provide the legal framework necessary for DHS to begin implementing a comprehensive biometric entry-exit system and introduce a regulation stating that all travelers may be required to provide photographs upon entry or departure of the country.<sup>103</sup>

## X. “Turn off the Jobs and Benefits Magnet”

Emphasizing the idea that unauthorized immigration present a threat to the U.S. economy, including by competing with U.S.-born workers for jobs, then-candidate Donald Trump promised in his Arizona speech to “turn off the jobs and benefits magnet.” To accomplish this aim of ensuring that U.S. jobs and public benefits are not available to unauthorized immigrants, he promised to expand use of the E-Verify system and to step up the removal of individuals who abuse public benefits. Though far from fully realized, the Trump administration has taken steps to implement both goals.

### A. Strengthen and Expand E-Verify

*“We will ensure that E-Verify is used to the fullest extent possible under existing law, and we will work with Congress to strengthen and expand its use across the country.”*

Nothing the administration has done thus far has appeared to move it closer to its goal of expanding the use of the employment authorization verification system E-Verify. The system, which is mostly voluntary, allows employers to check the work eligibility of potential hires by verifying their names and identity data against federal databases. The verification system has been at the center of proposals for comprehensive immigration reform since 2006, and lawmakers have regularly put forth bills to require all U.S. employers to use it. Many of its proponents have long seen E-Verify as a strong tool for deterring illegal immigration by making it far more difficult to secure a legitimate job without legal status.<sup>104</sup> However, critics argue that it incentivizes bad-faith employers to move off the books and could increase discrimination, further noting that mandates do not result in universal compliance.<sup>105</sup>

The President cannot unilaterally make E-Verify mandatory; this would require an act of Congress. While several bills related to E-Verify have been introduced since January 2017, and one passed out of committee, none have been brought to the floor for a vote in either chamber.<sup>106</sup> The President's FY 2018 budget request included a specific request for \$15 million to “begin implementation of a nationwide use of the E-Verify Program,”<sup>107</sup> though at the time of writing a FY 2018 budget had not yet been finalized.

Despite the lack of action within Congress, USCIS, which manages E-Verify, has made improvements to the program in preparation for an influx of new program participants. These include upgrading the E-Verify system to the cloud so it can handle an increase in concurrent users.<sup>108</sup> In addition, three states (Arizona, Maryland, and Wyoming) have joined the Records and Information from DMVs for E-Verify (RIDE) program, which helps to reduce document fraud in E-Verify by matching user data against records from

103 DHS, “Fall 2017 Agency Statements of Regulatory Priorities.”

104 See, for example, Lamar Smith, “Immigration Enforcement First” Politico, April 12, 2013, [www.politico.com/story/2013/04/lamar-smith-opinion-immigration-enforcement-first-089956](http://www.politico.com/story/2013/04/lamar-smith-opinion-immigration-enforcement-first-089956).

105 See, for example, Doris Meissner and Marc R. Rosenblum, *The Next Generation of E-Verify: Getting Employment Verification Right* (Washington, DC: MPI, 2009), [www.migrationpolicy.org/research/next-generation-e-verify-getting-employment-verification-right](http://www.migrationpolicy.org/research/next-generation-e-verify-getting-employment-verification-right); Alex Nowrasteh and Jim Harper, *Checking E-Verify: The Costs and Consequences of a National Worker Screening Mandate* (Washington, DC: Cato Institute, 2015), [www.cato.org/publications/policy-analysis/checking-e-verify-costs-consequences-national-worker-screening-mandate](http://www.cato.org/publications/policy-analysis/checking-e-verify-costs-consequences-national-worker-screening-mandate).

106 *Legal Workforce Act*. H.R. 3711. 115<sup>th</sup> Cong., (September 8, 2017). This bill passed favorably out of the Judicial Committee on October 25, 2017.

107 Trump, *America First: A Budget*, 24.

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



participating state motor vehicle departments.<sup>109</sup> With this addition, ten states now participate in the program.

During 2017, employers participating in E-Verify increased by 64,739 to reach a total of 760,499.<sup>110</sup>

## B. Pursue Abuse of Public Benefits

*“And the same goes for government benefits... Those who abuse our welfare system will be priorities for immediate removal.”*

While Trump made individuals who abuse any program related to the receipt of public benefits a priority for removal, including in his January 25 executive order on interior enforcement, at the moment there is no evidence that anyone has been removed in accordance with this priority thus far. Even before the President’s executive order, under U.S. law, legal permanent residents (i.e., green card holders) who have resided in the United States for less than five years may be deported if they become “public charges.” While the law does not define “public charge,” prior administrations have limited its definition to immigrants who use cash welfare programs or long-term institutional care funded by the government.<sup>111</sup> As a result, very few noncitizens have been removed on this ground.

While it is likely that the President’s new priorities and approach to interior enforcement are responsible for the increase in interior removals and the increase in arrests of noncitizens without criminal backgrounds described above, there is no data available to show how many of those arrested or removed had abused public benefits.

Looking ahead to 2018, DHS has signaled that it will propose regulations on when individuals can be denied admission to the United States because of their likelihood of becoming a public charge.<sup>112</sup> These regulations are meant to both define the term public charge and outline the items DHS will consider when determining whether someone is likely to become one.

# XI. Reform the Legal Immigration System

*“[W]e will reform legal immigration to serve the best interests of America and its workers...”*

*“The time has come for a new immigration commission to develop a new set of reforms to our legal immigration system in order to achieve the following goals. To keep immigration levels measured by population share within historical norms. To select immigrants based on their likelihood of success in U.S. society and their ability to be financially self-sufficient. ... To choose immigrants based on merit. Merit, skill, and proficiency. Doesn’t that sound nice? And to establish new immigration controls to boost wages and to ensure that open jobs are offered to American workers first.”*

<sup>109</sup> USCIS, “Driver’s License Verification,” updated November 30, 2017, [www.uscis.gov/e-verify/employers/drivers-license-verification](http://www.uscis.gov/e-verify/employers/drivers-license-verification); USCIS, “What’s New Archives: Arizona, Maryland and Wyoming Join RIDE Program.,” accessed January 12, 2018, [www.uscis.gov/e-verify/about-program/whats-new/whats-new-archive](http://www.uscis.gov/e-verify/about-program/whats-new/whats-new-archive).

<sup>110</sup> USCIS, “E-Verify Statistics,” updated January 2, 2018, [www.uscis.gov/e-verify/about-program/e-verify-statistics](http://www.uscis.gov/e-verify/about-program/e-verify-statistics); USCIS, “E-Verify Active MOUs as of December 31, 2016,” accessed January 11, 2018, [www.uscis.gov/sites/default/files/USCIS/E-Verify/E-Verify-Statistics/E-Verify-MOUs-AsOf-December2016.pdf](http://www.uscis.gov/sites/default/files/USCIS/E-Verify/E-Verify-Statistics/E-Verify-MOUs-AsOf-December2016.pdf).

<sup>111</sup> For a more complete discussion of the grounds for removal and inadmissibility related to public charge and ways they could be changed, see Michael Fix and Randy Capps, *Leaked Draft of Possible Trump Executive Order on Public Benefits Would Spell Chilling Effects for Legal Immigrants* (Washington, DC: MPI, 2017), [www.migrationpolicy.org/news/leaked-draft-possible-trump-executive-order-public-benefits-would-spell-chilling-effects-legal](http://www.migrationpolicy.org/news/leaked-draft-possible-trump-executive-order-public-benefits-would-spell-chilling-effects-legal).

<sup>112</sup> USCIS, “Inadmissibility and Deportability on Public Charge Grounds” (proposed rule 1615-AA22, Fall 2017), [www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AA22](http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AA22).



*“I believe we should sunset our visa laws so that Congress is forced to periodically revise and revisit them to bring them up to date. They’re archaic. They’re ancient. We wouldn’t put our entire federal budget on auto pilot for decades, so why should we do the same for the very, very complex subject of immigration?”*

While congressional inaction has impeded the President’s ability to follow through on his goal of reforming the legal immigration system, his support for reducing legal immigration has on its own radically changed the conversation. In the past, presidents have largely framed immigration as a net positive force for the economy and as an integral part of the country’s heritage. Trump has broken from this narrative by endorsing drastic cuts to legal immigration and challenging the value of family reunification.

In August 2017, the President came out in support of a bill introduced by Senators Tom Cotton (R-AR) and David Perdue (R-GA), the *Reforming American Immigration for Strong Employment Act* or RAISE Act.<sup>113</sup> While the bill has not yet had a hearing before a committee, and there is no sign that it will have one, it would address many of the items Trump, as a candidate, identified as in need of reform.

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*His support for reducing legal immigration has on its own radically changed the conversation.*

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The RAISE Act seeks to halve legal immigration levels by eliminating many of the current categories for family-sponsored immigration. While the President has never defined what level of immigration he would consider within “historical norms,” the desired measure he touted in his speech, the bill would reduce the annual issuance of new green cards to around 500,000, which is less than the average number granted since present framework for the U.S. immigration system was put in place in 1965—around 750,000 per year.<sup>114</sup>

The bill also proposes changing how employment-based green cards are allocated in favor of a points-based system. Currently, there are five channels through which nearly all foreign nationals immigrate based on a job offer. Under the points system proposed by the RAISE Act, would-be immigrants earn points for a variety of characteristics, such as having a high-paying job offer, high English test scores, educational attainment, and an age close to 25. Each year, those with the most cumulative points would be permitted to apply for a green card. Though this bill ticks off many of the items enumerated by Trump in his Arizona speech, it does not include the proposal of a new commission to consider reforms to the legal immigration system more broadly.

U.S. immigration laws have not undergone a major revision since 1990, and it had been largely static for a quarter century before that. “Sunset” provisions, as advocated for by Trump in his speech, would give specific dates on which laws would cease to have an effect, unless Congress takes legislative action to extend them. The provisions would thus require regular examination by Congress. While the RAISE Act does not include sunset provisions, it does require DHS and several other agencies report to Congress every four years with recommended updates to the points system.

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<sup>113</sup> *RAISE Act of 2017*, S 354, 115<sup>th</sup> Cong., 1<sup>st</sup> sess. (February 13, 2017); White House, “President Donald J. Trump Backs RAISE Act” (news release, August 2, 2017), [www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/](http://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/).

<sup>114</sup> Julia Gelatt, *The RAISE Act: Dramatic Change to Family Immigration, Less so for the Employment-Based System* (Washington, DC: MPI, 2017), [www.migrationpolicy.org/news/raise-act-dramatic-change-family-immigration-less-so-employment-based-system](http://www.migrationpolicy.org/news/raise-act-dramatic-change-family-immigration-less-so-employment-based-system).



Even though a major reshaping of the U.S. immigration system would require congressional approval and Congress has yet to successfully tackle the issue, the Trump administration seems to be taking some steps to slow legal admissions and make reforms where possible to do so unilaterally.

On April 18, 2017, Trump signed Executive Order 13788, Buy American and Hire American, which 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.<sup>115</sup> It also pressed the same agencies to suggest reforms to ensure that skilled temporary worker visas (H-1B visas) are awarded to the most-skilled or highest-paid beneficiaries.

Since then, the administration has taken a number of steps to fulfill the aims outlined in the order, including proposing to terminate the H-4 EAD program that saw work authorization granted to some spouses of H-1B visa holders, as described above, as well as:

- Rescinding a policy under which immigration officers were to defer to prior approvals for nonimmigrant visas, meaning that applications to extend or renew a visa now receive more scrutiny.<sup>116</sup>
- Increasing the scrutiny applied to all H-1B visa applications. Between January 1 and August 31, 2017, there was a 45 percent increase in challenges, or “requests for evidence” (RFEs), to H-1B visa petitions, even though the total number of H-1B petitions rose by less than 3 percent in the same period.<sup>117</sup>
- Describing their plans for future reforms of the H-1B visa program during 2018, which are to include:
  - Establishing an electronic registration program for employers filing for H-1B visas that are subject to the “H-1B cap.”<sup>118</sup>
  - Modifying the selection process for applications that are subject to the H-1B visa cap.
  - Changing the rules for who may qualify for the visa by revising the definition of specialty occupation.<sup>119</sup>
  - Revising the definition of employment and employer-employee relationship for the purposes of the visa.
  - Adding additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders.

115 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](http://www.gpo.gov/fdsys/pkg/FR-2017-04-21/pdf/2017-08311.pdf).

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

117 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](http://www.reuters.com/article/us-usa-immigration-employment-insight/trump-administration-red-tape-tangles-up-visas-for-skilled-foreigners-data-shows-idUSKCN1BV0G8).

118 USCIS, “Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Aliens Subject to Numerical Limitations” (proposed rule 1615-AB71, Fall 2017), [www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AB71](http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AB71).

119 USCIS, “Strengthening the H-1B Nonimmigrant Visa Classification Program” (proposed rule 1615-AC13, Fall 2017), [www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC13](http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC13).





It appears that the administration may also be taking unilateral steps to reduce family-based immigration. In December 2017, the administration announced a publicity campaign against both “chain migration” and the diversity visa lottery.<sup>120</sup> Although the term “chain migration” is not defined by law, the administration has used it to refer to any family-based immigration other than the immigration of spouses and minor children—although at times it appears to refer to all family-based immigration, these categories included. The diversity visa lottery is an annual selection of applications for green cards submitted by individuals from countries with low rates of immigration to the United States; the category was included in the 1990 immigration reform to diversify the country’s immigration pool. The Trump administration initiated its push to curtail these two channels of immigration amid active negotiations of a legislative fix for the population affected by the termination of DACA in an apparent bid to have the provisions included in any resulting legislation.

Yet even without a legislative fix on the books, there is some evidence that the administration has already slowed the entry of certain family-based immigrants. As shown in Table 1, approvals of family-based preference categories dropped drastically in the first nine months of the Trump administration when compared to prior years. While the approval rate during 2014–16 hovered around 85 percent, during 2017 it dropped to 70 percent, and the total number of applications approved fell by 70 percent.

**Table 1. Approvals and Denials of Applications for Immigration in Family-Based Preference Categories during the First Nine Months of the Year, 2014–17**

Year	Received	Approved	Denied	Approval Rate
2017	194,526	32,565	13,727	70.35%
2016	212,090	108,659	16,344	86.93%
2015	180,306	185,208	30,503	85.86%
2014	191,568	174,156	25,707	87.14%

Sources: U.S. Citizenship and Immigration Services, “USCIS Relative Petitions Form I-130 Performance Data,” several years, accessed January 10, 2018, [www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-130-petition-alien-relative](http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-130-petition-alien-relative).

USCIS, the agency adjudicating these applications, has the discretion to deny them for a variety of reasons. However, the sharp reduction of approvals during the first year of the Trump administration raises a number of questions, including whether the administration is using such discretion to lower the immigration levels.

## XII. Conclusion

The U.S. public is used to politicians making promises on the campaign trail, only to break them as soon as they get into office. Yet Donald Trump’s actions on immigration policy since entering office have been surprisingly consistent with what he proposed in his 2016 Arizona campaign speech. The Trump administration has increased and broadened enforcement of immigration laws, tried to expand enforcement cooperation with local jurisdictions, reduced refugee admissions, ended several immigration programs implemented through executive action by previous administrations, and even slowed the legal admissions of some categories of immigrants. The administration has also proposed or supported legislation on issues Trump raised in the campaign speech.

However, while the President of the United States enjoys broad discretion in implementing immigration policy, the Congress plays the primary role in major changes in immigration law and in approving annual appropriations to fund priorities. In these realms, the President has had less success to date, though he is only completing his first year in office and much can happen in the future. Congress has so far been

<sup>120</sup> Zeke Miller and Jill Colvin, “White House Aims to Sway Opinion on Immigration Overhaul,” Associated Press, December 15, 2017, <https://apnews.com/6377210a36f74fd791af75bcbd644886/White-House-aims-to-sway-opinion-on-immigration-overhaul>.



reluctant to tackle legislation that would reduce overall immigration levels or eliminate immigration categories, increase the number of agents assigned to enforcement, or fund additional fencing along the U.S.-Mexico border. Some of the administration's enforcement goals are now under negotiation with Congress as part of a broad deal to provide legal status to DACA recipients, but the outcome of these negotiations remains uncertain.

The courts, too, have slowed some of the President's priorities, including by giving local jurisdictions wide berth to define their degree of compliance with federal immigration enforcement priorities. Many of these cases are still working their way through the judicial system, so it remains to be seen how these boundaries will be defined in the coming years.

The approach to immigration pursued by President Trump is unprecedented in recent U.S. history. He has sought to frame immigration primarily as a problem for the country—for U.S. workers and the safety of society as a whole—and to reduce the overall number of immigrants coming into the country. There are signs that the government has slowed the processing of immigration applications, that the number of people trying to cross the border illegally has dropped, that international student enrollment has decreased, and even that tourism is lagging as fewer people apply for tourist visas. It is also clear that enforcement is increasing, with the number of detentions of unauthorized immigrants inside the country rising, though these detentions still remain below the levels seen under the Bush and Obama administrations—at least for now.

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*Some of the more structural changes in immigration policy that Donald Trump laid out in his Arizona speech may be harder to achieve as he enters his next years in office.*

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It is less clear whether the President will prevail on some of his larger goals for reshaping the U.S. immigration system. On this, there seems to be much less of an appetite in Congress—or in the U.S. public. In fact, opinion polls suggest that overall most people in the United States are comfortable with existing levels of immigration and have grown more so in recent years. While there is a significant minority who want a harder line against unauthorized immigration and want to see fewer immigrants overall—and these are important voters for the Trump administration—the larger public is divided and generally comfortable with immigration.<sup>121</sup> As a result, some of the more structural changes in immigration policy that Donald Trump laid out in his Arizona speech may be harder to achieve as he enters his next years in office.

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<sup>121</sup> For a summary of recent Gallup Poll trends on this topic, see RJ Reinhart, "In the News: Immigration," Gallup, January 10, 2018, [http://news.gallup.com/poll/225200/news-immigration.aspx?g\\_source=IMMIGRATION&g\\_medium=topic&g\\_campaign=tiles](http://news.gallup.com/poll/225200/news-immigration.aspx?g_source=IMMIGRATION&g_medium=topic&g_campaign=tiles).



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