

# The Biden Immigration Policy

Elizabeth Harvey, MS4

University of Virginia School of Medicine

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## Abstract

When Joseph R. Biden was inaugurated, the immigration system posed one of the central challenges to his administration. Biden proposed legislation to provide a path to citizenship for the millions of undocumented immigrants who currently reside in the United States. However, migrants entering the United States continued to be turned away under laws from Biden's predecessor, Donald Trump. Critics of Biden's administration state he has failed to strike the balance between a humane immigration policy and controlling the influx of migrants. Biden came under fire after the withdrawal of U.S. troops from Afghanistan led to the frenzied evacuation of 123,000 Afghan refugees. This strained an immigration system already weakened by Trump-era policies, leading to challenges with resettling these new arrivals in the United States, now called parolees. The arrival of the Afghan parolees influenced the situation at the Southern border, with the Biden administration limiting the number of migrants allowed into the United States. Haitian migrants who had crossed the border into Texas were expelled from the country in September 2021, drawing sharp rebuke from immigration activists. Overall the Biden administration struggled to manage the unprecedented influx of migrants with an immigration system in dire need of reform and a legislative deadlock in Congress making it extremely difficult to enact lasting change.

## Introduction

*"Give me your tired, your poor,  
Your huddled masses yearning to breathe  
free,  
The wretched refuse of your teeming  
shore."*

The ideals etched into the Statue of Liberty have often stood at odds with America's worst impulses. We are a nation of immigrants that too frequently falls back on isolationist and nationalistic rhetoric. The most recent example of anti-immigrant sentiment was stoked by the Trump administration. During his first week of office, Trump banned travel from seven Muslim-majority countries. His administration also separated nearly 5,000 children from their parents at the Southern

border. According to a Stanford Study, in total Donald Trump implemented more than 1000 changes that made it more difficult to immigrate to the United States.<sup>1</sup> Joe Biden inherited an immigration system that was gutted by his predecessor, a climate of political polarization, and a legislative deadlock. In this paper we will broadly discuss Biden's immigration agenda and analyze two crisis points during his time in the White House that exemplify his administration's successes and failures.

## President Biden's agenda

Joe Biden campaigned for a more humane immigration policy, setting up a contrast with Trump's hardline anti-immigrant agenda. He assailed Trump for launching an "unrelenting assault on our

values and our history as a nation of immigrants.”<sup>4</sup> Biden’s early days in office marked the end of some of the more draconian Trump policies—Biden repealed the travel ban on people from Muslim-majority countries, halted border wall construction, and reversed family separation and the “Remain in Mexico” program.<sup>4</sup> However, the administration was unprepared to handle the subsequent influx of migrants and Biden found himself drawing criticism from Republicans and Democrats alike. Mere months into his presidency, Biden was facing a surge of migrants straining a bureaucratic system that had been gutted by the previous administration. He is currently seeking both a temporary fix and a more long-term legislative solution to include the following.

In February of 2021, President Biden and the Democrats in Congress unveiled the US Citizenship Act—a largely symbolic gesture as the bill had no Republican support and was unlikely to pass into law. The bill sought to “provide an earned path to citizenship, to address the root causes of migration and responsibly manage the Southern border, and to reform the immigrant visa system.”<sup>5</sup> However, Biden has the constitutional authority to implement some provisions within the bill himself. He can grant legal status to almost all noncriminal illegal immigrants by expanding the use of temporary protected status and parole-in-place. He can let family members of US citizens and legal permanent residents wait for green cards inside the United States. He can increase the refugee ceiling.<sup>3</sup> Critics of his presidency state that Biden has been slow to implement such changes. Granted, Biden is facing opposition from federal judges weary of executive power. However, it’s not only his inertia that has drawn sharp rebuke—

Biden has in fact fought to continue one of Trump’s strictest immigration policies. Title 42 is a section of the Public Health Service Act that allows authorities to deny migrants their usual right to claim asylum during the coronavirus pandemic. Trump wielded Title 42 to effectively shut down immigration and expel hundreds of thousands of people<sup>2</sup>. When Biden came into office it was largely assumed he would repeal Title 42, as CDC scientists had always argued there was no legitimate public health rationale behind it.<sup>2</sup> Dr. Anthony Fauci, the leading federal infectious disease expert, stated “expelling [migrants] is not the solution to an outbreak”<sup>4</sup>. Yet, Biden continues to use Title 42 as his primary tool to manage the border. Biden maintains that Title 42 is necessary to keep U.S. detention centers from being overwhelmed during the pandemic. He argues that Title 42 is a temporary deterrence tool while the administration works to scale up the immigration system’s capacity<sup>7</sup>. Biden has not been using Title 42 indiscriminately—he carved out humanitarian exceptions for unaccompanied minors, among others. According to government data, of the 1.24 million times officials caught people crossing the southwestern border from February to August 2021, Title 42 was used to turn them away 56% of the time.<sup>6</sup> In September 2021, a federal judge ordered an end to the use of Title 42 to expel migrant families on the grounds that it unfairly denied them the right to seek asylum. Yet the Biden administration appealed this decision. Biden’s insistence on continuing this policy, deemed to be cruel and inhumane by many, led to the resignation of a senior adviser at the State Department. Harold Koh, said adviser, wrote that the use of Title 42 “continues to violate our legal obligation not to expel or

return individuals who fear persecution, death, or torture.”<sup>7</sup>

On the legislative side, Biden’s agenda is facing pushback in Congress. Democrats would need 10 Republicans to pass a bill through the traditional 2/3 majority vote in the Senate. This is unlikely in the current political climate and so Biden and party leaders are pushing his social and climate spending package through a process called budget reconciliation. This only requires a simple majority vote, which the Democrats have if the coalition unanimously approves the bill. The drawback is that the Senate Parliamentarian determines what provisions have a “more than incidental” impact on the budget and thus can be included in reconciliation. The parliamentarian has already rejected two immigration proposals because “the impact of the legislation far outweighed its budgetary consequences, making it inappropriate to include in a reconciliation bill”<sup>8</sup>. The current iteration of the Democrat’s immigration proposal focuses on undocumented immigrants who live in the US. In the latest draft, undocumented immigrants who arrived prior to 2011 (approximately 7 million people) could apply for five-year, renewable employment authorization. The bill would also recover millions of Green Cards (officially known as Permanent Resident Cards) that went unused since 1992 and allows some people who have been waiting for Green Cards to pay additional fees to fast-track the process<sup>8</sup>. Despite being broadly popular (a new poll by Data for Progress found that 75% of voters back these provisions), Biden’s immigration agenda faces two major hurdles.<sup>8</sup> Because budget reconciliation requires 50 votes, Democrats need every member of the caucus to

support the bill. In a coalition that includes progressive and moderate voices, consensus is proving difficult. Also, the Senate Parliamentarian has yet to approve the most recent draft of the bill. As things currently stand, it is unclear whether Biden can make a lasting legislative impact on immigration.

### **The Afghanistan Crisis**

The 20-year war in Afghanistan came to a chaotic end in August of 2021 with the withdrawal of all US troops from the country. This was a decision made by the Trump administration and executed under Biden, leaving a tenuous US-backed government in Kabul. The State Department tried to ramp up the approval of special immigrant visas, or SIVs, in the months leading up to the withdrawal. SIVs are granted to Afghans allied with the U.S. military operation, as well as their spouses and children under 21. It has historically been an exhausting and time-consuming process involving over a dozen steps. One young Afghan man who worked as a military translator was denied a SIV in 2019 after almost 3 years of waiting because his supervisor never responded to emails from American officials. He was forced to start the process over again and was still trying to reach out to the military officers who supervised him while they themselves were withdrawing from Afghanistan<sup>11</sup>. Many groups criticized the Biden administration for not acting fast enough. Representative Peter Meijer stated “They just didn’t want to deal with this issue and put up every roadblock possible.”<sup>9</sup> In Biden’s defense, he inherited a backlog of 17,000 SIV applications when he took office and he faced bureaucratic delays due to the coronavirus pandemic.<sup>9</sup> Yet the administration was warned about the

vulnerability of our Afghan allies should the Taliban seize power and seemingly failed to prioritize the SIV application process. At the time of the US withdrawal, there were 20,000 Afghans with pending SIV applications<sup>11</sup>. Further complicating the issue, Biden chose not to begin evacuating Afghans as troops withdrew, as he was concerned this would signal a lack of faith in the Afghan government. Thus when the government fell to the Taliban within days of the American withdrawal, the evacuation process was unnecessarily rushed and poorly planned. It was largely the responsibility of military veterans, aid workers, and journalists to fight for individual Afghan lives, one by one. Through a network of WhatsApp and Signal, they passed tips about Taliban checkpoints and which airport gates were open. One PBS NewsHour correspondent summarized the chaos: “There is no system. The system has collapsed.”<sup>10</sup>

The US and its allies ultimately flew nearly 123,000 civilians out of Kabul, including about 6,000 Americans.<sup>11</sup> However, the International Rescue Committee estimates that up to 300,000 Afghans were affiliated with US operations since 2001. That’s roughly a 200,000 person discrepancy—not to mention the civic, community, and female leaders who qualify for P-2 visas as part of the US Refugee Admissions Program. Secretary of State Anthony Blinken stated that the efforts to evacuate SIVs who remain in Afghanistan is ongoing—“our commitment to them has no deadline.”<sup>12</sup> Secretary Blinken speculated there could be up to 8,000 SIV applicants still in Afghanistan and reaffirmed “we’re working to bring [them] out, along with their immediate family members.”<sup>12</sup> He did not provide a number on additional P-2 applicants but stated that the US is “doing

everything we can to make good on our ongoing commitments, including the Afghans at risk that we want to help.”<sup>12</sup>

For the 123,000 people who made it out in the chaotic weeks after Kabul fell, the question became where to put them. Some evacuees were temporarily housed at 10 US bases in Europe and the Middle East, so-called “lily pads” because they served as stepping stones to a more permanent location. Thousands of analysts and agents from Customs and Border Protection, the Federal Bureau of Investigation, and the National Counterterrorism Center were dispatched to the lily pads to work on processing evacuees. Teams interviewed the Afghans and took their biometric and biographic information for security screening purposes.<sup>13</sup> Some had ongoing SIV applications before they landed at the lily pads and were already on the path to becoming permanent residents; but many had yet to begin the process. Most refugees are being granted “humanitarian parole,” which is a means for the federal government to bypass the lengthy visa process in an emergency to temporarily allow people to enter the US. The process requires in-person vetting before applicants can be approved. Humanitarian parole is not a path to citizenship, and refugees are allowed to live in the US for a fixed period, usually 2 years.<sup>13</sup> To stay in the US, parolees must apply for asylum or another more permanent immigration status. Since the US evacuation effort, there have been an additional 26,000 humanitarian parole applications from Afghan nationals still in the region. This has inundated the US Citizenship and Immigration Services (USCIS) agency, which normally receives fewer than 2000 parole applications per year.<sup>15</sup> The team reviewing the applications originally consisted of just six people, but

USCIS has scaled up the operation and trained an additional 44 people to process the applications.<sup>15</sup> Still, the pace is maddeningly slow for aid groups who state that of the 26,000 applications only 100 of them have been approved in the last four and a half months.<sup>15</sup>

The White House's National Security Council reported that it has relocated 73,000 Afghans to the US for resettlement.<sup>14</sup> Around 17,000 people have already arrived to their final destination but the remaining 56,000 have been living on US military bases.<sup>16</sup> Biden announced in November 2021 that the government will cut down on refugee admissions to focus on the resettling the Afghan evacuees<sup>19</sup>. Their arrival to the US has overwhelmed already strained refugee resettlement agencies. The system usually consists of a local agency that acquaints refugees with their new surroundings and helps set them up with services. However, with the record low number of refugees during President Trump's tenure, many of these local agencies were forced to close. So, the Afghan evacuees are inundating a system that has atrophied over years of disuse. To ease the caseload of government agencies, Biden has recently introduced a controversial new resettlement program. The program pairs evacuees with private sponsors who are responsible for securing housing, helping evacuees access benefits such as medical services, and enrolling children in school.<sup>16</sup> Usually the federal government pays an agency \$2275 for each Afghan the agency serves. The sponsors must raise that same amount privately. Supporters of the resettlement program like Danielle Gigsby, the co-founder of Community Sponsorship Hub, praise its grassroots spirit: "'It's providing this opportunity for communities that said they

want to stand up, to stand up. That's the point. It's to maximize this outpouring of desire to welcome."<sup>16</sup> Critics state the private volunteers, although well-meaning, are unsupervised and ill-prepared to navigate the unique needs of these people and all the government requirements. In an opinion piece published in The Hill, Will Berkovitz wrote "Unfortunately, this appears to have the same lack of forethought as the chaotic evacuation from the airport in Kabul this summer."<sup>17</sup>

Typically, the next steps involve applying for work permits and lawful permanent residence. However, the filing fees are costly--\$410 for work permits and \$1225 for lawful permanent residence—especially for evacuees who arrived in the US with little to nothing.<sup>17</sup> The Biden administration announced in early November 2021 that it will waive the application fee for parolees who arrived in the US on or after July 30<sup>th</sup>. The president of Lutheran Immigration and Refugee Service tweeted "Today's announcement provides some much-needed financial relief to our newest Afghan neighbors. Most of the families we're serving have no nest egg to draw from, and every expense is a source of stress and anxiety."<sup>14</sup> Much is still uncertain about these new arrivals but it is clear that their successful evacuation and resettlement is as much a result of the individual efforts of private citizens and aid groups as it is the Biden government.

### **The Southern Border**

President Biden repealed the Trump-era Migrant Protection Protocols (M.P.P), also known as the "Remain in Mexico" policy, on his first day in office. Under this policy, the American Immigration Council estimates 70,000 migrants were returned to Mexico while

their immigration cases were pending. This meant months, if not years, living in unsanitary tent encampments under threat of extortion, sexual assault, and kidnapping.<sup>18</sup> Of the cases completed, only 1.6% of applicants were granted asylum<sup>19</sup>. There are still 25,000 outstanding asylum claims from people affected by the program while it was in place under Trump.<sup>19</sup> Texas and Missouri sued the Biden administration over the suspension of the policy, citing the burden on government services if immigrants are allowed to wait in the US. In August 2021 a federal judge ruled in favor of the states and ordered the administration to reinstate the policy. Despite an ongoing appeals process, the administration has been forced to take steps to restart the program and states it will be ready for implementation mid-November 2021. However, this is pending approval from the Mexican government, which has said the US government must address humanitarian concerns before Mexico will allow immigrants to wait there.<sup>19</sup> Ursula Ojeda with the Women's Refugee Commission said "It's really worrisome that we are 10 months into this administration, and there are still several Trump administration policies — not just M.P.P. — that are still being implemented at the border."<sup>19</sup> Ms. Ojeda is referring to Title 42, which was discussed in section 2 of this paper. Title 42 rose to national attention in September 2021 with the aggressive mass deportation of Haitian migrants in Del Rio, Texas.

The Haitian migrants have been seeking refuge in South and Central American countries for years, fleeing Haiti after the 2010 earthquake, a rise in gang violence, and most recently the assassination of President Jovenel Moïse in July 2021.<sup>4</sup> There has been a push to enter

the US lately secondary to the COVID19 recession, racial discrimination in Latin America, and the perception that the Biden administration is more welcoming to refugees.<sup>4</sup> An estimated 14,000 Haitian migrants crossed the border through the shallow waters of the Rio Grande to converge at the town of Del Rio, Texas in September 2021.<sup>20</sup> The migrants were kept in a temporary staging area, described as a shantytown by the city's mayor. There was little access to clean water and food and just 22 portable toilets.<sup>21</sup> Tiffany Burrow, the operations director for the Val Verde Humanitarian Border Coalition's migrant respite center said "We can't help that many people. The city is not going to sustain all these people. The city under the bridge could become bigger than Del Rio."<sup>21</sup> The Haitian migrants were straining an immigration system already struggling to handle the record 1.7 million migrant crossings at the Southern border in the past year.<sup>19</sup> To manage the escalating crisis, the Biden administration announced it would begin deporting Haitians under Title 42 to clear Del Rio and deter more Haitians from crossing into the US.<sup>22</sup> Representative Ilhan Omar tweeted her criticism: "Haitians are experiencing a crisis after crisis and deserve compassion. Instead of stepping up deportation, we should be halting it. It's shameful from administration to administration our cruel immigration policies remain."<sup>22</sup> Immigration advocates point to the Biden administration's own decision in July 2021 to extend temporary protected status for Haitian migrants already within the US due to its assessment of the dangerous conditions in Haiti. And yet the Haitians who arrived to Del Rio in September 2021 are being flown back to Haiti—many of whom have not lived in the country for years. Republicans are blaming

the crisis on what they perceive to be the Biden administration's "open border policy" after President Biden repealed some of the harshest Trump-era immigration restrictions. Governor Greg Abbott of Texas stated "It's total chaos, and the Biden administration, they need to up their game big time."<sup>23</sup> Thus President Biden's central struggle is balancing a humane approach to border enforcement with controlling the record influx of migrants. Many say he failed to strike that balance with Haitian migrants, with indelible images of Border Patrol agents on horseback wielding reins like whips to push back Haitians crossing the Rio Grande. Marisa Franco, the executive director of a Latino civil rights organization summarized: "The question that's being asked now is: How are you actually different than Trump? You campaigned that immigration was one of the places where Trump was inhumane and failed. And last time I checked, Trump is not the president."<sup>24</sup>

### Conclusion

President Biden inherited an immigration system constrained by bureaucratic red tape and weakened by years of disregard from the Trump administration. It's with this immigration system that Biden was forced to manage an unprecedented surge of migrants at the Southern border and the influx of Afghan evacuees after the US withdrawal from Afghanistan and the fall of Kabul to the Taliban. Critics state that Biden is relying on Trump-era policies such as Title 42, which they state is in direct contrast to Biden's campaign message of creating a more humane immigration system. The legislative challenges in Congress make enacting long-term reforms difficult and until then, Biden must operate with this ineffective and

arguably inhumane system, trying to appease both hardline and pro-immigrant factions and satisfying neither.

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