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Summary

Immigration law and policies are created on the federal level. During the past three years, we have been bombarded with comprehensive and consistent attempts to scapegoat immigrants and to reduce all immigration to unseen levels in modern times. From the beginning, the Administration has continuously stated its intentions with its consistent anti-immigrant agenda. This Administration also normalized the political discourse that sees both documented and unauthorized immigration as a threat to the United States’ economy and security. The entire immigration system has become even more restrictive than in the past 100 years, with many newly instated bureaucratic roadblocks and backlogs for an already difficult to navigate system. For this reason, the Migration Policy Institute believes that the Trump Presidency will have lasting effects on the U.S. immigration system long after his time in office. These effects are certainly seen and felt throughout Santa Clara County.
Corresponding with the President’s strong rhetoric on immigration enforcement, the Trump administration has significantly reduced entry points at the United States’ southern border and continued to ramp up its efforts to boost the US Immigration and Customs Enforcement (ICE) funding. This was accompanied with frequent changes in policy and procedures, creating a constant atmosphere of urgency and spreading fear in immigrant communities across the country. National statistics reveal that the “noncriminal” share of immigrant arrests by ICE more than doubled over the course of the Trump administration: In FY 2019, 36% of those arrested had no criminal record compared to 14% in FY 2016.

On January 31, 2020, Customs and Border Protection (CBP) was designated as a “Security Agency,” reducing the range of transparency measures with which the agency must comply. This designation allows CBP to withhold the names of officers when disclosing documents to the public. Another enforcement tactic, “expedited removal,” is an example of a regulation that the administration intentionally uses to deny due process to the immigrant communities. In July 2019, a new regulation expanded the target population for removal to noncitizens encountered anywhere in the country who were not admitted or paroled, and who could not demonstrate that they had been in the United States for at least two years. However, the Administration did not immediately implement this regulation, and a federal district court ruling on September 27, 2019, blocked it from going into effect. A federal appeals court ruling in June 2020 reversed the district court’s ruling, though the injunction was not immediately lifted.
Deferred Action for Childhood Arrivals (DACA)

The U.S. Supreme Court reviewed three consolidated cases against the Trump administration’s 2017 decision to end DACA and heard oral arguments on November 12, 2019. On June 18, 2020, the U.S. Supreme Court decided that the termination of DACA did not comply with federal law because it failed to consider important aspects of the DACA program, including that DACA recipients, educational institutions, employers, and others who have come to rely on this program. The Supreme Court vacated the September 5, 2017 memorandum terminating DACA, thereby restoring DACA to its 2012 state. This meant that the US Citizenship and Immigration Services (USCIS) could start accepting initial DACA requests, along with applications for advance parole from DACA recipients. However, nothing in this decision affirmed DACA’s legality nor required DHS to maintain DACA. For DACA recipients, this was the 12th time since 2017 that court proceedings decided their fate. The emotional weight of this process has been overwhelming.

After the U.S. Supreme Court decision, the Department of Homeland Security (DHS) did not provide any guidance about how they planned to implement the decision for a whole month. However, on July 28, 2020, DHS released a new memorandum titled, “Reconsideration of the June 15, 2012 Memorandum, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children.” The memo states that DHS is “considering a new DACA policy” to assess “whether the DACA program should be maintained, rescinded, or modified.”

While DHS released its stand on the DACA policy, the July 28 Memo from DHS further instructed USCIS to:

1. Reject all initial DACA requests from applicants who have never received DACA in the past
2. Reject all advance parole applications from DACA recipients except where there are “exceptional circumstances"
3. Shorten the DACA renewal and work authorization period from two years to one year

According to the July 28 Memo from DHS, these changes to the DACA program are temporary and will only be in place while DHS reviews the DACA program and decides whether to maintain, rescind, or modify the program. This indicates that most likely another DACA policy change is expected in the future. With the above actions, the Administration is aligning its arguments, setting in motion steps to end DACA in the short term.
Asylum and Unaccompanied Minors Restrictions

The current administration has fostered the end of the US Asylum system. In 2019, DHS established a combination of policies that significantly limited seeking asylum at the border, and jointly, with increased immigration enforcement in Mexico, appeared to reduce the number of entries. This regulation made migrants ineligible for asylum if they failed to apply for it elsewhere on their way to the United States. Furthermore, Asylum Cooperation Agreements with Central American countries allowed the United States to send asylum seekers abroad, requiring migrants, mainly asylum seekers, to wait in Mexico for their adjudication. Together, these policy changes blocked asylum access or eligibility for most asylum seekers. These policies also created a humanitarian crisis on the Mexican side of the US/Mexico Border.

In 2020, the emerging pandemic gave the Administration an additional opportunity to further close off the border. Invoking the same power that was historically given to the surgeon general in 1944 to block the entry of foreign nationals who pose a public-health risk, the Director of the Centers for Disease Control and Prevention (CDC) resurrected the same power and issued an order on March 20, 2020, mandating all foreign nationals without authorization to enter the United States be pushed back to Mexico (or Canada) or returned to their countries.

Beginning June 30, 2019, USCIS instructed all asylum officers to make independent findings of whether people filing asylum applications with USCIS met the legal definition of an unaccompanied alien child in cases where applicants were also in removal proceedings before the immigration courts. USCIS also began to demand an increased volume of evidence for the Special Immigrant Juvenile Status (SIJS) approvals. In November 2019, two policy memos limited the role that individuals other than legal representatives (such as advocates) could play in the legal proceedings of unaccompanied child migrants.
Refugees

As the US President has the authority to set the refugee ceiling, under the current administration and during the past few years, refugee admissions have been drastically reduced. By 2019, the number of admissions have decreased from 85,000 a year to 18,000. In addition, the Administration issued several refugee bans and increased vetting for refugee admission from so called “high risk countries.”

Additionally, on September 26, 2019, the President issued an executive order requiring both states and local entities to provide written consent in order to continue receiving refugees, offering an unprecedented level of state and local control over refugee resettlement. By the end of January 2020, 42 states and more than 100 localities had consented to receiving refugees. On January 15, 2020, a federal district judge temporarily enjoined the executive order, allowing for refugees to be resettled even in states and localities that have not opted in.

As the COVID-19 pandemic spread across the country, the public health emergency served as the context for the suspension of the Refugee Resettlement Program: On March 19, 2020, the State Department stopped the entry of refugee arrivals. The halt came after the International Organization for Migration, which is in charge of booking refugees on their travel, and the United Nations High Commissioner for Refugees announced a temporary suspension of resettlement travel.

Even before COVID-19 and prior to the Trump administration, the U. S. was admitting on average approximately one percent of the world’s refugee population. In recent years, under the Trump administration, admission levels were drastically reduced from approximately 85,000 in 2016 to 7,754 admissions in 2020.
Temporary Protected Status (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. As of February 2020, immigrant communities have been designated as having TPS from the following ten countries, El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, Syria and Yemen. The Trump administration has made every attempt possible to end TPS in phases, following different timelines for different countries. Six of the ten TPS designations have been already terminated by the Administration, including El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. The termination of the programs has not yet gone into effect as court injunctions have been issued. To further limit TPS, DHS updated its policy manual to reflect that TPS holders who receive permission to travel outside the United States and re-enter on advance parole remain in the same immigration status upon return as when they left the country, including unauthorized status for individuals who originally entered without inspection, therefore, becoming ineligible to obtain green cards.
All Immigrants

On April 22, 2020, after promising to “temporarily suspend all immigration into the United States, the President signed a proclamation suspending, for 60 days, the issuance of visas to persons outside the United States who are parents, adult children, and siblings of U.S. citizens; spouses and children of permanent residents; diversity lottery winners; and nearly all types of employment-based immigrants.

On June 22, 2020, the President issued another proclamation suspending the entry of certain types of non-immigrants that also extended the April 22nd ban on permanent immigrants through December 31, 2020.

Starting on July 1, 2019, the Administration began to restrict the Department of Labor Certifications for U and T Visas. The new policy guidance for the department’s Wage and Hour Division (WHD) limited the circumstances in which WHD could certify U and T visa applicants’ cooperation with a law enforcement investigation into a crime committed against them or a trafficking situation, respectively. Many of the changes emphasized local agencies’ ability to set their own certification policies, such as setting time limits, conducting their own background checks on applicants, and withdrawing submitted certifications if new information came to light. Other changes reminded agencies that they were under no obligation to issue certifications. On August 2, 2019, ICE removed a requirement that for U visa applicants in removal proceedings, USCIS make an initial determination of whether they appeared to be eligible for the status before ICE approves or denies a stay of removal. The revised policy leaves that decision entirely to ICE’s discretion. Instead of being administratively decided, the enforcement branch is now in charge of making these decisions.
Public Charge

Federal law permits the U.S. government to deny entry, green cards, and some other immigration benefits to individuals deemed likely to become a “public charge.” Under existing and longstanding federal policy, non-citizens may use some public benefits and services without fear of immigration consequences. For a long time, immigration officials only considered limited forms of public cash assistance and long-term institutionalization at public expense in making “public charge” determinations.

On February 26th, the Courts ruled to allow the changes to public charge to be applied while the issue is debated in the courts. The rule allows USCIS to deny permanent residency (green card) applications based on the use of certain public benefits and services—no matter if their use of the benefit was legal, temporary, and limited in value. It also allows USCIS to speculate potential access to services. The changes would make it significantly more difficult for low and moderate-income families, and those with any of the negatively weighed factors to immigrate. This change in the public charge has created a chilling effect, limiting access to critical services, especially during the COVID-19 pandemic with devastating impacts on children, families, and communities. U.S.-born children are being harmed under this rule change, as parents’ and children’s health are inextricably linked.

On October 10, 2018, the Federal Government released its anticipated proposed changes to the Public Charge definitions. The proposed rule change would upend a decades-old policy by significantly expanding the public charge definition.

In addition, under the Immigration and Nationality Act (INA), any noncitizen who “within five years from the date of entry, has become a public charge, from causes not affirmatively shown to have arisen since entry, is deportable.” While in current practice, this ground of deportability rarely comes up in pending removal proceedings or as a reason for the initiation of removal proceedings, the threat continues to exist under the current policy.

In early 2020, the State Department implemented a public charge regulation based on the January 2018 changes in the consular manual to instruct officers in consular offices to consider a variety of factors about applicants when deciding whether they are likely to use public benefits in the United States.

The public charge rule remains influx. On July 29, 2020, a federal court in New York issued a new preliminary injunction that applies nationwide and blocks both the DHS’s public charge rule and the accompanying public charge rule applicable to the Department of State and consular officials. On August 11, 2020, the appellate court blocked the injunction outside of New York, Connecticut, and Vermont. As of this writing, the DHS’s public charge rule is again in effect in California and most of the rest of the country.
Public Charge

According to the MPI, the earlier implementation of the public charge rule changes has resulted in the increase of “inadmissible” determinations on public-charge grounds for many applicants. The impact in numbers shows an increase from 1,076 in FY 2016 to 20,941 in FY 2019, and the 2020 regulation is continuing to increase further between February 2020 and July 2020 during the COVID-19 pandemic.

![Public Charge: "Inadmissible" Determinations](image)

This expanded rule now gives adjudicators broad discretion to deny green cards to family-based applicants. Under the new standards, immigration officials will look at factors that were also already outlined in the old rule, including applicants’ age, health, family status, education, skills, assets, and ability to speak English among other criteria; and now adjudicators have greater discretion on deciding that the applicant is likely to become a public charge. Using Census data, MPI found that 69% of recent green card recipients had at least one negative factor named in the new rule, and 43% had at least two, suggesting the rule could affect a large portion of future applicants. This analysis also showed that the policy will disproportionately exclude women, children, the elderly, and applicants from Mexico and Central America.

The chilling effect of the Public Charge Rule has been widely documented and has created great fear in immigrant communities. Additionally, according to MPI, between 2016 and 2019, applications for green cards at USCIS dropped by 17%, the lowest level in half a decade. Over the same time period, applications to initiate the permanent residency process for family members dropped by 25% for immediate relatives of U.S. citizens, and by 42% for all other family members.

In 2018, MPI also estimated that up to 35% of non-citizens in Santa Clara County were at risk of possibly being considered public charge under the new rule, adding that the chilling effects might deter citizen family members from using public benefits also living in fear. On March 13, 2020, USCIS clarified that seeking treatment or preventive services for COVID-19 will not negatively affect foreign nationals in a future public charge analysis.
Travel Bans (2017-2020)

Muslim Travel Ban
In addition to the January 27, 2017, Muslim Travel Ban, the Trump administration has continued to bar an increased number of immigrants to travel and enter the U.S.

Travel Ban Extended to Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen
After the Administration issued three versions of the travel ban (the first in January 2017) and faced multiple court injunctions along the way, the Supreme Court upheld the third iteration of the ban on June 26, 2018. Under the latest version of this ban, nationals of seven countries (Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen) are prevented from entering the United States.

Travel Ban: China
On January 31, 2020, the Trump administration banned travel from China.

Travel Ban Extended to Burma, Kyrgyzstan, Nigeria and travel restrictions for Sudan, Tanzania
On February 21, 2020, travel restrictions for six new countries were added. The President signed a proclamation restricting entry and new permanent immigration from Burma, Eritrea, Kyrgyzstan, and Nigeria and restricting nationals from Sudan and Tanzania from participating in the Diversity Visa Lottery. Nationals of the newly designated countries are only permitted to enter the United States on nonimmigrant visas, for example as tourists or temporary workers.

Travel Ban: Iran
On February 29, 2020, the Trump administration banned travel from Iran. The President issued a proclamation banning the entry of foreign nationals, with significant exceptions, who were in Iran during the 14 days preceding their intended entry to the United States.

Travel Ban: Europe’s Schengen Area
On March 1, 2020, the Trump administration banned travel from the Schengen Area of Europe. In one proclamation, the President banned the entry of foreign nationals, with significant exceptions, who were in one of the 26 European countries comprising the Schengen Area during the 14 days preceding their intended entry to the United States. The State Department exempted people with student visas from this ban on July 16, 2020.
Travel Bans (2017-2020)

Travel Ban: Foreign Students and Exchange Visitor Program (SEVP) during COVID-19

On March 9, 2020, the Trump administration began an exclusion of students in online-only programs during the COVID-19 pandemic. ICE, which manages the Student and Exchange Visitor Program (SEVP), announced flexibility with online courses, advising that nonimmigrant students could maintain their status even if all of their courses were online, but that this did not apply to new students. On March 12, 2020, the Administration paused International Exchange Programs. The Bureau of Educational and Cultural Affairs suspended all remaining international exchange programs.

On July 24, 2020, ICE further clarified that new students would not be able to enter the United States to pursue a full course of study that is 100 percent online. In response to a lawsuit filed by Harvard and the Massachusetts Institute of Technology (MIT) challenging the policy, DHS on July 14 agreed to rescind it, reverting to the policy issued in March.

Travel Ban: United Kingdom and Ireland

On March 14, 2020, the Trump Administration banned all travel from the United Kingdom and Ireland. The President issued a proclamation banning the entry of foreign nationals, with significant exceptions, who were in the United Kingdom or Ireland during the 14 days preceding their intended entry to the United States. The State Department exempted people with student visas from this ban on July 16, 2020.
General Issues of Visa Processing, Restrictions, and Non-Immigrant Visas

**Visa Denials for Same-Sex Domestic Partners of Foreign Diplomats**
In July 2018, the administration began denying visas to same-sex domestic partners of foreign government officials and international organization personnel traveling to the United States. On October 1, 2018, same sex foreign domestic partners of diplomats based in the United States were given until December 31, 2018, to provide the State Department proof of marriage or leave the country.

**Visa Denials/Limits for L-1 Visas**
On November 15, 2018, the Administration changed the policy and set limits on the ability of foreign nationals to qualify for L-1 intracompany transferee visas if they have worked in the United States under a different visa status prior to their application for an L-1 visa.

**“Birth Tourism” Denials for B-2 Visas**
On January 24, 2020, the State Department issued a final regulation that attempts to prevent foreign nationals from coming to the United States to give birth, calling it “Birth Tourism”. The regulation explicitly states that coming into the United States strictly for the purpose of obtaining U.S. citizenship for a child by giving birth in the country, a practice dubbed “birth tourism,” is not a permissible purpose for a B-2 visa (for tourism, to visit family, and other non-business purposes). This gave special discretion to embassies abroad who review female visa applications to determine whether they are pregnant and supposedly have this intent in a blatant case of gender bias and gender discrimination policy.
General Issues of Visa Processing, Restrictions, and Non-Immigrant Visas

Visa Denials and Exceptions during COVID-19
On March 18, 2020, the State Department suspended routine visa services in most countries and, two days later, expanded this to all countries. Exception for H-2 visas was granted on March 26, 2020. Acknowledging H-2 visa holders as essential to the U.S. economy and food security, the State Department announced that despite the suspension of visa services, consulates and embassies would try to continue processing H-2A visas for agricultural workers and H-2B visas for nonagricultural workers. Exception was also granted for Medical Professionals.

Potential Limits on J Visas
The Administration has indicated it intends to publish a regulation that would make it harder for J visa holders (research scholars and other temporary exchange visitors) to stay in the United States. Certain J visa recipients, including those that receive government funding for research or study, must return to their home countries for two years before.

Changes to H-1B Visa Lottery
USCIS also made changes in the H1B visa lottery operation system, including redefining “specialty occupation,” redefining “employer-employee relationship,” and adding requirements to ensure that visa holders receive adequate wages, and rescission of work authorizations for (H4 visa) spouses of H1B visa holders who are in the country for a minimum of six years and on a path to obtaining a green card.

On July 13, 2020 - The State Department announced a phased resumption of routine visa services.
Changes at USCIS Processing Time

In its new Mission Statement issued on February 22, 2018, USCIS removed the phrase “nation of immigrants” and added a focus on protecting Americans.

Since April 2, 2018 when a USCIS document, such as a green card or employment authorization card, bounces back to USCIS because of a mailing issues, USCIS now only holds on to the document for 60 days before destroying it. Previously, the agency held on to such documents for up to one year.

In June 2020, USCIS ended its contract with a company that had printed green cards and employment authorization documents, and did not follow through with its plan to hire federal employees to take on this work due to budget issues, according to the agency. As a result of these changes there has been a reduction in printing green cards and employment authorization documents. As of July 22, 2020, the backlog has reached 115,000 unprocessed documents.

On July 15, 2020, USCIS updated its policy guidance for immigration officers encouraging them to deny immigration benefits to applicants who otherwise qualify, if the officer determines the applicant “does not merit a favorable exercise of discretion.” For many immigration benefits, including applications for lawful permanent residence and employment authorization documents, applicants must not only demonstrate eligibility, but also that they “possess positive discretionary factors.”

USCIS also slowed adjudications of all immigration benefit applications. A mix of changed policies, such as interviewing all employment-based applicants, and new vetting procedures have caused adjudications of immigration benefits applications to slow down significantly and extend the backlog.

USCIS is also dramatically increasing fees for filing most applications and changing the citizenship test. On November 14, 2019, USCIS published a proposed regulation that would increase fees for 39 immigration benefit applications. The fees would increase considerably and up to 83 percent for the cost of applying for U.S. citizenship. The fee increase is set for October 2, 2020. Creating a fee structure for filing asylum applications, which have not been subject to fees up till now are being proposed. The new rules would also limit many applicants’ eligibility for fee waivers and set stricter eligibility standards.

On July 9, 2019, USCIS announced its plan to update the nationalization test that applicants must pass to be granted U.S. citizenship. A naturalization test working group will announce an implementation date for the new test sometime around late 2020 or early 2021.
Census and Immigration

For over two years, the Administration has been attempting to collect information regarding citizenship status in the 2020 Decennial Census, but this attempt was halted by the Supreme Court after years of debate in the media. Despite the Supreme Court decision, on June 21, 2020, another plan was announced in the Census Executive Order to exclude undocumented immigrants from the 2020 Census by comparing immigrants to tourists.

Additionally, the Census Bureau has formally announced that the enumeration process will end on September 30, 2020, instead of October 31, 2020. This unfortunate decision will create many problems for organizations seeking to accomplish a complete and accurate count because the COVID-19 pandemic has created numerous problems that will now be exacerbated. Immigrant families, rural communities and other hard-to-count groups will be seriously under counted and states will be underfunded.