

IMPORTANT POLICIES

Title 42 - Section 265 of U.S. Code Title 42 permits the Director of the CDC to prohibit the introduction into the United States of individuals when the director believes that there is serious threat of communicable diseases being spread into the US

- ❖ Enacted March 20, 2020 under the Trump administration
- ❖ Continued by the Biden administration to date
- ❖ In agreement with the Mexican government in late March 2020, the Border Patrol began sending most Mexican, Guatemalan, Honduran, and Salvadoran families and single adults to Mexico
- ❖ Those subject to Title 42 who aren't sent to Mexico are held in U.S. Immigration and Customs Enforcement (ICE) or CBP detention and flown back to their home countries without opportunity to seek asylum
- ❖ Individuals who are expelled do not receive an order of deportation, but CBP collects their biometrics and records their contact with the agency
- ❖ August 2, 2021, the CDC replaced the October 2020 Order with a new order continuing Title 42 expulsions while exempting unaccompanied children
- ❖ Through the end of August 2021, the Border Patrol has carried out more than 1.13 million expulsions

Migrant Protection Protocol (MPP) - an immigration program initiated in January 2019 under the Trump administration that allows the US to return migrants from the US southern border to Mexico while their court proceedings are being processed

- ❖ Known as "Remain in Mexico" policy
- ❖ Most migrants in the program came to reside in large tent camps that left them exposed to the elements as well as to local organized crime in border cities like in Reynosa and Matamoros
- ❖ On June 1, 2021 the Biden administration's Secretary of Homeland Security issued a memorandum to terminate MPP citing humanitarian concerns
- ❖ August 13, 2021 U.S. District Court for the Northern District of Texas ruled in *Texas v. Biden* that the June 1, 2021, memo violated the Administrative Procedure Act and INA and ordered the Department of Homeland Security (DHS) to "enforce and implement MPP in good faith."
- ❖ October 29, 2021 the Secretary of Homeland Security issued another memorandum to terminate MPP as soon as the issuance of a final judicial decision on the Texas injunctive, though it is unclear when that will be
- ❖ December 6, 2021 DHS restarted MPP in accordance with the *Texas v. Biden* ruling
- ❖ MPP is being implemented in the seven ports of entry in San Diego, Calexico, Nogales, El Paso, Eagle Pass, Laredo, and Brownsville
- ❖ In an attempt to make the program more humane the Biden administration made several changes to the program's implementation:
 - a commitment that proceedings will generally be concluded within six months of an individual's initial return to Mexico
 - opportunities for enrollees to secure access to, and communicate with, counsel before and during non-refoulement interviews and immigration court hearings
 - improved non-refoulement procedures; and an increase in the amount and quality of information enrolled individuals receive about MPP
 - DHS will exclude particularly vulnerable individuals from being enrolled in MPP
 - DHS will provide COVID-19 vaccinations for all persons enrolled in MPP

REFUGEES

Refugee - someone who is unable or unwilling to return to their country because they fear persecution based on one or more of the following traits: race; religion; nationality; political opinion, or; membership in a specific social group.

- ❖ In 2020, the United Nations estimated there were 26.3 million refugees worldwide. That's the highest number of people fleeing conflict since World War II.
- ❖ Historically, the U.S. was a leader in accepting refugees, having resettled more than 3 million people over the last 50 years. But the number of refugees accepted per fiscal year—called the “refugee ceiling”—is set by the president, so it can vary dramatically.
- ❖ Former President Obama had set the ceiling at 110,000 people.
- ❖ Over the course of his term, former President Trump slashed that number to just 15,000, the lowest ceiling ever.

Refugee Resettlement - an extensive process with coordination from several government agencies and non-government organizations; supposed to take 18-24 months, but can take several years

Process Steps in order:

- ❖ United Nations Screening
 - The UN determines if an individual meets the definition of a refugee and collects biographic and biometric data; at this point their spouse or minor children and join them
- ❖ Residential Support Center “Prescreening”
 - USCIS collects biographic and biometric data again and conducts several security screenings; some nationalities require clearance from law enforcement agencies; those with the ages of 14-65 undergo additional security check by the National Counterterrorism Center
- ❖ Citizenship and Immigration Services (USCIS) Interview
 - a USCIS officer interviews the applicant to determine, again, if they are eligible for resettlement. If a family is seeking protection, then all adults are interviewed, but only one must be eligible to be considered for resettlement. In addition to meeting the definition of a refugee, the applicant must qualify according to one of the processing priorities listed below.
 - Priority 1: Cases that are identified and referred to the program by U.N, a U.S. Embassy, or a designated non-governmental organization
 - Priority 2: Groups of special humanitarian concern
 - Priority 3: Family reunification cases involving spouses, unmarried children under 21, and parents of persons lawfully admitted to the United States as refugees, asylees, permanent residents (green card holders) or U.S. citizens who previously had refugee or asylum status.
- ❖ Medical screening
 - to confirm they do not have any infectious disease; done by either the International Organization for Migration or a physician designated by a U.S. Embassy

- ❖ Resettlement through the Reception and Placement (R&P) Program - offers interest free loan for travel to US but must pay back six months upon arrival
 - There are currently nine resettlement agencies part of the R&P program, with 350 local affiliates located throughout the U.S.
 - Church World Service
 - World Relief
 - Hebrew Immigrant Aid Society (HIAS)
 - Episcopal Migration Ministries
 - International Rescue Committee
 - Ethiopian Community Development Council
 - Lutheran Immigration and Refugee Service
 - U.S. Committee for Refugees and Immigrants
 - United States Conference of Catholic Bishops
- ❖ Final Vetting by US Customs and Border Protection

Following Admission For Refugees

- ❖ Refugees are resettled in communities throughout the country
 - If a refugee has family members or friends in the U.S., the resettlement agency will make an effort to reunite them
 - If the refugee does not have family or friends in the U.S., they are placed where they "have the best opportunity for success," with employment and assistance from community services
- ❖ While assistance through the R&P program is only available to refugees for the first three months, refugees may seek additional assistance from the ORR
 - The ORR provides time-limited cash and medical assistance to arriving refugees along with
 - English classes
 - job readiness
 - employment services.
 - Benefits and services provided by ORR are available to refugees beyond the first eight months after their arrival
- ❖ All refugees are authorized to work in the U.S. upon their arrival
- ❖ After a year of being physically present in the U.S., refugees are required to apply for lawful permanent resident status ("green card")
- ❖ After five years as a green-card holder, refugees are eligible to apply for citizenship

ASYLUM SEEKERS

Asylum Seeker - a type of refugee who requests asylum, or protection, while already inside the U.S. or at a port of entry

Asylum Application

- ❖ Affirmative Asylum - application for asylum within 1 year of arrival in the US; individual cannot be in the process of being deported
 - Process:
 - Check - background check, fingerprinting, and "non adversarial interview with an asylum officer (supposed to happen within 45 days of the application but wait times have reportedly exceeded more than two years)
 - Can have attorney and witness, but are not provided any
 - Must be in English, if they do not speak english they must find their own interpreter
 - Unsuccessful applicants are placed in immigration court and removal proceedings; they can reapply, but through defensive asylum proceedings
- ❖ Defensive Asylum - application for asylum while in removal proceedings; can either be an individual who did not pass affirmative asylum or an individual apprehended by ICE or CBP in the US without valid documents
 - Process:
 - Credible Fear Interview
 - If a person expresses fear of returning home to CBP, they are referred to a "credible fear" interview to prove whether or not they will be tortured or persecuted if they are returned to their origin country
 - If their fear is determined credible then they are processed in immigration court through adversarial proceedings
 - If their fear is determined not credible then they are removed, however, they can attempt to repeal the decision
- ❖ Current Bars to Asylum
 - Bars to applying:
 - Failure to file within the one-year deadline
 - Previous denial of asylum
 - Ability to be removed to a safe third country under an Asylum Cooperative Agreement.
 - Bars to being granted asylum:
 - Incited, assisted, or participated in the persecution of any person based on their race, religion, nationality, political opinion, or membership in a particular social group
 - Was convicted of a "particularly serious crime," such as an aggravated felony
 - Is a danger to the security of the U.S.
 - Is believed to have committed a serious nonpolitical crime prior to their arrival
 - Was firmly resettled in another country prior to coming to the U.S.
 - Has engaged in, incited, supported, endorsed, or received military retraining related to terrorism, terrorist groups, or terrorist activity

- Is a spouse or child of an individual who inadmissible under the previous grounds

DACA

Deferred Action for Childhood Arrivals (DACA) - a program that allows Dreamers to legally live and work in the U.S., but it is not a pathway to citizenship and must be renewed with USCIS regularly

- ❖ "Dreamers" are DACA recipients
- ❖ Renewal requirements:
 - a \$495 filing fee
 - Proof that they have continuously resided in the U.S. since submitting their most recently approved DACA request
 - Proof that they have not left the U.S. without permission on or after August 15, 2012
 - Have not been convicted of a felony, a significant misdemeanor, or three lesser misdemeanors,
 - Do not pose a threat to national security or public safety
- ❖ Created to protect young, undocumented immigrants from deportation or being entered into removal proceedings
- ❖ As of June 2021, the U.S. Citizenship and Immigration Services reported that there are 590,070 DACA recipients in the U.S. with active cases
- ❖ Estimated 1.3 million DACA-eligible individuals in the country, not including those with active cases
- ❖ DACA eligibility includes:
 - Under the age of 31 as of June 15, 2012
 - Came to the U.S. before their 16th birthday
 - Have lived in the U.S. continuously since June 15, 2007
 - Were physically present in the U.S. on June 15, 2012, and at the time they requested DACA
 - Had no lawful status on June 15, 2012
 - Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States
 - Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not pose a threat to national security or public safety

History of policy

- ❖ Created June 15, 2012
- ❖ December 2014, the Obama administration announced the expansion of the program and the implementation of the Deferred Action for Parents of Americans (DAPA) program
- ❖ In response Texas along with 25 other states issued a lawsuit to block the administration's efforts
- ❖ In 2016, the case, Texas v. United States, went to the U.S. Supreme Court and ended in a 4-4 deadlock.
- ❖ DAPA was not allowed to move forward following the Supreme Court ruling and the DHS officially rescinded the program in June 2017
- ❖ September 5, 2017, the Trump administration announced they would end the DACA program, claiming its creation was an unconstitutional overreach of executive power. This decision sparked more than 10 lawsuits and three injunctions blocking the termination of the program in California, New York, and the District of Columbia
- ❖ May 2018, Texas filed a lawsuit in the Southern District of Texas to end DACA, joined by nine other states: Alabama, Arkansas, Louisiana, Nebraska, South Carolina, West Virginia, Kansas, Mississippi, Maine. The case is ongoing
- ❖ June 2019, the Supreme Court agreed to review the three injunctions by California, New York and the District of Columbia
- ❖ June 2020, Supreme Court ruled the program should continue, stating that while the DHS has the power to remove the program, it must do so through the correct avenues
- ❖ July 2020, the Department of Homeland Security announced that no new Dreamers were to be accepted and that current Dreamers would have to renew their status every year instead of biennially
- ❖ December 2020, a federal judge ordered for the program to be fully restored, overriding the new restrictions

US IMMIGRATION AGENCIES

Agencies Break Down

- ❖ The Department of Homeland Security (DHS) - oversees all immigration enforcement actions, which can be divided into border security and interior enforcement.
 - Border security operated by:
 - Customs and Border Protection (CBP)
 - U.S. Border Patrol (USBP) - mobile arm of CBP
 - Interior enforcement operated by:
 - Immigration and Customs Enforcement (ICE)
- ❖ The Department of Justice (DOJ) - oversees the US immigration court system

Department of Homeland Security

- ❖ Relatively new, created post 9/11 through unification of the numerous organizations responsible for homeland security
- ❖ Homeland Security Act of 2002 created DHS, ICE, and CBP, although many of the functions these agencies carry out were already being performed
- ❖ USBP was first established in 1924 with the purpose of securing the U.S. border between inspection stations, but it became a part of CBP in 2003
- ❖ Since the DHS's creation, its immigration enforcement operations have cost an estimated \$381 billion
- ❖ In just 18 years, the budgets for ICE and CBP have nearly tripled, spiking from \$9.2 billion in 2003 to \$26 billion for 2021
- ❖ Representing only two of the 22 agencies within DHS, for fiscal year 2020, the combined budget for ICE and CBP accounted for nearly 30 percent of DHS's total annual budget

U.S. Customs and Border Protection (CBP)

- ❖ CBP officers are stationed at ports of entry and determine whether an individual is admissible for entry. They also conduct inspections and collect data on individuals denied entry
- ❖ About 25,000 CBP officers are stationed in the nation's 328 land, air, and seaports of entry
- ❖ USBP agents patrol the border and apprehend individuals inside the U.S. who are found to be unauthorized within a 100-mile zone
- ❖ About 20,000 USBP agents operate along its 7,000 miles of international border

U.S. Immigration and Customs Enforcement (ICE)

- ❖ Conducts immigration enforcement, also known as interior enforcement, beyond the 100-mile jurisdiction of USBP
- ❖ Employs about 20,000 agents in its various operations but can also enlist state and local law enforcement agencies
- ❖ ICE ostensibly target "priority" migrants who have committed a crime, but because the relevant crimes include using public benefits and being in the country unlawfully, this category actually includes almost 75 percent of undocumented migrants in the U.S.
- ❖ During raids, ICE agents can conduct "collateral" arrests, or the arrest of individuals who are not priorities but are present at the scene of the raid
- ❖ Under a 2011 memo, agents are not to conduct arrests, interviews, searches, or surveillance for the purpose of immigration enforcement at locations including:
 - School
 - Hospitals
 - Churches, synagogues, mosques, or other institutions of worship
 - The site of a funeral, wedding, or other public religious ceremony
 - The site of a public demonstration (march, rally, or parade)

Immigration Detention

- ❖ DHS operates the world's largest detention system, with more than 200 immigration detention centers
- ❖ Individuals are placed in ICE detention after apprehension by either ICE or CBP. They may be placed into one of five detention facilities.
 - Facilities owned by ICE that generally have contracted staff
 - Detention facilities owned by private prison companies
 - City or county jails that reserve space for individuals held in ICE custody
 - Facilities owned by local governments for the sole purpose of housing ICE detainees
 - Local government-owned facilities that detain individuals in ICE custody and those being held by U.S. Marshals Service
- ❖ Standards for detainment
 - CBP must comply with the Flores Settlement of 1997 and the Trafficking Protection Reauthorization Act
 - For all non-dedicated ICE facilities, or facilities whose sole purpose isn't for immigration detention, they are subjected to ICE's National Detention Standards, published in 2000 and revised in 2019
 - For dedicated facilities, or facilities who only hold individuals in ICE custody, they are subject to the Performance-Based National Detention Standards (PBNDS) which were first issued in 2008 and then revised in 2011
 - ICE's family detention centers must have their own set of standards, the Family Residential Standards

Immigration Court

- ❖ Made up of 67 immigration courts, 460 immigration judges, and the Board of Immigration Appeals
- ❖ Immigration judges are DOJ employees and can be hired, fired, or transferred by the Attorney General, unlike federal judges
- ❖ Detainees can end up in immigration court two ways: if they applied for asylum through the affirmative process but are denied, or if they were apprehended and applied through the defensive asylum process
- ❖ All defensive asylum cases are heard by an immigration judge in adversarial (courtroom-like) proceedings. The court proceedings pit the U.S. government, which is represented by an attorney from ICE, against the detainee, who, unlike in the U.S. legal system, is not provided with an attorney
- ❖ The immigration judge decides whether the applicant is eligible for asylum. If the immigration judge finds that the applicant is ineligible, they will determine whether the applicant is eligible for another form of relief. If they are ineligible for asylum and for other forms of relief, the judge will order the applicant to be removed. A decision can be appealed by either party.
- ❖ As of February 2021, the current backlog in immigration court is nearly 1.3 million cases, with an average waiting period of more than 900 day