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Legal Sidebar

Recent White House Actions on Immigration

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Since taking office on January 20, 2025, President Trump and his Administration have issued numerous executive actions and initiatives related to the enforcement of federal immigration laws. These actions address a range of issues, including the suspension of entry of aliens at the southern border, the processing of applicants for admission, border security, refugee admissions, immigration enforcement in the interior of the United States, public safety and national security, citizenship under the Fourteenth Amendment of the U.S. Constitution, and other topics. Some actions reinstate previous policies and initiatives that were implemented during the first Trump Administration. This Legal Sidebar provides a brief overview of select executive actions and directives related to immigration that have been issued to date.

Presidential Proclamation Restricting Entry into the United States in Response to an "Invasion"

On January 20, 2025, President Trump issued the presidential proclamation "Guaranteeing the States Protection Against Invasion." The proclamation directs the federal government to take measures to "fulfill its obligations to the States" under Article IV, Section 4, of the Constitution, commonly referred to as the "Guarantee Clause" or the "Invasion Clause." The clause provides, "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." Invoking the Guarantee Clause and the President's independent constitutional authority, along with authorities delegated by immigration statute, the proclamation contains a mixture of specific actions and general directives.

Section 1 of the proclamation suspends the entry into the United States of "aliens engaged in the invasion across the southern border" until "a finding that the invasion at the southern border has ceased." This entry restriction relies on authorities conferred under 8 U.S.C. § 1182(f), which authorizes the President by proclamation to suspend the entry of any aliens or classes of aliens whose entry he finds "would be detrimental to the United States," and 8 U.S.C. § 1185(a), which among other things prohibits an alien from entering or attempting to enter the United States except under such rules as the President may prescribe. In addition, Section 4 of the proclamation, which does not invoke a specific statutory authority, directs that immigration authorities prevent covered aliens' *physical* entry into the United States. For covered aliens found within the United States, Section 2 of the proclamation provides that they "are

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restricted from invoking provisions" of federal immigration law, including those related to asylum eligibility, that would "permit their continued presence in the United States."

In addition to the aforementioned restrictions targeting "aliens engaged in the invasion across the southern border," the proclamation separately invokes 8 U.S.C. §§ 1182(f) and 1185(a) to suspend the entry of "any alien who fails, before entering the United States, to provide Federal officials with sufficient medical information and reliable criminal history and background information" to enable a determination as to whether the alien falls under any of the statutory grounds for inadmissibility relating to health, criminal activity, or national security. The proclamation also restricts these persons from obtaining asylum or other relief that would enable them to remain in the United States.

The proclamation directs the Secretary of the Department of Homeland Security (DHS), in coordination with the Secretary of State and Attorney General, to take "all appropriate action to repel, repatriate, or remove any alien engaged in invasion across the southern border of the United States." Pursuant to the proclamation, the Acting Secretary of DHS issued "Finding of Mass Influx of Aliens" on January 23, 2025, and invoked 28 C.F.R. § 65.83 to "request assistance from a State or local government in the administration of the immigration laws of the United States' under certain specified circumstances." The Acting Secretary found that "there exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents of all 50 States and that an actual or imminent mass influx of aliens is arriving at the southern border of the United States and presents urgent circumstances requiring an immediate federal response."

The proclamation's invocation of the Guarantee Clause as a source of authority for restricting alien entry and relief from removal is legally untested. During the 1990s, several states brought suit alleging that the federal government's failure to prevent an influx of aliens crossing the international border breached the federal government's constitutional duty to protect against "invasion" under the Guarantee Clause. Lower courts generally rejected such claims as raising a non-reviewable political question. Some courts—including the U.S. Courts of Appeals for the Second, Third, and Ninth Circuits—concluded that, even if a Guarantee Clause claim is subject to judicial review, the constitutional provision applies only in the context of an "armed hostility from another political entity, such as another state or foreign country that is intending to overthrow the state's government." Accordingly, a court reviewing a challenge to the suspension of physical entry under the proclamation may likely consider, first, whether the claim is justiciable and, second, whether aliens arriving to the United States may constitute an "invasion" for purposes of Article IV, Section 4.

The proclamation's reliance on statutory authorities to suspend legal entry of aliens seems to rest on legal arguments that courts have explored more frequently, though challenges may still arise. The Supreme Court has interpreted the President's delegated authority under § 1182(f) broadly, and Presidents have invoked this authority in a variety of contexts to suspend the entry of certain classes of aliens. Lower courts have grappled with questions over § 1182(f)'s application, including when or whether invocation of § 1182(f) authority supersedes or conflicts with other statutory provisions and the degree to which domestic interests may inform the President's decision to invoke that authority.

Processing Applicants for Admission

On January 20, 2025, President Trump issued an executive order entitled "Securing Our Borders." The order, among other things, directs the Secretary of DHS to "take all appropriate actions to detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States" and to terminate a long-standing policy of releasing into the country certain aliens who are found by immigration authorities to pose no security threat or flight risk and whose continued detention is determined not to be in the public interest. President Trump also ordered the Secretary of DHS (in coordination with the Secretary of State and the Attorney General) to resume a

policy previously instituted during the first Trump Administration known as the Migrant Protection Protocols (MPP). Under the MPP, certain individuals arriving at the southern border who were seeking asylum or other forms of relief or protection were required to return to Mexico while U.S. immigration courts adjudicated their cases in formal removal proceedings.

The executive order also directs the Secretary of DHS to cease using a mobile application developed during the Biden Administration known as "CBP One" to allow aliens who lack legal authorization to enter the United States to schedule appointments for their inspection at ports of entry along the southern border. President Trump also ordered the termination of existing "categorical parole programs," including the Biden Administration's special parole processes for nationals of Cuba, Haiti, Nicaragua, and Venezuela that permitted them to enter and remain in the United States temporarily if they had U.S. financial sponsors. Additionally, President Trump directed the Secretary of State (in coordination with the Attorney General and Secretary of DHS) to "take all appropriate action to facilitate additional international cooperation and agreements," including agreements authorizing transfer of asylum seekers to safe third countries for consideration of their claims.

On January 21, 2025, DHS announced a series of actions in response to the executive order. These actions include (1) the immediate reinstatement of the MPP (reportedly, the government of Mexico has not agreed to accept non-Mexican nationals who would be returned under the MPP at this time), (2) the removal of the scheduling functionality of the CBP One app, and (3) a new policy that "ends the broad abuse of humanitarian parole and returns the program to a case-by-case basis." A January 23, 2025, DHS memorandum provides direction to agency components regarding the review of the status and possible removal of aliens granted parole under any categorical parole program terminated by the Administration.

It is possible that these changes may be challenged in court. During the first Trump Administration, a federal district court ruled in *S.A. v. Trump* that the termination of a parole program for certain children from El Salvador, Guatemala, and Honduras violated the Administrative Procedure Act because, in the court's view, DHS acted arbitrarily and capriciously by failing to consider the "serious reliance interests" of aliens granted conditional approvals of parole at the time of the termination. A potential legal challenge to DHS's more recent parole program terminations may similarly require courts to consider whether the agency's actions violate federal law and also whether a plaintiff would have standing to challenge the agency's exercise of parole authority.

With respect to the MPP, 8 U.S.C. § 1225(b)(2)(C) provides that the Secretary of DHS "may return" inadmissible aliens placed directly into formal removal proceedings to "a foreign territory contiguous to the United States" pending adjudication if the alien is "arriving on land" from that territory. In 2019, a federal district court ruled in *Innovation Law Lab v. Nielsen* that DHS lacked authority to implement the MPP because the agency's return authority found in § 1225(b)(2)(C) could not be applied to aliens encountered at the border who would ordinarily be subject to expedited removal procedures. In 2020, the Ninth Circuit affirmed the district court's preliminary injunction barring DHS's implementation of the MPP. The Supreme Court, however, granted the government's request to stay the preliminary injunction pending the Court's review of the case, thereby allowing DHS to continue the MPP. Ultimately, the Biden Administration rescinded the MPP, rendering the legal challenge to the MPP moot. The Trump Administration's reinstatement of the MPP may prompt new consideration of these issues.

Border Security

On January 20, 2025, President Trump issued a proclamation declaring a national emergency at the southern border under the authority vested by the Constitution and federal statute, including under the National Emergencies Act (NEA). The proclamation invokes emergency powers codified in 10 U.S.C. §§ 12302 and 2808 to authorize the Department of Defense to support border operations and construction projects. The proclamation directs the use of "units or members of the Armed Forces, including the Ready

Reserve and the National Guard," to provide support—including detention space, transportation, and the construction of additional physical barriers—along the southern border.

In a separate January 20, 2025, executive order, "Clarifying the Military's Role in Protecting the Territorial Integrity of the United States," President Trump, among other things, ordered the Secretary of Defense to submit a revised "Unified Command Plan" tasking U.S. Northern Command with "the mission to seal the borders and maintain the sovereignty, territorial integrity, and security of the United States by repelling forms of invasion including unlawful mass migration, narcotics trafficking, human smuggling and trafficking, and other criminal activities."

Additionally, in his "Securing Our Borders" executive order, President Trump instructed the Secretary of Defense and the Secretary of DHS "to deploy and construct temporary and permanent physical barriers to ensure complete operational control of the southern border of the United States" and "to deploy sufficient personnel along the southern border of the United States to ensure complete operational control." The President also ordered the Secretary of DHS "to supplement available personnel to secure the southern border and enforce the immigration laws of the United States" pursuant to existing statutory authority.

The President's authority to invoke the NEA to reprogram military funds for border barrier construction has been the subject of litigation. During his first Administration, President Trump declared a national emergency at the southern border under the NEA and invoked the same statutory authorities cited in the January 20, 2025, executive order to enable the use of the military to support border operations and construction projects. In *El Paso County, Texas v. Trump*, a federal district court in 2019 held that the use of military funds to build a border wall was inconsistent with funding restrictions contained in the Consolidated Appropriations Act, 2019. On appeal, the U.S. Court of Appeals for the Fifth Circuit in 2020 ruled that the plaintiffs lacked standing to challenge the federal government's border wall expenditures. Conversely, in *Sierra Club v. Trump*, the Ninth Circuit held that a different group of plaintiffs had standing to challenge the border wall construction and affirmed a district court's determination that the construction did not fall within the scope of the government's emergency construction authority under 10 U.S.C. § 2808. The Supreme Court initially agreed to review the *Sierra Club* case but later vacated the Ninth Circuit's decision on mootness grounds after President Biden in 2021 terminated the national emergency and ordered an immediate pause to the border wall construction.

Refugee Admissions

Through an executive order signed on January 20, 2025, "Realigning the United States Refugee Admissions Program," President Trump suspended the entry of refugees under the U.S. Refugee Admissions Program for at least 90 days pending a review of "whether resumption of the entry of refugees into the United States under the program would be in the interests of the United States" (subject to certain exceptions, including discretionary admissions of certain aliens as refugees "on a case-by-case basis"). The restriction invokes the President's authority under 8 U.S.C. §§ 1182(f) and 1185(a), discussed above, to suspend the entry of aliens when he determines that such entry would be "detrimental to the United States." This suspension went into effect on January 27, 2025. Further, President Trump ordered officials to consult with states and localities before resettling refugees in those jurisdictions.

Interior Immigration Enforcement

On January 20, 2025, President Trump issued an executive order, "Protecting the American People Against Invasion," revoking several Biden Administration executive orders related to immigration enforcement policies and priorities and stipulating that "it is the policy of the United States to faithfully execute the immigration laws against all inadmissible and removal aliens, particularly those aliens who threaten the safety or security of the American people." The executive order directs DHS officials to

implement new civil enforcement priorities and to prioritize enforcing final orders of removal and immigration law provisions related to the illegal entry and unlawful presence of aliens in the United States. The executive order also directs the Attorney General, Secretary of State, and DHS Secretary to prioritize prosecuting criminal offenses relating to the unauthorized entry and presence of aliens in the United States. The order directs all unregistered aliens to comply with the registration obligations under 8 U.S.C. § 1302 and aliens who fail to do so to be categorized as enforcement priorities.

The executive order also calls for expanding the use of expedited removal "to the fullest extent authorized by Congress." Individuals who are subject to expedited removal bypass administrative removal proceedings and the opportunity to present their cases in front of immigration judges. The order would potentially make expedited removal available for use in removing any alien found to have been physically present in the country for less than two years if that alien either did not obtain valid entry documents or procured admission through fraud or misrepresentation. This reflects a return to the expansive expedited removal policy adopted by the first Trump Administration in 2019. The Biden Administration had rescinded this policy, reverting back to the pre–Trump Administration application of expedited removal to individuals apprehended within 100 miles of the border and within 14 days of entering the United States.

The executive order also directs the DHS Secretary to expand detention facilities and to ensure that aliens arrested for violating immigration laws are placed in detention facilities while awaiting the outcome of their removal proceedings and their removal from the country. In addition, the order directs the DHS Secretary to take necessary action, under 8 U.S.C. § 1357(g), to authorize state and local officials to perform the functions of immigration officers under the supervision of the DHS Secretary. This includes authorization, through agreements known as "287(g) agreements," for state and local officials to perform functions similar to immigration officers in relation to "investigation, apprehension, and detention of aliens in the United States."

The order directs federal authorities to facilitate and encourage unlawfully present aliens to voluntarily depart the country as soon as possible and instructs the DHS Secretary and Secretary of State to implement any necessary sanctions under 8 U.S.C. § 1253(d) to ensure that foreign states accept their nationals who are removed from the United States.

The executive order includes a provision that seeks to limit access of federal funds to "sanctuary jurisdictions"—a term not defined by the order but frequently used in reference to state or local jurisdictions that opt not to cooperate with federal immigration enforcement efforts. The order directs the DHS Secretary and Attorney General to "evaluate and undertake any other lawful actions, civil or criminal," against any jurisdiction that interferes with the enforcement of federal immigration law. The order further instructs the DHS Secretary to issue guidance to ensure compliance with 8 U.S.C. §§ 1373 and 1644, which generally prevent states and localities from restricting their officers from sharing certain immigration-related information with the federal government.

Many of the initiatives announced in the executive order seem likely to prompt litigation when implemented. For example, the U.S. Court of Appeals for the D.C. Circuit previously upheld an expedited removal policy similar to the one contained in the executive order. The court considered only whether the expansion was consistent with the governing statute; the court did not address the plaintiff's arguments that expedited removal procedures were constitutionally deficient when applied to persons living in the United States. It is also possible that legal challenges might be brought if federal agencies implementing the order deny "sanctuary jurisdictions" access to federal funding without clear statutory authorization to do so. Multiple lower courts rejected an effort by the first Trump Administration to condition a state or local government's eligibility for certain federal grants upon its cooperation with federal immigration enforcement efforts.

Public Safety and National Security

On January 20, 2025, President Trump issued an executive order entitled "Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists." The order identifies certain international cartels and other transnational organizations, including the Tren de Aragua and Mara Salvatrucha (MS-13) gangs, as national security threats and declares a national emergency under the International Emergency Economic Powers Act to address those threats. The order also directs the Secretary of State (in consultation with other agency heads) to recommend the designation of any cartel or other transnational organization as a Foreign Terrorist Organization pursuant to 8 U.S.C. § 1189 and/or a Specially Designated Global Terrorist pursuant to 50 U.S.C. § 1702 and Executive Order 13224. The January 20, 2025, order also directs the Attorney General and Secretary of DHS (in consultation with the Secretary of State) to make preparations for any future presidential order that invokes the Alien Enemy Act to address "any qualifying invasion or predatory incursion against the territory of the United States," including the preparation of facilities used to expedite the removal of aliens designated under that order.

In a separate January 20, 2025, executive order, "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats," President Trump directed the Secretary of State (in consultation with the Attorney General, Secretary of DHS, and director of national intelligence) to adopt enhanced vetting and screening procedures for aliens seeking admission to the United States or applying for immigration benefits, including those who are already present in the United States. The President, among other things, also directed the Secretary of State, Attorney General, Secretary of DHS, and director of national intelligence to jointly submit a report that identifies countries that have deficient vetting information that warrants suspending the entry of nationals of those countries under 8 U.S.C. § 1182(f) (discussed above) and the number of nationals from those countries who have entered the United States since January 20, 2021.

Additionally, in another January 20, 2025, executive order, "Restoring the Death Penalty and Protecting Public Safety," President Trump, among other things, ordered the Attorney General to pursue the death penalty for all federal "crimes of severity demanding its use" and, in particular, for every federal capital crime committed by an unlawfully present alien.

Citizenship Under the Fourteenth Amendment

The principle of "birthright citizenship" derives from the Fourteenth Amendment to the Constitution and complementary statutes and regulations. Section 1 of the Fourteenth Amendment provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Since the Supreme Court's decision in the 1898 case *United States v. Wong Kim Ark*, the predominant legal view has been that all persons born in the United States are constitutionally guaranteed citizenship at birth unless their parents are foreign diplomats, members of occupying foreign forces, or members of recognized Indian tribes. Some legal scholars have argued, however, that "subject to the jurisdiction thereof" in the Fourteenth Amendment's Citizenship Clause requires "something in addition to mere birth on U.S. soil."

On January 20, 2025, President Trump issued "Protecting the Meaning and Value of American Citizenship," an executive order addressing eligibility for U.S. citizenship at birth. The order declares that the Fourteenth Amendment "has always excluded from birthright citizenship persons who were born in the United States but not 'subject to the jurisdiction thereof.'" It further declares that birthright citizenship does not extend to a person born in the United States "(1) when that person's mother was unlawfully present in the United States and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) when that person's mother's presence in the United States was lawful but temporary, and that person's father was not a United States citizen or lawful permanent

resident at the time of said person's birth." "Mother" is defined in the order to mean "immediate female progenitor," and "father" is defined as "immediate male biological progenitor."

Through the executive order, President Trump directed federal departments and agencies to decline to issue documents recognizing U.S. citizenship for these individuals or to accept documents issued by state, local, or other government entities "purporting to recognize U.S. citizenship" of persons covered by the executive order. The executive order provides that this provision applies to persons who are born within the United States more than 30 days after the date of order's issuance.

Several lawsuits have been filed challenging the executive order, arguing that it conflicts with the constitutional guarantees of the Fourteenth Amendment and federal law. The U.S. District Court for the Western District of Washington issued a temporary restraining order on January 23, 2024, blocking the policy from going into effect nationwide. The district court reasoned that there is a strong likelihood that the executive order violates the Fourteenth Amendment and federal statute.

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