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President Trump and Migration at 3

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Abstract

Candidate Trump made reducing unauthorized migration a central theme of his campaign in 2015 and 2016 (Martin, 2017a). Soon after taking office, Trump issued executive orders that instructed the Department of Homeland Security to build a wall on the Mexico-US border, increase deportations, and reduce refugee admissions (Martin, 2017b). Immigration systems are like supertankers, hard to turn around quickly, but President Trump has in three years developed a restrictionist migration policy aimed at reducing unauthorised migration and asylum seeking. Even though Trump's businesses employ low-skilled guest workers, there have been no major changes to the H-2A and H-2B guest worker programs.

Keywords: *Trump; USA; immigration; unauthorised; migration policy.*

Walls, Deportations, and Refugees

As President Trump approaches three years in office, what are his major effects on immigration? After taking office in January 2017, Trump issued executive orders to fulfil three campaign promises, ordering the DHS to plan for the construction of a wall on the Mexico-US border, to reduce the stock of 11 million unauthorised migrants in the US with more deportations, and to reduce refugee admissions overall and from particular countries, the so-called Muslim ban (Martin, 2017b).

Despite court injunctions that blocked the implementation of parts of these orders, there has been action on Trump's three priorities (Wadhia, 2019). Fences and barriers on the Mexico-US border are being repaired, replaced, and expanded, but only a third of the 2,000 mile border has major pedestrian and vehicle barriers after three years, about the same as when Trump took office. Trump has been unable to get Mexico "to pay for the wall," and Congress refused to appropriate the funds for the wall requested by Trump, leading to the longest partial government shutdown in modern history, when nine of the 15 federal agencies closed for 35 days in December 2018-January 2019.

Trump promised an additional 450 miles of border wall before the November 2020 election, which would mean barriers on over half of the Mexico-US border.² In February 2019, Trump declared a national emergency and moved over \$6 billion from the military and other sources to build and repair fences and barriers on the Mexico-US border. This emergency declaration was challenged in the courts and Congress, but the US Supreme Court intervened to allow DHS to continue to build and repair border barriers in areas with the most illegal crossing, often constructing two parallel fences thirty feet high that

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² Congress appropriated \$1.375 billion for border barriers for FY20. Customs and Border Protection (CBP) Acting Commissioner Mark Morgan predicted in December 2020 that 450 additional miles of border barriers would be built by the end of 2020. <https://cis.org/Transcript/Conversation-Customs-Border-Protection-Mark-Morgan>



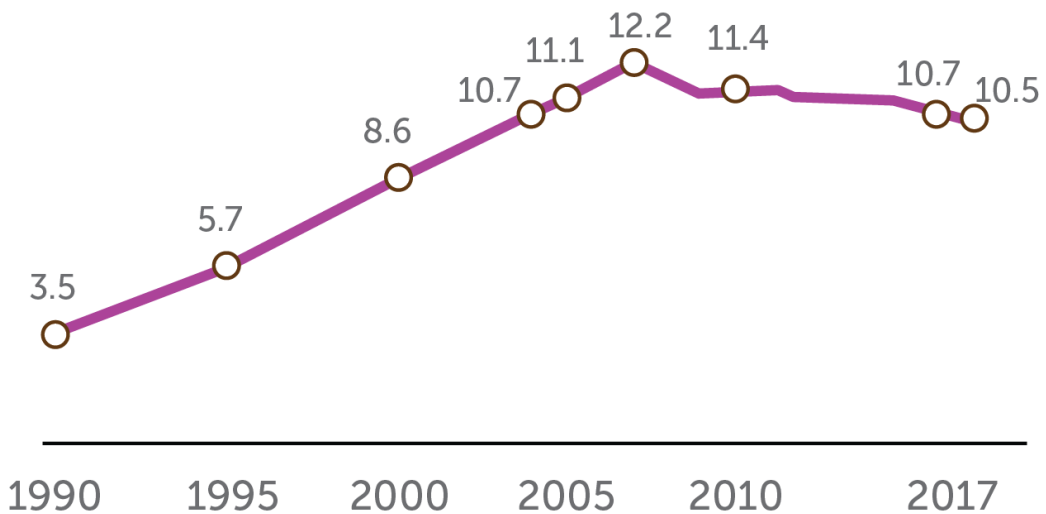
rely on six-inch square bollards to prevent entries, tubes with a rebar core filled with concrete for the first 10 feet.³

Critics of border barriers emphasise their high cost, \$20 million per mile, and the ease with which reciprocating saws can cut through and bend the bollards enough for migrants to squeeze through.⁴ Supporters believe that border barriers have both practical and symbolic value to deter illegal entry and to highlight the public safety dangers of immigration (Pierce, 2019).

There were an estimated 10.5 million unauthorised migrants in the US in 2017, down from a peak 12.2 million in 2007 (Figure 1). The 5.5 million non-Mexican unauthorised migrants outnumbered the 4.9 million unauthorised Mexicans in 2017, the first time that non-Mexicans outnumbered Mexicans among the unauthorised.

Figure 1. Unauthorised Migrants, 1990-2017

In millions



Source: Passel and Cohn, 2019

Candidate and President Trump promised to deport “millions” of unauthorised migrants, beginning with the two to three million foreigners convicted of US crimes and those with final orders of deportation, meaning that a judge ordered the migrant to leave the US but the migrant did not depart. Some 256,000 migrants were deported in FY18, down from the peak 435,000 in FY13 but up from less than 50,000 a year in the 1990s (Figure 2). Most of those deported were not convicted of US crimes, and many were intercepted by the Border Patrol just inside the US border with Mexico.

³ www.nytimes.com/2019/12/10/us/border-wall-texas-judge-injunction.html

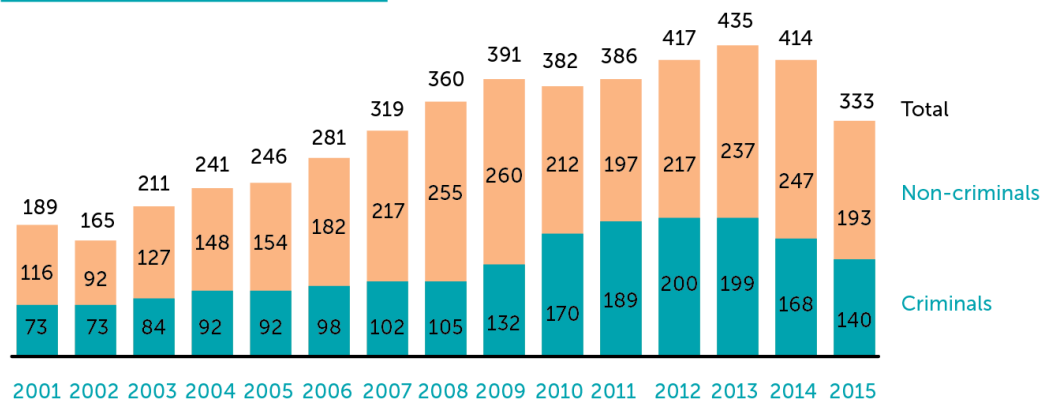
⁴ Some \$9.8 billion is allocated to build 500 miles of new border barriers before the end of 2020, about \$20 million a mile. The New York Times reported that one mile of new barriers was being erected every three days in South Texas in November 2019 <https://www.nytimes.com/2019/11/08/us/border-wall-texas.html>



Figure 2. Deportations or Removals, 2001-18

U.S. deportations of immigrants decline for second year in a row

In thousands, by fiscal year



Source: Data for 2001-2004 come from U.S. Department of Homeland Security, Yearbook of Immigration Statistics: 2010. Data for 2005 to 2014 come from U.S. Department of Homeland Security, Yearbook of Immigration Statistics: 2014. Data for 2015 come from U.S. Department of Homeland Security, Yearbook of Immigration Statistics: 2015.
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Source: Passel and Cohn, 2019

The increase in deportations under President Obama was linked to the 2007-13 Secure Communities program, which enlisted many of the 3,141 state, county, and local police agencies to provide DHS's Immigration and Customs Enforcement agency with the fingerprints of all persons arrested. This enabled ICE to identify suspected unauthorised migrants and to request that state and local prisons and jails hold them until ICE agents take them into custody.

Obama was accused by migrant advocates of being “deporter-in-chief” as removals climbed. DHS ended Secure Communities in 2013 and prioritised the removal of recent unauthorised entrants and migrants convicted of US crimes. Secure Communities was revived under President Trump, and all unauthorised foreigners are considered priorities for removal, prompting some states and cities to declare themselves to be “sanctuaries” for unauthorised migrants and to refuse to share information or to detain migrants for ICE unless they committed violent crimes. In several cases, migrants released from state and local custody in sanctuary areas committed new crimes.⁵

ICE wants state and local police to hold suspected unauthorised migrants as they complete their sentences in prisons and jails so that ICE agents do not have to go into communities to find them, which ICE says increases the chances that other unauthorised migrants will be encountered and detained. Disputes between sanctuary jurisdictions and the Trump administration have become routine, as federal agencies try to penalise jurisdictions that do not cooperate with ICE (Pierce, 2019).

The president proposes a quota of refugees who can be resettled in the US each year, and the federal government provides grants to NGOs to help these newcomers to find jobs and become self-sufficient.

⁵ One case highlighted by candidate Trump involved Kate Steinle, killed in July 2015 by unauthorized Mexican José Inez García Zárate, who had been deported from the US five times but returned after each deportation. San Francisco's county jail released García Zárate in April 2015 without notifying ICE. A San Francisco jury acquitted García Zárate of murder and manslaughter charges, but convicted him of being a felon in possession of a firearm.

Trump reduced the number of refugees admitted from over 80,000 a year to a planned maximum 18,000 in FY20, the lowest quota since the Refugee Act of 1980 was enacted. Trump believes that migrants from particular countries pose security risks, and the US Supreme Court in June 2018 ruled that Trump has the authority to ban from the US arrivals from six countries: Iran, Libya, North Korea, Somalia, Syria, and Yemen.

Labour and Guest Workers

ICE enforces laws against employers who hire unauthorised migrants. ICE agents in August 2019 inspected the workers employed at seven poultry processing plants near Canton, Mississippi. Some 680 unauthorised workers were arrested in the largest workplace raid since December 2006, when almost 1,300 workers were arrested at six Swift beef and pork processing plants (Rural Migration News, 2007).⁶

Critics argue that workplace raids penalise unauthorised workers but not employers. The workers, many with US-born children, are detained and unable to care for their families, while few employers are charged with hiring unauthorised workers. In FY19, ICE arrested 40 employers, down from 72 in FY18. ICE says that its "worksites enforcement strategy focuses on the criminal prosecution of employers who knowingly hire illegal workers," but acknowledges that it is often difficult for the government to prove that employers knowingly hired unauthorised workers.

ICE agents audit the I-9 forms completed by newly hired workers and their employers to verify the worker's legal status. If worker-submitted identification documents do not match the data in government databases, employers must inform suspect workers and ask them to correct their records or face termination. Workers who cannot prove they are authorised to work often quit, which can result in the worker moving to another employer rather than leaving the US. This circulation of unauthorised workers is criticised by migrant advocates who note that migrants must often start over at the bottom with a new employer, and restrictionists who want unauthorised workers removed from the US. ICE's Homeland Security Investigations unit opened 6,812 new workplace cases in FY19, up from 1,701 during FY16.⁷

One goal of border and interior enforcement is to prevent unauthorised migrants from getting US jobs and displacing US workers or depressing their wages. US spending on border and interior immigration enforcement topped \$24 billion in FY18, far more than the \$18 billion spent by other federal anti-crime agencies such as the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Bureau of Alcohol Tobacco, Firearms and Explosives, and twelve times more than the \$2 billion spent by the federal government on labour standards enforcement. There are 79,000 federal employees involved in immigration enforcement, compared to 10,000 in labour law enforcement (Costa, 2019).

Trump in April 2017 issued a Buy American and Hire American executive order that ordered federal agencies to study existing guest worker programs and to implement changes "to protect the interests of US workers ... including through the prevention of fraud or abuse." The US has three major guest worker programs, including the H-1B program that admits at least 85,000 migrants a year with at a college degree to fill US jobs requiring such degrees, an unlimited number of H-2A visas for foreign workers to fill seasonal farm jobs, and 66,000 H-2B visas a year to fill seasonal nonfarm jobs. Other migrants with F-1 student, J-1 cultural exchange, and L-1, intra-corporate transfer visas, also work in the US.

⁶ Some 1,282 unauthorised workers were arrested December 12, 2006, including 170 who were accused of identity theft; they used valid Social Security numbers belonging to other people to get jobs. Both Swift and the United Food and Commercial Workers International Union, which represented workers at five of the six plants, denounced the raids. Brazilian meatpacker JBS bought Swift in July 2007 for \$1.5 billion.

⁷ www.ice.gov/features/worksites-enforcement



Trump pledged to “crackdown” on abuse in the H-1B program, which was created in 1990 to allow employers to easily hire foreign college graduates to fill US jobs that require college degrees. Most employers are not required to try to recruit US workers before requesting visas for H-1B workers,⁸ and most may lawfully lay off US workers and replace them with H-1B migrants, as firms such as Disney and Southern California Edison did when they replaced their employees with IT outsourcers that relied largely on Indian workers with H-1B visas.⁹ H-1B visas are valid for three years and can be renewed, so there are an estimated 500,000 workers with H-1B visas in the US (Costa and Rosenbaum, 2017).

For-profit employers applied for 190,000 H-1B visas for FY19, twice the 85,000 quota (there is no quota on H-1B visas for nonprofits). Firms such as Microsoft want the quota to be increased, but advocates of more H-1B visas have been unwilling to accept more protections for US workers, blocking Congressional action to raise the quota. DOL approves almost all employer requests for H-1B workers, but DHS’s USCIS agency in 2018 and 2019 began to request more evidence from employers, asking them to explain why, if a particular job is skilled as required for the H-1B program, a low wage is being offered to the H-1B worker.

Over 20 per cent of first-time applications for H-1B visas were rejected by USCIS in FY19, as were 10 per cent of requests to renew H-1B visas (NFAP, 2019). About 20 firms, led by IT outsourcers such as Infosys and Tata who take over a firm's technology work, receive a third of H-1B visas. Outsourcer applications for H-1B visas are receiving more scrutiny, with DHS asking outsourcers to prove that they have work for the H-1B workers by naming all the businesses where the worker will be employed over the visa’s entire three-year period, one reason for more rejections.

Some 2.5 million new H-1B visas were issued between 1990 and 2017. Almost two-thirds are for IT occupations, and two-thirds go to Indians. The average salary of H-1B visa holders in 2016 was \$90,000, about the same as the average \$88,000 for all workers in computer-related occupations, but H-1B workers in IT are more likely than US IT workers to have advanced degrees.

The H-2A and H-2B programs admit low-skilled workers to fill seasonal farm and nonfarm jobs, respectively. Between 1996 and 2017, the number of US-born workers 25 and older with less than a high-school diploma declined by almost four million, while the number of foreign-born workers with less than a high-school diploma increased by almost two million (Orrenius et al., 2019). Even though Trump-owned businesses employ H-2A and H-2B guest workers, there have *not* been any major changes to the H-2A and H-2B guest worker programs, a disappointment for employers who expected Trump to make it easier for them to hire low-skilled guest workers (Martin, 2019).

The H-2A program has expanded significantly.¹⁰ Some 258,000 farm jobs were certified to be filled with H-2A workers in FY19, up from less than 50,000 in FY05 (Figure 3). The top five H-2A states, Florida, Georgia, Washington, California, and North Carolina, accounted for over half of the H-2A jobs certified. Growth in H-2A jobs certified may slow if labour-saving mechanisation is adopted or imports increase, and may increase if the federal government makes it easier for farmers to employ H-2A workers.

⁸ H-1B-dependent employers, those with 15 percent or more H-1B visa holders in their workforce, have since 1998 been required to try to recruit US workers before receiving permission to hire more H-1B migrants. They are exempt from this recruit-US-workers requirement if they pay H-1B workers at least \$60,000 a year.

⁹ Disney World in 2015 lawfully laid off US workers and replaced them with H-1B workers provided by an outsourcer, and required the US workers to train their replacements in order to receive severance pay. Candidate Trump condemned Disney World’s actions.

¹⁰ Some authors (Portes, 2020) mistakenly use DHS admissions data as an indicator of the number of H-2A workers. US employers of H-2A workers must offer them free housing, but some Mexican H-2A workers elect to live in Mexico and commute daily to farm jobs in border areas. Each daily entry is recorded as an H-2A admission, so that a single worker can generate 100+ entries during the winter vegetable harvest on the Mexico-US border.

DOL proposed regulations in July 2019 that would allow employers to post job offers online rather than in newspapers and to modify procedures for establishing the Adverse Effect Wage Rate, the minimum wage that must be paid to H-2A workers and US workers employed with them. California's AEWR was almost \$14 an hour in 2019 when the state's minimum wage was \$12. Proposed revisions to the AEWR would allow employers to specify the job title of each H-2A worker requested, which would likely raise the AEWR of equipment operators and reduce the AEWR of the general crop workers who are 90 per cent of H-2A workers (Rural Migration News, 2019).

The House in December 2019 approved HR 5038, the Farm Workforce Modernization Act (FWMA), by a vote of 260-165. HR 5038 would legalise currently unauthorised farmworkers, further streamline the H-2A program, and require farm employers to use E-Verify to check newly hired workers. Almost all Democrats supported the FWMA, while three-fourths of Republicans opposed the bill.

The FWMA would allow unauthorised farmworkers who did at least 180 days of farm work in previous 24 months to apply for Certified Agricultural Worker (CAW) status, which would provide the CAW worker and his/her dependents with renewable 5.5-year work permits good for employment in any industry. CAW workers could receive immigrant visas if they continued to do farm work and paid a \$1,000 fine. After the CAW legalisation program is implemented, farm employers must use E-Verify to check the status of new hires.

The H-2A program would be modified to allow three-year visas rather than the current maximum 10-month visas, although there is an exemption from the 10-month limit for shepherders who may generally remain in the US for three years. H-2A workers who complete a contract with one farmer, but have time remaining on their three-year visas, could remain in the US up to 45 days to find a new employer who has been certified to hire H-2A workers.

AEWRs of \$11 to \$15 an hour in 2019 would be frozen under HR 5038, set on the basis of specific job categories, with annual increases generally limited to 3.25 per cent through 2030. Under HR 5038, H-2A workers could be employed in year-round farm jobs, such as in dairies.

Congress has allowed DHS to increase the number of H-2B visas on an ad hoc basis each year, adding up to 15,000 H-2B visas in FY17 and FY18 for US businesses that would suffer "irreparable harm" without H-2B guest workers. An additional 30,000 H-2B visas were available in FY19 to such US businesses, and they could be granted to foreigners who previously held H-2B visas.

Employers must complete I-9 forms when hiring workers, a procedure that involves newly hired workers presenting work-authorization documents and employers reviewing them; both new hires and employers sign the I-9 form to confirm that documents were presented and reviewed. Employers may submit the information provided by newly hired workers to E-Verify, a voluntary internet system that informs the employer whether the worker-supplied information matches government records. Employers are to inform suspect workers of non-matches and give suspect workers time to correct their government records, although most suspect workers quit.

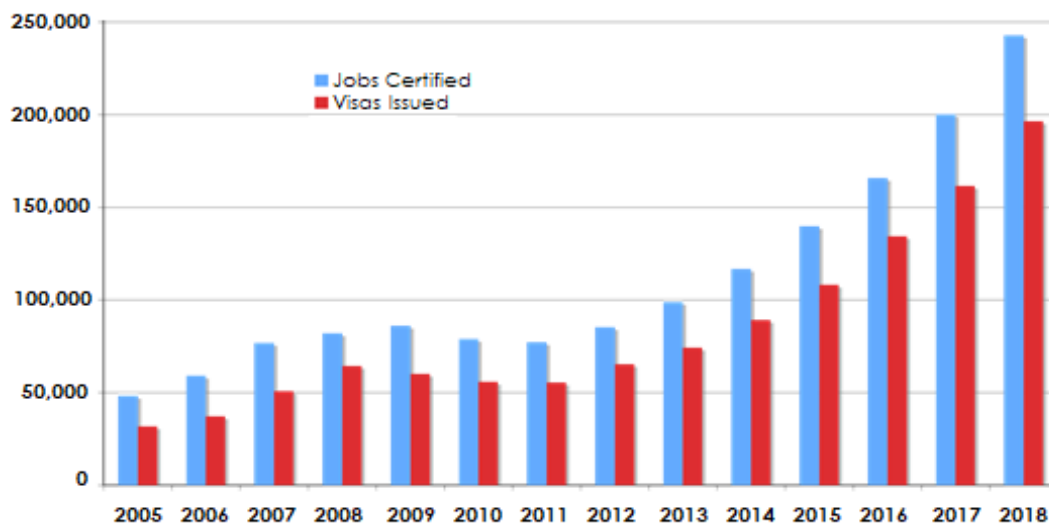
Federal contractors must use E-Verify to check new hires, and some states require all employers to use E-Verify. However, the major states with unauthorised workers, including California and New York, do not require employers to use E-Verify, so employers can say that they saw worker-provided authorisation documents that appeared to be genuine when completing I-9 forms.

Beginning in July 2018, the Social Security Administration revived no-match letters that inform employers that the information they provided when reporting worker earnings and income tax deductions does not match government records. No-match letters do not prove that the worker is unauthorized since



the cause could be a marriage and name change, but they put the employer on notice that the worker may be unauthorised.¹¹

Figure 3. H-2A Jobs Certified and Visas Issued, 2005-18



Source: US Departments of Labor and State

Central Americans

There were few Central Americans in the US until the 1990s when civil wars sent many to the US. Nicaraguans fleeing a regime opposed by the US were recognised as refugees, while Salvadorans fleeing a government supported by the US were not. By 2000, most Central Americans in the US were legal immigrants or received renewable Temporary Protected Status that included work permits, which allowed them to form or unite families in the US.¹²

Some Central Americans in the US formed gangs, especially the notorious MS-13 Salvadoran gang known for its brutality. Some gang members were deported, where they overwhelmed local police and gave the northern triangle countries of El Salvador, Guatemala, and Honduras some of the world's highest murder rates. Beginning in 2014, ever-larger numbers of Central Americans travelled through Mexico and applied for asylum at the US border, citing gang violence in their countries of origin.

The Flores settlement between migrant advocates and the US government in 1997, and modified several times since limits the detention of unauthorised children under 18 to 20 days. This means that adults who arrive with children and apply for asylum are usually released into the US with their children until a judge can decide whether they face persecution at home. Over 80 per cent of Central American asylum applications are rejected but, with over a million cases pending in US immigration courts, Central

¹¹ No-match letters were suspended between 2012 and 2018.

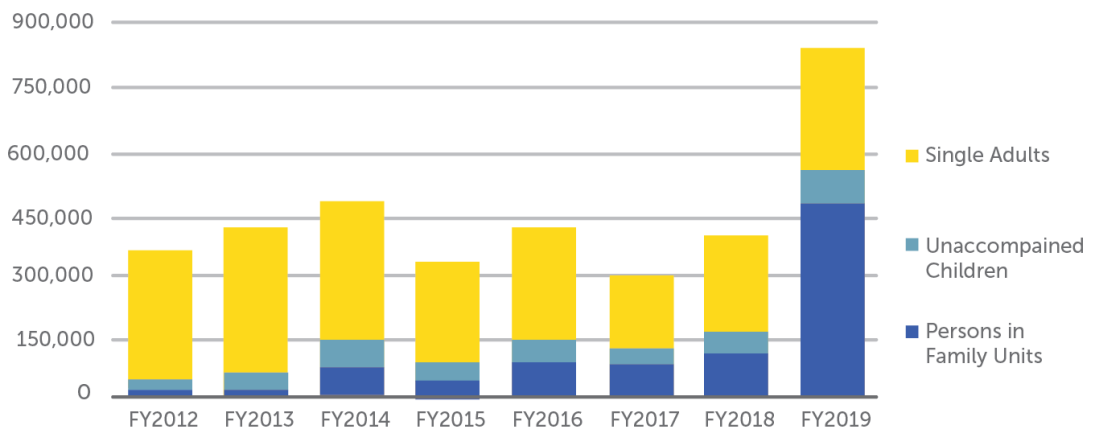
¹² When Trump took office, some 320,000 migrants from 10 countries had TPS. The TPS status of migrants from several countries was cancelled by DHS, but a federal judge in October 2018 temporarily blocked the withdrawal of TPS from 263,000 Salvadorans, 59,000 Haitians, 5,000 Nicaraguans and 1,000 Sudanese, citing President Trump's "animus against nonwhite, non-European immigrants" that led the judge to believe that race may have been "a motivating factor" for DHS withdrawing TPS from nationals of these four countries. DHS has temporarily extended TPS for these groups.

American families can often stay legally in the US several years. While they wait for hearings, adults can receive work permits and their children can attend US schools.

DHS in May-June 2018 tried to close the door to extended US stays for Central American asylum seekers by separating at least 4,300 children from their parents and prosecuting their parents for unauthorised entry.¹³ Some parents were deported without their children; litigation and a public outcry forced the DHS to end this child-separation policy (Pierce, 2019).

Apprehensions of adults with children, and of unaccompanied children, surged in 2019 as especially Guatemalans and Hondurans set out for the US before it was “too late.” Most of those apprehended just inside the US border with Mexico in FY19 were Central American family units or solo children, a marked change from solo Mexican men who previously dominated among those apprehended.

Figure 4. Apprehensions of Families and Solo Children, FY12-FY19



Source: Singer and Kandel, 2019

The Trump Administration took several steps to try to stop the influx of Central Americans. First, Attorney General Sessions in June 2018 instructed immigration judges that persons fleeing domestic or gang violence could not normally receive refugee status in the US, which is limited to those who face persecution at home due to race, religion, nationality, political opinion, or membership in a particular social group.

Second, DHS implemented a metering policy on the Mexico-US border that allows only 50 migrants a day to apply for asylum at particular ports of entry. Over 55,000 migrants who entered the US at ports of entry and applied for asylum and are now waiting in Mexico until an immigration judge can decide their case, the Migration Protection Protocols or Wait in Mexico program. DHS wants to detain families who arrive illegally with children in family detention centers to end the so-called catch-and-release policy of intercepting families and releasing them into the US until they appear before immigration judges.

Third, Trump in summer 2019 threatened Mexico with tariffs, and Northern Triangle countries with the suspension of foreign aid, if they did not do more to discourage the exit and transit of Central

¹³ www.wsj.com/articles/dhs-couldnt-track-how-many-immigrant-children-it-separated-from-families-report-says-11574881242?mod=hp_lead_pos2



American asylum seekers to the US. In response, Mexico stepped up enforcement on its southern border with Guatemala, and Guatemala and El Salvador agreed to become safe third countries for migrants passing through them, meaning that a Honduran or other foreigner transiting Guatemala en route to the US would be required to apply for asylum there rather than in the US.

Reshaping Migration

Trump's first three years of migration policy making have had several major impacts. First, Trump proved willing to use the threat of government shutdowns at home, and tariffs and the suspension of foreign aid abroad, to achieve his goals of building barriers on the Mexico-US border and slowing the influx of Central American asylum seekers.

Second, many of Trump's migration policy changes were challenged in the courts, where judges often issued injunctions to block them, as with efforts to end DACA, to penalise sanctuary states and cities, and to check migrants seeking immigrant visas more carefully to ensure they are not likely to become "public charges" dependent on US welfare. Trump may eventually prevail and implement these changes if the US Supreme Court upholds the president's authority to make them.

Third, Trump has reduced refugee admissions and entries from particular countries in ways that may make it hard to increase them quickly, since the refugee resettlement ecosystem that depends on federal funds is shrinking. Closer scrutiny of student and other visa applications from particular countries has blocked some entries and discouraged some migrants from seeking to visit the US.

Some migration patterns have not changed. Since Trump took office, legal immigration has continued at 1.1 million a year, including two-thirds who are sponsored by family members already in the US. There are fears that some of the 700,000 family immigrants a year could have their applications for visas rejected if regulations are enforced to deny visas to persons who could become a "public charge" because they are or could become dependent on federal welfare and are unable to provide proof of US health insurance.

Border apprehensions of 851,000 in FY19, over 2,300 a day, obscure the fact that much has changed on the Mexico-US border. The 20,000 Border Patrol agents are the most ever, and there are more barriers and cameras than ever before to detect and deter unauthorised entries. Instead of solo Mexican men seeking to elude the Border Patrol in order to work seasonally in US agriculture, most unauthorised border crossers are Central American families who seek out Border Patrol agents to apply for asylum.

Migration policy represents one of the sharpest differences between Democratic and Republican candidates for president in 2020. Most major Democratic candidates want to decriminalise illegal entry, making such entries misdemeanours that can lead to fines rather than felonies that can lead to prison. Democrats have endorsed legalisation for unauthorised migrants, especially DACA youth and those with US-born children or other US roots, and most Democratic candidates for their party's presidential nomination would allow all US residents, including unauthorised migrants, to participate in their proposed universal health care programs.

Trump, on the other hand, is likely to emphasise the dangers of unauthorised entries and to continue to call for a border wall and more enforcement to detect and remove unauthorised migrants. Trump opposes legalisation for most unauthorised migrants in the US and wants to reorient legal immigration away from low-skilled family unification and toward high-skilled migrants selected via a point system that rewards applicants for youth, education, knowledge of English, and a US job offer.

As a nation of immigrants, immigration is favoured by most Americans and the major political parties. Most major immigration reforms of the past three decades were bipartisan, as Democratic and Republican leaders agreed that immigration that allows newcomers to enrich themselves and the US is

in the national interest. Changes within each party have made Republicans more restrictionist and Democrats more admissionist, eroding the bipartisan consensus on migration. This growing polarisation is likely to lead to chants of “build the wall” at Republican rallies and “abolish ICE” at Democratic rallies, perhaps marking a new era in US immigration.

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