

# **TRUMP'S LEGACY IN MIGRATION POLICY AND POSTPANDEMIC CHALLENGES FOR BIDEN**

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## INTRODUCTION

This book belongs to the analytical tradition of comparison and prospective of U.S. presidents' first three months in office, which has been conducted by the media and academics for almost a century. The tradition of analyzing the first hundred days began in 1933 with Franklin D. Roosevelt, in an attempt to measure the New Deal's effectiveness at alleviating poverty and improving finances.

At the beginning of 2021, many universities, think tanks, and international scholars organized research seminars and articles on the topic of Joe Biden's first actions on migration policy, but few have turned their reflections into policy papers and much less into collective volumes such as this one. In particular, among other institutions, the University of Illinois, the Migration Policy Institute, and the Zolberg Institute have conducted research on this issue.

Most of the U.S. media have continued the tradition of analyzing presidential success, comparing campaign promises with early actions. In the first three months, "a new president is usually still popular with the public, and lawmakers often have incentives to cooperate with a new leader, creating opportunities for a president to pass major legislation" (Kelly, 2021). For this reason, the first hundred days is a media catchphrase that may be translated into a useful period of analysis. In media research as well as in the social sciences, we use prospective techniques based on political speeches and initial executive orders that may serve as early warning signals for presidential policies in the United States and elsewhere.

Biden's first actions should be interpreted in historical context. In what follows, we briefly analyze some of the most relevant executive initiatives in terms of the history of migration to the United States and the personal priorities that motivated U.S. presidents to support bills in Congress, sign executive orders, or create new migration policies during their administrations.

Franklin D. Roosevelt created the Bracero program through a bilateral agreement in 1942 amid anticipation of a labor shortage during World War II. The Bracero program provided contracts for Mexican agricultural workers in the United States until 1964. After Roosevelt's sudden death, Harry Truman focused on the final battles of World War II, with Germany's surrender occurring less than one month after he assumed the presidency. In such a context, migrants were not a state priority. Subsequent administrations included different approaches to migration, but they always sought to maximize the economic utility of migrant workers in a restrictive system that carefully selected migrants based on their abilities, or at times for humanitarian reasons. Dwight Eisenhower (1953-1961) was worried about the Soviet Union and how to end the Korean War. After the World War II, there was a growing flow of unauthorized migrants coming from Mexico. Eisenhower established the famous Operation Wetback in 1954 to apprehend and deport migrants quickly.

The following president, John F. Kennedy, is remembered for the disastrous Bay of Pigs invasion of Cuba, as well as for creating the Cuban Refugee Program in 1962. His successor Lyndon B. Johnson was anxious to pass civil rights legislation, and he supported the Immigration Act of 1965, which replaced a system that explicitly discriminated against immigrants who were not from the Western Hemisphere with one that provided for an equal number of immigrant visas for each country. Johnson paid special attention to family reunification, and this significantly benefited migrants from Mexico.

Richard Nixon prioritized an agreement with Cambodia in 1969, but he also launched Operation Intercept to force Mexico to collaborate more with drug control operations. Gerald Ford pardoned Nixon for the crimes he committed, and he paid special attention to the political turmoil in Southeast Asia. As the Vietnam War was slowing, Ford supported the Indochina Migration and Refugee Act (Abrams, 2021). The next president, Jimmy Carter, promised to end America's dependence on foreign oil and signed the Refugee Act of 1980, which raised quotas for refugees and provided them with residence and work permits (Verea, 2005). Ronald Reagan promoted an agenda of tax and spending cuts. During his second term he supported the Immigration Reform and Control Act (IRCA) of 1986.<sup>1</sup>

<sup>1</sup> IRCA legalized around three million undocumented migrants, approximately two million of whom were Mexican. It also included an employer sanction for those who knowingly hired undocumented persons, which has been very laxly applied since then.

George H. W. Bush's first hundred days as president were largely a continuation of the policies of the Reagan presidency, but he approved the Immigration Act of 1990 and incentivized a better educated and more skilled migrant labor pool.<sup>2</sup> During Bill Clinton's first hundred days the debate was over gays in the military and health care. The North American Free Trade Agreement went into effect in 1994. Clinton established Operation Gatekeeper in California; Blockade and Hold the Line in Texas and New Mexico; and Safeguard in Arizona, as part of the new border reinforcement policy he gradually put into place. He also approved the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, which controlled irregular migration more severely, reduced access to welfare programs, and abolished the deportation hearing procedure. Simultaneously, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was approved, prohibiting certain social benefits even for legal immigrants.

During the twenty-first century, George W. Bush's major legislative proposals involved tax cuts and education reform. In response to September 11, 2001, he made border security a top priority by reviewing the guidelines for immigration policy. Congress passed the Homeland Security Act of 2002, which overhauled the organization of the federal government's immigration functions mainly to strengthen border surveillance. He created the Department of Homeland Security as part of a major project called National Strategy for Territorial Security. Bush also promoted the U.S.A. Patriot Act to control terrorists, unauthorized immigrants, drug traffickers, and money laundering, along with the Enhanced Border Security and Visa Entry Reform Act (EBSVERA) of 2002 (Verea, 2014).

Barack Obama's first hundred days in office were dominated by the economic crisis, so he was compelled to establish economic stimulus programs. During his first administration, the Obamacare program demanded a lot of attention and energy, leaving aside the long-promised comprehensive immigration reform. Obama used an "enforcement only" approach—with congressionally approved resources—similar to, or even more severe than, those applied by the Clinton and Bush administrations. Thus, by achieving the

<sup>2</sup> With complex formulas, limits were set on the categories for family reunification, establishing priorities for the most immediate relatives: children and parents. The proportion of employment-based visas increased by 70 percent—from 54,000 to 140,000—granted to highly trained professionals with advanced academic degrees as well as investors.

most reinforced and guarded border, President Barak Obama was also known as “deporter-in-chief.” In his two terms in office, he deported over 2.7 million undocumented immigrants, which is more than the approximately 2 million who were deported during George W. Bush’s two-term presidency. The Deferred Action for Childhood Arrivals program (DACA), created in June 2012, was Obama’s response to the refusal of the House of Representatives—which had a Republican majority—to pass comprehensive immigration reform (Verea, 2014). Obama extended the Secure Communities Program, initiated by Bush in 2008, which targets undocumented criminals by allowing local law enforcement to share data with the Immigration and Customs Enforcement agency, a very controversial program that eroded trust within local communities.

Donald Trump applied an unprecedented hardline stance on immigration during his presidency. Starting with the 2016 presidential race, he used destructive and violent anti-immigrant rhetoric to justify the establishment of highly punitive directives, multiple executive orders, and federal regulations. His main objective was to enhance border security through the acceleration of apprehensions and deportations, and interior enforcement. Trump ended Temporary Protected Status (TPS) and suspended DACA. He imposed a travel ban, mainly for Muslims, limited refugee admissions, established an asylum ban, and restrained legal immigration, among other measures. Furthermore, the COVID-19 pandemic gave him the excuse to increase apprehensions, separate families, abandon migrants and asylum seekers in Mexican border towns, and end the right to asylum in order to “protect” the border. Trump ordered broad shut-downs of the legal immigration system, including applications for permanent residence, blocking the entry of a range of temporary foreign workers, and temporarily closing offices that process immigration applications.

In the middle of a terrible COVID-19 pandemic, Biden took office on January 20, 2021, a time with a high number of deaths in the United States. A media content analysis of his first months in power, issued by Argentino, et al. (2021) revealed “a number of common narratives under which previously distinct groups have begun to converge, including anti-government ideologies, COVID conspiracy theories, election misinformation, racism, antisemitism, misogyny and transphobia.”

Despite this context of political unrest that included an assault on the Capitol, Biden brought the United States back into the World Health Orga-

nization and the Paris Agreement on climate change, and ordered the use of masks in the White House and on federal properties. Biden implemented a rescue plan, started to revoke several of Trump's anti-immigrant measures, and dealt with an increasing flow of asylum seekers and undocumented migrants at the U.S.-Mexico border. He declared that science would be at the core of his decisions, as opposed to his predecessor, Donald Trump, who inspired more mistrust than cooperation with scientific institutions. By his hundredth day, Biden managed to secure an average approval rating of 53.8 percent, compared to just 42 percent for Trump, according to a study by Seddiq et al. (2021) for Business Insider.

In his first hundred days, Biden has signed fewer executive orders than other presidents, but cancelled the Muslim travel ban and promoted economic rescue measures in a context of global pandemic. In symbolic terms, one of his major challenges was to restore the U.S. image abroad and attract investors. Compared to Obama, he is believed to be in a better situation, at least in terms of the financial crisis (Tepper, 2021).

At beginning of his term in January 2021, Biden was portrayed by the international media as a decent president who tried to re-humanize migrants and reestablish national honor by restoring the asylum system. His personal image was enhanced by his wife's efforts to rescue migrants and his commitment to reopening legal paths for Central American migrants and asylum seekers. He promised to put an end to discriminatory deportations and protect migrant children by reuniting them with their families.

As time went on, he was accused of a self-inflicted migration crisis, because there was a perception of friendlier circumstances and better opportunities to migrate, and "a catch-and-release" political game that increased the number of migrants and displaced people in the informal camps along the Mexican side of the border. Biden's humanitarian discourse showed his limitations as part of a system that is not, and has not been, prepared to take in a great number of migrants and refugees.

There are important discursive differences in Biden's approach to migration when compared to Donald Trump: Biden promotes more justice for migrants as "essential workers" in a pandemic context, the final outcome of his migrant friendlier stance may in fact be limited by strict federal management of immigration laws, previously characterized as "the machinery" of the U.S. immigration system (Meissner et al., 2013).



Based on Pécoud's recent classification of migration governance (2021a: 103), we believe Biden may combine at least four types of governance: first, he takes migration to be a matter of state sovereignty; second, he tries to control migration in an environment that Pécoud is theorizing as a global governance of forced immobility that exploits migrant labor; third, Biden has a friendly discourse on human rights governance. Finally, there is cooperation between the state and companies for managerial/developmental global migration governance, aimed at optimizing the utility of existing migration flows, especially undocumented ones.

The image of the United States as a gatekeeper state, repeatedly reinforced during Trump's presidency, provides a dim perspective for what Biden may have to offer in terms of a change. The United States has withdrawn from the negotiations for the Global Compact for Migration and the Global Compact for Refugees (GCM and GCR, respectively) since 2017, and even tried to convince other countries to do the same, based on arguments of sovereignty and lack of consistency with U.S. immigration policies and principles (Margesson, 2021; Pantuliano et al., 2021).

Even when the GCM has been severely criticized for its normative limitations regarding what should be done to govern migration (Pécoud, 2021a), especially due to its non-binding role, the U.S. absence from the agreement reveals a lot about its position in opposition to the ideal that migration should be managed in a more orderly way. In fact, Pécoud (2021a: 18) even believes that cooperation and migration serve very different purposes: "Western states [. . .] work with sending and transit countries to externalize border control and implement strategies of remote control (Zaiotti, 2016); this entails cooperation, but towards an objective –the surveillance of human mobility– that is not exactly what the GCM advocates: [...] the GCM calls rather for 'facilitating' migration" (Pécoud, 2021a: 18). From this perspective, it comes as no surprise that the United States, a country with a long history of restrictive migration policy, has withdrawn from the compacts.

Despite arguments that U.S. participation in the GCM and GCR may enhance leadership in global migration affairs, the Biden administration has not yet made a statement regarding the possible return of the United States to these agreements, as it has done with other accords such as the climate change agreement. Reports from international think tanks such as the Overseas Development Institute (ODI) have urged Biden to adopt the GCM. The ODI Report

assesses that the return of the United States “would encourage other states to follow suit, like Switzerland, Italy and others who have been on the fence about the GCM, pointing to their own short-term domestic political pressures” (Pantuliano et al., 2021). These actions would complement other more positive initiatives such as the cancellation of the travel ban, a more friendly discursive approach to Central American migrant children and several pathways to reinstate the asylum system ruined by Biden’s predecessor.

According to Pécoud’s abstract model (2021b: 106), U.S. migration policy, both under Trump and Biden, is part of a “global anti-migrant governance system” that tries to control large flows from poor to rich countries by enhancing border control and border externalization, and expelling unwanted migrants. As the chapters included in this book will analyze, most migrants are unaware of the political maneuvers used to manage migration, becoming victims of an economic system that exploits labor at the expense of human rights.

In this respect, it is pertinent to recall a previous argument by Carens (2013: 226), stating that “citizenship in Western democracies is the modern equivalent of feudal class privilege—an inherited status that greatly increases one’s life chances.” In this way, citizens from Latin American countries may be interpreted as second-class citizens (equivalent to peasants in the Middle Ages, according to Carens’s metaphorical comparison) knocking at the door of more privileged nations such as the United States.

## **Book Genesis and Structure**

At the end of 2020, we decided to organize a multidisciplinary seminar that would bring together scholars who analyzed the anti-immigrant policy Donald Trump left as a legacy and the challenges Joe Biden has faced as president since January 2021. We invited academics from Argentina, Chile, Mexico, and the United States to present innovative interpretations of U.S. migration policies in the context of the reorganization caused by presidential succession. The chapters included in this book were initially presented in the seminar organized by the Center for Research on North America, National Autonomous University of Mexico (Centro de Investigaciones sobre América del Norte, Universidad Nacional Autónoma de México [CISAN-UNAM]) on May 19, 2021.

In general terms, our collective work explores the historically asymmetrical relations that the United States has had with Central America and Mexico, and that may be reproduced in terms of migration cooperation under President Joe Biden. One of our objectives is to culturally translate U.S. tradition into a more regional reading of what Biden has achieved for migrants in general, and Latin Americans in particular, in his first three months as president. The book is based on two complementary types of logic: a comparative one (Biden vs. previous presidents, and in particular, Biden vs. Trump) and a prospective analysis (what next?) that allows for a constructive critique and policy proposals.

The book is divided into two main parts, with three chapters each: a) general implications of migration policy changes and ideological perspectives in the United States; and b) specific anti-immigrant policies in the following areas: *DACA*, asylum policies, public services, and imaginaries.

In the opening chapter, “The Legacy of Trump’s Anti-Immigrant Agenda: Actions and Challenges for Biden,” Mónica Vereá illustrates how Trump adopted an unprecedented hardline stance on immigration during his presidency, which toughened U.S. immigration policy. The destructive anti-immigrant rhetoric he used following his presidential campaign was the common denominator employed to justify the imposition of his anti-immigrant policies, achieved through establishing highly punitive directives, multiple executive orders and federal regulations. His main objective was to enhance border security through the acceleration of apprehensions and deportations, and interior enforcement. He ended the *TPS* granted by previous administrations and suspended *DACA*. He imposed a travel ban aimed mainly at Muslims. He also limited refugee admissions, established an asylum ban, and limited legal migration, among other actions. Furthermore, the *COVID-19* pandemic gave President Trump an excuse to increase apprehensions, separating families, and abandoning migrants and asylum seekers in Mexican border towns, effectively ending the right of asylum in order to “protect” the border. He was responsible for a shutdown of the legal immigration system, thereby affecting some applicants for permanent residence and blocking the entry of a range of temporary foreign workers, by temporarily closing offices that process immigration applications. President Biden promised that in the first hundred days of his presidency he would send proposals to Congress for sweeping immigration reform and relief for *DACA* beneficiaries. This created high expectations

among many citizens, organizations, and, in particular, undocumented migrants and their families, which are carefully analyzed throughout this essay.

The second chapter of the book, “As Luck Would Have It: Immigration Policy and Opportunistic Behavior in U.S. Border Bureaucracies,” by Tony Payan, examines the bureaucratic behavior of recent U.S. administrations and the consequences this has had on immigration policies. Payan builds on the relationship between the field environment created by an elected principal (political leadership) and enacted by the supervisor (political appointee) and the interpretation of such an environment by the collective agent (a bureaucracy) as an opportunity to advance its organizational interests. This results in a collusion between principal, supervisor, and agent, with the last of these aligning his or her behavior with politicians and supervisors, engaging in noxious behavior to advance its organizational interests (Vafai, 2010), even well after the supervisor and the principal are gone. When this occurs, this behavioral alignment represents a kind of group opportunism, where bureaucracies know that the field environment may change and move quickly to assert their organizational interests, regardless of the consequences for public life. Payan focuses on the dynamics of immigration policy under the Trump administration as a case study in these opportunistic bureaucratic dynamics, at the expense of good policy, a dearth of accountability, and even abuse of power and authority to the point of cruel field behavior. In this regard, the author examines the behavior of Customs and Border Protection, the Border Patrol, and Immigration and Customs Enforcement in search of signs that the theory of opportunistic behavior can help explain what happened in the area of immigration policy between 2017 and 2021.

The third chapter, “Friends on Other Continents: Representations of Biden’s Migration Diplomacy Outside the Americas,” by Camelia Tigau, analyzes the media representations of Biden’s executive actions on migration during his first three months in power, including his actions to promote the United States as a welcoming country and a leader in attracting talent. It is based on a combined pragmatic analysis of Biden’s speeches compared to the political context and media representations in regions other than the Americas: Asia, Europe, and the Middle East. Tigau claims that the actions undertaken by Joe Biden in his first three months as president were an attempt to reposition the United States as a multilateral partner and to deprovincialize the American perspective on immigration. The article finds that

at the beginning of his term, Biden sought not only to promote his country as a moral, cultural, and scientific power, but also to reestablish broken relations with Muslim countries, Central America, and India, which had been damaged by the restrictions imposed by his predecessor, Donald Trump. Biden's approach to migration is analyzed from the theoretical perspective of the "country of origin," a communication strategy to reposition the U.S. image, rather than a genuine attempt to achieve migration reform. The main findings describe Biden's migration diplomacy as intentional discourse and a political strategy to promote the U.S. image, and also to differentiate himself from Donald Trump's administration. Results rest on the differences of representation of policies for skilled and unskilled migration, but also on more technical aspects such as the use of secondary sources and mutual quoting between U.S. sources and non-American media.

The second part of the book addresses specific anti-immigrant measures applied in relation to policies such as *DACA*, asylum policies, and *TPS*. In the fourth chapter, "DACA, Dreamers and Other Migrants after Trump," Jorge Santibáñez and Arcelia Serrano recall Donald Trump's anti-immigrant positions, particularly regarding Mexico and Central America, starting with his campaign and throughout his entire administration. The authors focus on the *DACA* program, an executive order signed by President Obama in 2012 that granted temporary permission for certain unauthorized immigrants, who were brought to the United States by their parents when they were children (under 16 years of age), to stay, work, and be assigned a social security number. Towards the end of his administration, Obama proposed expanding the program's coverage to include undocumented immigrants who have children who are U.S. citizens or legal permanent residents, but the action was blocked by state courts and the U.S. Supreme Court. Legal challenges to Trump's actions stopped the full cancellation of the *DACA* program. In practice, however, new permits and applications for *DACA* were stopped after September 2017. In turn, the new government headed by Joe Biden declared intentions to reinstate and expand the *DACA* program. Santibáñez and Serrano conclude with an analysis of possible and probable scenarios for a broader immigration reform.

The fifth chapter, authored by Nicole Hallett and Angela Remus, is a reflection on asylum adjudication and refugee resettlement in the context of Central American migration. Hallett and Remus describe how former

President Donald Trump rose to power by demonizing and dehumanizing asylum-seekers at the U.S.-Mexico border. President Joe Biden promised to restore the right to asylum, but a refugee crisis continues to grip the U.S.-Mexico border, despite the fact that the Trump administration has ended. While Biden has reversed some of Trump's policies, returning the asylum system to its previous state will not solve the crisis. The authors trace the development of the U.S. asylum system and contrast it with the U.S. refugee resettlement system, arguing that the asylum system has always been, and will continue to be, ill-equipped to manage the Central American migration crisis. This chapter concludes that Biden must adapt the asylum system to respond to the particular situation in Central America and at the U.S.-Mexico border, rather than return to old policies. The authors propose reforms that fall into four general categories: making changes to U.S. asylum law that would broaden who is eligible for asylum; expanding resettlement for refugees from Central America; implementing burden-sharing with Mexico; and reimagining other forms of humanitarian protection under U.S. law.

The closing chapter, "A Just Public Charge Rule," takes a philosophical approach to migration. Author Enrique Camacho Beltrán examines how the public charge rule (PCR) poses a threat to the immigration status of those foreigners who require the support of public services. He argues that President Trump's public charge rule was unjust, but also analyzes some conditions under which the PCR could be made more compatible with standards of justice. Camacho Beltrán unpacks the concept of a fair public charge rule, to accurately assess the full normative panorama of immigrants. He finds instances of PCR-grounded exclusion where a complete analysis of the elements that are supposed to be the basis for applying the PCR would, in fact, justify more inclusion. Based on the case of U.S.-El Salvador, the chapter claims that we should present a more complete picture of relevant obligations and rights in order to better understand the role that "charge" or burden ought to play in rights of exclusion. This could, in turn, create the conditions for a fairer implementation of the public charge rule.

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