



HOPE AND DATA

How the world's getting better

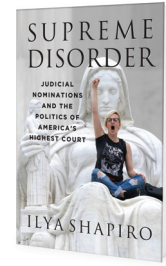
PAGE 3



SIMON LECTURE

Judge Willett on civic literacy

PAGE 9



SUPREME DISORDER

The history of confirmation battles

PAGE 13

Cato Policy Report

NOVEMBER/DECEMBER 2020. VOL. XLII NO. 6

A Pro-Immigration Agenda for the Biden Administration

BY DAVID J. BIER AND ALEX NOWRASTEH

Joe Biden will be the next president of the United States, and he has vowed to take aggressive actions to reverse President Trump's policies. One of the most significant areas of reversal will be Trump's signature issue of immigration. President Trump has shown that a committed president can aggressively restrict immigration, but it is unclear whether a president can substantially liberalize it. Regardless, President-elect Biden can improve the system to benefit all Americans by at least replacing Trump's anti-immigration policies with welcoming ones.

Recession—even before his near-total ban on new immigrants in 2020 in response to COVID-19 and the resulting recession.

At no time in American history has immigration been as legally restricted as it is currently. Trump has overseen a reduction in legal immigration greater than the declines during the two world wars, the Great Depression, or even after Congress ended America's open immigration policy with Europe in the 1920s. President-elect Biden could do more to expand, improve, and deregulate the immigration system

than any other president if for no other reason than that the system is largely shut down right now.

Biden has no political reason to back down from his campaign promises, either. According to a Gallup poll, for the first time in that poll's 55-year history, more Americans support increasing immigration than decreasing it. Support for decreasing immigration has imploded, dropping from 50 percent in 2009 to 28 percent today—mostly before Trump even took office.

Continued on page 6

PRESSURE TO CHANGE THE STATUS QUO

Before Trump became president, executive branch policies already significantly restricted legal immigration to the United States beyond the laws enacted by Congress. Presidents have narrowly interpreted the law to keep out many legal immigrants who could otherwise have qualified. Trump greatly added to the burden of immigration restrictions, to such an extent that America's immigrant share of the population has stagnated for the first time since the Great



ALEX NOWRASTEH is the director of immigration studies and **DAVID J. BIER** is an immigration policy analyst at the Cato Institute's Center for Global Liberty and Prosperity.

In September, San Diego mayor **Kevin Faulconer** and California state auditor **Elaine Howle** participate in a virtual Cato conference, "Crisis: Housing and Homelessness in California," as part of senior fellow Michael Tanner's Project on Poverty and Inequality in California.

Continued from page 1

Meanwhile, support for increasing immigration rose from 14 percent to 34 percent over the same period, while the percentage who want to keep the present levels has remained about constant in the high 30s. As importantly for Biden, half of Democrats want increased immigration.

In 2020, 77 percent of Americans called immigration a “good thing” for the country today, up 20 percentage points since 2010. The turnaround in public perception is even more dramatic because Gallup asks about all immigration, not just legal immigration, so the poll likely understates support for legal immigrants.

President Trump and candidate Biden presented Americans with a stark choice on immigration: cut legal immigration or expand it. They chose to expand it, aligning their votes with the trend in polling responses. No president has ever had more political momentum to loosen legal immigration restrictions than Biden will have.

THE BIDEN ADMINISTRATION'S IMMIGRATION POSITION

President-elect Biden's position paper on immigration was the most comprehensive and detailed by any presidential candidate in history. Importantly, it demonstrated a deep awareness of the shortcomings of the current legal system.

To understand those shortcomings, one must step back from the legal details and see the big picture. Even before Trump, the United States was among the least welcoming developed countries in the world. Before Trump closed the borders, the United States legally accepted more immigrants than any other country *in absolute terms*, but accounting for its size and economy, it ranked in the bottom third of wealthy countries for both its foreign-born share of the population and its annual per capita growth in the foreign-born population in 2019.

Immigrants in Canada are about 21 per-

“ Trump and Biden presented a stark choice on immigration. ”

cent of its population. Immigrants make up more than 26 percent of the population in New Zealand and about 30 percent in both Australia and Switzerland. By contrast, legal immigrants account for just 11 percent of the U.S. population, rising to 14 percent when illegal immigrants are included. The per capita annual inflow of immigrants into those countries ranges between three and six times greater than that of the United States.

The United States has an exceptional immigration history. More than 100 million immigrants have come to these shores and built better lives for themselves, their children, and the native-born Americans who were here before them. Immigrants built a culture of risk-taking and creative destruction that, combined with the blessings of American liberty, has turned the United States into the free and prosperous society it is today. But in the past century, we've lost that exceptionalism. In the 2010s, our per capita legal immigration rate had already dropped two-thirds from 100 years earlier, and now it's as close to zero as it has ever been.

America has an image of itself as being proudly open to immigration, but for a long time that hasn't been the reality. The immigration system is so constrained that it has built up an unprecedented backlog of nearly 5 million applicants for green cards. In 1991, the last time Congress adjusted the numerical caps on green cards, those limits forced 3 percent of green card recipients to wait more than a decade to immigrate. Now it's 28 percent. And those are just the immigrants who received green

cards. In 2020, about 23 million people worldwide applied for America's green card lottery, with just 50,000 winners. There are 25 million refugees worldwide. America took in just 10,000 in 2020. President Trump inherited a heavily restrictive immigration system and made it much worse.

People across the world want to live the American Dream, and Americans want to welcome them as family, workers, consumers, and employers, but there are very few legal opportunities for them to come. As a result, many have come illegally, leading to an estimated 10.5 million illegal immigrants living in the United States.

President Ronald Reagan argued that the United States should again be a city on a hill with “doors . . . open to anyone with the will and the heart to get here,” but we have fallen well short of that promise. President-elect Biden has an opportunity to reclaim it now.

WHAT CAN PRESIDENT BIDEN DO?

President-elect Biden's position paper suggests that he would apply lessons from Canada on how to improve American immigration policy. Controlling for population, America's smaller neighbor allows more skilled immigrants, family-based immigrants, and refugees than the American system. Biden's immigration plan borrows heavily from the Canadian model by “rejecting the false choice” between different types of immigrants to embrace them all.

Biden has said he intends to ask Congress to increase the number of employment-based green cards for skilled immigrant workers. His proposal would allow the number to fluctuate with the unemployment rate and exempt PhDs from U.S. doctoral programs from the caps entirely. Biden also wants to increase family-sponsored immigration by exempting about 90,000 spouses and minor children of green card holders from the numerical caps. Those green cards would then go to some of the more than

3 million adult children and siblings of U.S. citizens and green card holders caught in decades-long backlogs.

Anticipating that this increase would not be enough to eliminate the backlog, Biden says he would also ask Congress to create a new temporary visa to allow these family-sponsored immigrants to come to the United States to live and work legally while they wait for permanent residence. Biden also proposes to immediately increase the refugee cap to 125,000, which would be the highest number since President George H. W. Bush and a huge difference from the roughly 10,000 admitted in 2020.

Alone among the Democratic primary candidates, President-elect Biden stood out for recognizing the importance of America's temporary worker system. He rightly labels the guest worker regulations as "cumbersome, bureaucratic, and inflexible—driving up incentives to circumvent the system by hiring undocumented laborers." He says he would streamline the process and "expand opportunities for individuals seeking temporary worker visas," particularly from violence-torn Central America, where most illegal border crossers originated in 2019.

No single policy has done more to reduce illegal immigration than expanding the number of temporary migrant workers. Border Patrol apprehensions of Mexican illegal border crossers per agent declined 96 percent from 1997 to 2019, largely because of the 11-fold expansion in guest worker visas issued to Mexicans during that time. As one Mexican worker explained in 2019, "Most of my friends go with visas or they don't go at all." He noted that while he hadn't received a visa that year, he wouldn't risk his chance next year by crossing illegally.

The fact that Biden understands this dynamic puts him in a class of his own among Democrats, who have historically opposed guest worker programs. Indeed, his own former boss President Obama voted

“ Guest worker visas reduce illegal immigration. ”

for an amendment as a senator that gutted the guest worker expansion in the Senate's 2007 immigration reform bill. Biden wants to do less to improve temporary worker visas for high-skilled migrants on the H-1B visa, but even here he still wants to expand the number of high-skilled visas in exchange for some ill-conceived protectionist measures such as higher minimum wages for foreign workers and more regulations to prevent native-born job displacement.

Biden has also called for a "new visa category to allow cities and counties to petition for higher levels of immigrants" to counter population decline or support more robust local economic growth. This decentralized system is also based on the Canadian system, which allows provinces to select immigrants.

President Trump has also touted the Canadian model for its ability to attract skilled immigrants, but he has ignored how the Canadian system welcomes relatively larger numbers of refugees, family-based immigrants, and temporary workers of all skill levels. In contrast, President-elect Biden wants to implement the best features of the entire Canadian system without explicitly endorsing it.

PRESIDENTIAL AND ADMINISTRATIVE ACTIONS

President-elect Biden will have to exert considerable effort to get the U.S. immigration system back to where it was in 2016, but he has vowed to start on Day One of his presidency. Biden can immediately repeal the immigration bans that President Trump enacted in response to COVID-19 and the ensuing recession, which Biden

rightly criticized because "immigrants help grow our economy and create jobs." Biden has also said he would repeal the travel and immigration bans that now target a dozen countries on the basis of a national security pretext, even though no terrorist from those countries has committed a deadly attack on U.S. soil in more than four decades.

Congress explicitly granted the president the power to set the refugee limit, and Trump has used this power to almost end the refugee program by reducing admissions from about 85,000 in 2016 to about 10,000 in 2020, the fewest since the program's creation in 1980. In 2020, he offered no slots at all to victims of political persecution, such as those in Hong Kong or other communist countries. Biden has said he will ditch those policies and admit 125,000 refugees in 2021.

Similarly, President-elect Biden has promised to reverse Trump administration actions that barred almost all asylum applicants and deported many of them to unsafe conditions in Mexico or other Central American countries. Although Biden can rescind presidential actions and executive orders immediately, it will take longer for him to rescind formal regulations enacted by agencies during the Trump administration through the requirements of the Administrative Procedure Act. The most significant regulation that he should want to repeal is Trump's tightening of the public charge rule. The change was sold as a way to reduce immigrant welfare consumption, but it bans any immigrants whom government officials project would have low incomes when they arrive. Immigrants can't even beat the rule by pointing out that they can't legally consume federal welfare programs until they're eligible to become U.S. citizens.

In some cases, Biden can issue executive actions to expand legal immigration beyond just repealing Trump's regulations and orders. He can allow relief for some applicants stuck in the family-sponsored green card

backlog of roughly 3.5 million by expanding the Department of Homeland Security's parole authority.

In 1952, Congress enacted a statute allowing immigration agencies to "parole" a foreigner into the country by effectively waiving the limits on admission "for urgent humanitarian reasons or significant public benefit." Since then, agencies have used parole sparingly, such as by providing parole to Cubans fleeing communism under the wet-foot/dry-foot policy. But Biden could expand it dramatically by classifying family separations of more than a year as an urgent humanitarian reason, helping millions of legal immigrants reunite with their American families.

President-elect Biden could also stop counting the spouses and minor children of workers who enter on a green card against the numerical caps. Currently, U.S. law allows 140,000 green cards for workers, but less than half of those go to the workers themselves—the rest go to their immediate family members. President-elect Biden could implement this reform very quickly because no law or regulation requires counting the spouses and minor children of immigrant workers against the green card cap. Doing so would essentially double the annual number of legal workers who can earn a green card. He could also apply this reform to other family-based green card categories and altogether increase legal immigration by a quarter.

The new administration could also deregulate employment authorization for temporary workers and their family members. There are hundreds of thousands of foreign students as well as spouses of temporary workers who cannot legally work in the United States right now because of long-standing presidential orders. The executive branch has occasionally adopted more permissive policies, such as when President George W. Bush allowed foreign STEM students to work after their graduations. The Obama administration even allowed some

“ Biden could overreach on executive actions.”

” spouses of H-1B high-skilled workers to work if they were in line for a green card. A Biden administration could expand these policies by allowing all spouses and minor children to work legally.

Finally, Biden could replace the immigration personnel and administrative judges who evaluate immigration applications and asylum claims. Those bureaucrats have enormous discretion to accept or reject visa applications. Former presidents have staffed immigration agencies with administrators committed to rejecting applicants on the flimsiest of pretexts. For instance, the Trump and Bush administrations stacked the asylum system with former law enforcement officers who gave less weight to applicants' testimonies in order to deny more claims. Biden could go the other way by hiring adjudicators from the private sector who will give applicants a better shot.

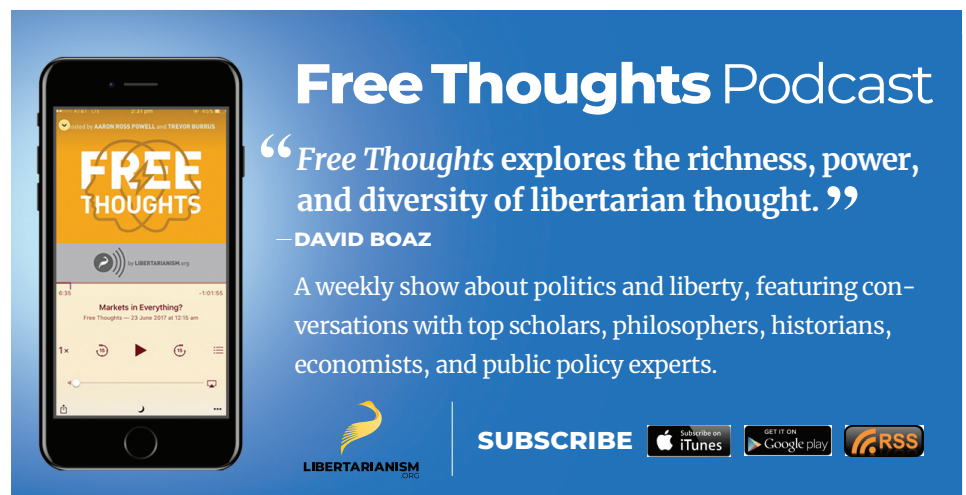
WHERE BIDEN COULD GO WRONG

Biden's biggest weak spot could be his affinity for labor unions that are opposed to the temporary worker programs that he

supports. It is not difficult to imagine Biden being convinced to raise minimum wages for temporary workers to levels that would make it effectively impossible for farmers and employers to hire them.

Another risk is that Biden could overreach on executive actions in the same manner as President Obama did by providing legal status to illegal immigrants without following the law, taking the wind out of the sails of congressional reform efforts while doing little to liberalize the legal immigration system. Biden will likely be more mindful of Congress and how it will react to executive actions since he has spent more years in the Senate than any other president in American history, but the temptation to overreach with executive actions will be great.

Biden's election should give immigrants as well as Americans who want expanded legal immigration more hope than they have had in decades. President Obama's election also raised hopes of immigration reforms that the president failed to deliver, but Democrats in 2009 were much less supportive on immigration than they are today. Through regulatory reforms and asking Congress to pass legislation to expand and deregulate the legal immigration system, President-elect Biden has a golden opportunity to remake U.S. immigration policy for the 21st century. ■



Free Thoughts Podcast

“Free Thoughts explores the richness, power, and diversity of libertarian thought.”

— DAVID BOAZ

A weekly show about politics and liberty, featuring conversations with top scholars, philosophers, historians, economists, and public policy experts.

SUBSCRIBE 