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Biden's first year on immigrants: failed and embraced some of Trump's worst policies

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3/1: Biden's first year on immigrants--failed to deliver on critical promises — and has even embraced some of Trump's worst policies

Marielena Hincapie - National Immigration Law Center

As President Biden prepares to address the nation tonight in the annual State of the Union Address, we wanted to reflect on his first year in office.

President Biden started with a vision to ensure immigrants are honored as a strength to our nation. He rescinded the Muslim and African Bans, ended Trump's Public Charge "wealth test," ordered Immigrations and Customs Enforcement (ICE) to stop large-scale worksite raids, and more.

Through our continued work with the Biden administration, we've made progress on creating a more humane immigration system. However, we still have a lot of work to do.

The truth is, President Biden has failed to deliver on critical promises — and has even embraced some of Trump's worst policies.

Despite pledging to end cruel deterrence policies, the Biden administration has doubled down on Title 42 — expelling migrants without due process, expanded the "Remain in Mexico" program — stranding families to live in squalid border camps, and deported tens of thousands of Haitians and other asylum seekers back to danger.

The current State of the Union is this: Black and brown migrants continue to face disparate and inhumane treatment at every stage of the immigration process. President Biden must take action to ensure people seeking safety on our shores are no longer in harm's way.

Intentions are not enough. Our communities deserve tangible results and meaningful progress. We hope at tonight's State of the Union Address we will see President Biden rededicate his efforts towards the bold pro-immigrant vision he was elected to fulfill.

12/1: Media Don't Factcheck Right-Wing Migration Myths

David L. Wilson-Fairness and Accuracy in Reporting (FAIR)

The New York Post (11/4/21) was either lying, was never told or had forgotten about the dubiousness of Peter Doocy's question.

Fox News White House correspondent Peter Doocy asked a bizarre question at President Joe Biden's November 3 press briefing. The president seemed to misunderstand the question, which referred to potential settlements of a lawsuit stemming from the Trump administration's notorious 2017–18 family separation policy. Biden bungled his response, apparently calling reports about the settlement "garbage."

Not surprisingly, the media ran with the story of Biden's blunder. Doocy's question, on the other hand, was mostly ignored or played down.

The Fox reporter had asked whether the possible settlements, reportedly as high as \$450,000 a person, "might incentivize more people to come over illegally." But as the Washington Post's Aaron Blake (11/4/21) noted, the question didn't make sense: "The [family separation] policy is no longer in effect (thus rendering such future payments inapplicable for would-be border-crossers)."

Other reporters, however, didn't seem to notice this issue. CNN's Daniel Dale (11/5/21) factchecked Biden's answer, but not the notion that a settlement based on a terminated policy could somehow incentivize future migration. Over at Politico (11/3/21), Myah Ward reported Doocy's question, but not how strange it was. New York Times White House correspondent Zolan Kanno-Youngs (11/3/21) didn't even bother to report the question, merely noting that Biden was "asked on Wednesday about compensating the migrants."

In contrast, the New York Post (11/4/21) (owned, like Fox, by the Murdoch family) responded with an editorial backing Doocy's implication that the settlement could encourage unauthorized migration. This followed an earlier Post article (10/29/21) that quoted a total of 11 Republican politicians denouncing the reported settlement amount. Neither piece mentioned the public outrage at the practice of tearing apart children and parents fleeing violence (PBS, 6/18/18)—an outrage so intense that the Trump administration was forced to end the policy in June 2018 (NPR, 6/20/18).

Misperception or misrepresentation?

Unfortunately, this imbalance is typical of much corporate media immigration coverage. Right-wing media figures and Republican politicians get little pushback when they promote evidence-free, often absurd claims about incentives for unauthorized immigration.

Chart: Manhattan Institute/National Immigration Forum (3/30/06)

Doocy didn't answer emails asking him to explain his November 3 question, but presumably he was referring to a misperception migrants might have that the Biden administration was handing out money to border crossers—a misperception the right has worked overtime to create. But two surveys of unauthorized immigrants indicate that misperceptions about US migration policies don't actually play a significant role in spurring unauthorized border crossing.

In 2005, the Bendixen & Associates polling company interviewed 233 undocumented immigrants for a study sponsored by the National Immigration Forum and the conservative Manhattan Institute. The study reported that 68% of the subjects said they'd migrated here to work, 15% to get better education and healthcare for themselves and their families, 12% to escape violence and 3% to join their families. Just 2% cited other reasons.

Eight years later, Latino Decisions surveyed 400 undocumented immigrants for the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund and America's Voice Education Fund. This study reported that 39% of the people interviewed came for better jobs and economic opportunities, 38% for a better life for family or children, 12% to join family members, and 4% to escape political oppression. Other reasons accounted for 6%.

What history shows

Migration patterns over the last half-century support the findings of the two surveys. Increases and declines in unauthorized immigration mostly correlate with changes in job opportunities and other economic conditions in the United States and in nearby countries.

The US undocumented population grew at a fairly steady rate during the first half of the period, but the pattern had started changing by the mid-1990s, when the undocumented population increased sharply, tripling by 2007. It then gradually declined through 2019. There was an increase in asylum seekers after 2010, although not enough to reverse the overall decline.

The population of unauthorized immigrants has been mostly declining since 2007. (Chart: ProCon.org)

Vox (7/4/21) pointed out that a “law to legalize the undocumented population...could actually reduce unauthorized immigration and give the US economy a boost.”

The US economy was growing during most of the 1990s, but Mexicans continued to suffer from the effects of the 1982 debt crisis. Their situation worsened after a 1994–95 financial crisis, and NAFTA’s disruption of the rural economy left millions of Mexicans unemployed or underemployed. The resulting increase in undocumented immigration from Mexico eased a little in the early 2000s, as the Mexican economy stabilized; border crossings dropped further when the 2007–09 Great Recession knocked out millions of US jobs.

The more recent increase in asylum seekers came as levels of violence rose in El Salvador, Guatemala and Honduras.

It’s true that one US policy helped swell the undocumented population, but not because the policy attracted migrants. The Clinton White House started a significant intensification of border enforcement; this continued through subsequent administrations. The policy made border crossings more dangerous, resulting in at least 7,000 border deaths from 1998 to 2020 (Guardian, 1/30/21).

And as Vox reporter Nicole Narea (7/4/21) explained, Princeton sociologist Douglas Massey and other scholars have found that the stepped-up enforcement ended a circular pattern in which Mexicans had alternated periods working in the United States with periods spent at home. As crossing the border became riskier and more expensive, many Mexican workers chose to settle here instead of returning to Mexico.

Long wait for ‘amnesty’

The New York Times (2/22/00) blamed the rise in unauthorized immigration on a 1986 amnesty—not on the trade policies that it editorially supported.

This history explains most spikes in unauthorized immigration, but anti-immigrant forces prefer to make up their own explanations.

Their favorite centers on a 1986 law that provided a path for legalization to some 2.7 million immigrants during the Reagan administration. The right claims that the sharp increase of the undocumented population during the mid-1990s—seven or eight years after the law went into effect—somehow resulted from this “Reagan amnesty.” So legalizations must “beget more illegal immigration,” as the New York Times (2/22/00) announced in a 2000 editorial:

Amnesties signal foreign workers that American citizenship can be had by sneaking across the border, or staying beyond the term of one’s visa, and hiding out until Congress passes the next amnesty.

The Times and other centrist media now seem to have backed away from this post hoc, propter hoc argument, but they often don’t challenge others who make it, despite studies by demographers that undercut the premise.

LA Times (3/18/21): “As each side seeks to rally supporters and shape public opinion, the parties have pressed dueling narratives.”

US News & World Report (2/18/21) quoted Senate Minority Leader Mitch McConnell’s claim that Biden’s proposed immigration reforms would create “huge new incentives for people to rush here illegally,” but the publication failed to present any alternative view. The Los Angeles Times (3/18/21) deferred in the same way to Sen. Lindsey Graham when the South Carolina Republican charged that legalization without increased border enforcement would “continue to incentivize the flow” of migrants.

Reporters often ignore a rather obvious problem with this argument: the fact that no legalization bill has been passed since 1986.

“Legalizing countless millions of illegal aliens—even discussing it—rings the bell for millions more to illegally enter the US to await their green card,” Heritage Foundation researcher Lora Ries announced in January, according to New York Times reporter Miriam Jordan (1/27/21). The paper’s Nicholas Fandos (3/18/21) cited Rep. Tom McClintock, a California Republican, as claiming in March that a new legalization would mean border crossers “need only wait until the next amnesty.”

Apparently neither reporter thought to point out that based on past experience, the wait “until the next amnesty” could last as long as 35 years, nearly half a lifetime.

The center does not hold

Washington Post (10/7/21): “The journey starts with a calculation: What am I willing to sacrifice to reach the United States?”

What’s striking about corporate media’s immigration coverage is that conservative think tankers and Republican politicians so often get a platform, while the US public hardly ever learns about immigration from the immigrants themselves (FAIR.org, 6/19/21).

There are important exceptions. Jordan’s January New York Times article failed to question the notion of “awaiting” the next amnesty, but it did include valuable reporting on migrants’ point of view. A recent Washington Post feature (10/7/21) by Arelis Hernández provided nuanced descriptions of the complex motives that have led Haitians to appear at the US border. And the Vox explainer cited above is a good example of how the media can present a realistic picture of immigration patterns.

But there’s too little reporting of this caliber. The right wing goes all out; the center rarely provides the necessary balance. Coverage of the poverty and violence that actually drive migration—and the role of US policies in creating them—appears in left media, as in a Jacobin piece (6/8/21) by Suyapa Portillo Villeda and Miguel Tinker Salas, but this sort of reporting is marginalized in corporate media.

The result is a public that’s primed to believe a Republican politician like Texas Sen. Ted Cruz when he casually distorts a lawsuit’s possible settlement into “@JoeBiden wants to give \$450k to every illegal immigrant.”

1/20: After 1 year and many changes, Biden's immigration record frustrates opponents and allies alike

Camilo Montoya-Galvez- CBS News

When thousands of Haitian migrants converged underneath a Texas bridge last September, the images of their plight, broadcast across the world, depicted the dire humanitarian consequences of a historic migration wave at the U.S. southern border.

But the events in Del Rio, Texas, last fall also illustrated the complicated, and often contradictory, trajectory of U.S. immigration and border policy during President Biden's first year in office.

Republicans, who have accused Mr. Biden of encouraging unlawful migration through changes in policy and rhetoric, portrayed the administration as too lenient, criticizing the release of some migrants who were allowed to stay in the U.S. to have court hearings before an immigration judge.

While many were released into the U.S., others met a starkly different fate. Using a pandemic order enacted by former President Donald Trump, the Biden administration launched an unprecedented deportation blitz to Haiti, expelling thousands, including women and children, in just a few weeks.

In its first year, Mr. Biden's administration made dozens of high-profile and little-noticed changes to the U.S. immigration system, many of them reversals of Trump-era restrictions. But the Biden administration also continued some policies instituted by Mr. Trump.

A task force created by Mr. Biden has reunited 118 migrant children with families who were separated near the southern border during the Trump administration. It has also identified an additional 370 children who are set to be reunited with their

families. But following Republican criticism, the Biden administration also ended court negotiations over financial compensation for these families.

In an interview, Homeland Security Secretary Alejandro Mayorkas said the administration's priorities in 2022 include reforming immigration detention, reducing massive immigration application backlogs, reshaping the asylum process and expanding naturalization efforts for eligible permanent residents.

"We accomplished a lot in this past year. We certainly have plans to do a lot more — and we will do it," Mayorkas, a child of Cuban refugees, told CBS News on Wednesday.

2021 saw both unusual and predictable developments in immigration policy. Last summer, following the Afghan government's sudden collapse, the Biden administration quickly staged the evacuation and resettlement of tens of thousands of at-risk Afghans, a vast operation that continues to this day.

Meanwhile, a long-shot bid by the White House and slim Democratic majorities in Congress to offer legal protections to many of the country's estimated 11 million unauthorized immigrants crumbled after three separate plans to bypass the Senate's 60-vote threshold were rejected by the chamber's parliamentarian.

Arrivals of migrants at the U.S.-Mexico border last year defied historic patterns, rising to unprecedented levels in the hot summer months. Migrant apprehensions climbed to 1.7 million, a record, in fiscal year 2021, but they also reflected an unusually high rate of adults attempting to cross the border multiple times.

A year in, the Biden administration's border strategy has divided the president's appointees and frustrated critics on the right and left, who hurl accusations of lax immigration enforcement and outrage over the continuation of some Trump-era restrictions.

Pili Tobar, the White House deputy communications director, said Republicans' criticism is rooted in "politics of fear," indicating the administration wants to highlight the "progress" Mr. Biden has made on immigration policy.

"We don't think that this is the third rail of politics, or that this is an area to shy away from," Tobar said. "On the contrary, we think the American people want this to be an issue that gets resolved."

But the political blowback over the border has been so intense it has overshadowed key reforms and campaign promises that Mr. Biden fulfilled in other parts of the sprawling immigration system.

"According to our tracking, in its first year, the Biden administration took about 300 administrative actions on immigration," said Jessica Bolter, an analyst for the Migration Policy Institute. "This probably will be surprising to a lot of people because of how much the border dominated public discourse around Biden's first year."

At the border, despite chaos and some changes, Trump-era expulsions continued

The main U.S. border policy during Mr. Biden's presidency has been an emergency rule put in place in March 2020 by the Trump administration. Known as Title 42, it allows U.S. border agents to quickly expel migrants to Mexico or their home country without screening them for asylum.

Despite criticism from advocates, the Biden administration has defended the expulsions in federal court, arguing they are needed to curb the spread of the coronavirus inside detention sites.

Officials have enforced Title 42 longer under Mr. Biden than under the Trump administration, carrying out over 1 million expulsions, most of them of single adult migrants, in 11 months, government figures show. During just over nine months under Mr. Trump, roughly 400,000 expulsions were carried out.

The Biden administration has, however, refrained from expelling migrant children who enter U.S. custody without their parents. Instead, unaccompanied children from Central America are being transferred to government shelters.

The administration has also applied Title 42 to a smaller percentage of families than the Trump administration, partly because Mexican officials have refused to accept Central American families with young children. However, the number of families encountered in 2021 increased by 1,200% from 2020.

There have been notable border policy changes under Mr. Biden. The State Department voided agreements that would have allowed the U.S. to re-route migrants seeking refuge to Central America, and the Justice Department reversed Trump-era rules that disqualified victims of gang and domestic violence from asylum.

Hours after taking office, Mr. Biden stopped border wall construction, though some barrier gaps are now being closed. The Justice Department also set up a program to expedite the immigration court cases of families who are not expelled under Title 42.

Texas emerged as chief legal adversary

During Mr. Biden's first week in office, Republican officials in Texas sued his administration over the decision to halt most interior deportations for 100 days. The lawsuit, which blocked the deportation moratorium four days after it started, foreshadowed Texas' emergence as Mr. Biden's chief legal adversary.

Since then, Texas has filed multiple lawsuits seeking to hinder Mr. Biden's immigration agenda. The state has already convinced a federal judge to rule against limits on interior immigration arrests and through another case is seeking to force Mr. Biden to expand Title 42 to once again include unaccompanied minors.

In July 2021, granting a request by Texas, a federal judge ordered the Biden administration to stop processing first-time applications for the Deferred Action for Childhood Arrivals program, which provides work permits and deportation protections to unauthorized immigrants brought to the U.S. as minors.

A month later, Texas and Missouri convinced another judge to mandate the revival of a Trump administration policy that requires asylum-seekers to await their U.S. court hearings in Mexico, a program that Mr. Biden had suspended after calling it inhumane.

In late October, Mayorkas issued a second memo to terminate the Remain in Mexico rule, but it won't take effect until the court order is lifted. The Trump-era program was restarted in December; though its implementation has been limited so far.

The administration moved to reform ICE

With less fanfare, the Biden administration has reshaped the work of Immigration and Customs Enforcement (ICE), the agency in charge of deportations and immigration arrests, scrapping Trump-era rules that broadened the population subject to deportation and expanded immigration detention.

Current rules direct ICE agents to arrest migrants who recently entered the U.S. illegally, noncitizens convicted of serious crimes and those who threaten national security. They generally exempt undocumented immigrants who have lived in the U.S. for years from arrest if they have clean records.

"We have fundamentally changed immigration enforcement in the interior. For the first time ever, our policy explicitly states that a non-citizen's unlawful presence in the United States will not, by itself, be a basis for the initiation of an enforcement action," Mayorkas said. "This is a profound shift away from the prior administration's indiscriminate enforcement."

The Biden administration has barred, in most circumstances, the detention of pregnant or nursing women and victims of serious crimes. It also ended mass ICE arrests at worksites and expanded the number of "sensitive locations" where agents should avoid making arrests to include bus stops and shelters.

The long-term detention of migrant families with children — which the Trump administration sought to expand to deter illegal border crossings — has also been discontinued, for now.

In May, ICE stopped using two detention facilities plagued by allegations of abuse and initiated a review of its detention system. Mayorkas on Wednesday said additional detention centers will be closed. ICE, however, has yet to fulfill Mr. Biden's campaign pledge to end for-profit immigration detention.

"I don't want to get into the substance of a policy memorandum that I've not yet issued," Mayorkas said. "I will only say the following: number one, detention reform is a priority of mine, and two, the president fulfills his promises."

Trump limits on legal immigration were rolled back

Mr. Biden has also rolled back several limits the Trump administration placed on legal immigration, from categorical bans to bureaucratic processing restrictions.

For the current fiscal year, Mr. Biden set an ambitious target of resettling up to 125,000 refugees fleeing war and violence, a dramatic reversal of the historic low refugee cap of 15,000 that Mr. Trump set before leaving office.

The admissions target will likely not be met, however, given the state of the refugee resettlement infrastructure, which is still recovering from the pandemic and cuts under Mr. Trump, and currently focused on helping the Afghan evacuees who were relocated to the U.S. last summer.

Mr. Biden's administration has offered Temporary Protected Status, a humanitarian protection from deportation, to more than 400,000 immigrants already in the U.S., including Haitians and Venezuelans who fled political and economic crises in their home countries.

The State Department resurrected and expanded the Obama-era Central American Minors initiative, which allows some parents in the U.S. to bring their children from Guatemala, Honduras and El Salvador to the country legally.

Early in his presidency, Mr. Biden revoked a Trump order that restricted immigration and travel from 13 countries, most of them African or predominantly Muslim. He also refused to extend restrictions on work and immigrant visas that Mr. Trump put in place during the first year of the COVID-19 pandemic.

The Biden administration also stopped enforcing Trump administration regulations that gave U.S. officials broader discretion to reject green card and visa applications from low-income immigrants deemed to be a "public charge," or an economic burden on the country.

In 2022, immigration challenges may only intensify

In many ways, Mr. Biden will continue to face immigration policy challenges in 2022 that have bedeviled Republican and Democratic presidents for decades.

Massive case backlogs continue to plague U.S. Citizenship and Immigration Services and the immigration court system, crippling the government's ability to adjudicate applications in a timely manner.

There's currently no viable path to fulfill Mr. Biden's pledge to legalize the country's undocumented immigrants. Any such proposal would face insurmountable odds if Republicans regain control of the House in November's elections. Inaction in Congress could prompt Mr. Biden to take executive action, but that would likely invite additional lawsuits from conservative states like Texas.

While migrant arrivals at the southern border have recently plateaued, they could increase sharply later this year, as historical trends suggest, creating a new humanitarian and political challenge for Mr. Biden.

There are, however, some opportunities for Mr. Biden to implement his immigration policy vision in 2022. The Afghan evacuee resettlement effort, which has enjoyed bipartisan support, could serve as a model to reinvigorate the U.S. refugee program, test private refugee sponsorship and increase admissions.

While some Biden appointees fear the rescission of the Title 42 border rule may trigger a migration wave, its eventual end could allow the administration to test initiatives it has proposed, including a plan to let asylum officers review migrants' requests for protection, instead of transferring cases to backlog-ridden courts.

The main objective of the proposal is to dramatically speed up the screening of asylum-seekers. In an ideal scenario, it would allow the U.S. to quickly determine whether migrants should be deported because they don't qualify for asylum or allowed to stay because they are fleeing persecution or torture.

But the administration still needs to finalize the rule and hire hundreds of asylum officers to implement it. Biden officials support setting up campus-like centers to screen migrants, but none have yet been erected. And while Title 42 is supposed to be a temporary emergency order, there's no telling when it will be lifted.

On Wednesday, Mayorkas said he expects to start the asylum overhaul plan "in very short order."

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