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VIEWPOINT

President Trump and US Migration after 100 Days

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Abstract

President Trump issued four executive orders dealing with immigration since taking office January 20, 2017, setting in motion plans to build a wall on the 2,000 mile Mexico-US border, increase deportations, reduce refugee admissions, and protect US workers. These executive orders signaled a new era in migration policy that emphasize enforcement against unauthorized foreigners and protections for US workers, but their major effect so far is a changed tone in migration policy, from welcoming newcomers from around the world to the US being perceived as a country where natives fear immigrants and immigrants live in fear.

Keywords: President Trump; United States; immigration; policy.

Trump's Executive Orders

President Trump issued 30 executive orders¹ in his first 100 days in office. Many lay out ambitious goals, but most request that agencies review programs and provide options to achieve Trump's goal to "make America great again." For example, after issuing the border and interior enforcement executive orders, Trump said: "Beginning today, the United States of America gets back control of its borders," an ambitious goal that may require years to persuade Congress to appropriate the necessary funds, construct a wall, and hire agents to detect and remove unauthorized foreigners.

The Border Security and Immigration Enforcement Improvements (BSIEE) executive order,² issued January 25, 2017, asserts that "border security is critically important to the national security of the United States" and directs the Department of Homeland Security (DHS) to plan for the construction of a wall on the 2,000-mile Mexico-US border, produce a plan within 180 days to assess the current state of border security and develop "a strategy to obtain and maintain complete

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¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders>

² <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>



operational control of the southern border,” defined as the “prevention of all unlawful entries.” A third of the Mexico-US border is currently fenced to prevent the unauthorized entry of people and vehicles and apprehensions, which peaked at over 1.8 million in FY2000, over 150,000 a month, fell to 12,200 in March 2017.³

The BSIEE executive order requires DHS to add 5,000 Border Patrol agents “as soon as practicable” to the current 20,000,⁴ instructs DHS to find more facilities to detain unauthorized foreigners who are apprehended rather than releasing them until they appear in court to explain why they should be allowed to remain in the US. It allows DHS to use expedited removal procedures⁵ to deport unauthorized foreigners detected anywhere within the US if they have been in the US less than two years and can not make credible claims that they need protection from persecution in their country of citizenship. The BSIEE executive order requires all federal agencies to report on the US aid they provided to the government of Mexico over the past five years.

The Enhancing Public Safety in the Interior of the United States (EPS) executive order, also issued January 25, 2017, tackles sanctuary cities and cooperation between federal and state and local law enforcement agencies.⁶ There are several definitions of sanctuary city. Most stress that state and local police in sanctuary cities do not hold persons arrested for certain crimes at the request of DHS so that these foreigners can be placed in federal custody. Without defining sanctuary, the EPS executive order requires DHS to designate “sanctuary” jurisdictions, and a follow-up implementation memo requires state and local governments to certify by June 30, 2017 that they are in compliance with a 1996 federal law requiring them to cooperate in immigration enforcement or risk loss of US Department of Justice grants.⁷

The EPS authorizes DHS to resume so-called 287(g) agreements with state and local law enforcement agencies that involve federal immigration agents to train state and local police officers to detect unauthorized foreigners and to hold them for

³ <https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions>

⁴ There were about 7,000 Border Patrol agents in 2000, that is, their number tripled over the past 16 years.

⁵ Expedited removal allows for the removal of non-US citizens without them appearing before an immigration judge. Introduced in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, expedited removal was restricted before Trump to foreigners in the US less than 14 days and apprehended within 100 miles of US external borders.

⁶ <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>

⁷ Department of Justice grants to state and local governments are relatively small; total federal aid to state and local governments is much larger, accounting for 10 to 20 percent of many budgets. A federal judge in April 2017, acting on a suit filed by San Francisco, issued an injunction that would prevent Trump from denying federal funds to sanctuary cities, saying that only Congress can restrict federal funds for non-cooperation. Peter Baker, *Defiant Trump Vows to Take Immigration Case to Supreme Court*, New York Times, April 26, 2017. www.nytimes.com/2017/04/26/us/politics/trump-immigration-courts-california.html?ref=politics



federal agents or involves state and local police joining task forces with federal enforcement agents to pursue criminal gangs. The EPS emphasizes that DHS should focus on the detection and removal of unauthorized foreigners convicted of US crimes, but makes more unauthorized foreigners priorities for removal, including those arrested but not convicted of US crimes as well as any other unauthorized foreigners encountered while searching for criminals. The EPS directs DHS to add 10,000 ICE agents to the current 10,000 to detect and remove unauthorized foreigners inside the US.

In the first two months under President Trump, arrests of removable foreigners away from the border were 21,400, including 5,400 who did not have criminal records in the US. Most of these arrests have not yet led to more removals, since many of those arrested have an opportunity to ask an immigration judge to allow them to remain in the US. The EPS instructs DHS to detain more of those arrested and waiting for trials before immigration judges.

The third executive order, *Protecting the Nation from Terrorist Attacks by Foreign Nationals (PNTAFN)*, was issued January 27, 2017 and prompted chaos and controversy.⁸ The PNTAFN executive order suspended the entry of nationals of Iran, Iraq, Sudan, Syria, Libya, Somalia, and Yemen, halted refugee admissions for 120 days and reduced refugee admissions from 110,000 to 50,000,⁹ and called for “extreme vetting” of some foreigners seeking visas to enter the US.

The PNTAFN executive order led to chaos at airports, as immigrants and visitors with valid visas were denied entry to the US. Thousands protested what they called Trump’s Muslim ban, and several states sued, prompting a federal judge to enjoin PNTAFN implementation, a decision upheld on appeal. Instead of appealing to the US Supreme Court, President Trump issued a new executive order on March 6, 2017 that bars the issuance of new visas to nationals of six countries (not Iraq) but permits green-card holders from these countries to travel in and out of the US.¹⁰ This second executive order was blocked by two federal judges who cited Trump’s campaign pledges to stop Muslim immigration as reasons why the order was unconstitutional religious discrimination; these decisions are being appealed.

The Buy American and Hire American (BAHA) executive order, issued April 18, 2017, directs federal agencies that deal with guest workers, the Departments of Labor, Justice, Homeland Security, and State, to study existing guest worker programs and recommend changes “to protect the interests of US workers in the administration of our immigration system, including through the prevention of

⁸ <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>

⁹ As of April 20, 2017, some 41,300 refugees had been admitted to the US in FY17, which ends September 30, 2017.

¹⁰ <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>

fraud or abuse.”¹¹ The US has a dozen visas that permit foreigners to work temporarily in the US, but the focus of the BAHA executive order is on the H-1B program.

The H-1B program makes it easy for most US employers to hire college-educated foreigners to fill US jobs that normally require college degrees; most employers are not required to try to recruit US workers before being certified to hire H-1B foreigners, and most employers may legally replace US workers with H-1B workers (Costa, 2017). The major protection for US workers is a cap on the number of H-1B visas, 65,000 a year plus 20,000 for foreigners with masters degrees. Employers requested 200,000 or more H-1B visas in recent years, and 35 to 50 percent went to so-called body shops, typically outsourcing firms such as Tata Consultancy Services, Infosys, and Wipro that often have major operations in India. These outsourcing firms do some of a firm's IT work in the US with H-1B workers and send the rest to India (Hira, 2016).

US employers must agree to pay H-1B workers at least the prevailing wage for the occupation. There are four wage levels in the H-1B program, ranging from entry-level to experienced. Over half of H-1B visas go to entry-level workers who are paid relatively low wages, and over 80 percent are in the two lowest wage levels (GAO, 2011).

US employers often say that they need to “raise the cap” on the number of H-1B visas in order to hire the world’s “best and brightest” workers and stay competitive in a globalizing world, but some research finds that the easy availability of H-1B workers depressed the wages of similar US workers by five percent and discourages US students from working in IT (Bound et al., 2017). The BAHA executive order instructs DHS to ensure that H-1B visas go to the most-skilled or highest-paid foreign workers, ending the current practice of selecting those who get H-1B visas by lottery. Implementing new ways to select H-1B workers is likely to prompt litigation.

Immigrants and Immigrant Workers

The United States has 20 percent of the world’s 244 million international migrants and perhaps half of the unauthorized foreigners in industrial countries. The 43 million foreign-born US residents in 2014 were almost a seventh of the 320 million Americans, and the 26 million foreign-born workers were a sixth of the 160 million US workers (Rural Migration News, 2016). Foreign-born workers have a higher labor force participation rate, 65 percent, than US-born workers, although they earn less, an average \$680 a week in 2015 versus \$835 a week for US-born workers.

Trump’s executive orders deal primarily with the 11 million unauthorized foreigners, including eight million who are in the US workforce, making five percent

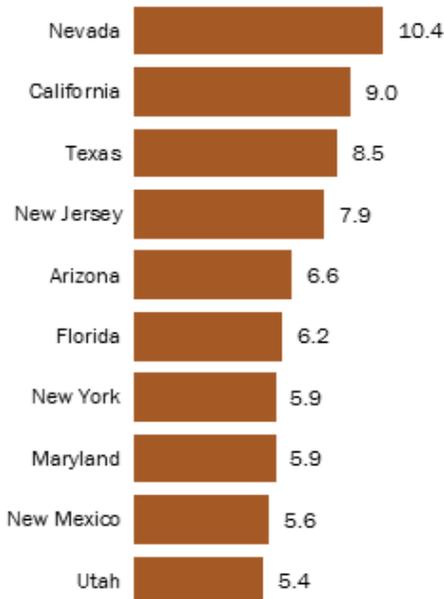
¹¹ <https://www.whitehouse.gov/the-press-office/2017/04/18/presidential-executive-order-buy-american-and-hire-american>



of all US workers unauthorized.¹² There are three salient facts about unauthorized foreigners. First, two-thirds of unauthorized foreigners have been in the US at least a decade, and 40 percent of the 10 million unauthorized adults live in families with US-born and US citizen children (Passel and Cohn, 2017). Second, most newly arrived unauthorized foreigners arrived legally, as with tourist visas, and did not leave, and most of these new unauthorized foreigners are not Mexicans (Passel and Cohn, 2017). Third, apprehensions at the Mexico-US border are at their lowest levels in decades, and most of those apprehended just inside the US border are non-Mexicans, prompting some to suggest that the US work with the Mexican government to help stop Central Americans and others headed to the US rather than ask Mexico to pay for the construction of a border wall (Passel and Cohn, 2017).

Unauthorized workers are concentrated by geography, industry, and occupation, so stepped-up enforcement is likely to have different effects by state and sector. California had the most unauthorized workers in 2014, some 1.7 million, followed by 1.1 million in Texas and 600,000 in New York (Passel and Cohn, 2016). However, the share of workers who are unauthorized is highest in Nevada, over 10 percent, followed by about nine percent in California and Texas.

Figure 1. Share of Unauthorized Workers by State, 2014



Source: Passel and Cohn, 2016

¹² Another one percent of US workers are legal guest workers (Costa, 2017).

Employers sometimes say they would go out of business without unauthorized workers, suggesting that such workers are critical to business survival. However, most employers assert that the workers they hire present documents that show they are legally authorized to work in the US, so employers do not know they are violating laws against employing unauthorized workers when particular workers are hired because they are not required to verify the authenticity of worker-presented documents.

Employers may enroll in E-Verify to check worker documents. E-Verify is a mostly voluntary DHS internet-based system that checks data submitted to employers by newly hired workers against government databases to determine whether new hires are legally authorized to work in the US. Over 600,000 employers were enrolled in E-Verify at the end of 2016, including 88,000 in Georgia, one of 20 states that require some or all of their employers to participate in E-Verify.¹³ Non-participating employers complete I-9 forms for newly hired workers that involve workers providing identity and work authorization documents to employers, and both employers and new hires sign documents stating that they completed this verification process, and DHS may audit these I-9 forms. DHS audited 1,300 employers in FY16 and made 239 arrests of unauthorized workers at their workplaces, suggesting a very low risk of detection for employers and workers who do not participate in E-Verify (Rural Migration News, 2017a).

Data on where unauthorized foreigners work is collected in household surveys that may not detect unauthorized foreigners in non-standard housing, and should be treated as lower-bound estimates. Agriculture and farming are at the top of lists of unauthorized workers as a share of all workers employed in particular industries and occupations. A sixth of those employed in agriculture, and a quarter of those with farming occupations, are believed to be unauthorized based on household survey data.

Construction employs an average seven million workers, versus two million in agriculture. A seventh of those in construction are unauthorized, suggesting there are at least twice as many unauthorized construction as farm workers. Leisure and hospitality employ almost 16 million workers, so nine percent unauthorized would mean 1.4 million unauthorized workers, more than the one million in construction work. Seven percent of the 20 million workers employed in business services are unauthorized, meaning there are as many unauthorized janitors and temp workers as there are unauthorized hotel maids and food-service workers.

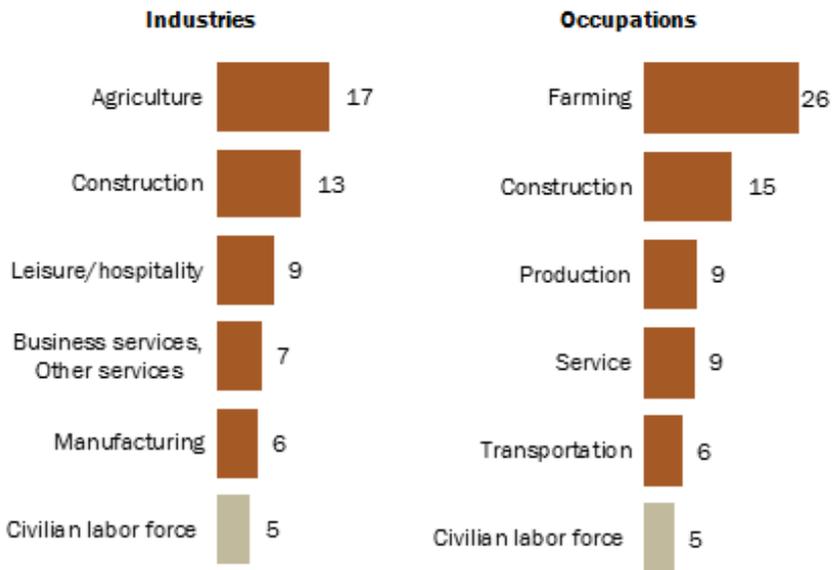
More specialized surveys find higher shares of unauthorized workers in particular sub-sectors. For example, the National Agricultural Worker Survey (NAWS) interviews 2,000 to 3,000 crop workers each year, and finds that half are not authorized to work in the US (Rural Migration News, 2017b). About 70 percent of crop workers were born outside the US, usually in Mexico, and 70 percent of

¹³ <https://www.uscis.gov/e-verify/about-program/e-verify-usage-statistics>



foreign-born workers are unauthorized, making half of all crop workers unauthorized. These unauthorized workers have settled in the US, so there is very little migrancy. Farm work has become like nonfarm work, with most workers living away from the farm where they work, commuting to their jobs in car or van pools, and returning to families that include US-born children.

Figure 2. Share of Unauthorized Workers by Industry and Occupation, 2014



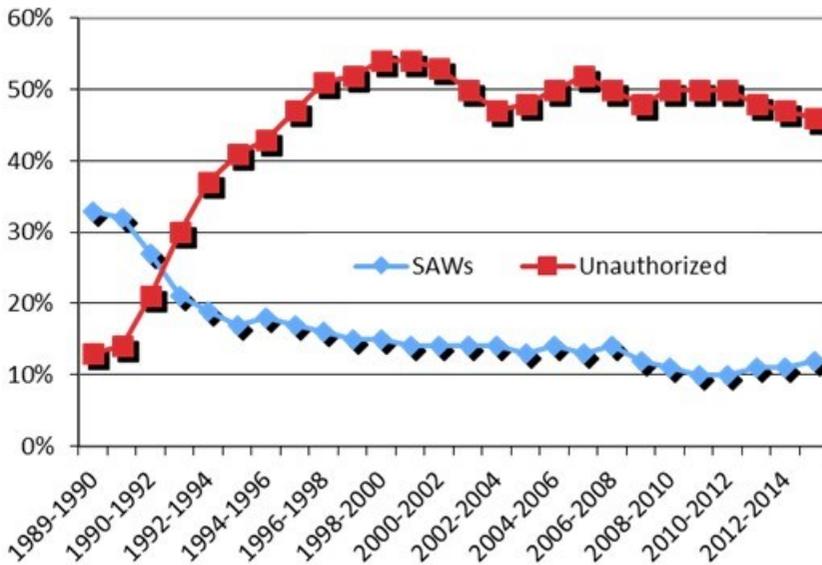
Source: Passel and Cohn, 2016

Agriculture is unusual because it is the industry that is widely considered the source of unauthorized Mexico-US migration via the Bracero program, and farmer and worker advocates were the only group to propose an industry-specific plan to legalize unauthorized farm workers and make it easier to hire legal guest workers. Between 1942 and 1964, over 4.5 million Braceros were admitted to the US, giving one to two million rural Mexicans experience working in the US, and making them willing to return illegally in the 1970s as US farm wages soared and the Mexican peso was devalued (Martin, 2009).

The Immigration Reform and Control Act of 1986 allowed 1.1 million unauthorized farm workers to become immigrants under the Special Agricultural Worker program and eased employer requirements to hire H-2A guest workers, but illegal migration surged, SAWS left agriculture, and the H-2A program shrank. The Agricultural Job Opportunity Benefits and Security Act (AgJOBS), negotiated between workers and employers in 2000 and included in all comprehensive immigration reform proposals since, would repeat the IRCA approach of legalizing unauthorized farm workers and making it easier to hire guest workers in the future

(Rural Migration News, 2009). Under AgJOBS, worker exits are to be slowed by a requirement that they continue to do farm work up to five years in order to earn an immigrant status.

Figure 3. Share of SAW and Unauthorized Farm Workers, 1989-2014



Source: National Agricultural Worker Survey

Many farmers and other employers of unauthorized workers are Trump supporters who say they voted for Trump despite his promises to reduce unauthorized migration. Some cite the benefits of his efforts to reduce regulation and taxes and say that, because Trump businesses employ both H-2A and H-2B guest workers, Trump understands the importance of low-skilled foreign workers to the US economy and will not remove large numbers of unauthorized workers without making it easier to hire guest workers.¹⁴

Trump on April 25, 2017 issued the Promoting Agriculture and Rural Prosperity in America executive order.¹⁵ The PARPA did not mention immigration or labor, but did call for recommendations from federal agencies within 180 days on how to “ensure access to a reliable workforce and increase employment opportunities in

¹⁴ Trump Vineyard Estates in Charlottesville, Virginia, owned by Eric Trump, requested certification to hire 29 H-2A workers in 2017. Trump’s Mar-a-Lago resort and Jupiter golf course in Florida were certified to employ 77 H-2B workers in 2017. CNN reported that Trump companies employed at least 1,256 H-2A and H-2B workers, most from Romania and South Africa, between 2000 and 2015 (Rural Migration News, 2017c).

¹⁵ <https://www.whitehouse.gov/the-press-office/2017/04/25/presidential-executive-order-promoting-agriculture-and-rural-prosperity>



agriculture-related and rural-focused businesses,” making it almost certain that there will be options offered to change the H-2A and H-2B guest worker programs.

Trump and Immigration

Donald Trump struck a chord with disaffected whites in areas with shrinking manufacturing and mining sectors, appealing for their support with promises to restrict the free trade that can lead to closed factories and the types of immigration that can put downward pressure on wages. Trump’s attacks on Mexico, a country he accused of stealing US jobs and sending drugs and crime to the US via migration, were expected to ensure that the first-time candidate for public office would be defeated by more experienced rivals in the Republican primary and in the general election.

Trump defied the elite consensus and became president by winning in six states that voted for President Obama in 2012, including Florida and midwestern states. Many polls find wide gaps between elite and mass opinion on immigration, trade, and globalization generally, with elites welcoming globalization while masses prefer protection from outsiders. The Chicago Council on Foreign Relations (www.thechicagocouncil.org) has several times found that 50 to 60 percent of Americans see immigration as a “critical threat” to the US, while less than 15 percent of opinion leaders see immigration as a threat. There is a similar gap between elites and masses on the virtues of free trade.

President Trump has moved quickly to satisfy supporters who wanted a new direction for the US generally and migration in particular. However, Trump’s first substantive efforts to reverse an Obama-era policy, replacing the Affordable Care Act or Obamacare, floundered amidst divisions among Congressional Republicans. Trump’s executive orders on immigration are likely to be slowed by the need for Congressional action and judicial reviews. Congress must appropriate funds for the construction of a Mexico-US border wall and more enforcement agents, which they may be reluctant to do in a time of tight budgets. Federal courts have blocked efforts to restrict the entry of nationals of particular countries and deny funds to sanctuary cities, and changing the regulations governing guest workers is likely to generate law suits that slow change.

Over two centuries ago, George Washington, the first president, asserted that “the bosom of America is open to receive not only the Opulent and respectable Stranger, but the oppressed and persecuted of all Nations and Religions.” (Papers of George Washington). Donald Trump, the 45th president, has changed America’s migration message to the world, questioning the virtues of immigration in the 21st century. Trump wants the US to make a U-turn in many areas, from immigration and trade to participation in the United Nations and other global activities. After 100 days, Trump has continued the America-first rhetoric that got him elected, but is only at the beginnings of his journey to change US immigration policies.

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