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Legal Sidebar

Recent Executive Branch Actions on Immigration (Part 1)

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Since taking office on January 20, 2025, President Trump and his Administration have issued numerous executive actions and initiatives related to the enforcement of federal immigration laws. These actions address a range of issues, including the suspension of entry of aliens at the southern border, the processing of applicants for admission, border security, refugee admissions, immigration enforcement in the interior of the United States, public safety and national security, citizenship under the Fourteenth Amendment of the U.S. Constitution, and other topics. Some actions reinstate previous policies and initiatives that were implemented during the first Trump Administration. This Legal Sidebar provides an overview of select executive actions and directives issued to date that are related to the southern border, applicants for admission, border security, and the admission of refugees. It is the first in a two-part series. The second Sidebar—which is focused on executive actions related to interior immigration enforcement, public safety and national security, and eligibility for U.S. citizenship—is available here.

Presidential Proclamation Restricting Entry into the United States in Response to an "Invasion"

On January 20, 2025, President Trump issued the presidential proclamation "Guaranteeing the States Protection Against Invasion." The proclamation directs the federal government to take measures to "fulfill its obligations to the States" under Article IV, Section 4, of the Constitution, commonly referred to as the "Guarantee Clause" or the "Invasion Clause." The clause provides, "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." Invoking the Guarantee Clause and the President's independent constitutional authority, along with authorities delegated by immigration statute, the proclamation contains a mixture of specific actions and general directives.

Section 1 of the proclamation suspends the entry into the United States of "aliens engaged in the invasion across the southern border" until "a finding that the invasion at the southern border has ceased." This entry restriction relies on authorities conferred under 8 U.S.C. § 1182(f), which authorizes the President by proclamation to suspend the entry of any aliens or classes of aliens whose entry he finds "would be

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detrimental to the United States," and 8 U.S.C. § 1185(a), which among other things prohibits an alien from entering or attempting to enter the United States except under such rules as the President may prescribe. In addition, Section 4 of the proclamation, which does not invoke a specific statutory authority, directs that immigration authorities prevent covered aliens' *physical* entry into the United States. For covered aliens found within the United States, Section 2 of the proclamation provides that they "are restricted from invoking provisions" of federal immigration law, including those related to asylum eligibility, that would "permit their continued presence in the United States."

In addition to the aforementioned restrictions targeting "aliens engaged in the invasion across the southern border," the proclamation separately invokes 8 U.S.C. §§ 1182(f) and 1185(a) to suspend the entry of "any alien who fails, before entering the United States, to provide Federal officials with sufficient medical information and reliable criminal history and background information" to enable a determination as to whether the alien falls under any of the statutory grounds for inadmissibility related to health, criminal activity, or national security. The proclamation also restricts these persons from obtaining asylum or other relief that would enable them to remain in the United States.

The proclamation directs the Secretary of the Department of Homeland Security (DHS), in coordination with the Secretary of State and Attorney General, to take "all appropriate action to repel, repatriate, or remove any alien engaged in invasion across the southern border of the United States." Pursuant to the proclamation, the Acting Secretary of DHS issued "Finding of Mass Influx of Aliens" on January 23, 2025, and invoked 28 C.F.R. § 65.83 to "request assistance from a State or local government in the administration of the immigration laws of the United States under certain specified circumstances." The Acting Secretary found that "there exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents of all 50 States and that an actual or imminent mass influx of aliens is arriving at the southern border of the United States and presents urgent circumstances requiring an immediate federal response."

The proclamation's invocation of the Guarantee Clause as a source of authority for restricting alien entry and relief from removal is legally untested. During the 1990s, several states brought suit alleging that the federal government's failure to prevent an influx of aliens crossing the international border breached the federal government's constitutional duty to protect against "invasion" under the Guarantee Clause. Lower courts generally rejected such claims as raising a non-reviewable political question. Some courts—including the U.S. Courts of Appeals for the Second, Third, and Ninth Circuits—concluded that, even if a Guarantee Clause claim is subject to judicial review, the constitutional provision applies only in the context of an "armed hostility from another political entity, such as another state or foreign country that is intending to overthrow the state's government." Accordingly, a court reviewing a challenge to the suspension of physical entry under the proclamation may likely consider, first, whether the claim is justiciable and, second, whether aliens arriving to the United States may constitute an "invasion" for purposes of Article IV, Section 4.

The proclamation's reliance on statutory authorities to suspend legal entry of aliens seems to rest on legal arguments that courts have explored more frequently, though challenges may still arise. The Supreme Court has interpreted the President's delegated authority under § 1182(f) broadly, and Presidents have invoked this authority in a variety of contexts to suspend the entry of certain classes of aliens. Lower courts have grappled with questions over § 1182(f)'s application, including when or whether invocation of § 1182(f) authority supersedes or conflicts with other statutory provisions and the degree to which domestic interests may inform the President's decision to invoke that authority.

A lawsuit filed on February 3, 2025, asserts that the proclamation violates various laws, including immigration laws related to granting relief and protection to aliens and the Administrative Procedure Act. The lawsuit also asserts that the proclamation is unconstitutional as it violates separation of powers and exceeds constitutional authority. The lawsuit remains pending before the district court.

Processing Applicants for Admission

On January 20, 2025, President Trump issued an executive order titled "Securing Our Borders." The order, among other things, directs the Secretary of DHS to "take all appropriate actions to detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States" and to terminate a long-standing policy of releasing into the country certain aliens who are found by immigration authorities to pose no security threat or flight risk and whose continued detention is determined not to be in the public interest. President Trump also ordered the Secretary of DHS (in coordination with the Secretary of State and the Attorney General) to resume a policy previously instituted during the first Trump Administration known as the Migrant Protection Protocols (MPP). Under the MPP, certain individuals arriving at the southern border who were seeking asylum or other forms of relief or protection were required to return to Mexico while U.S. immigration courts adjudicated their cases in formal removal proceedings.

The executive order also directs the Secretary of DHS to cease using a mobile application developed during the Biden Administration known as "CBP One" to allow aliens who lack legal authorization to enter the United States to schedule appointments for their inspection at ports of entry along the southern border. President Trump also ordered the termination of existing "categorical parole programs," including the Biden Administration's special parole processes for nationals of Cuba, Haiti, Nicaragua, and Venezuela (CHNV parole programs) that permitted them to enter and remain in the United States temporarily if they had U.S. financial sponsors. Additionally, President Trump directed the Secretary of State (in coordination with the Attorney General and Secretary of DHS) to "take all appropriate action to facilitate additional international cooperation and agreements," including agreements authorizing transfer of asylum seekers to safe third countries for consideration of their claims.

On January 21, 2025, DHS announced a series of actions in response to the executive order. These actions include (1) the immediate reinstatement of the MPP (reportedly, the government of Mexico has not agreed to accept non-Mexican nationals who would be returned under the MPP at this time), (2) the removal of the scheduling functionality of the CBP One app and the cancellation of appointments that had been made using that app, and (3) a new policy that "ends the broad abuse of humanitarian parole and returns the program to a case-by-case basis." A January 23, 2025, DHS memorandum provided direction to agency components regarding the review of the status and possible removal of aliens granted parole under any categorical parole program terminated by the Administration. On March 25, 2025, DHS announced the termination of the CHNV parole programs, effective as of April 24, 2025.

In an ongoing legal challenge to a 2024 rule promulgated during the Biden Administration that makes certain aliens who unlawfully enter the United States at the southern border generally ineligible for asylum unless they, among other things, had arrived at U.S. ports of entry pursuant to pre-scheduled times and places, the plaintiffs filed a motion with the court on January 23, 2025, seeking a temporary restraining order to require DHS to allow certain asylum seekers who had scheduled appointments using CBP One to enter the United States. The plaintiffs argued that the asylum seekers had relied on the app to schedule their appointments and that DHS's cancellation of the appointments unlawfully deprived them of an opportunity to seek asylum. The judge denied the request on February 6, 2025.

In another case, aliens who received grants of parole under the Biden Administration's special parole processes, including the CHNV parole program, filed a lawsuit seeking to prevent DHS from categorically revoking their existing grants of parole. On April 14, 2025, a federal district court stayed DHS's termination of existing grants of parole and work authorization under the CHNV parole programs prior to their originally stated end dates, concluding, among other things, that the agency's categorical termination of parole without conducting a case-by-case review was unlawful.

With respect to the MPP, 8 U.S.C. § 1225(b)(2)(C) provides that the Secretary of DHS "may return" inadmissible aliens placed directly into formal removal proceedings to "a foreign territory contiguous to the United States" pending adjudication if the alien is "arriving on land" from that territory. In 2019, a federal district court ruled in *Innovation Law Lab v. Nielsen* that DHS lacked authority to implement the MPP because the agency's return authority found in § 1225(b)(2)(C) could not be applied to aliens encountered at the border who would ordinarily be subject to expedited removal procedures. In 2020, the Ninth Circuit affirmed the district court's preliminary injunction barring DHS's implementation of the MPP. The Supreme Court, however, granted the government's request to stay the preliminary injunction pending the Court's review of the case, thereby allowing DHS to continue the MPP. Ultimately, the Biden Administration rescinded the MPP, rendering the legal challenge to the MPP moot. The Trump Administration's reinstatement of the MPP may prompt new consideration of these issues.

Border Security

On January 20, 2025, President Trump issued a proclamation declaring a national emergency at the southern border under the authority vested by the Constitution and federal statute, including under the National Emergencies Act (NEA). The proclamation invokes emergency powers codified in 10 U.S.C. §§ 12302 and 2808 to authorize the Department of Defense to support border operations and construction projects. The proclamation directs the use of "units or members of the Armed Forces, including the Ready Reserve and the National Guard," to provide support—including detention space, transportation, and the construction of additional physical barriers—along the southern border.

In a separate January 20, 2025, executive order, "Clarifying the Military's Role in Protecting the Territorial Integrity of the United States," President Trump, among other things, ordered the Secretary of Defense to submit a revised "Unified Command Plan" tasking U.S. Northern Command with "the mission to seal the borders and maintain the sovereignty, territorial integrity, and security of the United States by repelling forms of invasion including unlawful mass migration, narcotics trafficking, human smuggling and trafficking, and other criminal activities."

Additionally, in his "Securing Our Borders" executive order, President Trump instructed the Secretaries of Defense and DHS "to deploy and construct temporary and permanent physical barriers to ensure complete operational control of the southern border of the United States" and "to deploy sufficient personnel along the southern border of the United States to ensure complete operational control." The President also ordered the Secretary of DHS "to supplement available personnel to secure the southern border and enforce the immigration laws of the United States" pursuant to existing statutory authority.

The President's authority to invoke the NEA to reprogram military funds for border barrier construction has been the subject of litigation. During his first Administration, President Trump declared a national emergency at the southern border under the NEA and invoked the same statutory authorities cited in the January 20, 2025, executive order to use the military to support border operations and construction projects. In *El Paso County, Texas v. Trump*, a federal district court in 2019 held that the use of military funds to build a border wall was inconsistent with funding restrictions contained in the Consolidated Appropriations Act, 2019. On appeal, the U.S. Court of Appeals for the Fifth Circuit in 2020 ruled that the plaintiffs lacked standing to challenge the federal government's border wall expenditures. Conversely, in *Sierra Club v. Trump*, the Ninth Circuit held that a different group of plaintiffs had standing to challenge the border wall construction and affirmed a district court's determination that the construction did not fall within the scope of the government's emergency construction authority under 10 U.S.C. § 2808. The Supreme Court initially agreed to review the *Sierra Club* case but later vacated the Ninth Circuit's decision on mootness grounds after President Biden in 2021 terminated the national emergency and ordered an immediate pause to the border wall construction.

Refugee Admissions

Through an executive order signed on January 20, 2025, "Realigning the United States Refugee Admissions Program," President Trump suspended the entry of refugees under the U.S. Refugee Admissions Program for at least 90 days pending a review of "whether resumption of the entry of refugees into the United States under the program would be in the interests of the United States" (subject to certain exceptions, including discretionary admissions of certain aliens as refugees "on a case-by-case basis"). The restriction invokes the President's authority under 8 U.S.C. §§ 1182(f) and 1185(a), discussed above, to suspend the entry of aliens when he determines that such entry would be "detrimental to the United States." This suspension initially went into effect on January 27, 2025. Further, President Trump ordered officials to consult with states and localities before resettling refugees in those jurisdictions.

The suspension of refugee admissions has been subject to legal challenge. In one case, on February 28, 2025, a federal district court granted the plaintiffs' motion for a preliminary injunction blocking the suspension and ruled, among other things, that the President's action exceeded his statutory authority. Following the plaintiffs' filing of an amended complaint challenging the Secretary of State's termination of resettlement agency cooperative agreements, on March 24, 2025, the court issued a second preliminary injunction requiring reinstatement of those agreements. On March 25, 2025, the Ninth Circuit granted the government's motion to stay, in part, the February 28, 2025, injunction order pending appeal, allowing the government to pause refugee admissions except with respect to aliens who were conditionally approved for refugee status before January 20, 2025. In a separate case, on March 11, 2025, a federal district court denied the plaintiff's motion for a preliminary injunction seeking to revive the resettlement agency cooperative agreements, ruling that the court lacked the authority to grant that relief.

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