

# **The Impact of COVID-19 on Noncitizens and Across the U.S. Immigration System**

March-September 2020

By Jorge Loweree, Aaron Reichlin-Melnick,  
and Walter A. Ewing, Ph.D.

SPECIAL REPORT

# ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council works to strengthen America by shaping how America thinks about and acts towards immigrants and immigration and by working toward a more fair and just immigration system that opens its doors to those in need of protection and unleashes the energy and skills that immigrants bring. Through its research and analysis, the American Immigration Council provides policymakers, the media, and the general public with information about how the immigration system works, the impact of policy proposals, and the crucial role that immigration plays in our communities and workplaces.

Visit us at [www.AmericanImmigrationCouncil.org](http://www.AmericanImmigrationCouncil.org) and [www.ImmigrationImpact.com](http://www.ImmigrationImpact.com).

## ABOUT THE AUTHORS

Jorge Loweree is the Director of Policy at the American Immigration Council where he directs the Council's administrative and legislative advocacy and leads the Council's efforts to provide lawmakers, policymakers, advocates, and the general public with accurate and timely information about the role of immigrants in the United States. Previously, Jorge spent ten years in a variety of positions with the U.S. House of Representatives, most recently as Senior Counsel for Immigration Law and Policy, working on a wide range of enforcement and benefits issues. His experience includes the creation and implementation of novel and progressive programs to provide legal assistance to underserved populations, as well as extensive coalition-building and advocacy in pursuit of legal and regulatory reforms. Jorge holds a J.D. from the University of Colorado Law School and Bachelor of Arts in Mathematics from the Saint Mary's University.

Aaron Reichlin-Melnick is Policy Counsel at the American Immigration Council, where he works primarily on immigration court issues and the intersection of immigration law and policy. He previously worked as a Staff Attorney at the Council, working on impact litigation, Freedom of Information Act litigations, and practice advisories. Prior to joining the Council, he was an Immigrant Justice Corps Fellow placed as a Staff Attorney at the Immigration Law Unit of The Legal Aid Society in New York City, representing immigrants placed in removal proceedings because of a prior criminal conviction. Aaron holds a J.D. from the Georgetown University Law Center and a B.A. in Politics and East Asian Studies from Brandeis University.

Walter A. Ewing, Ph.D., is an Editor and Writer at the American Immigration Council. Walter has authored numerous reports for the Council, including *The Criminalization of Immigration in the United States* (co-written in 2015 with Daniel Martínez and Rubén Rumbaut), which received considerable press attention. He has also published articles in the *Journal on Migration and Human Security*, *Society*, the *Georgetown Journal of Law and Public Policy*, and the *Stanford Law and Policy Review*, as well as a chapter in *Debates on U.S. Immigration*, published by SAGE in 2012. Walter holds a Ph.D. in Anthropology from the City University of New York (CUNY).

## ACKNOWLEDGEMENTS

For their valuable advice on different aspects of the development of this report, we thank Royce Murray, Managing Director of Programs at the American Immigration Council, Emily Creighton, Legal Director at the American Immigration Council, Leslie Dellon, Staff Attorney, American Immigration Council, Wendy Feliz, Director of the Center for Inclusion and Belonging at the American Immigration Council. Finally, we also thank Tory Johnson and Eric Gibble at the American Immigration Council for their work in the fact-checking, editing, and layout of this report.

## CONTENTS

<b>Executive Summary</b> .....	4
<b>Introduction</b> .....	8
<b>The Effect of COVID-19 on Immigrants and Nonimmigrants Abroad</b> .....	10
<b>The Effect of COVID-19 on Immigration Processing at U.S. Land Borders</b> .....	18
<b>The Effect of COVID-19 on Immigration Processing Inside the United States</b> .....	24
<b>The Effect of COVID-19 on Immigration Enforcement and Detention Inside the United States</b> .....	30
<b>The Effect of COVID-19 on the Immigration Court System</b> .....	38
<b>Congressional Response to the Impact of COVID-19 on Noncitizens</b> .....	42
<b>Conclusion</b> .....	46
<b>Endnotes</b> .....	47

# EXECUTIVE SUMMARY

The COVID-19 (the novel coronavirus) pandemic, and the related federal response, disrupted virtually every aspect of the U.S. immigration system. Visa processing overseas by the Department of State, as well as the processing of some immigration benefits within the country by U.S. Citizenship and Immigration Services (USCIS), have come to a near standstill. Entry into the United States along the Mexican and Canadian borders—including by asylum seekers and unaccompanied children—has been severely restricted. Immigration enforcement actions in the interior of the country have been curtailed, although they have not stopped entirely. Tens of thousands of people remain in immigration detention despite the high risk of COVID-19 transmission in crowded jails, prisons, and detention centers that U.S. Immigration and Customs Enforcement (ICE) uses to hold noncitizens. The pandemic led to the suspension of many immigration court hearings and limited the functioning of the few courts which remain open or were reopened. Meanwhile, Congress left millions of immigrants and their families out of legislative relief, leaving many people struggling to stay afloat in a time of economic uncertainty.

This report seeks to provide a comprehensive overview of the impact of COVID-19 across the immigration system in the United States. Given that the landscape of immigration policy is changing rapidly in the face of the pandemic, this report will be updated as needed.

## The Effect of COVID-19 on Immigrants and Nonimmigrants Abroad

The COVID-19 pandemic profoundly impacted the ability of foreign nationals to travel to the United States in any status. Beginning in February 2020, the Trump administration has imposed five separate travel restrictions on individuals who had been present in certain countries where COVID-19 epidemics were occurring. As the pandemic spread, on March 20, 2020 the Department of State suspended “routine visa services” at all embassies and consulates worldwide, including cancelling all “immigrant and nonimmigrant visa appointments.” This suspension encompasses applicants for both employment-based and family-based immigrant visas, including the relatives of U.S. citizens and lawful permanent residents (LPRs), as well as applicants for nonimmigrant visas for visitors, students, and skilled workers. However, the State Department has continued to process all H-2 visa cases, which includes temporary agricultural workers, and allows for emergency visa appointments. The worldwide suspension remained until mid-July, after which some consulates began to slowly reopen.

The pandemic also led to new barriers on legal immigration. The Trump administration implemented a proclamation, effective April 24, 2020 and lasting through at least December 31, 2020, that suspends the entry of certain immigrants, with the stated purpose of preserving employment opportunities for U.S. citizens affected by the economic impact of the pandemic. On June 24, the ban was extended to include a prohibition on entry in certain employment-based nonimmigrant visa categories.

**Analysis and Recommendations:** The United States should work to remove the red tape that makes it difficult for many medical professionals to move to the United States and contribute their talents. In addition, the ban on most new immigrants and nonimmigrants should be terminated, as it is a thinly veiled attempt to implement drastic changes to our immigration system and not a genuine attempt to help American workers.

## The Effect of COVID-19 on Immigration Processing at U.S. Land Borders

On March 20, 2020, the United States reached joint agreements with the governments of Canada and Mexico to suspend “non-essential” travel through ports of entry on each border. On the same day, the Department of Health and Human Services (HHS) issued an emergency regulation which permits the Director of the Centers for Disease Control (CDC) to “prohibit ... the introduction” of individuals when the Director believes that “there is serious danger of the introduction of [a communicable] disease into the United States.” Citing the new CDC authority, the Border Patrol began “expelling” individuals who arrive at the U.S.-Mexico border, without giving them the opportunity to seek asylum. Through the end of August, over 147,000 people have been “expelled” at the southern border. In addition, all “Migrant Protection Protocols” (MPP) hearings at the border for asylum seekers sent to Mexico have been suspended indefinitely until

the pandemic abates significantly, leaving more than 20,000 people stranded in Mexico or forced to abandon their cases and return home.

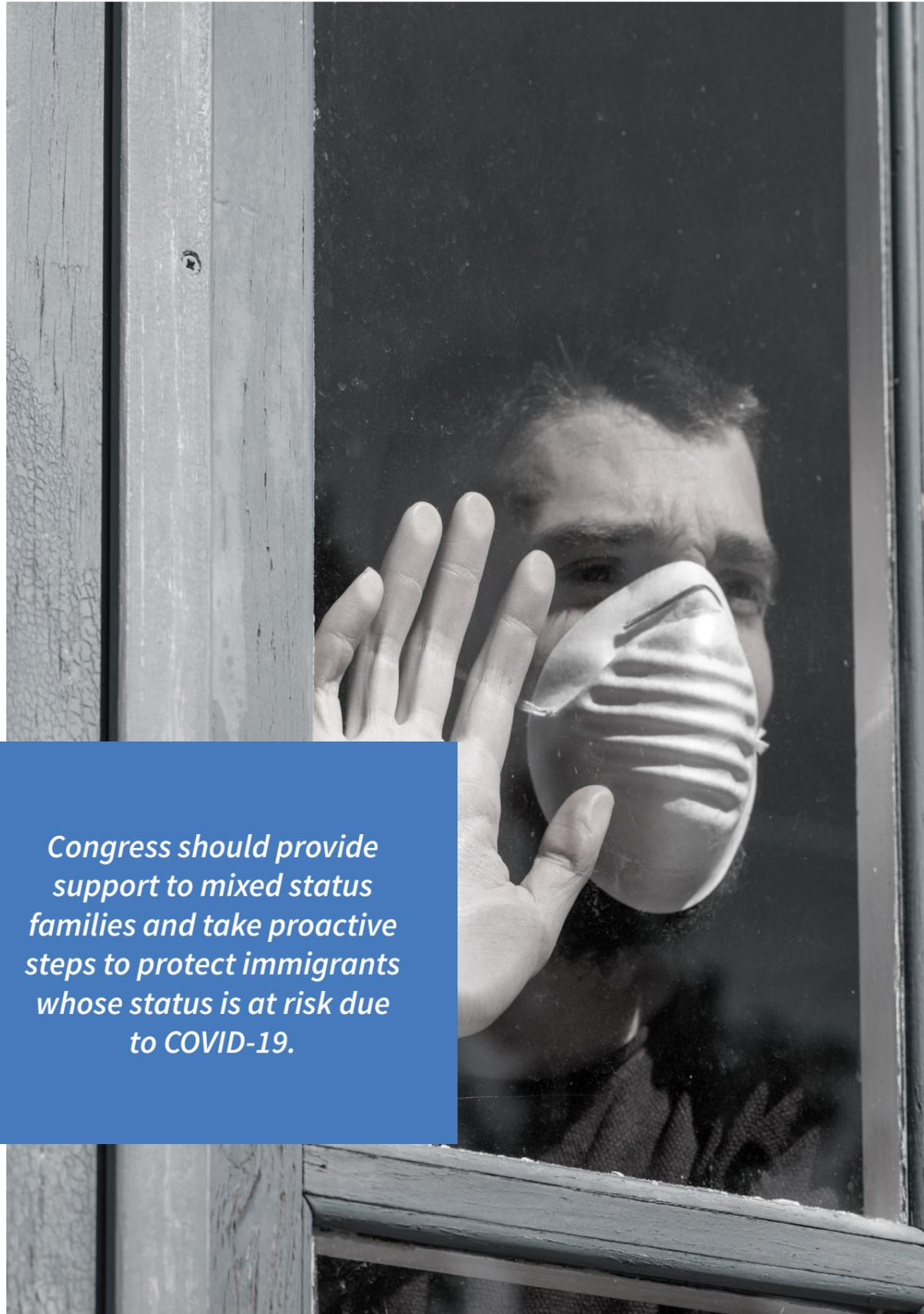
**Analysis and Recommendations:** Suspending all processing of asylum seekers in this manner is likely a violation of international and domestic law. U.S. Customs and Border Protection (CBP) should immediately develop plans to administer appropriate screenings at the border for asylum seekers and unaccompanied children, allowing for the safe processing of all individuals in a way that protects the vulnerable, while preventing the spread of the coronavirus. CBP should also parole all individuals in MPP proceedings into the United States.

## The Effect of COVID-19 on Immigration Processing Inside the United States

USCIS suspended all in-person services at its offices for the first three months of the pandemic, before beginning a slow reopening process in certain locations. As a result, interviews for all immigration benefit applications and asylum applications were postponed and will be rescheduled when normal operations resume. USCIS also temporarily suspended all biometrics appointments, meaning that new fingerprints could not be taken. In addition, the agency temporarily suspended naturalization oath ceremonies through June, resisting video oath ceremonies and instead instituting socially distant in-person oath ceremonies and drive-through oath ceremonies. This delayed the ability of tens of thousands of immigrants to become U.S. citizens. The agency has also made a number of technical changes to the H-2A and H-2B processes that make it easier for noncitizens who are working to keep the nation’s food supply stable to remain in the United States for the duration of the national emergency.

However, the agency has resisted calls to grant automatic status extensions or otherwise make changes which would prevent foreign nationals from inadvertently losing status during the national emergency declared by the president on March 13, 2020. In addition, the agency announced that due to reduced fees resulting in part from the pandemic, it would run out of money to meet its expenses and that it would have to furlough 13,400 employees. While the agency ultimately cancelled its planned furloughs, it nevertheless announced that it anticipated that operational reductions would significantly impact its day-to-day operations.

**Analysis and Recommendations:** Despite the extraordinary set of circumstances presented by the pandemic, USCIS has not issued broad policy changes that would enable noncitizens to focus on their well-being rather than their immigration paperwork. USCIS should suspend all filing deadlines and extend all nonimmigrant statuses for at least 90 days beyond the duration of the COVID-19 national emergency. The agency should also administer oath ceremonies online to approved naturalization candidates. Congress should also ensure that any emergency funding provided to USCIS is conditioned upon significant accountability measures.



## The Effect of COVID-19 on Immigration Enforcement and Detention Inside the United States

The arrival of the coronavirus in the United States posed an immediate threat to detained individuals and individuals working in detention facilities. Unlike people living outside of detention centers, those in detention centers cannot socially distance from others, as they are locked inside facilities with hundreds of other people. People in detention have limited access to soap and often must pay for hand sanitizer. Face masks are difficult to obtain or simply not distributed at all. The risk of the virus spreading to additional ICE detention centers is exacerbated by the agency's practice of routinely transferring people from one detention center to another, often multiple times. At least eight people have died after contracting COVID-19 while detained and over 6,000 people have tested positive in ICE detention since the pandemic began.

In response to the coronavirus pandemic, ICE limited its enforcement actions throughout the United States. While the agency did not fully suspend arrests, it promised to “temporarily adjust its enforcement posture” beginning on March 18, 2020, by “focus[ing] enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds.” The effect of ICE's limited enforcement became quickly apparent, with the agency sending fewer people to ICE detention centers in the weeks after the change in policy.

**Analysis and Recommendations:** ICE should use its broad authority to parole people and release them on alternatives to detention to the widest extent possible while their immigration court proceedings continue. For those who remain detained, telephonic access to one's attorneys and family members should be robust. In addition, despite a drop in immigration enforcement inside the United States, ICE has continued to deport people to countries around the world, even though this threatens to further spread the coronavirus. ICE should limit enforcement actions that put communities at heightened risk due to COVID-19 by implementing meaningful enforcement priorities.

## The Effect of COVID-19 on the Immigration Court System

As the pandemic spread throughout the United States, the immigration court system responded slowly. It was not until March 16 that the Executive Office for Immigration Review (EOIR) postponed large “master calendar hearings” nationwide. Despite suspending all non-detained immigration court hearings through June, EOIR has not suspended all other hearings. Hearings continue for all immigrants held in detention, as well as for unaccompanied children held in shelters by the HHS Office of Refugee Resettlement. In June, EOIR began reopening some courts across the country for individual hearings but has not explained its methodology for picking which courts should be reopened. Several courts that reopened have been forced to

close unexpectedly for days at a time when a COVID-19 exposure occurs. While most courts remained shuttered through August, by the end of September the majority of courts had reopened for at least some hearings.

**Analysis and Recommendations:** Requiring detained immigrants and unaccompanied children to gather in close proximity for court hearings risks furthering the spread of COVID-19. EOIR should suspend all in-person immigration court hearings and utilize remote technology until COVID-19 is under control. When choosing how to reopen courts, EOIR should provide a clear and detailed public plan on ensuring the safety of immigrants, court staff, and attorneys.

## Congress' Response to the Impact of COVID-19 on Immigrants

In response to the economic downturn, Congress passed several stimulus measures intended to provide financial support to individuals, businesses, and governments across the country—while also increasing the availability of medical testing and treatment.

The “Coronavirus Aid, Relief, and Economic Security” Act, or CARES Act, directs the expenditure of approximately \$2 trillion in new spending to provide emergency assistance—including direct payments—for individuals, families, and businesses impacted by the COVID-19 pandemic. However, many immigrants and their families have been left out. Noncitizens who lack Social Security numbers but nevertheless file federal income tax returns using Individual Taxpayer Identification Numbers (ITINs)—including millions of lawfully-present noncitizens and their families—are deemed ineligible for recovery rebates and emergency grants. Even American citizens who file their taxes jointly with someone using an ITIN are denied eligibility.

The CARES Act also includes language allowing colleges and universities to use emergency funding to award emergency financial aid grants to undergraduate and graduate students to assist with unexpected expenses and unmet needs that arise as a result of the COVID-19 pandemic. The U.S. Department of Education has worked to limit the availability of these grants to students who are U.S. citizens and certain qualifying noncitizens. Many noncitizens—including millions of international students and DACA recipients—are deemed ineligible for emergency grants under the CARES Act and are left with little to no options to obtain economic assistance during the pandemic.

**Analysis and Recommendations:** Congress has largely failed to provide meaningful support to millions of immigrants and mixed status families throughout the United States. Congress should provide support to mixed status families and take proactive steps to protect immigrants whose status is at risk due to COVID-19. The Department of Education should also ensure that noncitizen students remain eligible for emergency grants throughout the pandemic.

*Congress should provide support to mixed status families and take proactive steps to protect immigrants whose status is at risk due to COVID-19.*

# INTRODUCTION

The COVID-19 (the novel coronavirus) pandemic, and the federal government's response, has disrupted virtually every aspect of the U.S. immigration system. Visa processing overseas by the Department of State, as well as the processing of some immigration benefits within the country by U.S. Citizenship and Immigration Services (USCIS), have come to a near standstill. Entry into the United States along the Mexican and Canadian borders, including by asylum seekers, has been severely restricted. Immigration enforcement actions in the interior of the country have been curtailed, although they have not stopped entirely. Tens of thousands of people remain in immigration detention despite the high risk of COVID-19 transmission in crowded jails, prisons, and detention centers that U.S. Immigration and Customs Enforcement (ICE) uses to hold noncitizens. The pandemic led to the suspension of almost all immigration court hearings and limited the functioning of those few courts which remain open.

This report seeks to provide a comprehensive overview of COVID-19-related disruptions throughout the immigration system and identifies recommendations for adjustments and improvements to the federal response. Given that the landscape of immigration policy is changing rapidly in the face of the pandemic, this report will be updated as needed.<sup>1</sup>



*This report seeks to provide a comprehensive overview of COVID-19-related disruptions throughout the immigration system and identifies recommendations for adjustments and improvements to the federal response.*

# THE EFFECT OF COVID-19 ON IMMIGRANTS AND NONIMMIGRANTS ABROAD

Citizens of foreign countries who wish to travel to the United States must generally obtain a visa to enter the country. Exceptions exist for citizens and nationals of 39 countries that participate in the Visa Waiver Program.<sup>2</sup> The interviews and processing associated with the issuance of U.S. visas are handled by a network of U.S. Department of State (DOS) embassies and consulates around the world.

The COVID-19 pandemic has profoundly impacted the ability of foreign nationals to travel to the United States as both immigrants (people granted permission to permanently reside in the United States) and nonimmigrants (people who come to the United States on a temporary basis for work, study, business, or tourism). Much of this is due to changes to routine operations at U.S. consulates which are intended to reduce the rate of infection and protect U.S. personnel abroad. The Trump administration has also prevented nationals of specific countries with high rates of COVID-19 infection from traveling to the United States during the pandemic. Further, the Trump administration issued a proclamation effective April 24, 2020, that suspended the entry of certain immigrants, and a subsequent expansion of this proclamation effective June 24, 2020, that suspended the entry of many nonimmigrants. The stated purpose of the proclamation and its expansion was to preserve employment opportunities for U.S. citizens affected by the economic impact associated with the pandemic.<sup>3</sup> The collective impact of the limitations on visa processing and availability sharply curtailed immigration to the United States for immigrants and nonimmigrants alike.

## Entry Restrictions Targeting Specific Countries

On February 2, 2020, President Trump issued a proclamation imposing restrictions on entry into the United States of noncitizens traveling from China.<sup>4</sup> On March 2, similar restrictions followed regarding noncitizens traveling from Iran.<sup>5</sup> On March 13, the administration issued restrictions on travel from the 26 European nations of the Schengen Area: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.<sup>6</sup> On March 17, further restrictions were imposed on travel from the United Kingdom (excluding overseas territories outside of Europe) and the Republic of Ireland.<sup>7</sup> On May 24, similar restrictions were imposed on travel from Brazil.<sup>8</sup>

Each of these proclamations prevent entry into the United States, as either immigrants or nonimmigrants, of any noncitizens who were physically present within the designated countries “during the 14-day period preceding their entry or attempted entry into the United States.”<sup>9</sup>

However, none of the proclamations fully ban travel to the United States. These restrictions do not apply to any noncitizen who is:

- a lawful permanent resident (LPR) of the United States;
- the spouse of a U.S. citizen or LPR; the parent or legal guardian of a U.S. citizen or LPR under the age of 21 and unmarried;
- the child, foster child, or ward of a U.S. citizen or LPR;
- traveling at the invitation of the U.S. government for a purpose related to containment or mitigation of coronavirus;
- traveling as a member of an air or sea crew;
- traveling as a foreign government or NATO official or immediate family member of such an official; or
- a member of the U.S. Armed Forces or spouse or child of said member.

These proclamations have no end date. On the first and fifteenth day of each month, the Secretary of Health and Human Services is required to recommend whether the president “continue, modify, or terminate” each proclamation.<sup>10</sup>

On September 15, CBP lifted arrival restrictions for individuals flying directly from countries covered by the proclamations. CBP no longer requires airplanes to fly to specific airports and has ended certain public health measures at airports, such as temperature screenings.<sup>11</sup> The proclamations remain in place.

## Limitations on Visa and Refugee Processing Abroad

On March 20, the DOS suspended “routine visa services” at all embassies and consulates worldwide.<sup>12</sup> All “immigrant and nonimmigrant visa appointments” were cancelled as of that date. This suspension encompasses applicants for both employment- and family-based immigrant visas, including the relatives of U.S. citizens and LPRs. The suspension also halts the processing of applications for nonimmigrant visas for visitors, students, and skilled workers. However, consulates remain open for “emergency” visa appointments.<sup>13</sup>

While the DOS announced a phased resumption of visa services on July 14 on a post-by-post basis, routine visa services remain suspended at the vast majority of consular posts abroad as of the most recent update to this report.<sup>14</sup> On August 31, the DOS indicated that as consulates reopened they would give “high priority” to K-1 visa petitions for fiancé(e)s of U.S. citizens.<sup>15</sup>

The suspension of consular services does not affect services to U.S. citizens or anyone traveling under the Visa Waiver Program who are not required to visit an embassy or consulate to obtain permission to travel to the United States.<sup>16</sup> However, because many Visa Waiver Program countries are in Europe, and people who have recently spent time in the region are subject to restrictions in traveling to the United States, most Visa Waiver Program entrants would be unable to enter the United States without first spending at least 14 days outside of their home country. In addition, the DOS continues to process all H-2 visa cases, which includes temporary agricultural workers, given the importance of that visa category “to the economy and food security of the United States.”<sup>17</sup>

The combined impact of international travel restrictions related to slowing the spread of COVID-19 caused the U.S. Refugee Resettlement Program to grind to a halt as well. On March 17, the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration, which facilitate the processing and travel of refugees abroad, temporarily suspended travel by refugees to their country of resettlement.<sup>18</sup>

UNHCR lifted the temporary suspension on June 18.<sup>19</sup> In the United States, refugee resettlement remained suspended until July 30, when the State Department approved the resumption of the refugee resettlement program, along with unspecified “significant COVID health measures.”<sup>20</sup>

## Presidential Proclamation Suspending Entry of Certain Immigrants to the United States

On April 20, 2020, five weeks after the European travel restrictions were issued, President Trump declared that he intended to sign an executive order that would “temporarily suspend immigration into the United States.”<sup>21</sup>

On April 22, 2020, President Trump signed Proclamation 10014 (the COVID-19 immigrant visa ban), suspending the entry of certain immigrants into the United States for an initial period of 60 days, beginning on April 24.<sup>22</sup> On June 22, the president extended the COVID-19 immigrant visa ban through December 31, 2020.<sup>23</sup> The proclamation relies on authority granted to the president under section 212(f) of the Immigration and Nationality Act to suspend the “entry” of noncitizens whose entry the president has deemed to be “detrimental to the interests of the United States.”<sup>24</sup> This is the same statutory basis that the president invoked in 2017 when implementing bans on the entry of immigrants and nonimmigrants from a number of Muslim-majority and other countries.<sup>25</sup>

The stated justification for the new immigration ban varies from previous orders. The president justified the Travel Ban (or Muslim Ban) on national security grounds, with the stated purpose of further increasing the scrutiny of individual immigrants and

nonimmigrants as well as increasing information-sharing between the United States and other nations.<sup>26</sup> Unlike the Travel Ban, the COVID-19 immigrant visa ban suspends the entry of immigrants based on their purported negative impact on the U.S. labor market, not on national security grounds.<sup>27</sup> The proclamation does not include any analysis, however, supporting the claim that suspending the entry of certain immigrants will help native-born workers recover from the economic downturn associated with the COVID-19 pandemic.

The COVID-19 immigrant visa ban primarily targets a unique combination of noncitizens who seek to come to the United States based on their close familial relationships to U.S. citizens or LPRs. As of April 24, 2020, the proclamation suspends the issuance of all new immigrant visas to people outside the U.S. with some notable exceptions. These exceptions are detailed below:

### Individuals Directly Impacted, Exempted, or Otherwise Unaffected by the COVID-19 Immigrant Visa Ban

People Directly Impacted	People Who Are Exempt or Otherwise Unaffected
<ul style="list-style-type: none"> <li>The noncitizen parents of U.S. citizens.</li> </ul>	<ul style="list-style-type: none"> <li>The noncitizen spouses of U.S. citizens.</li> </ul>
<ul style="list-style-type: none"> <li>The noncitizen adult children (over the age of 21) of U.S. citizens.</li> </ul>	<ul style="list-style-type: none"> <li>The noncitizen children of U.S. citizens and prospective adoptees who are under the age of 21.</li> </ul>
<ul style="list-style-type: none"> <li>The noncitizen sisters and brothers of U.S. citizens.</li> </ul>	<ul style="list-style-type: none"> <li>Noncitizens who seek to enter the U.S. as EB-5 immigrant investors.</li> </ul>
<ul style="list-style-type: none"> <li>The noncitizen spouses of LPRs.</li> </ul>	<ul style="list-style-type: none"> <li>Other noncitizens who seek to enter the U.S. as physicians, nurses, or other healthcare professionals to perform work deemed essential in combatting, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak as determined by the Secretaries of State and Homeland Security.</li> </ul>
<ul style="list-style-type: none"> <li>The noncitizen children (regardless of age) of LPRs.</li> </ul>	<ul style="list-style-type: none"> <li>Noncitizens who could further important U.S. law enforcement objectives.</li> </ul>
<ul style="list-style-type: none"> <li>Diversity visa lottery winners.</li> </ul>	<ul style="list-style-type: none"> <li>Noncitizen members of the armed forces, their spouses, and children.</li> </ul>
<ul style="list-style-type: none"> <li>Noncitizens who seek to enter the U.S. on employment-based visas unless specifically exempted.</li> </ul>	<ul style="list-style-type: none"> <li>Special Immigrant Visas for Iraqi and Afghan translators/interpreters, their spouses, and children.</li> </ul>
<ul style="list-style-type: none"> <li>All other categories, unless specifically exempted (see list of exemptions below).</li> </ul>	<ul style="list-style-type: none"> <li>Anyone who seeks to come to the U.S. in any of the nonimmigrant visa categories, including all employment-based categories. However, certain nonimmigrant employment-based categories are now covered by the COVID-19 nonimmigrant visa ban.</li> </ul>

**Source:** President Donald J. Trump, “Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak,” April 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/>

Despite the president’s suggestion that the ban is needed to help American workers, the COVID-19 immigrant visa ban does not explicitly target the various visa categories that allow foreign nationals to enter the United States temporarily for business, pleasure, or to work in specific fields. It did, however, instruct the secretaries of labor, homeland security, and state to review nonimmigrant visa programs within 30 days and provide recommendations for additional measures to stimulate the U.S. economy.<sup>28</sup>

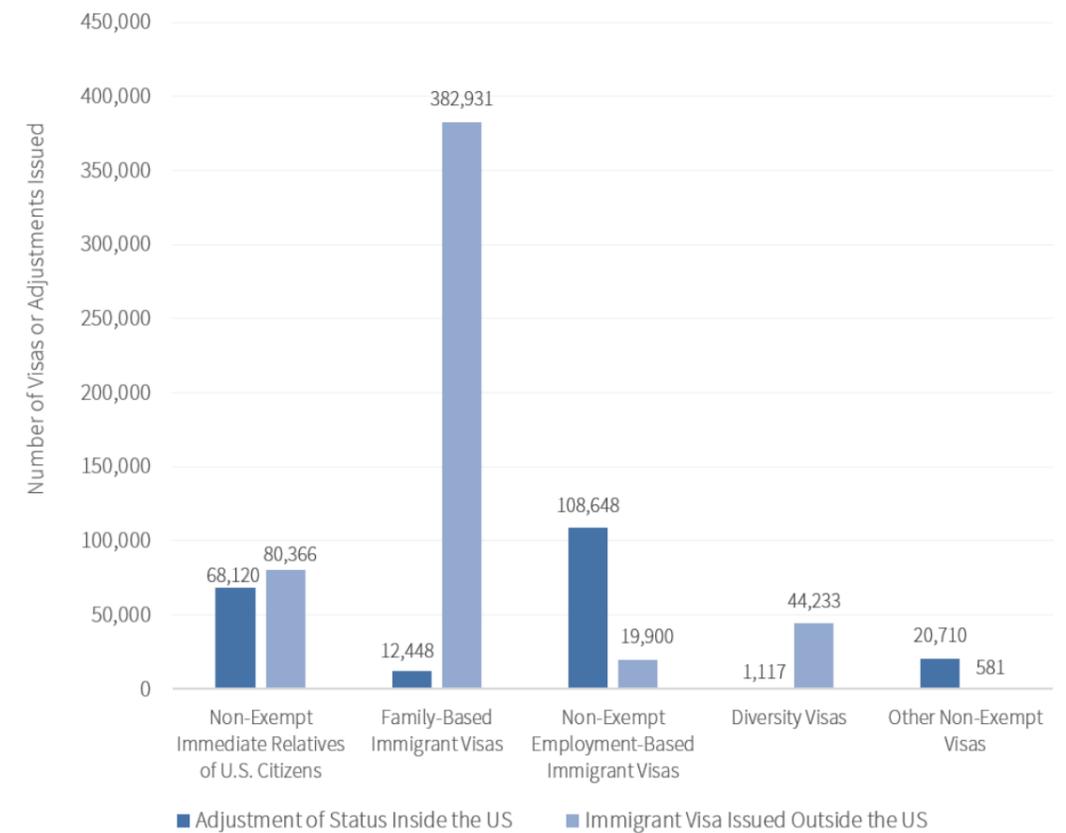
The proclamation does not target noncitizens who apply for green cards from within the United States through a process known as “adjustment of status.” U.S. Department of Homeland Security (DHS) data confirm that the vast majority of people—over 94 percent in FY 2018—who obtained permanent residency through the family-based categories did so from abroad.<sup>29</sup> The majority of people—80 percent—who applied for green cards

through the employment-based categories did so from within the United States through the adjustment of status process.<sup>30</sup>

The practical effect of these variations means that the greatest impact of the COVID-19 immigrant visa ban will be felt by people who attempt to obtain permanent residency through the family-based and diversity categories. Noncitizens who are eligible to obtain permanent residency through employment are almost entirely unaffected (Figure 1), as were those eligible to come to the United States as temporary workers until the president issued the COVID-19 nonimmigrant visa ban described below.

This disconnect between the impact on family-based immigrants compared to employment-based immigrants undermines the rationale for the ban and suggests the real purpose of the ban is to reduce family-based immigration, for which the president has long advocated.

**FIGURE 1: FY 2018 Immigration in Categories Not Exempt From COVID-19 Immigrant Visa Ban, by Method of Obtaining Lawful Permanent Resident Status**



Source: Department of Homeland Security, *Yearbook of Immigration Statistics 2018*, Table 7, April 23, 2020, <https://www.dhs.gov/immigration-statistics/yearbook/2018>.

While the practical impact of suspending the issuance of immigrant visas for the various categories described above in the short term will be minimal in light of the disruption that COVID-19 caused to routine operations at U.S. embassies and consulates around the world, the potential long-term consequences are considerable. If the COVID-19 immigrant visa ban remains in place for a year, it is estimated that it will reduce the number of immigrant visas—and therefore the number of green cards—issued by approximately 358,000, or 33 percent of the annual total.<sup>31</sup> Administration officials indicated that the proclamation is part of a long-term strategy.<sup>32</sup>

On September 4, 2020, a federal judge in Washington, D.C. ordered the State Department to resume issuing visas to people who had been selected for the 2020 Diversity Visa Lottery, who would otherwise lose their opportunity to immigrate to the United States if they did not obtain a visa by September 30, 2020.<sup>33</sup> Individuals who receive these visas will not necessarily be able to enter the United States, as their “entry” is still suspended by the proclamation. The judge rejected a broader challenge to the COVID-19 immigration bans imposed by President Trump, finding that the plaintiffs were unlikely to prove at that point that the bans exceeded the president’s power under section 212(f) of the Immigration and Nationality Act.<sup>34</sup>

## Presidential Proclamation Suspending Entry of Certain Nonimmigrants to the United States

On June 22, 2020, President Trump issued Presidential Proclamation 10052 (the COVID-19 nonimmigrant visa ban), suspending for an initial period of 60 days the entry of hundreds of thousands of individuals who come to the United States on certain nonimmigrant work visas.<sup>35</sup> As with previous proclamations, the COVID-19 nonimmigrant visa ban relies on authority granted to the president under section 212(f) of the Immigration and Nationality Act to suspend the “entry” of noncitizens whose entry the president has deemed to be “detrimental to the interests of the United States,” and its stated purpose is to preserve employment opportunities for Americans during the pandemic by reducing the supply of labor in the U.S.<sup>36</sup> As with the COVID-19 immigrant visa ban, the COVID-19 nonimmigrant visa ban does not include any meaningful economic analysis supporting its purported benefits.

As of June 24, 2020, the COVID-19 nonimmigrant visa ban suspends the issuance of all new H-1B, H-2B, J, and L visas with some notable exceptions provided in State Department guidance, which are detailed below.<sup>37</sup>

## Individuals Directly Impacted, Exempted, or Otherwise Unaffected by the COVID-19 Nonimmigrant Visa Ban

People Directly Impacted	People Who Are Exempt or Otherwise Unaffected
<ul style="list-style-type: none"> <li>Individuals seeking H-1B visas and their spouses and dependents.</li> </ul>	<ul style="list-style-type: none"> <li>Any person seeking to enter the United States to “provide temporary labor or services essential to the United States food supply chain.” However, the Department of State interprets this exemption as limited to H-2B visa applicants.<sup>38</sup></li> </ul>
<ul style="list-style-type: none"> <li>Individuals seeking H-2B visas and their spouses and dependents.</li> </ul>	<ul style="list-style-type: none"> <li>Individuals that the secretaries of state, labor, and homeland security classify as seeking a position that is “critical to the defense, law enforcement, diplomacy, or national security of the United States.”</li> </ul>
<ul style="list-style-type: none"> <li>Individuals seeking J visas in the categories of intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and their spouses and dependents.</li> </ul>	<ul style="list-style-type: none"> <li>Individuals that the secretaries of state, labor, and homeland security classify as seeking a position that is “involved with the provision of medical care to individuals hospitalized with COVID-19,” or “medical research” relating to COVID-19.</li> </ul>
<ul style="list-style-type: none"> <li>Individuals seeking L visas and their spouses and dependents.</li> </ul>	<ul style="list-style-type: none"> <li>Individuals that the secretaries of state, labor, and homeland security classify as seeking a position that is “necessary to facilitate the immediate and continued economic recovery of the United States.”</li> </ul>

**Source:** President Donald J. Trump, “Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak,” June 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>.



*The COVID-19 nonimmigrant visa ban suspends the issuance of all new H-1B, H-2B, J, and L visas with some notable exceptions provided in State Department guidance.*

In 2018, a total of 3,919,567 noncitizens entered the United States as temporary workers or their derivatives, the most recent year for which data is available.<sup>39</sup> Approximately 2,525,599 of them entered the country as H-1B, H-2B, J, or L beneficiaries, and would therefore have been prevented from coming to the United States under the COVID-19 nonimmigrant visa ban.<sup>40</sup> This represents approximately 64 percent of all temporary worker admissions.

The Trump administration has attempted to justify these restrictions on economic grounds by claiming that they will reallocate approximately 500,000 jobs to out-of-work Americans.<sup>41</sup> In reality, many employers will likely struggle to fill these positions given that many of them require a high level of technical expertise, are temporary in nature and often located outside of major population centers, or are concentrated in fields that have maintained persistently low rates of unemployment despite the economic impact of the COVID-19 pandemic.<sup>42</sup>

Both the J-1 Exchange Visitor Program and the H-1B programs bring thousands of foreign doctors to the United States each year, although the J-1 visa ban did not extend to doctors.<sup>43</sup> Both programs were already disrupted by the suspension of visa services, although medical professionals with an approved visa petition or certificate of eligibility in an approved exchange visitor program were permitted to seek an emergency visa appointment at the nearest U.S. embassy or consulate.<sup>44</sup> Many hospitals in the U.S. have already reported significant shortages of new doctors as a result of these policies.<sup>45</sup>

## “National Interest” Exceptions to the Visa Bans

Beginning in July, the State Department issued guidelines for “national interest” exceptions under both the COVID-19 immigrant visa ban and the COVID-19 nonimmigrant visa ban. These exemptions have reshaped the ban and limited some of the worst effects.

As of August 12, the State Department has declared that the following individuals are exempt from the bans as a matter of national interest:<sup>46</sup>

- Any spouses or children who are accompanying or following to join a visa applicant who has been granted a national interest waiver under the COVID-19 nonimmigrant visa ban.
- Any applicant for an immigrant visa who would age out of their visa classification before the COVID-19 immigrant visa ban expires, or within two weeks after.
- H-1B and L-1 visa applicants who are seeking to resume ongoing employment in the United States in the same position and with the same employer and visa classification.
- H-1B, H-2B, and L-1 visa applicants whose entry would be “based on a request by a U.S. government agency or entity to meet critical foreign policy objectives or to satisfy treaty or contractual obligations,” and J-1 visa applicants whose entry would support “critical foreign policy objectives.”

- H-1B and L-1 visa applicants who are “public health or healthcare professionals” or researchers whose work would help alleviate “effects of the pandemic,” whether direct or secondary, or “to conduct ongoing medical research in an area with a substantial public health benefit.”
- H-1B and H-2B visa applicants when travel is “necessary to facilitate the immediate and continued economic recovery of the United States” and who meet a specific set of individual criteria that is evaluated by consular officers.
- J-1 visa applicants who are au pairs travelling to provide care for a child of a U.S. citizen, lawful permanent resident, or nonimmigrant in lawful status, if the au pair possesses “special skills required for a child with particular needs,” or if the child’s parents are doctors or researchers working on COVID-19 or if care would prevent a U.S. citizen, lawful permanent resident, or nonimmigrant in lawful status “from becoming a public health charge or ward of the state.”
- J-1 visa applicants who are travelling as part of an exchange program “conducted pursuant to [a memorandum of understanding], Statement of Intent, or other valid agreement or arrangement between a foreign government and any federal, state, or local government entity in the United States that is designed to promote U.S. national interests” that was in effect before the COVID-19 nonimmigrant visa ban.
- J-1 visa applicants who are listed as G-3 or G-5 on Form DS-2019, who are interns or trainees on U.S.-government sponsored programs or specialized teachers in accredited educational institutions.

- L-1A visa applicants who are senior-level executives or managers “filling a critical business need of an employer meeting a critical infrastructure need” in a specific set of industries, who meet a specific set of individual criteria that is evaluated by consular officers, and who are not “seeking to establish a new office in the United States” unless such office will directly or indirectly employ at least five U.S. workers.

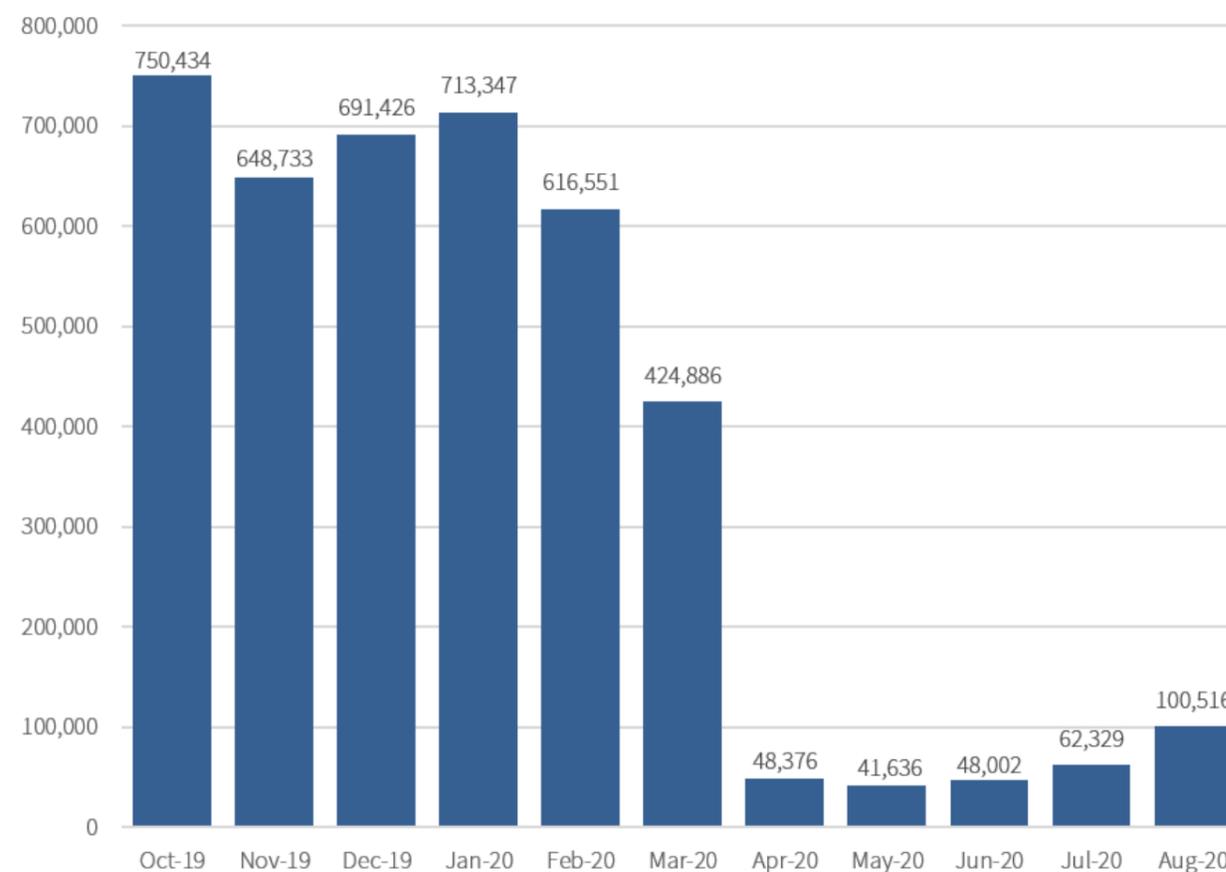
- L-1B visa applicants who are technical experts or specialists “meeting a critical infrastructure need” in a specific set of industries, and who meet a specific set of individual criteria that is evaluated by consular officers.

In its August 12 update, the State Department also said that spouses and children were not subject to the COVID-19 nonimmigrant visa ban and did not require a “national interest” exception to apply for a derivative visa, if the spouse/parent either was in the United States in H-1B, H-2B, L-1, or J-1 status on June 24, or has a valid visa for entry into the United States in one of these categories.

## The Collective Impact of COVID-19 Policies on Immigration and Travel

The closure of embassies and consulates abroad, combined with the restrictions on travel imposed in the United States and countries around the world, led to a significant reduction in travel

**FIGURE 2: Total Immigrant and Nonimmigrant Visas Issued, Fiscal Year 2020**



Source: U.S. Department of State, Visa Statistics, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>

to the United States both for immigrants and nonimmigrants. This decline began in February 2020 following the travel restrictions on China, which led to a drop of more than 60,000 visas issued to Chinese nationals from the previous month.<sup>47</sup> Moreover, research shows that following the implementation of other restrictions, the number of noncitizens flying to the United States had decreased by 98 percent prior to the COVID-19 immigrant visa ban.<sup>48</sup> The most recent statistics from the Department of State confirm that visa issuance plummeted under 50,000 from April to June 2020 (down from 713,000 in January 2020), and only rose above 50,000 visas granted in July 2020.<sup>49</sup> This trend is likely to continue while consulates remain closed or reopen with only very limited services.

## Recommendations

COVID-19 is a global health crisis unlike anything the United States has ever encountered. The health and economic consequences of the pandemic have impacted nearly every aspect of American life. Immigrants play a critical role in combatting the COVID-19 pandemic across the country, standing shoulder-to-shoulder with their U.S.-born colleagues.

- The COVID-19 immigration bans are thinly veiled at-

tempts to implement drastic changes to our legal immigration system under the guise of preserving economic opportunities for native-born Americans. The bans should be terminated.

Even before COVID-19, the United States was facing a serious shortage of physicians. The U.S. health care system depends upon the hard work and knowledge of native-born **and** foreign-born workers, and it will take every one of them to effectively respond to COVID-19.

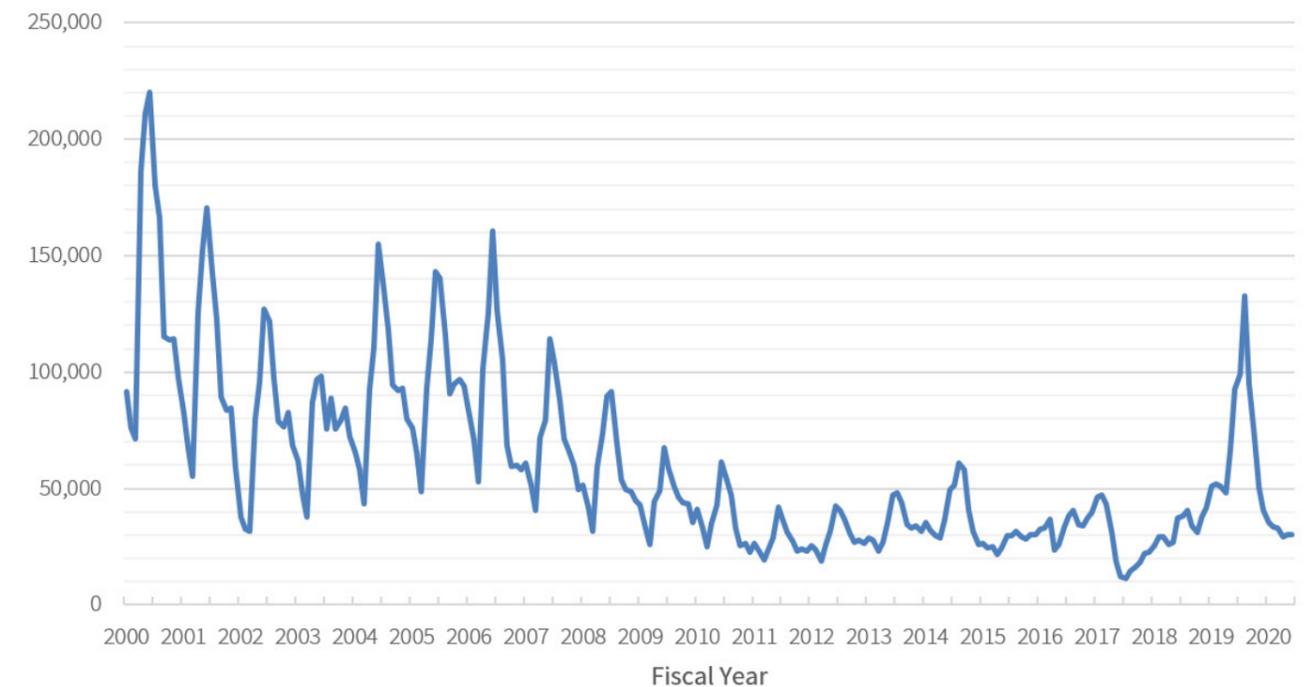
- The federal government should be doing everything possible to make sure that everyone who is willing to come forward to help is able to be part of the collective response, which includes restarting visa processing for all healthcare professionals seeking to immigrate to the United States, and ensuring that temporary workers in essential industries are not blocked from entering.
- The federal government should work to remove the red tape that prevents many medical professionals who were trained abroad from being able to live and work in the United States.

# THE EFFECT OF COVID-19 ON IMMIGRATION PROCESSING AT U.S. LAND BORDERS

For millions of Americans who live along the United States' land borders, international travel is a frequent and necessary part of life and vital for local economies and cross-border culture. On a normal day before the arrival of the coronavirus, hundreds of thousands of people crossed the U.S.-Mexico border in both directions, as did an estimated \$1.3 billion in goods.<sup>50</sup> Similarly, hundreds of thousands of people crossed the U.S.-Canada border each day, and goods flowed in both directions.<sup>51</sup>

Along with the flow in traffic through ports of entry, in 2019 the U.S.-Mexico border saw significant numbers of people crossing between ports of entry and seeking asylum (see Figure 3), including nearly 475,000 parents and children who arrived together as a part of family groups.<sup>52</sup>

**FIGURE 3:** Monthly Southwest Border Apprehensions, October 1999-March 2020



Source: U.S. Border Patrol, *Monthly Apprehensions: FY 2000 – FY 2019*; U.S. Customs and Border Protection, *Southwest Border Migration FY 2020*, <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

Before the arrival of the coronavirus in the United States, the processing of asylum seekers at the border was already significantly disrupted. Under the “expedited removal” process in place at the border since 2004, asylum seekers who were determined to have a “credible” or “reasonable” fear of persecution were allowed to pursue asylum inside the United States.<sup>53</sup> In early 2019, the Trump administration began implementing a suite of new policies affecting asylum seekers at the border.<sup>54</sup> Each of these policies disrupted or abandoned the expedited removal asylum process. With the arrival of the coronavirus pandemic, these new policies have themselves been disrupted or abandoned.

## Changes to Policies at the Border Due to COVID-19

In March 2020, in response to the coronavirus pandemic, the Trump administration imposed two new restrictions at the land borders. The first change affected ports of entry and the second impacted asylum seekers and others crossing between ports of entry.

### Restrictions at Ports of Entry

On March 20, 2020, the United States reached joint agreements with the governments of Canada and Mexico to suspend “non-essential” travel through ports of entry on each border.<sup>55</sup> Both agreements defined non-essential travel as including “travel

that is considered tourism or recreational in nature.”<sup>56</sup> There are no quarantine requirements for individuals who are permitted to travel between the countries.

Both the Mexican and Canadian travel restrictions contain significant exceptions. The following groups are exempt from travel restrictions at either border:<sup>57</sup>

- U.S. citizens and LPRs, as well as members of the U.S. Armed Forces and their spouses and children, who are returning to the United States.
- Individuals traveling for medical treatment in the United States.
- Individuals traveling to attend educational institutions in the United States.
- Individuals traveling to work in the United States.
- Individuals traveling for emergency response and public health purposes.
- Individuals “engaged in lawful cross-border trade,” such as truck drivers.
- Individuals engaged in official government travel or diplomatic travel.
- Individuals engaged in military-related travel or operations.

Since issuing the restrictions, the administration has extended them four more times, with a current end date of September 21, 2020.<sup>58</sup> Non-essential travel dropped significantly in the first month of restrictions; reductions in passenger traffic were as high as 95 percent at some ports of entry along the U.S.-Canada border.<sup>59</sup> Given the pace of the spread of the novel coronavirus, it is likely that the restrictions will be extended further.

### Restrictions Between Ports of Entry

On March 20, 2020, the Department of Health and Human Services (HHS) issued an emergency regulation designed to implement a specific aspect of U.S. Health Law. The provision (title 42 section 265) permits the Director of the Centers for Disease Control (CDC) to “prohibit ... the introduction” of individuals when the Director believes that “there is serious danger of the introduction of [a communicable] disease into the United States.”<sup>60</sup> The rule allows any customs officers, which includes officers of CBP (such as Border Patrol agents), to implement any such order issued by the CDC.<sup>61</sup>

The same day, Director of the CDC Robert R. Redfield relied on this regulation to issue an order suspending the “introduction” of certain individuals who have been in “Coronavirus Impacted Areas.”<sup>62</sup> The order targets individuals who have entered the United States from Canada or Mexico and “who would be introduced into a congregate setting” at a port of entry or in a Border Patrol station.<sup>63</sup> This includes individuals who would normally be detained by CBP after arriving at the border, including asylum seekers, unaccompanied children, and people attempting to enter the United States without inspection.

Citing the new CDC order, on March 20 the Border Patrol began “expelling” individuals who arrive at the U.S.-Mexico border, without giving them the opportunity to seek asylum.<sup>64</sup> Under an agreement reached with the Mexican government, the Border Patrol began sending most Mexican, Guatemalan, Honduran, and Salvadoran families and single adults to Mexico.<sup>65</sup> Individuals who are “expelled” do not receive an order of deportation, but CBP takes their fingerprints and records their entry. It is unclear how this information will be used in the future, or how it may impact an individual’s ability to seek protection in the United States once the coronavirus pandemic has subsided.

At the same time, CBP stopped processing all asylum seekers who arrive at ports of entry and ask for humanitarian protection.<sup>66</sup> This led to nearly 15,000 people who had been waiting on lists for an opportunity to request asylum at ports of entry (a practice known as “metering”) to be left in limbo, with no ability to seek asylum.<sup>67</sup>

The CDC order does not apply to U.S. citizens, LPRs, and their spouses and children, nor does it apply to U.S. military personnel or those who arrive at a port of entry with valid travel documents.<sup>68</sup> The rule also includes an exemption for anyone that DHS determines should be allowed into the United States on “consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests.”<sup>69</sup>

In addition to turning away asylum seekers, CBP has used this order to turn away and deport more than 2,000 unaccompanied children,<sup>70</sup> despite provisions of the Trafficking Victims Protection Act which requires the government to protect children who arrive at the border without a parent or legal guardian.<sup>71</sup>

On April 20, 2020, the order was extended a second time.<sup>72</sup> On May 19, 2020, the order was extended indefinitely, with the CDC Director now declaring that the order will extend “until I determine that the danger of further introduction of COVID-19 into the United States has ceased to be a serious danger to the public health, and continuation of the Order is no longer necessary to protect the public health.”<sup>73</sup> The May 19 order further extended the suspension on entry to individuals who enter the United States via a coastal border, having previously been limited only to those who enter via a land border.<sup>74</sup>

The Order will remain in place indefinitely, with the CDC required to “review the latest information regarding the status of the COVID-19 pandemic” every 30 days.<sup>75</sup>

On September 11, 2020, HHS published the final version of the March interim regulation enabling the CDC Director to issue orders suspending the “introduction” of people at the border.<sup>76</sup> In the rule, the CDC acknowledged for the first time that its Order is being used to turn away refugees and asylum-seekers, and declared its belief that doing so was legal.

## Effects of the Border Restrictions on Asylum Seekers

### Asylum Processing at the Border Prior to COVID-19

In January 2019, DHS began instituting the so-called Migrant Protection Protocols (MPP) at the port of entry in between San Diego and Tijuana. Under MPP, asylum seekers are sent to Mexico, where they are required to wait for court hearings at four different locations across the border.<sup>77</sup> By making it extremely difficult for asylum seekers to access attorneys and resources in support of their cases, MPP effectively made it impossible for individuals to win their asylum cases. As of March 2020, nearly 65,000 people had been put into MPP, with just 517 of them winning protection out of 44,916 completed cases.<sup>78</sup>

In October 2019, DHS began implementing two pilot programs at the U.S.-Mexico border, called Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP).<sup>79</sup> These programs condensed the expedited removal process into a matter of days, keeping asylum seekers in Customs and Border Protection (CBP) facilities throughout the process. Through late February 2020, nearly 4,000 people had been processed through both programs.<sup>80</sup>

In November 2019, DHS began implementing an “Asylum Cooperative Agreement” with Guatemala.<sup>81</sup> The United States has also signed similar agreements with Honduras (effective May 2020) and El Salvador (yet to go into effect). Under these agreements—also known as “Safe Third Country” agreements—individuals seeking asylum in the United States are instead sent

to a third country to pursue their claims.<sup>82</sup> Individuals subject to these agreements may not seek asylum, or any other protection, in the United States. Through the beginning of March 2020, roughly 1,000 people had been processed under the U.S.-Guatemala Asylum Cooperative Agreement.<sup>83</sup>

### Changes to Asylum Processing Following COVID-19 Border Restrictions

After the CDC rule was issued, reports emerged that the White House had long sought to use public health laws to block asylum seekers.<sup>84</sup> This may be why, as one law professor put it, the CDC order is “like a bullseye drawn on the side of the barn around the arrow that has already been shot,” targeting only those seeking humanitarian protections and those individuals who are already subject to summary removal from the United States.<sup>85</sup>

From March 20 through the end of August, CBP “expelled” over 147,000 people encountered at the border from the United States to Mexico.<sup>86</sup> Despite the order’s supposed focus on health, individuals with prior felony convictions who are apprehended at the border are still detained and sent to ICE custody for deportation.<sup>87</sup>

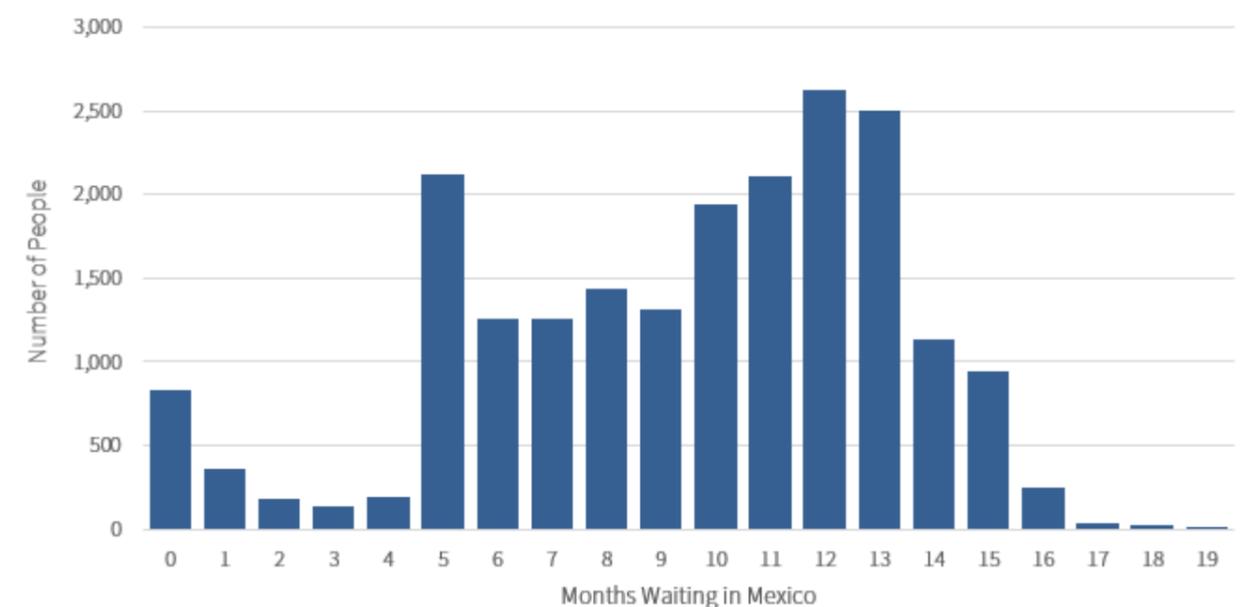
The administration relied on this order to rapidly “expel” at least 2,000 unaccompanied children through June 25 who had arrived at the border and sought protection.<sup>88</sup> Through late August, at least 660 unaccompanied children were held in hotels for days or weeks at a time—with no access to lawyers—prior to being “expelled” to their home countries.<sup>89</sup> Children held in these hotels, which at times were also used to hold families prior to

“expulsions,” were guarded by private contractors who were not licensed to provide child care.<sup>90</sup> On September 4, 2020, a federal judge ruled that holding children in hotels was a violation of the 1997 *Flores settlement agreement*, and ordered ICE to stop using that practice.<sup>91</sup> Likely in response to this order, days later reports emerged that the Trump administration drafted plans to exempt most unaccompanied children from the CDC order, meaning that they would no longer be expelled.<sup>92</sup>

Suspending all processing of asylum seekers in this manner is likely a violation of international and domestic law. Guidance from the United Nations High Commissioner for Refugees issued in early March makes clear that countries may not legally abandon all asylum processing because of the coronavirus.<sup>93</sup> Similarly, the law that the Trump administration used to institute the “expulsion” policy was passed in 1944, predating generations of laws in the United States which codified the basic principle that a person may not be deported to a place where they have a well-founded fear of persecution.

The broader shutdown at the border has also had a significant effect on the asylum policies that were instituted in 2019. By mid-March, the Trump administration had suspended all MPP hearings, which were indefinitely suspended on July 17 until the COVID-19 pandemic recedes in border regions and worldwide.<sup>94</sup> As a result, more than 20,000 people remain in Mexico in a dangerous state of limbo or have given up and returned to their home country despite a pending MPP case.<sup>95</sup> (see Figure 4). Many are living in crowded shelters or refugee camps, and the government has refused to let them pursue their asylum claims from within the United States.<sup>96</sup>

**FIGURE 4:** Number of People With a Pending MPP Case Since First Sent Back to Mexico Under MPP



Source: TRAC, Details on MPP (Remain in Mexico) Deportation Proceedings, through March 31, 2020, <https://trac.syr.edu/phptools/immigration/mpp/>.

Concerns about the spread of the coronavirus also led Guatemala to suspend its Asylum Cooperative Agreement with the United States on March 17, 2020.<sup>97</sup> Although the Asylum Cooperative Agreement with Honduras went into effect on May 1, there is currently no evidence that individuals have been processed under the agreement during the pandemic. During this suspension, the United States is unable to send any asylum seekers to a third country. Similarly, because asylum seekers are no longer able to access the normal asylum process, both the PACR and the HARP programs have been suspended.

While the CDC order remains in place indefinitely, the border is effectively shuttered to all individuals seeking asylum or other protections. Notably, CBP has taken no steps toward improving the conditions in its facilities to allow for safe processing of asylum seekers. In May, the agency even began dismantling the tent facilities it had set up to process asylum seekers in 2019, making no effort to adapt them to safely process asylum seekers.<sup>98</sup>

In July, the Trump administration proposed a new regulation which would permit asylum officers and immigration judges to declare asylum seekers a “danger to the security of the United States” and bar them from asylum and withholding of removal if they had arrived from a country or region facing a COVID-19 outbreak.<sup>99</sup> Under the proposal, border officials would be allowed to hold people for a matter of days and then deport them to their home countries, regardless of whether they would face persecution.<sup>100</sup> For those who could show a likelihood of torture in their home countries, the rule would permit DHS officials to deport them to a third country.<sup>101</sup> Comments on this rule were due on August 10, 2020, and the Trump administration will have to consider those comments before they can finalize the rule.

## Recommendations

It is a false choice to suggest that we must turn away all people at the southern border or risk public health. Fleeing violence and persecution is “essential travel,” and responses to the pandemic must balance the interests of public health with the right to seek asylum.

- The response to the coronavirus pandemic must not lead to abandonment of fundamental protections for vulnerable populations and should balance necessary restrictions on travel with sensible measures to protect those fleeing harm. The indefinite suspension of asylum processing at the border during the era of COVID-19 must be ended.
- Given that there is no ban on travel for Central Americans, those seeking protection should, at a minimum, be treated the same as other travelers from those countries. Seeking asylum should be treated as a form of essential travel, and CBP should treat it as such.
- CBP should immediately develop plans to administer appropriate screenings at the border for asylum seekers and unaccompanied children, allowing for the safe processing of all individuals in a way that protects the vulnerable while preventing the spread of the coronavirus.
- The decision to “expel” unaccompanied children, many of whom are the victims of trafficking, will cause untold harm to the most vulnerable. CBP should immediately exempt all unaccompanied children from the new policy of border expulsions.
- CBP should immediately suspend MPP and establish procedures for screening and—when necessary—quarantining people subject to MPP so that they may be admitted to the United States where they can safely pursue their claims.
- DHS should abandon the attempts to create a new COVID-19 asylum ban, which would eliminate fundamental protections for vulnerable refugees.



*CBP should immediately suspend MPP and establish procedures for screening and—when necessary—quarantining people subject to MPP so that they may be admitted to the United States where they can safely pursue their claims.*

# THE EFFECT OF COVID-19 ON IMMIGRATION PROCESSING INSIDE THE UNITED STATES

USCIS generally carries out the processing of immigration benefits inside the United States. USCIS operates field offices, asylum offices, or Application Support Centers in all 50 states.<sup>102</sup> Before the COVID-19 pandemic, thousands of people each day would be required to travel in person to a USCIS office as part of the process of seeking an immigration benefit. USCIS is also the agency which processes naturalization applications for LPRs seeking to become U.S. citizens, including in-person interviews and naturalization oath ceremonies.

In response to the COVID-19 pandemic, numerous states and localities issued orders designed to enforce the practice of social distancing; that is, maintaining at least six feet between (unrelated) individuals, not gathering in groups of 10 or more people, and not engaging in non-essential travel. In fact, nine out of 10 governors issued stay-at-home or shelter-in-place orders for their states.<sup>103</sup> This posed a significant challenge for many USCIS practices and policies, under which social distancing would be impossible.

Under normal circumstances, USCIS processing requires relatively close person-to-person contact. This includes requirements for in-person interviews and ceremonies; “wet” signatures on paper forms; and the preparation and mailing of hard copy applications, petitions, and responses to agency correspondence through traditional means. Despite some limited accommodations during the current pandemic, these requirements present many applicants for immigration benefits with a stark choice: violate social distancing rules and risk coronavirus infection, or maintain social distance and risk losing legal status. Difficult choices now confront U.S. citizens petitioning for a spouse or close relative; noncitizens pursuing lawful permanent residency; foreign students; and noncitizens who are here temporarily as visitors or workers and who need to change or extend their status.

Despite the extraordinary set of circumstances presented by the pandemic, USCIS has not issued the sort of sweeping policy changes that would enable noncitizens to focus on their well-bring rather than their immigration paperwork. For instance, the agency is not allowing foreign nationals to remain in lawful status (with work authorization) for the duration of the current national emergency declared by the president on March 13. Therefore, people who are unable to gather the necessary documentation, meet with an attorney, receive or attend an in-person appointment with the government, or afford a filing fee risk losing their lawful status or ability to legally work in the United States. This includes recipients of Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS), as well as all nonimmigrant workers and conditional LPRs.<sup>104</sup>

Yet individuals may begin to accrue “unlawful presence” if they remain in the United States after the date to which they were admitted, which could trigger three- or ten-year bars to reentry into the United States upon leaving the country.<sup>105</sup> Students or exchange visitors admitted for “duration of status” who may later be found to have violated their status could then start to accrue unlawful presence and trigger the same bars.

Beyond the obvious humanitarian considerations, many thousands of workers in these statuses are providing critical labor in medical and related support capacities, as well as in industries providing essential goods and services. For example, many doctors, particularly those in underserved areas, are present in the United States on J-1 exchange visas or H-1B highly skilled worker visas.<sup>106</sup> These doctors may have trouble responding to the coronavirus pandemic because of their status, which can leave them linked to one particular position and unable to respond to the crisis with flexibility.<sup>107</sup>

Similarly, many individuals whose status is at risk under the Trump administration work in healthcare and other essential industries. A total of 202,500 DACA recipients are essential workers, including 29,000 healthcare workers.<sup>108</sup> Similarly, an estimated 131,300 TPS holders from El Salvador, Honduras, and Haiti are essential workers in home healthcare, food processing, repair, and other occupations.<sup>109</sup> In addition, many

undocumented workers perform vital functions on farms<sup>110</sup> and in healthcare.<sup>111</sup>

## Changes that Affect Immigration Processing

As of April 24, 2020, USCIS suspended all in-person services at its offices through June 4.<sup>112</sup> As a result, interviews for all immigration benefit applications and asylum applications were postponed and rescheduled when normal operations resumed. During this period, USCIS continued to process applications that did not require in-person interviews. Non-emergency public services resumed at “some domestic offices” on June 4, subject to social distancing guidelines and public health safety precautions. At that time, rescheduling of asylum interviews and naturalization ceremonies began.<sup>113</sup>

USCIS also temporarily suspended all biometrics appointments as of March 18, meaning that new fingerprints could not be taken.<sup>114</sup> Along with this suspension, USCIS announced that individuals who applied for an extension of their Employment Authorization Document (or work permit) and were unable to submit new biometrics because of the suspension of services would have their application processed using previously submitted biometrics.<sup>115</sup> However, this applies only to individuals who had a biometrics appointment scheduled on or after March 18. As of late August, a few Application Support Centers have reopened and a few more are scheduled to reopen in September.<sup>116</sup>

In addition, responses to any Request for Evidence, Notice of Intent to Deny, Notice of Intent to Revoke, or Notice of Intent to Terminate dated between March 1 and July 1, 2020 may be submitted up to 60 days after the response or due date.<sup>117</sup> Importantly, this does not help people who received requests, notices, or decisions dated earlier than March 1 that are due now. This policy was later extended through January 1, 2021.<sup>118</sup>

***Despite the extraordinary set of circumstances presented by the pandemic, USCIS has not issued the sort of sweeping policy changes that would enable noncitizens to focus on their well-bring rather than their immigration paperwork.***

On August 19, USCIS announced that employers may temporarily accept, as proof of work authorization, the paper notice that USCIS has approved Form I-765, a foreign national's application for employment authorization.<sup>119</sup> The approval notice (Form I-797, Notice of Action), must be dated no earlier than December 1, 2019, and no later than August 20, 2020, and may be accepted until December 1, 2020. Foreign nationals who choose to present such an approval notice as proof of work authorization for new employment also must present a document acceptable for proof of identity. Until December 1, such an approval notice also is acceptable as proof of work authorization for reverification of employment eligibility. Although USCIS attributed this action to production delays due to COVID-19, the notice is the result of a consent decree that USCIS entered into following litigation that occurred after the agency switched production contracts, leading to delays in the printing of physical employment authorization cards.<sup>120</sup>

The agency made several other relatively minor accommodations in the face of the pandemic. Effective March 21, the agency suspended the requirement that all immigration benefit filings contain original signatures. Photocopied and faxed signatures are now acceptable, although digital signatures are not.<sup>121</sup> USCIS provided some flexibility regarding I-9 employment eligibility verification requirements prior to its August 19 announcement, as did ICE. In limited instances, an employer does not need to be in the physical presence of an employee when reviewing identity and employment verification documents, but can inspect those documents remotely (via video, fax, or email).<sup>122</sup> Effective May 1, an employer may accept as proof of identity a document that expired on or after March 1, 2020, when no auto-extension exists.<sup>123</sup> The employee must present an acceptable unexpired document within 90 days after the temporary policy ends.<sup>124</sup> On July 18, one day before they were set to expire, these more flexible verification requirements were extended through August 19.<sup>125</sup> However, ICE indicated that “after July 19 no additional extensions will be granted to employers who were served notices of inspection by ICE during the month of March 2020.”<sup>126</sup>

In addition, although people who enter the United States on the Visa Waiver Program can typically request one 30-day extension

of the deadline by which they must depart the country, DHS is allowing additional 30-day extensions by which they can satisfy departure requirements.<sup>127</sup>

On April 15, DHS announced a “temporary final rule” that makes substantive changes to the H-2A temporary agricultural worker program. Eligible agricultural employers unable to bring new workers into the country due to COVID-19 travel restrictions can now hire certain foreign workers already in the United States. Moreover, H-2A nonimmigrants can remain in the country longer than the three-year maximum. DHS explained that the changes were necessary so that “farmers have access to these critical workers necessary to maintain the integrity in our food supply.”<sup>128</sup> An H-2A worker already in the United States will be able to begin working as soon as the U.S. employer files the I-129 nonimmigrant extension petition without having to wait for USCIS approval.

DHS initially announced that it would increase the number of H-2B temporary nonagricultural worker visas in response to high demand, but then reversed course in the face of political opposition from anti-immigrant hardliners.<sup>129</sup> On March 5, the department said that it would make available 35,000 extra H-2Bs<sup>130</sup> given that the visa cap for the second half of FY 2020 was reached on February 18.<sup>131</sup> However, the department walked this back on April 2 and said that the “rule on the H-2B cap is on hold pending review due to present economic circumstances.”<sup>132</sup>

On May 14, DHS announced changes to the H-2B program which mirror the changes made to H-2A visas, including the ability to remain in the United States longer than three years and the ability to begin working as soon as the U.S. employer files an I-129 petition.<sup>133</sup> The changes are restricted only to those H-2B workers who are providing “temporary nonagricultural services or labor essential to the U.S. food supply chain.”<sup>134</sup>

USCIS has also made changes which make it easier for foreign-born doctors working in rural areas of the United States through the Conrad 30 program to remain in the country. On May 11, USCIS announced a new policy that would waive certain restrictions that prevented those doctors from expanding their medical care to different areas or practicing through telemedicine.<sup>135</sup> The new policies also provide flexibility for doctors present on H-1B or J-1 visas who are required to work at least 40 hours per week, declaring that doctors who are unable to meet this requirement as a result of the pandemic will not be penalized.<sup>136</sup>

### Changes to Student Visa Processing

Along with the changes made by USCIS, ICE—which manages some aspects of compliance with the terms of student visas—issued guidance on March 13 permitting students to shift from in-person class to online-only classes in response to the pandemic, including allowing foreign students to get credit for completing courses online even if they had to return to their home country.<sup>137</sup> In addition, students who notify the school that they can't participate in online classes due to technology limitations are permitted to remain in status, but only so long as

they intend to return to campus when in-person classes resume.<sup>138</sup> Colleges and universities are still required to report any changes that affect foreign students.<sup>139</sup>

On July 6, ICE suddenly and without warning reversed its March 13 guidance, which had permitted foreign students to remain in the United States and take classes online, warning that students whose universities went online-only would have to leave the United States for the fall semester.<sup>140</sup> This unexpected decision was met with widespread condemnation and challenged in nine different lawsuits within a week.<sup>141</sup> On July 14, at a hearing in a lawsuit filed by Harvard and MIT, ICE announced that it would reverse this policy decision and allow foreign students to remain in the United States for the fall semester.<sup>142</sup> On July 15, ICE issued a new set of guidance confirming the March 13 guidance and permitting foreign students to remain in the United States, but casting doubt on the ability of foreign students who were beginning classes for the first time to enter the United States if their university goes online-only.<sup>143</sup>

### Problems Unaddressed by USCIS

Though USCIS suspended in-person interviews and took some measures to respond to the coronavirus pandemic, problems remain with the agency's response. There are many groups of noncitizens—such as foreign workers and individuals present under the Visa Waiver Program—who may go from lawful status to out of status if they are unable to depart the country on time or acquire an extension due to COVID-19-related travel restrictions. For some of these individuals, they may not find an international flight that will permit them to return home due to travel restrictions in their home countries, meaning that some of them are stuck in the United States with their status soon to expire. The Cato Institute estimates that roughly 6 million foreign visitors, students, and temporary workers were stranded in the United States beyond their initially required air departure dates from January through April of 2020.<sup>144</sup>

Despite the severe consequences that status expiration might cause, USCIS has not exercised its authority to automatically extend work authorization or grant status extensions for individuals in this situation. USCIS has only indicated that the agency “may” excuse some late filings for extension or change of nonimmigrant

status due to COVID-19, but only on a case-by-case basis.<sup>145</sup> This has left many people in dire circumstances, risking the possibility of removal without any clear path forward. Furthermore, the agency is not providing relief to individuals whose immigration status may lapse because they were laid off or furloughed due to the pandemic.

For those nonimmigrant workers whose status is tied to employment, such as H-1B workers, loss of a job results in loss of legal status.<sup>146</sup> Moreover, medical professionals on some nonimmigrant visas, such as H-1Bs and J-1s, are not free to change worksites, which could prevent them from putting their skills to the most effective use in fighting the pandemic.<sup>147</sup> Applying for permission to change job sites became even more time consuming when USCIS suspended premium processing, an accommodation for some workers which speeds up the process.<sup>148</sup> On May 29, USCIS announced that it would begin resuming premium processing “in phases” for different petition types over the course of June.<sup>149</sup>

In response to the pandemic, USCIS also postponed naturalization oath ceremonies until June 4<sup>150</sup>—although a very limited number of small ceremonies took place in some jurisdictions as of May 25.<sup>151</sup> The cancellation of the ceremonies prevented tens of thousands of eligible immigrants from becoming U.S. citizens,

potentially making them ineligible to register to vote ahead of the 2020 primary elections.<sup>152</sup> USCIS did not approve any alternatives to in-person oath ceremonies that would have allowed these individuals to finalize the process of becoming U.S. citizens.

When some naturalization ceremonies resumed in June 2020, USCIS instituted social distancing measures and new drive-through naturalization oaths.<sup>153</sup> Although the capacity of these ceremonies was limited due to circumstances, USCIS insisted publicly that it would fully make its way through the backlog of oath ceremonies by the end of August.<sup>154</sup> In September, the agency revealed that it

had made its way through the entire backlog of naturalizations cancelled due to office closures, but because of the delays the agency was on track to naturalize 30 percent fewer people than the previous year.<sup>155</sup>

USCIS has also been criticized for refusing to suspend the Trump administration's public charge rule, which limits access to green

*Despite the severe consequences that status expiration might cause, USCIS has not exercised its authority to automatically extend work authorization or grant status extensions for individuals in this situation.*

*Though USCIS suspended in-person interviews and took some measures to respond to the coronavirus pandemic, problems remain with the agency's response.*

cards for individuals that a USCIS officer determines might, at any point in the future, utilize certain government benefits. This has created a great deal of anxiety and uncertainty over whether noncitizens will be penalized for utilizing government benefits that they are legally permitted to use during the pandemic.<sup>156</sup> Being laid off, for example, might count against a noncitizen who later wants to apply for a green card—as would reliance on food stamps or subsidized housing to survive during that period of unemployment. However, USCIS stated that the use of Medicaid for coronavirus-related treatment would not be considered a negative factor in the public charge test. Importantly, unemployment benefits (for which eligibility varies on a state-by-state basis for noncitizens) do not count as “public benefits” for this purpose and can be received without penalty.

The agency indicated that noncitizens who do find themselves unemployed or reliant upon public benefits during this time should provide additional evidence along with their application for a green card in order to explain that their hardship was a result of the pandemic. Such evidence will be considered on a case-by-case basis. USCIS states that seeking testing, treatment, or preventative care related to COVID-19 will not count against any noncitizen under the public charge rule.<sup>157</sup>

On July 29, a federal judge in New York issued an injunction halting the USCIS public charge rule in its entirety, as well as the State Department’s public charge rule, during the duration of the COVID-19-related national emergency declaration.<sup>158</sup> Following the injunction, USCIS acknowledged that it was no longer requiring applicants to meet the new public charge rule.<sup>159</sup> On August 12, the United States Court of Appeals for the Second Circuit limited this injunction to only New York, Vermont, and Connecticut.<sup>160</sup> As of late August, USCIS had not resumed applying the public charge rule in the other 47 states.<sup>161</sup> However, on September 11, 2020, the Second Circuit fully stayed the second injunction, restoring the public charge test nationwide.<sup>162</sup>

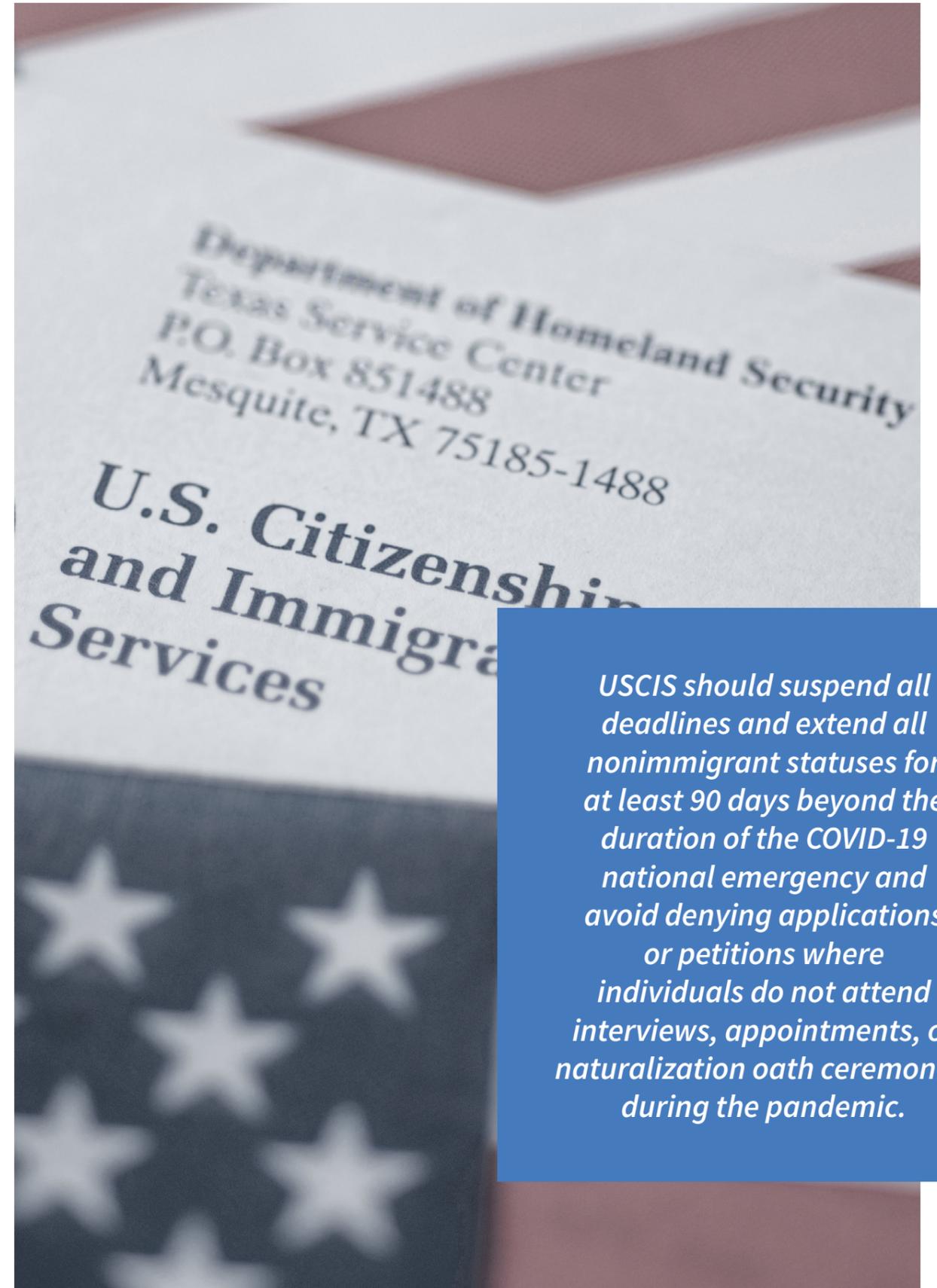
USCIS has also told Congress that the pandemic has led to drastic budgetary problems as fewer people apply for immigration benefits, with the agency predicting an overall drop in applications of 61 percent through the end of September.<sup>163</sup> In response to this drop in revenue, the agency issued furlough notices to roughly 13,400 of the agency’s workers, telling them that they could face furloughs of more than 30 days starting in August.<sup>164</sup> USCIS has asked Congress for \$1.2 billion to fund the agency—an unprecedented action for a government agency which is funded by fees and not by normal congressional appropriations.<sup>165</sup> Although

USCIS attributes its current funding shortfall to the impact of the pandemic alone, the agency has in fact struggled with revenue and management problems for many years, as reflected in repeated increases in the fees charged for immigration benefits at the same time its quality of service has deteriorated.<sup>166</sup>

In mid-July, USCIS revealed that the agency had received more revenue than originally projected and anticipated that it would end the fiscal year with a surplus, but be unable to continue operations following October 1.<sup>167</sup> As a result, the agency delayed its planned furloughs to the end of August.<sup>168</sup> One week before the furloughs were set to go into effect, USCIS announced that it would cancel the furloughs entirely.<sup>169</sup> However, the agency indicated that it would cancel some contracts “that assist USCIS adjudicators in processing and preparing case files,” and as a result the agency predicts “increased wait times for pending case inquiries . . . , longer case processing times, and increased adjudication time” for benefit requests, including naturalization.<sup>170</sup>

### Recommendations

- USCIS should suspend all deadlines and extend all non-immigrant statuses for at least 90 days beyond the duration of the COVID-19 national emergency and avoid denying applications or petitions where individuals do not attend interviews, appointments, or naturalization oath ceremonies during the pandemic
- USCIS should waive in-person interviews when legally authorized and permit naturalization oaths to be taken through video.
- USCIS should allow for the electronic submission of certain documents via email, accept photocopies of evidence where originals are required, accept digital signatures when reproduced originals or “wet” signatures are impossible or impractical to obtain, reuse biometrics for all application and petition types, and permit stakeholders to electronically reschedule interviews and appointments, as well as request emergency appointments.
- USCIS should also excuse any late filings of extension or change of status requests for up to 90 days after the end of the national emergency and provide an automatic grant of deferred action for the duration of the national emergency for individuals whose status has expired and cannot be extended or changed.



*USCIS should suspend all deadlines and extend all nonimmigrant statuses for at least 90 days beyond the duration of the COVID-19 national emergency and avoid denying applications or petitions where individuals do not attend interviews, appointments, or naturalization oath ceremonies during the pandemic.*

# THE EFFECT OF COVID-19 ON IMMIGRATION ENFORCEMENT AND DETENTION INSIDE THE UNITED STATES

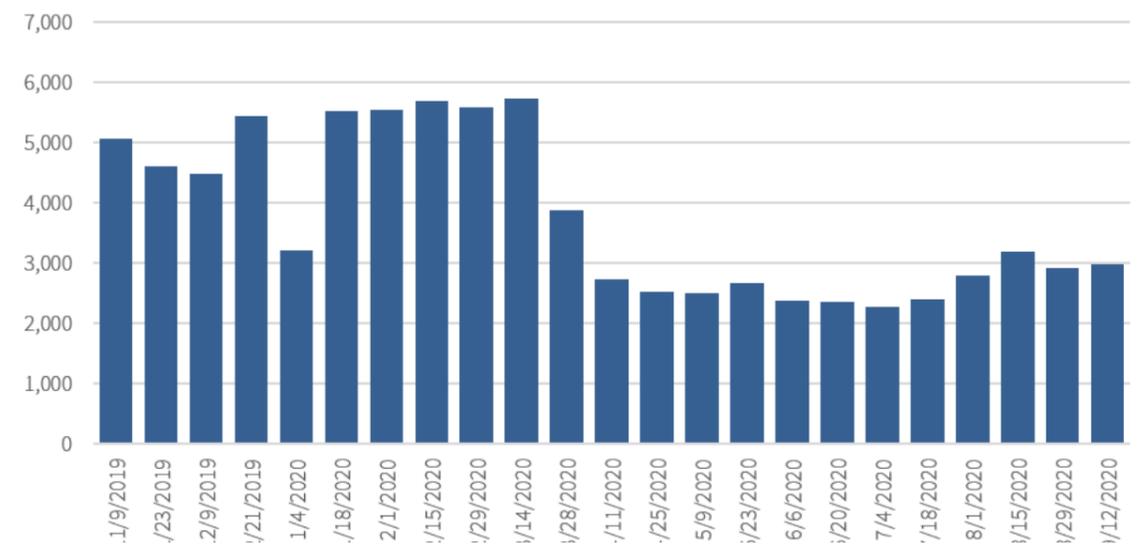
Every day, ICE Enforcement and Removal Operations officers detain noncitizens across the United States for alleged violations of immigration law. Individuals in ICE custody include undocumented immigrants and people with lawful immigration status such as visitors, international students, temporary workers, or LPRs. People detained by ICE are held in a network of detention centers around the country which includes private facilities operated for profit, state and local jails, and dedicated ICE facilities. Some of these facilities are also used to detain people arrested at the border by CBP, including thousands of people seeking asylum.

## The Effect of the Coronavirus on ICE Enforcement Practices

In response to the coronavirus pandemic, ICE has been forced to limit its enforcement actions throughout the United States. While the agency did not fully suspend arrests, it promised to “temporarily adjust its enforcement posture” beginning on March 18, 2020, by “focus[ing] enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds.”<sup>171</sup>

The effect of ICE’s limited enforcement became quickly apparent, with the agency sending fewer people to ICE detention centers in the weeks after the change in policy (see Figure 5). In the week ending on March 14, 2020, ICE arrests led to 2,751 people sent to detention. That dropped to 1,608 by the end of March and dropped further still throughout April.<sup>172</sup> ICE apprehensions remained stable through the end of July, then began to pick up in the first weeks of August (see Figure 5). In early September, ICE began publicizing news of enforcement actions across the United States that led to “at-large” arrests of around 2,000 people.<sup>173</sup> ICE data shows that the number of people sent to detention after being arrested in the United States reached 75 percent of pre-pandemic levels in late August (see Figure 5).

**FIGURE 5: Biweekly ICE Interior Apprehensions Resulting in Detention, FY 2020**



**Source:** Immigration and Customs Enforcement, “Detention Management: Detention Statistics,” <https://www.ice.gov/detention-management>. Prior weekly data on file with authors.

ICE also made changes to its policy of requiring some immigrants released from detention and placed on an “order of supervision” to check in with the agency periodically. All in-person check-in appointments were suspended, as were home visits.<sup>174</sup> In the interim, ICE required some individuals to check in by phone instead, or through apps and other technological solutions.

## The Effect of Coronavirus on Deportations

Despite a drop in immigration enforcement inside the United States, ICE has continued to deport people to countries around the world, even though this threatens to further spread the coronavirus. Initially, ICE indicated that it was conducting temperature checks for all individuals prior to boarding removal flights, sending anyone to a hospital whose temperature was 100.4 degrees or above.<sup>175</sup> This was later reduced to 99 degrees.<sup>176</sup> On April 23, 2020, ICE announced that it would begin testing some

individuals prior to deportation.<sup>177</sup> In July, whistleblower reports emerged that some detention contractors were turning up the air conditioning in detainee transport vehicles before deportations, so that individuals with fevers would not show a fever when their forehead temperature was measured.<sup>178</sup>

In mid-April, dozens of people deported to Guatemala—all of whom spent time in ICE detention centers—tested positive for the coronavirus.<sup>179</sup> Guatemala responded by suspending deportation flights temporarily.<sup>180</sup> In response to Guatemala and other countries threatening or suspending deportation flights due to the pandemic, the White House issued a memorandum on April 10, 2020, that threatened visa sanctions on any country that refused to accept ICE deportation flights.<sup>181</sup> The memorandum declares that any government which “denies or unreasonably delays the acceptance” of deportation flights from the United States will be targeted with visa sanctions under Immigration and Nationality Act section 243(d).<sup>182</sup>

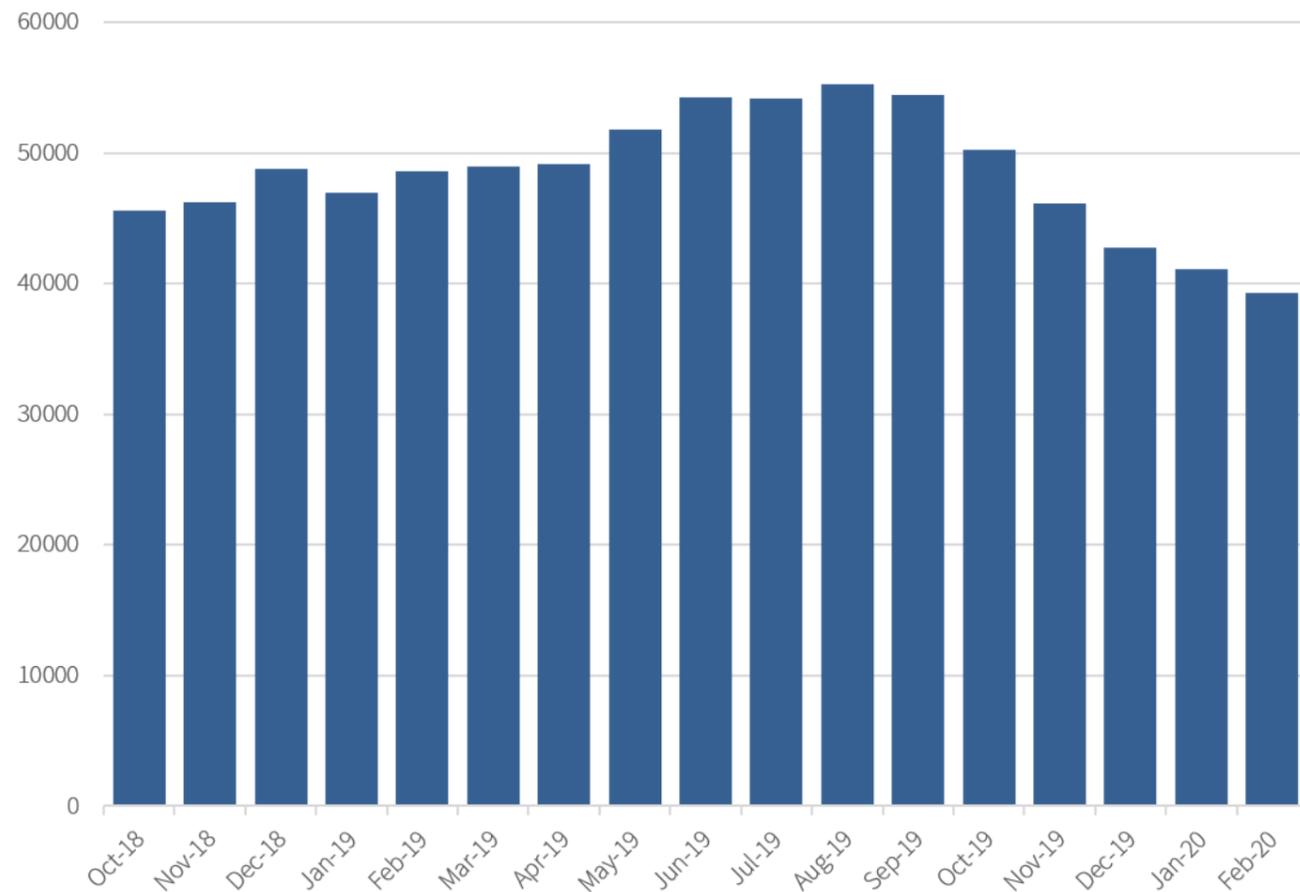
Despite this memorandum, Guatemala has not been sanctioned

for temporarily halting some deportation flights. However, the spread of the virus inside Guatemala has been directly attributed to ICE deportation flights. By the end of April, 20 percent of the country’s positive cases were from ICE deportation flights.<sup>183</sup> In May, Guatemala resumed deportation flights, after ICE promised to test all individuals deported to that country and certify that they were not positive for the virus.<sup>184</sup> On May 15, after multiple individuals certified by ICE as not having COVID-19 tested positive after being deported to Guatemala, deportation flights were suspended again.<sup>185</sup> Flights resumed again on June 9 and have continued since that date.<sup>186</sup>

### The State of Immigration Detention Prior to the Arrival of the Coronavirus

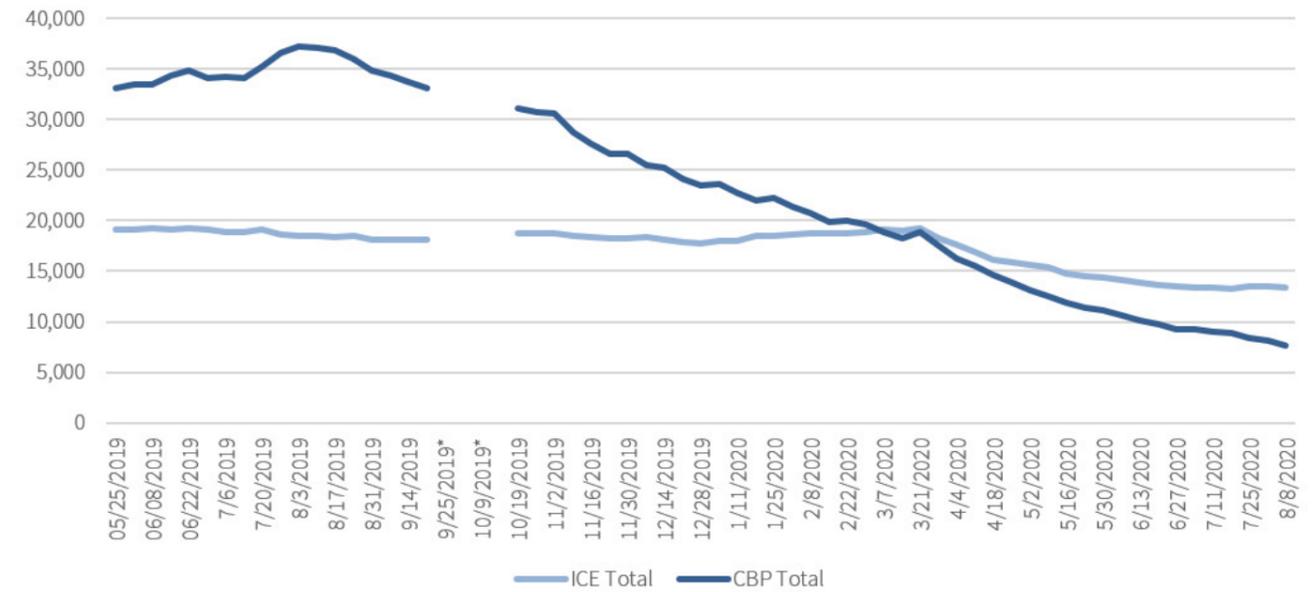
At the end of February, when the coronavirus pandemic was just emerging in the United States, ICE had 38,537 people in its custody in a network of detention centers around the country, down from record highs the previous year<sup>187</sup> (see Figure 6).

**FIGURE 6: Total People Held in ICE Detention, FY 2019 - February 2020**



Source: Immigration and Customs Enforcement, Detention Management: Detention Statistics, <https://www.ice.gov/detention-management>.

**FIGURE 7: People in ICE Detention by Arresting Agency, May 2019 – August 2020**



Source: Immigration and Customs Enforcement, Detention Management: Detention Statistics, <https://www.ice.gov/detention-management>. \*Book-in data not available on these dates.

High levels of detention in 2019 were driven by ICE’s decision to expand detention capacity in response to the arrival of hundreds of thousands of people seeking asylum.<sup>188</sup> At its peak in early August 2019, just 33 percent of people in ICE detention had been arrested by ICE inside the United States. The remaining 66 percent had been arrested by CBP at the border and then transferred to an ICE detention center to go through the asylum process or await deportation (see Figure 7).<sup>189</sup>

Unlike individuals in jail or prison, people are not sent to ICE detention as punishment for a crime. ICE detention is “civil immigration detention,” where the nominal purpose of detention is to ensure that people appear for their immigration court hearings or deportation, and to hold those individuals that Congress or an immigration judge determined pose a risk to the community.<sup>190</sup>

ICE uses a variety of facilities to detain noncitizens, which include state and federal prisons, private detention centers run by contractors, and at times temporary locations like hotels or even hospitals.<sup>191</sup> These facilities are spread throughout the United States, with hundreds of facilities contracted to hold anywhere from dozens to thousands of people.<sup>192</sup>

Although Congress has mandated that some individuals with a prior criminal record must be detained during their immigration proceedings, ICE retains the discretion to release all individuals in its custody on humanitarian grounds. ICE may release individuals from detention with no further conditions apart from a signed commitment to appear in court, an order of supervision (achieved electronically or in person), payment of a bond, or a grant of parole.<sup>193</sup>

### The Effect of the Coronavirus on Immigration Detention

The arrival of the coronavirus in the United States posed an immediate threat to detained individuals and individuals working in detention facilities. Unlike people living outside of detention centers, those in detention centers cannot socially distance from others, as they are locked inside facilities with hundreds of other people. They have limited access to soap and often must pay for hand sanitizer.<sup>194</sup> Face masks are difficult to obtain or simply not distributed at all.<sup>195</sup>

The risk of the virus spreading to ICE detention centers is exacerbated by the agency’s practice of routinely transferring people from one detention center to another, often multiple times.<sup>196</sup> ICE carries out this practice in order to ensure that minimum bed space numbers in contracts with private prisons and state and local jails are met, in order to limit overcrowding, and to coordinate flights for deportations.<sup>197</sup> Under this system, ICE could inadvertently move asymptomatic carriers of the coronavirus among multiple detention centers, spreading the virus at each new location along the way.

These conditions raised immediate concerns about the health of all people detained in ICE custody. On March 19, 2020, doctors contracted by the DHS Office of Civil Rights and Civil Liberties sent an open letter to Congress warning that ICE detention centers posed a “tinderbox scenario” for the spread of the coronavirus.<sup>198</sup> These warnings were quickly realized when, on March 24, ICE announced the first case of the coronavirus inside detention centers.<sup>199</sup>

The threat posed by the coronavirus for those held in ICE detention is enormous and made worse by the agency's long-standing problems with providing healthcare. Reports from nongovernmental organizations and internal government watchdogs have long documented serious flaws with ICE's provision of medical care.<sup>200</sup> In June 2019, the DHS Office of Inspector General found significant failures to follow standards—such as “inadequate detainee medical care”—at ICE detention centers around the country.<sup>201</sup> In December 2018, a whistleblower from the ICE Health Services Corps (IHSC) declared in an email to Matthew Albence, then- ICE Acting Director, that “IHSC is severely dysfunctional and unfortunately preventable harm and death to detainees has occurred.”<sup>202</sup>

Within a month of the first person testing positive in ICE detention, the coronavirus spread rapidly in ICE detention centers around the country (see Figure 8). By August 30, ICE's public statistics showed that 5,355 detained individuals and

45 employees of ICE (not counting third-party contractors) who work at detention centers had tested positive for the virus, and that 814 people held in ICE detention on that date had tested positive for the virus.<sup>203</sup> On July 13, executives from private prison companies testifying in front of Congress stated that nearly 1,000 of their employees had tested positive for the coronavirus.<sup>204</sup>

ICE's numbers likely significantly undercount the proportion of people infected with the virus. ICE refuses to report the number of positive tests for the contractors who run and staff almost all detention centers.<sup>205</sup> ICE also severely limited the number of tests provided to detained individuals. Through May 22, ICE had only tested 2,394 people for the coronavirus, with 1201 (50 percent of those tested) testing positive for the virus.<sup>206</sup>

In August, reports emerged that early in the pandemic, ICE had blocked widespread coronavirus testing at detention centers

because it would cause “housing issues” that might force them to release people.<sup>207</sup> Despite having enough COVID tests to test everyone at the Mesa Verde detention center, ICE told GEO Group not to conduct the tests.<sup>208</sup> Similar allegations emerged in a lawsuit surrounding the Adelanto detention center, where emails revealed that ICE blocked GEO Group from testing all detainees and staff.<sup>209</sup>

When ICE began conducting some mass-testing in August, results showed widespread epidemics in many facilities. For example, when ICE tested roughly 1,000 people held in the La Palma Correctional Center in Eloy, Arizona, 233 people tested positive for COVID-19.<sup>210</sup>

At least eight people have died after contracting COVID-19 while in ICE custody. seven people have died while still detained by ICE, and another individual died shortly after being released.<sup>211</sup>

In response to the spread of the virus within detention centers, ICE has faced significant pressure to release people from detention. Members of Congress,<sup>212</sup> advocacy organizations,<sup>213</sup> and doctors<sup>214</sup> called on the agency to release individuals from detention in order to slow the spread of the virus. By mid-April, ICE released roughly 700 individuals on the grounds that they faced a high risk from the virus.<sup>215</sup>

Many of these releases resulted from a flurry of court orders requiring ICE to release individuals from detention. From late March through April, dozens of lawsuits were filed across the country seeking the release of individuals from ICE detention

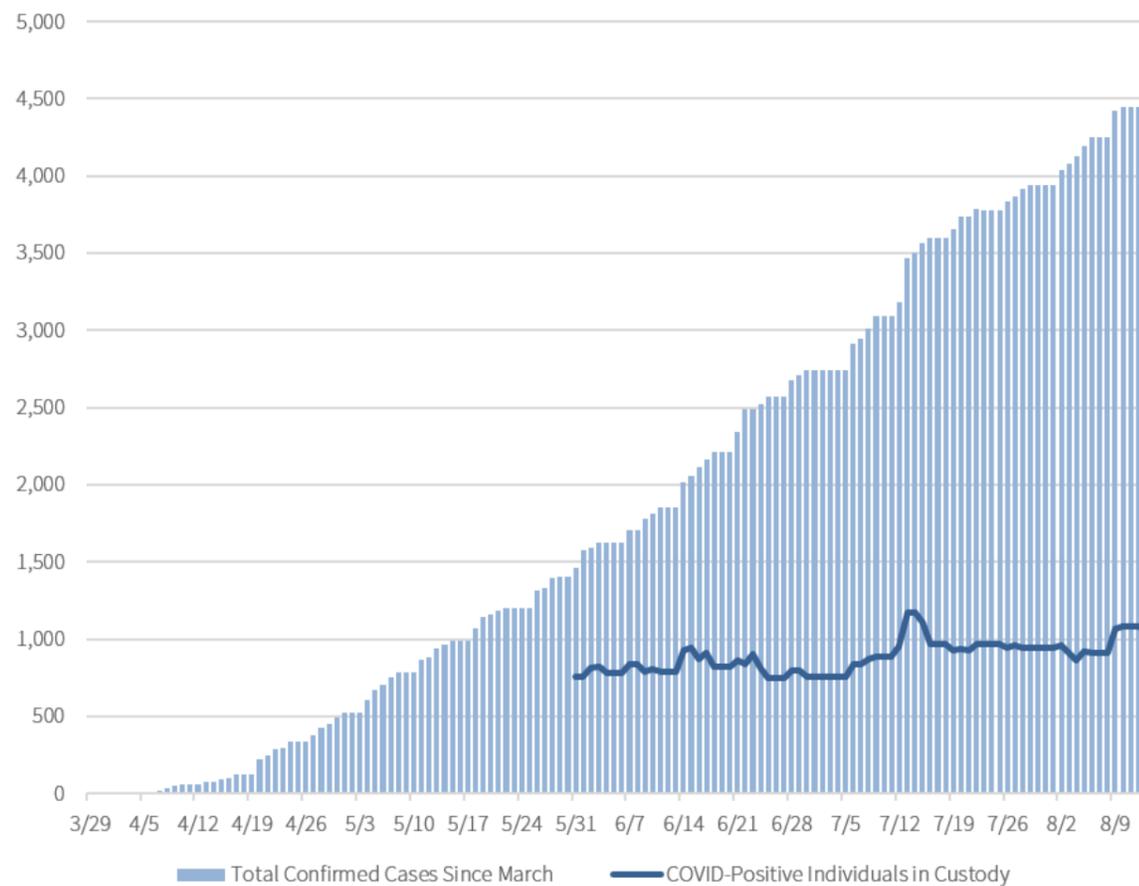
on the grounds that they faced a risk from the coronavirus.<sup>216</sup> On April 20, 2020, a federal court in California ordered ICE to immediately review prior custody decisions for all individuals held in ICE detention who are at a heightened risk of severe illness or death due to the coronavirus.<sup>217</sup>

However, during the same time, ICE detention numbers fell significantly because fewer people entered ICE detention, while the pace of people leaving detention due to release or deportation remained fairly constant (see Figure 9).<sup>218</sup>

Over the four-week period from February 23 to March 21, 2020, ICE booked a total of 21,916 people into ICE custody and 22,522 people were either released from detention or deported. This led to a net drop of 606 in the number of people in detention over that period.<sup>219</sup> In the four-week period that followed (March 22 to April 18), the number of people newly booked into ICE custody dropped by 59 percent to 8,963 people. This drop was driven by CBP's March 20 policy of turning away asylum seekers at the border, as well as ICE's March 18 announcement of scaled back enforcement actions.

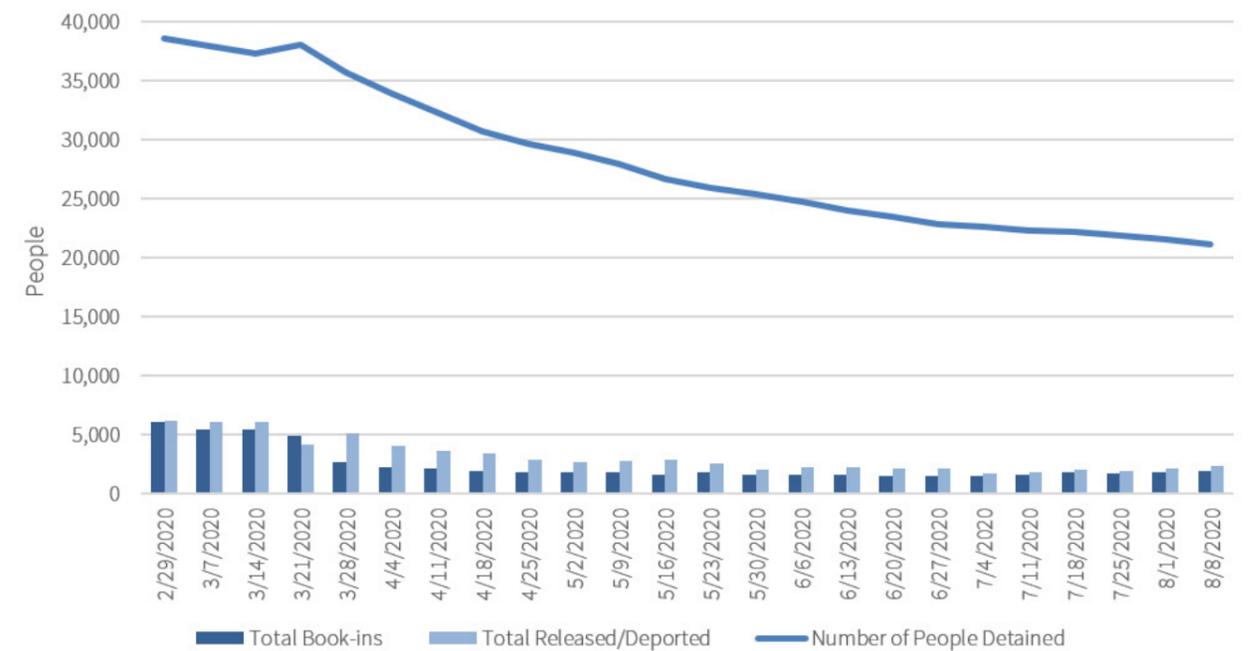
However, over that same period, releases and deportations **dropped by 28 percent, falling to 16,257.**<sup>220</sup> As a result, despite the significant drop in the overall number of people in ICE detention in April 2020 (7,294 fewer people in detention as of April 18 than four weeks earlier), the agency only released a few hundred people due to COVID-19 and maintained a business-as-usual policy for the rest of the people in ICE detention.<sup>221</sup>

**FIGURE 8: Confirmed Cases of People in ICE Detention with COVID-19, March – August 2020**



Source: Immigration and Customs Enforcement, ICE Guidance on COVID-19, Confirmed Cases, <https://www.ice.gov/coronavirus>.

**FIGURE 9: ICE Book-ins and Departures, February 29 to August 8, 2020**



Source: Immigration and Customs Enforcement, Detention Management, <https://www.ice.gov/detention-management>. Prior weekly data on file with author.

As the pandemic continues, tens of thousands of immigrants remain locked inside ICE detention centers and are at heightened risk of death due to the virus. According to a study released in late April, within 90 days of the virus entering a facility, between 72 percent and 99 percent of the people held in detention in the facility will have contracted the virus.<sup>222</sup> The accuracy of this model was confirmed by developments in an ICE detention center in Farmville, Virginia where over 97 percent of the people held in the facility contracted COVID-19 following a series of transfers.<sup>223</sup>

Once the virus has spread widely within a detention center, it risks overwhelming local hospitals, especially those in rural areas with limited numbers of intensive care units.<sup>224</sup> If ICE transfers a detainee with COVID-19 to a new location, that person may spread the virus to detention center staff, who may spread the virus more broadly into the community. Already at least two guards at ICE detention facilities have died after contracting the virus.<sup>225</sup>

Despite the proven dangers posed by the pandemic for people in ICE custody, ICE has not taken sufficient steps to protect people from the virus, leaving protections largely in the hands of local staff and contractors who operate detention centers.<sup>226</sup>

## Recommendations

- ICE should limit enforcement actions that feed the pipeline to immigration detention during the time of a declared national emergency.
- ICE should release as many people in its custody as possible, starting with those who are elderly and most vulnerable, to safeguard the health of immigrants as well as government personnel and members of surrounding communities. The close quarters in ICE detention facilities makes social distancing impossible, and ICE has a proven record of providing inadequate care for people in its custody.
- ICE should immediately provide all individuals in its custody, as well as all detention staff, with adequate supplies of face masks, hand sanitizer, and other sanitary products which may help slow the spread of the virus inside detention centers. ICE should ensure all contractors are providing the same amount of personal protective equipment for all individuals held in custody.
- ICE should limit the practice of transferring detainees from one detention center to another to fulfill contractual minimums or for nonessential reasons. This practice has led to the spread of the virus within detention centers around the country.
- ICE should ensure that people who remain in custody are able to speak with family and their attorneys remotely through videoconferencing, no-contact visitation, and free, unmonitored calls.
- ICE should suspend all deportations until it can ensure that it is not exporting COVID-19 to other countries.



*ICE should suspend all deportations until it can ensure that it is not exporting COVID-19 to other countries.*

# THE EFFECT OF COVID-19 ON THE IMMIGRATION COURT SYSTEM

When the U.S. government seeks to deport noncitizens from the United States, they are generally placed in formal removal proceedings—an administrative court process run by the Department of Justice Executive Office for Immigration Review (EOIR). Those placed in removal proceedings include LPRs who have committed a deportable offense, undocumented immigrants, and asylum seekers. Many individuals apply for relief from removal which will permit them to stay in the United States. This relief is often decided by an immigration judge, who assesses eligibility and determines whether relief should be granted. Certain forms of relief are only available through USCIS, permitting judges in some circumstances to delay cases until the agency makes its decision.

As of June 2020, there were over 1.2 million cases pending in immigration court.<sup>227</sup> Over 95 percent of these cases were on the court's non-detained docket, meaning that a noncitizen was living in the community while awaiting the conclusion of their hearings. The remaining cases include roughly 20,000 cases where a person is being held in an ICE detention center,<sup>228</sup> another roughly 19,000 cases where a person is currently in Mexico as part of MPP,<sup>229</sup> and at most a few thousand cases of unaccompanied children currently in shelters run by the Office of Refugee Resettlement (ORR).<sup>230</sup>

As the pandemic began to spread throughout the United States, the immigration court system was slow to respond. On March 12, the National Association of Immigration Judges—the union which represents immigration judges—called on EOIR to postpone “master calendar” hearings where dozens of people crowd into small court courtrooms.<sup>231</sup> The judges explained that they—as well as attorneys, immigrants, and court staff—were at risk from the spread of the virus in crowded courtrooms and that some attorneys had already shown signs of infection.<sup>232</sup> Despite these calls, it was not until On March 16, EOIR postponed large master calendar hearings nationwide.<sup>233</sup> Two days later, EOIR postponed all non-detained hearings, including individual hearings where an immigrant was seeking relief from removal.<sup>234</sup>

At the border, MPP hearings were repeatedly suspended through at least July 17, after which EOIR and DHS announced a joint plan setting metrics for when MPP hearings would resume.<sup>235</sup> Under these metrics, MPP hearings will not resume until:<sup>236</sup>

- California, Arizona, and Texas progress to Stage 3 of their reopening plans.
- The State Department and the Centers for Disease Control and Prevention lower global health advisories to Level 2, “and/or a comparable change in health advisories, regarding Mexico in particular.”
- The Government of Mexico’s COVID-19 “stoplight” system categorizes all Mexican states that border the United States as “yellow.”

Given the current state of the coronavirus pandemic, it is unlikely that MPP hearings will resume under this plan in 2020.

Non-detained hearings remained suspended nationwide until June 16, when the Honolulu immigration court began hearing cases again.<sup>237</sup> On June 29, immigration courts reopened in

Boston, Buffalo, Dallas, Hartford, Las Vegas, and Memphis, with additional openings scheduled in a small number of courts across the country.<sup>238</sup> However, at least in some of these courts, only individual hearings went forward and master calendar hearings remained suspended.<sup>239</sup> Since then, multiple immigration courts have also reopened or been scheduled for reopening, including courts in Cleveland, Philadelphia, Newark, Baltimore, Detroit, Arlington, Omaha, Salt Lake City, Charlotte, Denver, Orlando, Los Angeles, San Diego, Phoenix, Tucson, San Francisco, and Sacramento.<sup>240</sup>

Despite the serious health risks involved, EOIR has not revealed its plan for choosing which courts to reopen. The only official guidance that EOIR has issued on COVID-19 requires individuals to wear masks, avoid coming to court if they display COVID-19 symptoms, and socially distance.<sup>241</sup> EOIR has not provided guidance regarding how individuals are supposed to socially distance in potentially crowded court. Advocates, as well as members of Congress, continue to call on EOIR to keep hearings suspended during the pandemic.<sup>242</sup>

As of September 15, EOIR has announced that the reopening of all courts without an official reopening date was suspended through at least October 9.<sup>243</sup>

Despite suspending all non-detained immigration court hearings, EOIR has not suspended all other hearings. Hearings generally continue for all immigrants held in detention, as well as for unaccompanied children held in shelters by ORR.<sup>244</sup> Because many of these hearings

occur through video conferencing with the judge in one location and the immigrant in another, attorneys may be forced to break social distancing and appear in person to represent their clients.<sup>245</sup> Similarly, family members or witnesses wanting to appear at a hearing for a detained immigrant may have to travel to the court, potentially exposing them to the virus.<sup>246</sup>

In response to advocacy, many immigration judges and courts began issuing “standing orders” which permitted attorneys and witnesses to appear at hearings that continued via telephone.<sup>247</sup> However, many of these standing orders require attorneys to waive certain objections to the admissibility of documents submitted by the government “on the sole basis that they are unable to examine the document,” meaning that attorneys may have to choose between their own safety and their duty to their client.<sup>248</sup>

EOIR made several changes to its practices during the pandemic, including the following measures:<sup>249</sup>

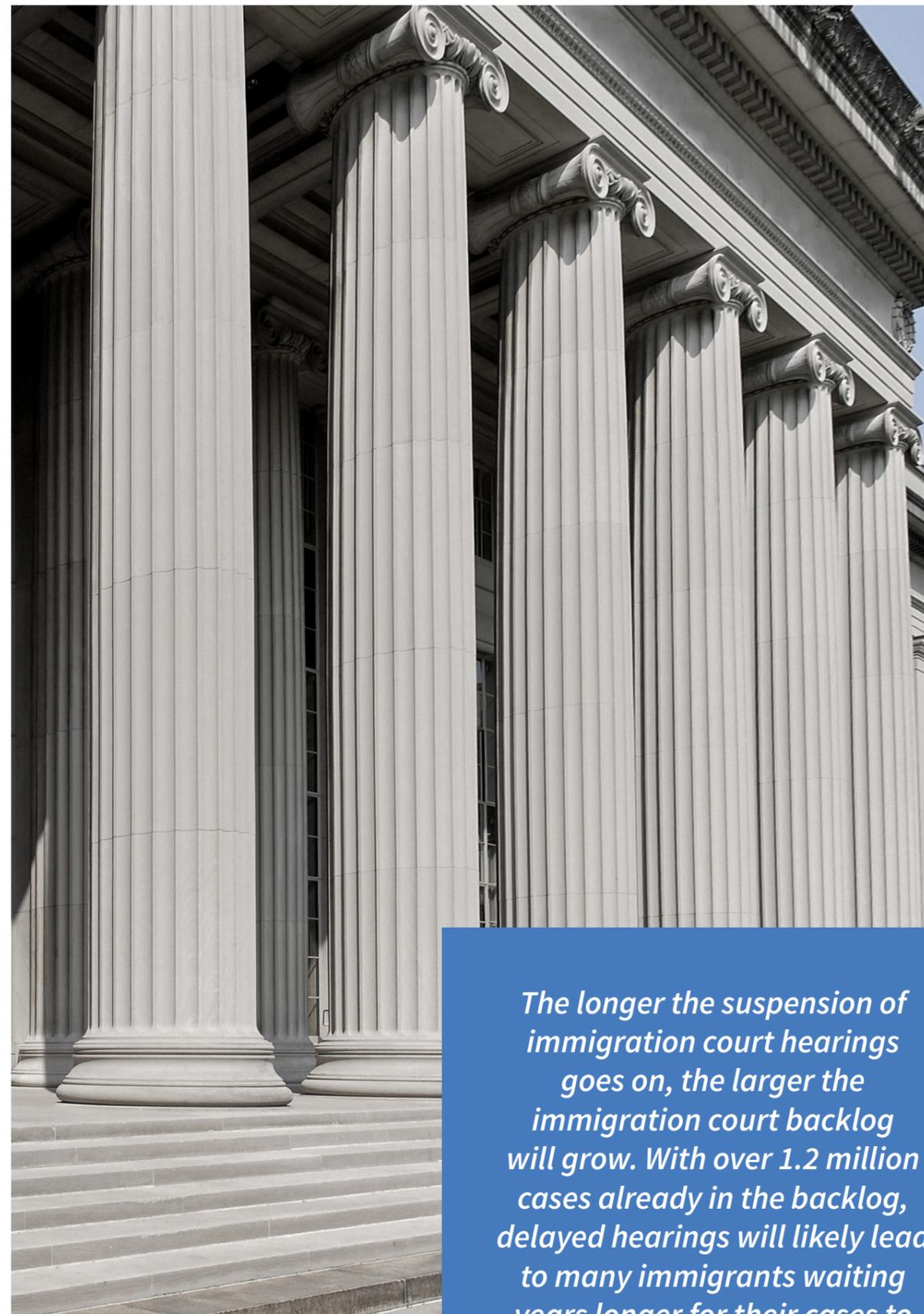
*EOIR should suspend all in-person immigration court hearings and utilize remote technology until COVID-19 is under control.*

- Instituting electronic filing of documents with the immigration courts via email.
- Permitting electronic filing with the Board of Immigration Appeals.
- Posting all “standing orders” relating to the coronavirus online.

The longer the suspension of immigration court hearings goes on, the larger the immigration court backlog will grow. With over 1.2 million cases already in the backlog, delayed hearings will likely lead to many immigrants waiting years longer for their cases to be resolved.

## Recommendations

- EOIR should commit to suspending all in-person immigration court hearings and utilize remote technology until COVID-19 is under control. This will protect the health of court staff, immigrants, immigration judges, and communities alike. While the use of such technology creates separate due process concerns, it is the only viable option during this worldwide pandemic.
- Should EOIR reinstate some hearings, it should make its criteria for reopening courts public and ensure that public health is prioritized.
- EOIR should conduct all bond hearings by telephone or video. With over 20,000 people in detention, many of whom are eligible for bond, the need for bond motions is more important now than ever.
- People who are currently detained and request to move forward with their hearings should be allowed to do so, and judges can utilize telework practices to hear bond motions and order releases as necessary while also working to preserve public health.
- EOIR should automatically grant all continuance requests filed in response to the COVID-19 pandemic, including upon verbal request and without requiring a written motion.
- The Attorney General should restore the authority of immigration judges to administratively close cases to help reduce the backlog.



*The longer the suspension of immigration court hearings goes on, the larger the immigration court backlog will grow. With over 1.2 million cases already in the backlog, delayed hearings will likely lead to many immigrants waiting years longer for their cases to be resolved.*

# CONGRESSIONAL RESPONSE TO THE IMPACT OF COVID-19 ON NONCITIZENS

The World Health Organization declared COVID-19 a worldwide pandemic on March 11, 2020.<sup>250</sup> President Trump subsequently declared a national emergency in the United States on March 13, 2020.<sup>251</sup> As of March 17, 2020, 48 states had declared states of emergency in an effort to combat the spread of the virus.<sup>252</sup> As of April 6, 2020, 43 states had stay-at-home orders or directives to shelter-in-place, ordering over 90 percent of the U.S. population to remain indoors.<sup>253</sup> While the specific terms of these orders vary by state, they typically include the closure of “non-essential” businesses and bans on large gatherings.

These orders and activities have had a negative, cascading impact across the U.S. economy. Since pandemic-related lockdowns began, more than 51 million Americans filed for unemployment through mid-July.<sup>254</sup> The U.S. gross domestic product decreased by 4.8 percent in the first quarter of 2020.<sup>255</sup> In response to the economic downturn, Congress passed a number of stimulus measures intended to provide financial support to individuals, businesses, and governments across the country, while also increasing the availability of medical testing and treatment. These bills largely failed to provide meaningful support to immigrants and mixed status immigrant families throughout the United States.

## The CARES Act

H.R. 748, the “Coronavirus Aid, Relief, and Economic Security” Act,<sup>256</sup> or CARES Act, is a broad appropriations bill passed by Congress and signed into law by the president on March 27, 2020.

The CARES Act directs the expenditure of approximately \$2 trillion in new spending to provide emergency assistance—including direct payments—for individuals, families, and businesses impacted by the pandemic. The Act also seeks to expand COVID-19 testing and treatment by providing significant increases in funding for Medicaid and community health centers.<sup>257</sup> While some immigrants in the United States will benefit from the provisions relating to direct payments, increased access to medical testing and treatment, and unemployment benefits, millions of people are excluded from these provisions based on their immigration status or that of their close relatives. Given the nature and scale of the COVID-19 pandemic, the provisions excluding many immigrants and their close relatives are counterproductive and unnecessarily punitive.

### Direct Payments for Noncitizens

Section 2201 of the CARES Act includes one-time direct payments, or “recovery rebates,” for certain low- and middle-income families and adults in the United States.<sup>258</sup> Payments are made available on a sliding scale dependent upon household income and up to \$1,200 per qualifying adult and \$500 per qualifying child.<sup>259</sup>

In order to qualify for these direct payments, noncitizens must qualify as “resident aliens” by meeting either the “green card test” or the “substantial presence test” as defined by the Internal Revenue Service.<sup>260</sup> Noncitizens who lack Social Security numbers but nevertheless file federal income tax returns using Individual Taxpayer Identification Numbers (ITINs) are deemed ineligible for recovery rebates. Roughly 4.35 million people filed tax returns using ITINs in 2015.<sup>261</sup>

Moreover, U.S. citizens and noncitizens who are themselves eligible for direct payments under the Act are disqualified from receiving these payments if they file joint returns with a spouse who lacks a Social Security number and instead uses an ITIN for income-tax purposes. This includes noncitizens who are lawfully present in the United States but who may be ineligible to work, such as certain spouses of H-1B workers, as well as the U.S.-citizen children of noncitizen parents who file income taxes using an ITIN. A recent study indicates that 16.7 million people and

5.9 million children in the United States live in so-called mixed-status families.<sup>262</sup> An estimated 4.3 million adults and 3.5 million children will be disqualified from the recovery rebates as a result of these restrictions.<sup>263</sup> On April 28, 2020, the Mexican American Legal Defense and Educational Fund filed a class action lawsuit on behalf of various U.S. citizens who were denied recovery rebates because they filed tax returns with spouses who use ITINs, challenging the practice on constitutional grounds.<sup>264</sup>

The CARES Act also includes language allowing colleges and universities to use emergency funding to award emergency financial aid grants to undergraduate and graduate students to assist with unexpected expenses and unmet needs that arise as a result of the COVID-19 pandemic.<sup>265</sup> Guidance issued by the U.S. Department of Education limited the availability of these grants to students who are U.S. citizens and certain qualifying noncitizens.<sup>266</sup> The Department formally mandated these limitations through an interim final rule published in the Federal Register on June 17, 2020.<sup>267</sup> Many noncitizens, including millions

of international students and DACA recipients, are deemed ineligible for emergency grants under the CARES Act, and they are left with few-to-no options to obtain economic assistance during the pandemic.<sup>268</sup>

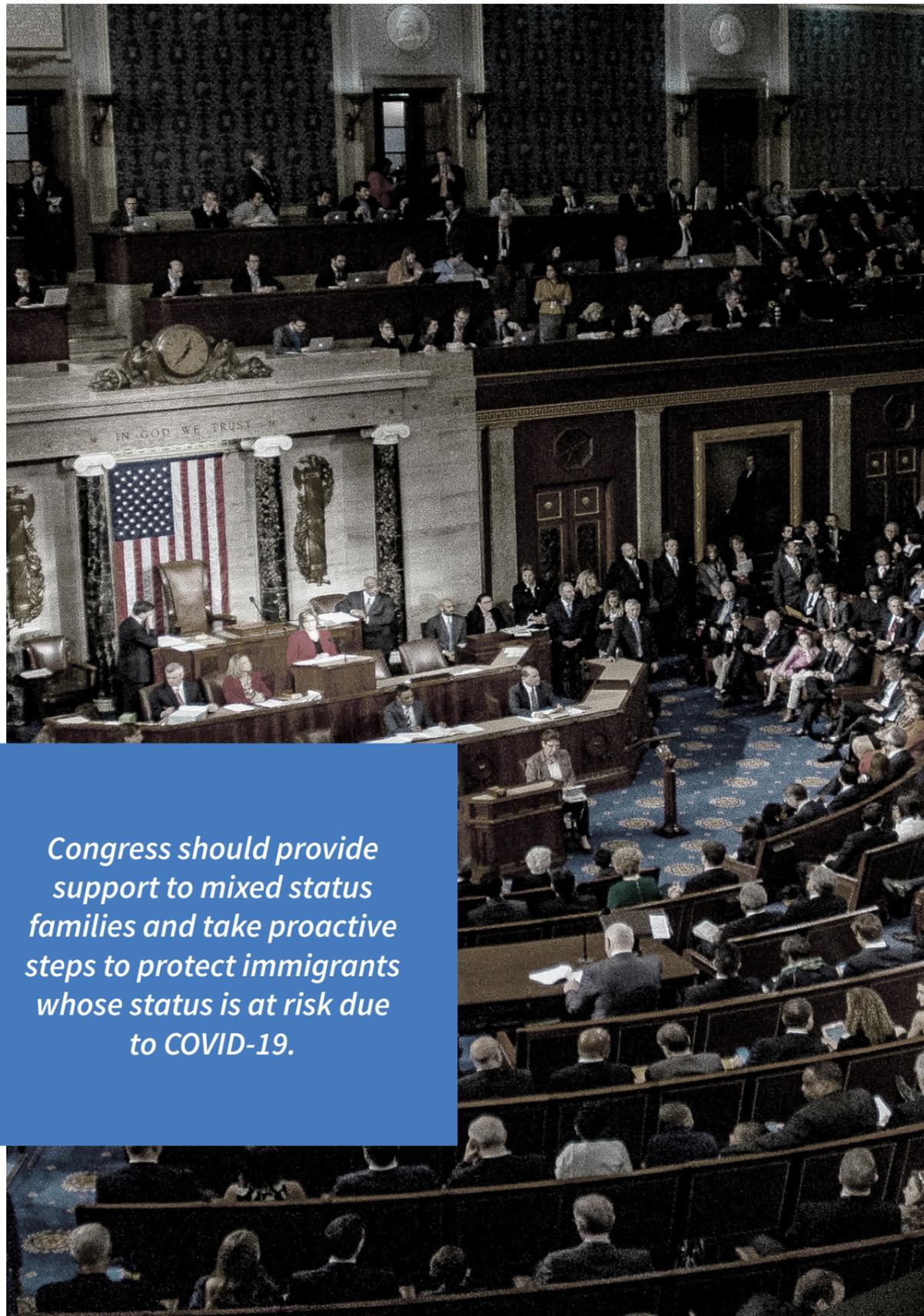
The State of Washington and California Community Colleges system filed separate challenges to this guidance and interim rule in federal district court.<sup>269</sup> Both courts issued preliminary injunctions in mid-June preventing the Department of Education from applying the terms of its guidance and rule to higher education institutions in Washington and community colleges in California.<sup>270</sup> The rule continues to apply to all other institutions of higher education throughout the United States.

The CARES Act therefore creates disparate impacts for U.S. citizens and some noncitizens based on their immigration status or that of their spouses and children.

### State and Private Sector Intervention

State and private-sector actors have created separate programs to assist noncitizens impacted by the COVID-19 pandemic who are ineligible for relief from the federal government. The state of California created a \$75 million disaster relief fund to provide support to 150,000 immigrant workers impacted by the pandemic.<sup>271</sup> This includes direct payments of up to \$500 for noncitizen workers, up to \$1,000 per household.<sup>272</sup> The state of New York created a similar program to provide 20,000 noncitizen workers and their families with direct, one-time relief

*An estimated 4.3 million adults and 3.5 million children will be disqualified from the recovery rebates as a result of these restrictions.*



*Congress should provide support to mixed status families and take proactive steps to protect immigrants whose status is at risk due to COVID-19.*

payments.<sup>273</sup> This includes direct payments of up to \$400 for individuals, up to \$1,000 per household.<sup>274</sup>

Similarly, grant makers created separate funds intended to fill some of the gaps in eligibility in the CARES Act by providing direct cash assistance to noncitizens who are excluded from federal relief under the CARES Act and who are also ineligible for state-based programs.<sup>275</sup> Nonprofit organizations created national programs intended to provide limited assistance to noncitizens impacted by the pandemic in paying for food and expenses.<sup>276</sup>

#### **COVID-19 Testing and Treatment**

The CARES Act includes significant increases for COVID-19 testing and treatment.<sup>277</sup> This includes expansions to Medicaid to provide health coverage for many low-income individuals in all states.<sup>278</sup> While the Act increased funding for Medicaid, it did not expand the eligibility criteria, and many immigrants will still not be able to participate in the program.

Some noncitizens qualify for Medicaid, but coverage is generally limited to individuals who have had “qualified” immigration status for a minimum of five years.<sup>279</sup> Qualified immigrants include LPRs, refugees, asylees, and people granted parole, among others.<sup>280</sup> Millions of noncitizens who do not meet the five-year residency requirement, are present in the United States as nonimmigrants, or are otherwise unauthorized are disqualified from participating in the program.<sup>281</sup>

#### **Immigration Enforcement**

The CARES Act appropriated increased funding for DHS for the purpose of COVID-19 prevention, preparation, and response.<sup>282</sup> This includes the purchase of personal protective equipment and sanitization materials to respond to the coronavirus.<sup>283</sup> The Act contains explicit language preventing the department from transferring appropriated funds between accounts for other purposes, including immigration enforcement.<sup>284</sup> Therefore, despite appropriations for DHS, the CARES Act does not have a direct impact on immigration enforcement activities in the United States.

#### **Recommendations**

- It is critical that Congress fully exercise its constitutional oversight authority to ensure that our immigration enforcement system is adjusted to ensure public health during this crisis.
- Congress should pass legislation that ensures that everyone in the United States is able to access COVID-19 testing and treatment necessary to reduce the impact and further spread of the virus, and provides financial relief for taxpaying families, irrespective of immigration status.
- While Congress has included effective guardrails to date in COVID-19 relief packages that will prevent the diversion of money intended for testing, treatment, and our collective recovery to immigration enforcement, it is critical that similar protections be included in subsequent proposals.
- Millions of immigrant families will not benefit from the \$2 trillion in COVID-19 relief money contained in the CARES Act or its expansion of Medicaid and increased funding for hospitals. Excluding some people from this process undermines our collective ability to win the war against COVID-19, and Congress should do better in future legislative measures.

# CONCLUSION

The COVID-19 pandemic presented a public health crisis unlike any other the United States has experienced in a century. While the outbreak has impacted many aspects of American life, it created unique challenges for noncitizens as well as the various government agencies that regulate immigration. The U.S. immigration system has, in many ways, been slow to respond to the pandemic, and the impact of the government's response has been experienced by citizens and noncitizens alike.

Some aspects of the immigration system have ground to a halt. In other cases, many noncitizens, their families, their attorneys, and government personnel have had to continue to navigate some routine operations that force them to violate the social distancing measures implemented in nine out of ten states. Tens of thousands of noncitizens have been forced to remain in immigration detention and potentially exposed to COVID-19 unnecessarily due to the government's refusal to implement meaningful release policies despite viable alternatives to detention. Other noncitizens have been prevented from obtaining permanent status or U.S. citizenship due to USCIS's refusal to create avenues for noncitizens to complete certain requirements remotely. The pandemic has also highlighted the bureaucratic barriers that exist in recruiting and retaining noncitizens with the skills necessary to help fill critical labor shortages in the United States.

The administration has also used the COVID-19 outbreak to pursue policy changes that it has sought to implement for many years. These include a near elimination of asylum at the southern border and a reduction of family-based immigration. While these policy changes have been described as temporary in nature, they will likely remain in place into 2021, thereby dramatically reducing the number of noncitizens who are permitted to travel to the United States to pursue humanitarian protections or reunite with family members. While Congress has taken decisive action in addressing the impact of COVID-19, its response has excluded many immigrants from receiving direct payments and support, as well as from being able to avail themselves of the increased availability of health care services. This combination of factors has left millions of noncitizens at a considerable and unnecessary disadvantage. Many noncitizens across the country are on the front lines helping their fellow Americans fight this pandemic, and immigration is a critical element of our economic recovery. Noncitizens help to fill many jobs that Americans are unable or unwilling to take. They also help to fuel our economic expansion by increasing our population and enriching the fabric of our communities. **The federal government can and should do better.**

# ENDNOTES

- 1 This report is not intended to serve as a practice advisory for immigration attorneys and does not attempt to delve into every topic in exhaustive detail.
2. See U.S. Department of State, "Visa Waiver Program," last accessed April 30, 2020, <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>.
3. President Donald J. Trump, "Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak," April 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/>; President Donald J. Trump, "Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak," June 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-following-coronavirus-outbreak/>.
4. President Donald J. Trump, "Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus," January 31, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-persons-pose-risk-transmitting-2019-novel-coronavirus/>.
5. President Donald J. Trump, "Proclamation on the Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus," February 29, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-coronavirus/>.
6. President Donald J. Trump, "Proclamation—Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus," March 11, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-2019-novel-coronavirus/>.
7. President Donald J. Trump, "Proclamation on the Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus," March 14, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-coronavirus-2/>.
8. President Donald J. Trump, "Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Novel Coronavirus," May 24, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-novel-coronavirus/>.
9. Ibid.
10. Ibid.
11. U.S. Customs and Border Protection, "Notification of Termination of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within Certain Countries," 85 Fed. Reg. 57108 (September 15, 2020).
12. U.S. Department of State, "Suspension of Routine Visa Services," last modified March 20, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html>.
13. Ibid.
14. U.S. Department of State, "Phased Resumption of Routine Visa Services," last modified July 14, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/phased-resumption-routine-visa-services.html>.
15. U.S. Department of State, "Important Notice for K visa applicants affected by COVID-19," August 31, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/important-notice-for-k-visa-applicants-affected-by-covid-19.html>.
16. U.S. Department of State, "Suspension of Routine Visa Services," last modified March 20, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html>.
17. U.S. Department of State, "Important Announcement on H2 Visas," last modified March 26, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-h2-visas.html>.
18. United Nations High Commissioner for Refugees, "IOM, UNHCR announce temporary suspension of resettlement travel for refugees," March 17, 2020, <https://www.unhcr.org/en-us/news/press/2020/3/5e7103034/iom-unhcr-announce-temporary-suspension-resettlement-travel-refugees.html>.
19. United Nations High Commissioner for Refugees, "Joint Statement: UN refugee chief Grandi and IOM's Vitorino announce resumption of resettlement travel for refugees," June 18, 2020, <https://www.unhcr.org/en-us/news/press/2020/6/5eeb85be4/joint-statement-un-refugee-chief-grandi-ioms-vitorino-announce-resumption.html>.
20. Priscilla Alvarez, "Refugee admissions to the US resume after being on pause due to coronavirus," *CNN*, August 12, 2020, <https://www.cnn.com/2020/08/12/politics/refugee-admissions-coronavirus/index.html>.
21. Tweet by President Donald J. Trump, April 20, 2020, <https://twitter.com/realDonaldTrump/status/1252418369170501639>.
22. President Donald J. Trump, "Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak," April 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/>.
23. President Donald J. Trump, "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak," June 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-following-coronavirus-outbreak/>.
24. President Donald J. Trump, "Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak," April 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/>.

[ent-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/](#).

25. President Donald J. Trump, “Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats,” September 24, 2017, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-enhancing-vetting-capabilities-processes-detecting-attempted-entry-united-states-terrorists-public-safety-threats/>.
26. President Donald J. Trump, “Proclamation on Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry,” January 31, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-improving-enhanced-vetting-capabilities-processes-detecting-attempted-entry/>.
27. President Donald J. Trump, “Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak,” April 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/>.
28. Ibid.
29. See U.S. Department of Homeland Security, *2018 Yearbook of Immigration Statistics*, Table 7, <https://www.dhs.gov/immigration-statistics/yearbook/2018/table7>.
30. Ibid.
31. Boundless, “Trump’s New Executive Order will Favor Immigrants from Western Europe,” April 22, 2020, <https://www.boundless.com/blog/trump-immigration-ban-who-is-affected/>.
32. Caitlin Dickerson & Michael D. Shear, “Before COVID-19, Trump Aide Sought to Use Disease to Close Borders,” *New York Times*, May 3, 2020, <https://www.nytimes.com/2020/05/03/us/coronavirus-immigration-stephen-miller-public-health.html>.
33. Genevieve Douglas, “U.S. Ordered by Judge to Partly Lift Ban on Visa Winners,” *Bloomberg Law*, September 4, 2020, <https://news.bloomberglaw.com/daily-labor-report/white-house-ordered-by-judge-to-partly-lift-ban-on-visa-holders>.
34. Ibid.
35. President Donald J. Trump, “Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak,” June 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>.
36. President Donald J. Trump, “Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak,” June 22, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>.
37. Within days of the publication of Proclamation 10052, the White House issued an amendment to correct a clear drafting error that would have permitted nonimmigrants to obtain any of the targeted visas if they otherwise qualified, and if they had any other valid nonimmigrant visa on the effective date of the proclamation. See President Donald J. Trump, “Proclamation on Amendment to Proclamation 10052,” June 29, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>.
38. Department of State, “Cable: Implementation Procedures and Guidance for Presidential Proclamation 10052 Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak,” ¶ 7, June 30, 2020, available at <https://www.aila.org/infonet/department-of-state-provides-administrative-record>.
39. Department of Homeland Security, *Yearbook of Immigration Statistics 2018*, Table 25, July 9, 2020, <https://www.dhs.gov/immigration-statistics/yearbook/2018>.
40. Ibid. Not all categories of J-1 exchange visitors are prevented from entering the United States under Proclamation 10052. The DHS *Yearbook of Immigration Statistics* does not provide admission figures for subcategories of J-1 exchange visitors.
41. Michelle Hackman, “Trump Moves to Temporarily Suspend New H-1B, Other Visas Amid COVID-19 Pandemic,” *The Wall Street Journal*, June 23, 2020, <https://www.wsj.com/articles/trump-order-would-temporarily-suspend-new-h-1b-other-visas-11592853371>.
42. As an example, H-1B workers are heavily concentrated in computer occupations, and the government’s own data confirms that the unemployment rate in that sector actually dropped from 3.0 to 2.5 percent between January and May of this year when the unemployment rate for all other occupations rose to 15 percent. See National Foundation for American Policy, *Updated Analysis of Employment Data for Computer Occupations*, June 2020, <https://nfap.com/wp-content/uploads/2020/06/Updated-Analysis-of-Employment-Data-for-Computer-Occupations.NFAP-Policy-Brief-June-2020.pdf>.
43. Silva Mathema, *Immigrant Doctors Can Help Lower Physician Shortages in Rural America* (Washington, DC: Center for American Progress, July 29, 2019), <https://www.americanprogress.org/issues/immigration/reports/2019/07/29/472619/immigrant-doctors-can-help-lower-physician-shortages-rural-america/>.
44. U.S. Citizenship and Immigration Services, “Update on Visas for Medical Professionals,” last modified April 8, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/update-on-h-and-j-visas-for-medical-professionals.html>.
45. Dara Lind, “Hospitals Are Suddenly Short of Young Doctors — Because of Trump’s Visa Ban,” *ProPublica*, July 17, 2020. <https://www.propublica.org/article/hospitals-are-suddenly-short-of-young-doctors-because-of-trumps-visa-ban>.
46. U.S. Department of State, “National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak,” last updated August 12, 2020, <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>.
47. U.S. Department of State, “Visa Statistics,” <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>.
48. David J. Bier, “98% Fewer Noncitizens Were Flying to America Before Trump’s New Order,” *Cato*, April 30, 2020, <https://www.cato.org/blog/98-fewer-non-citizens-were-flying-america-trumps-new-order>.
49. U.S. Department of State, “Visa Statistics,” <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>.
50. Kadee Russ & Aaron Sojourner, “The Mexican Border and U.S. Trade: What Would Be the Impact of a Border Closure?” *Econofact*, April 13, 2019, <https://econofact.org/the-mexican-border-and-u-s-trade-what-would-be-the-impact-of-a-border-closure>.
51. “The Canada-U.S. border: by the numbers,” *CBC News*, December 7, 2011, <https://www.cbc.ca/news/canada/the-canada-u-s-border-by-the-numbers-1.999207>.

52. Customs and Border Protection, “Southwest Border Migration FY 2019,” November 14, 2019, <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019>.

53. American Immigration Council, *Asylum in the United States* (Washington, DC: May 14, 2018), <https://www.americanimmigrationcouncil.org/research/asylum-united-states>; American Immigration Council, *A Primer on Expedited Removal* (Washington, DC: July 22, 2019), <https://www.americanimmigrationcouncil.org/research/primer-expedited-removal>.

54. American Immigration Council, *Policies Affecting Asylum Seekers at the Border* (Washington, DC: January 29, 2020), <https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border>.

55. Department of Homeland Security, “Joint Statement on US-Mexico Joint Initiative to Combat the COVID-19 Pandemic,” March 20, 2020, <https://www.dhs.gov/news/2020/03/20/joint-statement-us-mexico-joint-initiative-combat-covid-19-pandemic>; Department of Homeland Security, “Joint Statement on US-Canada Joint Initiative: Temporary Restriction of Travelers Crossing the US-Canada Land Border for Non-Essential Purposes,” March 20, 2020, <https://www.dhs.gov/news/2020/03/20/joint-statement-us-canada-joint-initiative-temporary-restriction-travelers-crossing>.

56. Ibid.

57. Department of Homeland Security, “Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico,” 85 Fed. Reg. 22,353 (April 22, 2020), <https://www.federalregister.gov/documents/2020/04/22/2020-08652/notification-of-temporary-travel-restrictions-applicable-to-land-ports-of-entry-and-ferries-service>; Department of Homeland Security, “Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada,” 85 Fed. Reg. 22,352 (April 22, 2020), <https://www.federalregister.gov/documents/2020/04/22/2020-08650/notification-of-temporary-travel-restrictions-applicable-to-land-ports-of-entry-and-ferries-service>.

58. Department of Homeland Security, “Acting Secretary Chad Wolf Statement on Non-Essential Travel,” April 20, 2020, <https://www.dhs.gov/news/2020/04/20/acting-secretary-chad-wolf-statement-non-essential-travel>; Department of Homeland Security, “Acting Secretary Chad Wolf Statement on Non-Essential Travel Restrictions with Canada and Mexico,” June 16, 2020, <https://www.dhs.gov/news/2020/06/16/acting-secretary-wolf-s-statement-extension-non-essential-travel-restrictions-canada>; U.S. Customs and Border Protection, “Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico,” 85 Fed. Reg. 44183 (July 22, 2020); U.S. Customs and Border Protection, “Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico,” 85 Fed. Reg. 51633 (August 21, 2020).

59. Emma Jacobs, “Canadian Border Restrictions Have Been Extended For Another 30 Days,” *NPR*, April 18, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/04/18/837160928/canadian-border-restrictions-have-been-extended-for-another-30-days>.

60. Centers for Disease Control and Prevention, Department of Health and Human Services, “Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes,” 85 Fed. Reg. 16,559 (March 24, 2020), <https://www.federalregister.gov/documents/2020/03/24/2020-06238/control-of-communicable-diseases-foreign-quarantine-suspension-of-introduction-of-persons-into>.

61. Ibid.

62. Centers for Disease Control and Prevention, Department of Health and Human Services, “Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists,” 85 Fed. Reg. 17,060 (March 26, 2020), <https://www.federalregister.gov/documents/2020/03/26/2020-06327/notice-of-order-under-sections-362-and-365-of-the-public-health-service-act-suspending-introduction>.

63. Ibid.

64. Dara Lind, “Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately — Ignoring Asylum Law,” *ProPublica*, April 2, 2020, <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law>.

65. Government of Mexico, Secretary of Foreign Relations, “Respecto al posible retorno a migrantes de Estados Unidos a México debido al COVID-19,” March 24, 2020, <https://www.gob.mx/sre/documentos/nota-informativa-relaciones-exteriores?state=published>.

66. Stephanie Leutert, et al., *Metering and COVID-19* (Austin, TX: University of Texas at Austin, Strauss Center for International Security and Law, April 2020), <https://www.strausscenter.org/images/MSI/MeteringCovid-19.pdf>.

67. Ibid.

68. Centers for Disease Control and Prevention, Department of Health and Human Services, “Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists,” 85 Fed. Reg. 17,060 (March 26, 2020), <https://www.federalregister.gov/documents/2020/03/26/2020-06327/notice-of-order-under-sections-362-and-365-of-the-public-health-service-act-suspending-introduction>.

69. Ibid.

70. Camilo Montoya-Galvez, “U.S. border expulsions of migrant children continue, with few allowed to seek refuge under virus order,” *CBS News*, July 17, 2020, <https://www.cbsnews.com/news/migrant-children-expelled-under-coronavirus-policy/>.

71. See 8 U.S.C. § 1232.

72. Centers for Disease Control, “Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists,” 85 Fed. Reg. 22,424 (April 22, 2020), <https://www.federalregister.gov/documents/2020/04/22/2020-08605/extension-of-order-under-sections-362-and-365-of-the-public-health-service-act-order-suspending>.

73. Centers for Disease Control, “Amendment and Extension of Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists,” May 19, 2020, [https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal\\_5-19-20-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf).

74. Ibid.

75. Ibid.

76. Department of Health and Human Services, “Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes,” September 11, 2020, <https://www.federalregister.gov/documents/2020/09/11/2020-20036/control-of-communicable-diseases-foreign-quarantine-suspension-of-the-right-to-introduce-and>.

77. American Immigration Council, *Policies Affecting Asylum Seekers at the Border* (Washington, DC: January 29, 2020), <https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border>.

[tioncouncil.org/research/policies-affecting-asylum-seekers-border](https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border).

78. TRAC Immigration, “Details on MPP (Remain in Mexico) Deportation Proceedings,” last accessed April 8, 2020, <https://trac.syr.edu/phptools/immigration/mpp/>.

79. American Immigration Council, *Policies Affecting Asylum Seekers at the Border* (Washington, DC: January 29, 2020), <https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border>.

80. *Testimony of Customs and Border Protection Acting Commissioner Mark Morgan Hearing on U.S. Customs and Border Protection Budget Request for FY2021*, House Appropriations Committee, February 27, 2020 (stating that approximately 2,500 people had been put through PACR and 1,200 through HARP), <https://www.c-span.org/video/?469564-1/customs-border-protection-fiscal-year-2021-budget-request>.

81. U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review, “Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act,” 84 Fed. Reg. 63,994 (November 19, 2019), <https://www.federalregister.gov/documents/2019/11/19/2019-25137/implementing-bilateral-and-multilateral-asylum-cooperative-agreements-under-the-immigration-and>.

82. 8 U.S.C. § 1158(a)(2)(A).

83. *Testimony of Customs and Border Protection Acting Commissioner Mark Morgan, Hearing on U.S. Customs and Border Protection Budget Request for FY2021*, House Appropriations Committee, February 27, 2020 (stating that approximately 1,000 people had been put through the Guatemalan ACA), <https://www.c-span.org/video/?469564-1/customs-border-protection-fiscal-year-2021-budget-request>.

84. Caitlin Dickerson and Michael D. Shear, “Before Covid-19, Trump Aide Sought to Use Disease to Close Borders,” *New York Times*, May 3, 2020, <https://www.nytimes.com/2020/05/03/us/coronavirus-immigration-stephen-miller-public-health.html>.

85. Lucas Guttentag, “Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors,” *Just Security*, April 13, 2020, <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>.

86. Customs and Border Protection, “Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions,” last accessed September 7, 2020, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

87. Dara Lind, “Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately — Ignoring Asylum Law,” *ProPublica*, April 2, 2020, <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law>.

88. Camilo Montoya-Galvez, “U.S. border expulsions of migrant children continue, with few allowed to seek refuge under virus order,” *CBS News*, July 17, 2020, <https://www.cbsnews.com/news/migrant-children-expelled-under-coronavirus-policy/>.

89. Camilo Montoya-Galvez, “ICE held 660 migrant kids set for expulsion in hotels, independent monitor reveals,” *CBS News*, August 27, 2020, <https://www.cbsnews.com/news/migrant-children-hotels-expelled-ice-flores-agreement-monitor/>.

90. Caitlin Dickerson, “A Private Security Company Is Detaining Migrant Children at Hotels,” *New York Times*, August 16, 2020, <https://www.nytimes.com/2020/08/16/us/migrant-children-hotels-coronavirus.html>.

91. Camilo Montoya-Galvez, “Judge orders Trump administration to stop detaining migrant children in hotels prior to expelling them,” *CBS News*, September 4, 2020, <https://www.cbsnews.com/news/judge-rules-migrant-children-held-in-hotels-have-protections-dealing-blow-to-shadow-detention-system/>.

92. Hamed Aleaziz, “The Trump Administration Is Considering Excluding Some Immigrant Children From A Controversial Pandemic Border Policy,” *Buzzfeed News*, September 8, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/trump-immigrant-children-pandemic-border-order>.

93. United Nations High Commissioner for Refugees, “Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response,” March 16, 2020, <https://www.refworld.org/docid/5e7132834.html>.

94. Department of Justice, “Department of Justice and Department of Homeland Security Announce Plan to Restart MPP Hearings,” July 17, 2020, <https://www.justice.gov/opa/pr/department-justice-and-department-homeland-security-announce-plan-restart-mpp-hearings>.

95. Author’s analysis of data available at TRAC Immigration, “Details on MPP (Remain in Mexico) Deportation Proceedings,” last accessed September 25, 2020, <https://trac.syr.edu/phptools/immigration/mpp/>.

96. Arun Gupta & Michelle Fawcett, “Refugees in the Time of COVID-19,” *The Nation*, April 21, 2020, <https://www.thenation.com/article/society/refugees-asylum-coronavirus-mexico/>.

97. Camila DeChalus, “Guatemala suspends US flights carrying asylum-seekers,” *CQ Roll Call*, March 17, 2020, <https://www.rollcall.com/2020/03/17/guatemala-suspends-u-s-flights-carrying-asylum-seekers/>.

98. Valerie Gonzalez, “Border Patrol deconstructing soft-sided facilities in RGV, Yuma and El Paso,” *KRGV*, May 19, 2020, <https://www.krgv.com/news/border-patrol-deconstructing-soft-sided-facilities-in-rgv-yuma-and-el-paso>.

99. Department of Homeland Security, “Security Bars and Processing,” 85 Fed. Reg. 41201 (July 9, 2020).

100. Ibid.

101. Ibid.

102. U.S. Citizenship and Immigration Services, “USCIS Service and Office Locator,” <https://egov.uscis.gov/office-locator/#/asc>.

103. Suzanne Rowan Kelleher, “45 U.S. States Shut Down And Counting: State-By-State Travel Restrictions,” *Forbes*, April 6, 2020, <https://www.forbes.com/sites/suzannerowanwankelleher/2020/03/28/23-states-shut-down-and-counting-state-by-state-travel-restrictions/#d832e0558f4c>.

104. *Am. Immigration Lawyers Ass’n v. U.S. Dep’t of Homeland Sec.*, No. 1:20-cv-00897-RJL, Complaint, Dkt. 1 (D.D.C., Apr. 3, 2020), <https://www.courthouse-news.com/wp-content/uploads/2020/04/Immigration-Attorneys.pdf>.

105. American Immigration Council, *The Three- and Ten-Year Bars* (Washington, DC: January 2, 2020), <https://www.americanimmigrationcouncil.org/research/three-and-ten-year-bars>.

106. Larry Beresford, “International Docs Held Back From COVID Front Lines,” *Medpage Today*, April 22, 2020, <https://www.medpagetoday.com/infectiousdisease/covid19/86100>.

107. Ibid.

108. Nicole Prchal Svajlenka, “A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response” (Washington, DC: Center for American Progress, April 6, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482708/demographic-profile-daca-recipients-front>

[lines-coronavirus-response/](https://www.dhs.gov/lines-coronavirus-response/).

109. Ibid.

110. Mary Jo Dudley, “These U.S. industries can’t work without illegal immigrants,” *CBS News*, January 10, 2019, <https://www.cbsnews.com/news/illegal-immigrants-us-jobs-economy-farm-workers-taxes/>.

111. New American Economy, “Undocumented Immigrants and the Covid-19 Crisis” (New York, NY: April 4, 2020), <https://research.newamericaneconomy.org/report/undocumented-immigrants-covid-19-crisis/>.

112. U.S. Citizenship and Immigration Services, “USCIS Offices Preparing to Reopen on June 4,” last modified April 24, 2020, <https://www.uscis.gov/news/alerts/uscis-offices-preparing-reopen-june-4>.

113. U.S. Citizenship and Immigration Services, “USCIS Preparing to Resume Public Services on June 4,” May 27, 2020, <https://www.uscis.gov/news/alerts/uscis-preparing-resume-public-services-june-4>.

114. U.S. Citizenship and Immigration Services, “USCIS Temporarily Closing Offices to the Public March 18-April 1,” March 17, 2020, <https://www.uscis.gov/news/alerts/uscis-temporarily-closing-offices-public-march-18-april-1>.

115. U.S. Citizenship and Immigration Services, “USCIS to Continue Processing Applications for Employment Authorization Extension Requests Despite Application Support Center Closures,” March 30, 2020, <https://www.uscis.gov/news/alerts/uscis-continue-processing-applications-employment-authorization-extension-requests-despite-application-support-center-closures>.

116. U.S. Citizenship and Immigration Services, “USCIS Office Closings,” last updated September 1, 2020, <https://www.uscis.gov/about-us/uscis-office-closings>.

117. U.S. Citizenship and Immigration Services, “USCIS Extends Flexibility for Responding to Agency Requests,” May 1, 2020, <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1>.

118. U.S. Citizenship and Immigration Services, “USCIS Extends Flexibility for Responding to Agency Requests” last updated September 11, 2020, <https://www.uscis.gov/about-us/uscis-response-to-covid-19>.

119. U.S. Citizenship and Immigration Services, “Form I-9 Verification During EAD Production Delays Due to COVID-19,” August 19, 2020, <https://www.uscis.gov/i-9-central/form-i-9-verification-during-ead-production-delays-due-to-covid-19>.

120. AILA, “District Court Issues Consent Order and Final Statement in Class Action Challenging Delay in Issuance of EADs,” August 21, 2020, <https://www.aila.org/infonet/district-court-issues-tro-in-class-action>.

121. U.S. Citizenship and Immigration Services, “USCIS Announces Flexibility in Submitting Required Signatures During COVID-19 National Emergency,” March 20, 2020, <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-submitting-required-signatures-during-covid-19-national-emergency>.

122. U.S. Immigration and Customs Enforcement, “DHS announces flexibility in requirements related to Form I-9 compliance,” April 3, 2020, <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance#wcm-survey-target-id>. This policy was extended on May 14, 2020.

U.S. Immigration and Customs Enforcement, “ICE announces extension of flexibility in rules related to Form I-9 Compliance,” May 14, 2020, <https://www.ice.gov/news/releases/ice-announces-extension-flexibility-rules-related-form-i-9-compliance>.

123. U.S. Citizenship and Immigration Services, “Temporary Policy for List B Identity Documents,” May 1, 2020, <https://www.uscis.gov/i-9-central/temporary-policies-related-covid-19>.

124. Ibid. Auto-extended List B identity documents are acceptable for the extension period specified.

125. U.S. Immigration and Customs Enforcement, “ICE announces another extension to I-9 compliance flexibility, no more extensions for employers to respond to NOIs served in March” updated July 20, 2020, <https://www.ice.gov/news/releases/ice-announces-another-extension-i-9-compliance-flexibility-no-more-extensions>.

126. Ibid.

127. U.S. Customs and Border Protection, “CBP Offers Flexibility to Departing Visa Waiver Program Travelers,” April 17, 2020, <https://www.aila.org/infonet/cbp-announces-that-vwp-entrants-may-apply>.

128. U.S. Citizenship and Immigration Services, “DHS and USDA Move to Protect American Farmers and Ensure Continued Flow of America’s Food Supply,” April 15, 2020, <https://www.uscis.gov/news/news-releases/dhs-and-usda-move-protect-american-farmers-and-ensure-continued-flow-americas-food-supply>.

129. Jason Hopkins, “DHS Suspends Increase in Guest Worker Visas,” *Tennessee Star*, April 5, 2020, <https://tennesseestar.com/2020/04/05/dhs-suspends-increase-in-guest-worker-visas/>.

130. Department of Homeland Security, “DHS to Improve Integrity of Visa Program for Foreign Workers,” March 5, 2020, <https://www.dhs.gov/news/2020/03/05/dhs-improve-integrity-visa-program-foreign-workers>.

131. U.S. Citizenship and Immigration Services, “H-2B Cap Reached for Second Half of FY2020,” February 26, 2020, <https://www.uscis.gov/news/alerts/h-2b-cap-reached-second-half-fy2020>.

132. Tweet by U.S. Department of Homeland Security, April 2, 2020, <https://twitter.com/DHSgov/status/1245745115458568192>.

133. U.S. Citizenship and Immigration Services, “Temporary Changes to Requirements Affecting H-2B Nonimmigrants Due to the COVID-19 National Emergency,” 85 Fed. Reg. 28,843, May 14, 2020, <https://www.federalregister.gov/documents/2020/05/14/2020-10486/temporary-changes-to-requirements-affecting-h-2b-nonimmigrants-due-to-the-covid-19-national>.

134. Ibid.

135. U.S. Citizenship and Immigration Services, “Policy Memorandum: Temporary Policy Changes for Certain Foreign Medical Graduates During the COVID-19 National Emergency,” May 11, 2020, [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2020/PM-602-0178\\_-\\_COVID19MedicalGraduatesMemo\\_Final\\_CLEAN.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2020/PM-602-0178_-_COVID19MedicalGraduatesMemo_Final_CLEAN.pdf); Camila DeChalus, “USCIS eases visa restrictions for some foreign doctors,” *CQ Roll Call*, May 13, 2020, <https://www.rollcall.com/2020/05/13/uscis-eases-visa-restrictions-for-some-foreign-doctors/>.

136. Ibid.

137. Immigration and Customs Enforcement, “Frequently Asked Questions for SEVP Stakeholders about COVID-19,” last updated June 4, 2020, <https://www.ice.gov/doclib/coronavirus/covid19faq.pdf>.

138. Ibid.
139. Ibid.
140. Immigration and Customs Enforcement, “SEVP modifies temporary exemptions for nonimmigrant students taking online courses during fall 2020 semester,” July 6, 2020, <https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-students-taking-online-courses-during>.
141. Michelle Hackman, Melissa Korn and Andrew Restuccia, “Trump Administration Rescinds Rules on Foreign Students Studying Online,” *Wall Street Journal*, July 14, 2020, <https://www.wsj.com/articles/white-house-weighs-scaling-back-rules-on-foreign-students-studying-online-11594746772>.
142. Ibid.
143. Immigration and Customs Enforcement, “Frequently Asked Questions for SEVP Stakeholders about COVID-19,” last updated July 15, 2020, <https://www.ice.gov/doclib/coronavirus/covid19faq.pdf>.
144. David J. Bier, “6 Million Foreign Visitors, Students, and Guest Workers Were Stranded in the US Beyond Air Departure Dates” (Washington, DC: Cato Institute, June 16, 2020), <https://www.cato.org/blog/6-million-foreign-visitors-students-guest-workers-were-stranded-us-beyond-air-departure-dates>.
145. U.S. Citizenship and Immigration Services, “USCIS Response to COVID-19,” last accessed May 26, 2020, <https://www.uscis.gov/about-us/uscis-response-covid-19>.
146. Tanvi Misra, “H-1B workers lose jobs, legal status amid pandemic,” *Roll Call*, April 15, 2020, <https://www.rollcall.com/2020/04/15/h-1b-workers-lose-jobs-legal-status-amid-pandemic/>.
147. Genevieve Douglas, “Lawmakers to Immigration Agency: Let Docs on Visas Fight Virus,” *Bloomberg Law*, April 15, 2020, <https://news.bloomberglaw.com/daily-labor-report/lawmakers-to-immigration-agency-let-docs-on-visas-fight-virus>.
148. U.S. Citizenship and Immigration Services, “USCIS Announces Temporary Suspension of Premium Processing for All I-129 and I-140 Petitions Due to the Coronavirus Pandemic,” last modified March 27, 2020, <https://www.uscis.gov/working-united-states/temporary-workers/uscis-announces-temporary-suspension-premium-processing-all-i-129-and-i-140-petitions-due-coronavirus-pandemic>.
149. U.S. Citizenship and Immigration Services, “USCIS Resumes Premium Processing for Certain Petitions,” May 29, 2020, <https://www.uscis.gov/news/alerts/uscis-resumes-premium-processing-certain-petitions>.
150. U.S. Citizenship and Immigration Services, “USCIS Response to COVID-19,” last accessed June 16, 2020, <https://www.uscis.gov/about-us/uscis-response-covid-19>.
151. *Associated Press*, “Thousands Wait to Take US Citizenship Oath Amid Virus Delays,” May 25, 2020, <https://www.voanews.com/usa/thousands-wait-take-us-citizenship-oath-amid-virus-delays>.
152. Hamed Aleaziz, “The Coronavirus Has Derailed The Citizenship Oath For Thousands Of Immigrants Who Are Anxious To Vote,” *Buzzfeed*, April 8, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/coronavirus-derails-citizenship-oath-immigrants>.
153. Max Rivlin-Nadler, “Drive-Through Naturalizations Make New U.S. Citizens In The COVID-19 Era,” *NPR*, July 2, 2020, <https://www.npr.org/2020/07/02/886014589/drive-through-naturalizations-make-new-u-s-citizens-in-the-covid-19-era>; Jamie Ehrlich, “Becoming an American citizen during a pandemic: Drive-thru naturalization ceremonies,” *CNN*, June 18, 2020, <https://amp.cnn.com/cnn/2020/06/18/politics/naturalization-ceremonies-michigan-drive-thru-trnd/index.html>.
154. Dianne Solis, “Immigrants close to U.S. citizenship find delays and uncertainty,” *Dallas Morning News*, July 19, 2020, <https://www.msn.com/en-us/news/us/immigrants-close-to-us-citizenship-find-delays-and-uncertainty/ar-BB16Uoep>.
155. Camila DeChalus, “Citizenship delays may keep many immigrants from fall vote,” *CQ Roll Call*, September 8, 2020, <https://www.rollcall.com/2020/09/08/uscis-citizenship-delays-keep-immigrants-from-voting/>.
156. National Immigration Law Center, “Changes to Public Charge: Analysis and Frequently Asked Questions,” February 24, 2020, <https://www.nilc.org/issues/economic-support/pubcharge/changes-to-public-charge-analysis-and-faq/>.
157. U.S. Citizenship and Immigration Services, “Public Charge,” last modified August 21, 2020, <https://www.uscis.gov/greencard/public-charge>.
158. David Welna, “Twin Rulings By Federal Judge Block ‘Public Charge’ Rules For Immigrants,” *NPR*, July 31, 2020, <https://www.npr.org/2020/07/31/897429845/twin-rulings-by-federal-judge-block-public-charge-rules-for-immigrants>.
159. U.S. Citizenship and Immigration Services, “Injunction of the Inadmissibility on Public Charge Grounds Final Rule,” last modified August 4, 2020, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/injunction-of-the-inadmissibility-on-public-charge-grounds-final-rule>.
160. Camilo Montoya-Galvez, “Trump administration can enforce green card wealth test in most states, court rules,” *CBS News*, August 12, 2020, <https://www.cbsnews.com/news/immigration-news-trump-administration-public-charge-rule-green-card-wealth-test/>.
161. Tweet from Camilo Montoya-Galvez, @camiloreports, August 26, 2020, 3:22 PM, <https://twitter.com/camiloreports/status/1298702374840741888> (“While the Trump admin. can enforce its ‘public charge’ test for green cards in 47 states, the rule remains suspended nationwide, USCIS tells @CBSNews.”).
162. Khorri Atkinson, “2nd Circ. Revives Immigration Wealth Test, Again,” *Law 360*, September 14, 2020, <https://www.law360.com/articles/1309566/2nd-circ-revives-immigration-wealth-test-again>.
163. Hamed Aleaziz, “The US Agency In Charge Of The Immigration System Says It’s Facing A Financial Disaster Amid The Coronavirus Pandemic,” *Buzzfeed News*, May 19, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/coronavirus-uscis-budget>.
164. Camilo Montoya-Galvez, “Standoff over emergency funding leaves 13,400 immigration workers facing furlough,” *CBS News*, July 6, 2020, <https://www.cbsnews.com/news/uscis-funding-13400-immigration-workers-furlough-coronavirus/>.
165. Hamed Aleaziz, “The US Agency In Charge Of The Immigration System Says It’s Facing A Financial Disaster Amid The Coronavirus Pandemic,” *Buzzfeed News*, May 19, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/coronavirus-uscis-budget>.
166. Ibid.
167. Eric Katz, “Homeland Security Moves Forward With 13,000 Furloughs Despite Its Improving Financial Situation,” *Government Executive*, July 21, 2020, <https://www.govexec.com/workforce/2020/07/homeland-security-moves-forward-13000-furloughs-despite-its-improving-financial-situation/167081/>.
168. Ibid.
169. U.S. Citizenship and Immigration Services, “USCIS Averts Furlough of Nearly 70% of Workforce,” August 25, 2020, <https://www.uscis.gov/news/news-releases/uscis-averts-furlough-of-nearly-70-of-workforce>.
170. Ibid.
171. Immigration and Customs Enforcement, “Updated ICE statement on COVID-19,” March 18, 2020, <https://www.ice.gov/news/releases/updated-ice-statement-covid-19>.
172. Immigration and Customs Enforcement, “Detention Management: Detention Statistics,” last accessed April 24, 2020, <https://www.ice.gov/detention-management>. Data on prior weekly numbers on file with authors.
173. Camilo Montoya-Galvez, “ICE arrests 2,000 immigrants in largest sweep of the pandemic,” *CBS News*, September 1, 2020, <https://www.cbsnews.com/news/ice-arrests-2000-immigrants-largest-sweep-pandemic>.
174. Immigration and Customs Enforcement, “ICE Guidance on COVID-19,” last accessed April 24, 2020, <https://www.ice.gov/coronavirus>.
175. Conor Finnegan, “75% of migrants deported to Guatemala on single flight tested positive for coronavirus: Health minister,” *ABC News*, April 15, 2020, <https://abcnews.go.com/International/75-migrants-deported-guatemala-single-flight-tested-positive/story?id=70156471>.
176. Immigration and Customs Enforcement, “ICE Guidance on COVID-19,” last accessed April 24, 2020, <https://www.ice.gov/coronavirus>.
177. Ted Hesson and Mica Rosenberg, “U.S. to test some immigrants coronavirus before deportation,” *Reuters*, April 23, 2020, <https://www.reuters.com/article/us-health-coronavirus-usa-immigration/us-to-test-some-immigrants-for-coronavirus-before-deportation-idUSKCN2253SE>.
178. Noah Lanard, “Whistleblowers Say an ICE Detention Center Used Deceptive Tricks to Conceal COVID Outbreak,” *Mother Jones*, July 21, 2020, <https://www.motherjones.com/politics/2020/07/whistleblowers-say-ice-detention-center-used-deceptive-tricks-to-conceal-covid-outbreak/>.
179. Sofia Menchu, “Guatemala says 32 on deportation flight from U.S. infected with coronavirus,” *Reuters*, April 18, 2020, <https://www.reuters.com/article/us-health-coronavirus-guatemala-deportee/guatemala-says-32-on-deportation-flight-from-u-s-infected-with-coronavirus-idUSKBN22100N?il=0>.
180. Molly O’Toole & Cindy Carcamo, “After dozens of deportees are positive for coronavirus, U.S. deploys CDC to Guatemala to ‘validate’ its tests,” *Los Angeles Times*, April 16, 2020, <https://www.latimes.com/world-nation/story/2020-04-16/coronavirus-cdc-guatemala-deportees>.
181. The White House, *Presidential Memorandum on Visa Sanctions*, April 10, 2020, <https://www.whitehouse.gov/presidential-actions/memorandum-visa-sanctions/>.
182. Ibid.
183. Jeff Abbott, “Unwelcomed in US – and at home: Deported Guatemalans face threats,” *Al Jazeera*, April 27, 2020, <https://www.aljazeera.com/news/2020/04/unwelcomed-home-deported-guatemalans-face-threats-200427143917256.html>; Tweet from Jeff Abbott, @palabrasdeabajo, April 26, 2020, 9:40 PM, <https://twitter.com/palabrasdeabajo/status/1254586257524613120> (noting that 100 of 500 people who tested positive in Guatemala had been deported from the United States).
184. Cindy Carcamo and Molly O’Toole, “Migrants deported by U.S. make up more than 15% of Guatemala’s coronavirus cases,” *Los Angeles Times*, May 4, 2020, <https://www.latimes.com/world-nation/story/2020-05-04/u-s-deportation-flights-to-guatemala-resume-with-assurances-of-coronavirus-testing>.
185. Sonia Pérez D., “More Guatemalans deported from US test positive for virus,” *Associated Press*, May 18, 2020, <https://abcnews.go.com/International/wireStory/guatemalans-deported-us-test-positive-virus-70747231>.
186. *Associated Press*, “US deportation flights to Guatemala Resume,” July 9, 2020, <https://apnews.com/c6c7ad80ca9cc7c8b73db7bc4ed2fa05>.
187. Immigration and Customs Enforcement, “Detention Management: Detention Statistics,” last accessed April 24, 2020, <https://www.ice.gov/detention-management>. Data on prior weekly numbers on file with authors.
188. Noah Lanard, “ICE Just Quietly Opened Three New Detention Centers, Flouting Congress’ Limits,” *Mother Jones*, July 9, 2019, <https://www.motherjones.com/politics/2019/07/ice-just-quietly-opened-three-new-detention-centers-flouting-congress-limits/>.
189. Immigration and Customs Enforcement, “Detention Management: Detention Statistics,” last accessed April 24, 2020, <https://www.ice.gov/detention-management>. Data on prior weekly numbers on file with authors.
190. American Immigration Council, *Seeking Release from Immigration Detention* (Washington, DC: September 13, 2019), <https://www.americanimmigrationcouncil.org/research/release-immigration-detention>.
191. American Immigration Council, *Immigration Detention in the United States by Agency* (Washington, DC: January 2, 2020), <https://www.americanimmigrationcouncil.org/research/immigration-detention-united-states-agency>.
192. American Immigration Council, *The Landscape of Immigration Detention in the United States* (Washington, DC: December 5, 2018), <https://www.americanimmigrationcouncil.org/research/landscape-immigration-detention-united-states>.
193. American Immigration Council, *Seeking Release from Immigration Detention* (Washington, DC: September 13, 2019), <https://www.americanimmigrationcouncil.org/research/release-immigration-detention>.
194. Laura C. Morel, “Inside ICE lockdown: Face masks made of socks, no hand sanitizer and growing tensions,” *Reveal News*, April 7, 2020, <https://reveal-news.org/article/inside-ice-lockdown-face-masks-made-of-socks-no-hand-sanitizer-and-growing-tensions/>.
195. Nomaan Merchant, “Detained immigrants plead for masks, protection from virus,” *Associated Press*, April 14, 2020, <https://apnews.com/1ea169603b-3c1e6b62bded8c5a8d658d>.
196. Yeganeh Torbati, Dara Lind, and Jack Gillu, “In a 10-day Span, ICE Flew This Detainee Across the Country—Nine Times,” *ProPublica*, March 27, 2020, <https://www.propublica.org/article/coronavirus-ice-flights-detainee-sirous-asgari>.
197. Yeganeh Torbati, Dara Lind, and Jack Gillu, “In a 10-day Span, ICE Flew This Detainee Across the Country—Nine Times,” *ProPublica*, March 27, 2020, <https://www.propublica.org/article/coronavirus-ice-flights-detainee-sirous-asgari>; University of Washington Center for Human Rights, *Hidden in Plain Sight: ICE Air and the Machinery of Mass Deportation* (Seattle, WA: April 23, 2019), <https://jsis.washington.edu/humanrights/2019/04/23/ice-air/>.
198. Catherine E. Shoichet, “Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE detention,” *CNN*, March 20, 2020, <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.
199. Hamed Aleaziz, “An ICE Detainee Has Become The First To Test Positive For The Coronavirus,” *Buzzfeed News*, March 24, 2020, <https://www.buzzfeed-news.com/article/hamedaleaziz/immigrant-ice-detention-facility-coronavirus-test>.
200. See American Immigration Council, *Complaint Demands Investigation Into Inadequate Medical and Mental Health Care Condition in Immigration Deten-*

tion Center (Washington, DC: June 4, 2018), <https://www.americanimmigrationcouncil.org/advocacy/immigrants-inadequate-medical-care-aurora>.

201. Department of Homeland Security, Office of Inspector General, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, June 3, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

202. Ken Klippenstein, "ICE Detainee Deaths Were Preventable: Document," *TYT*, June 3, 2019, <https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/688s1LbT-KvQKNcV2E9bu7h>.

203. Immigration and Customs Enforcement, "ICE Guidance on COVID-19, Confirmed Cases," last accessed August 31, 2020, <https://www.ice.gov/coronavirus>.

204. *Reuters*, "Nearly 1,000 U.S. Immigration Detention Center Employees Test Positive for Coronavirus," July 13, 2020, <https://www.reuters.com/article/us-health-coronavirus-usa-immigration/nearly-1000-u-s-immigration-detention-center-employees-test-positive-for-coronavirus-idUSKCN24E2V3>.

205. Monique O. Madan, "Inmate at Krome detention center tests positive for COVID-19. Here's how ICE kept it quiet," *Miami Herald*, April 7, 2020, <https://www.miamiherald.com/news/local/immigration/article241829036.html>.

206. Immigration and Customs Enforcement, "ICE Guidance on COVID-19, Confirmed Cases," last accessed May 26, 2020, <https://www.ice.gov/coronavirus>.

207. Andrea Castillo, "ICE deliberately limited testing at Bakersfield immigration facility with COVID-19 outbreak," *Los Angeles Times*, August 6, 2020, <https://www.latimes.com/california/story/2020-08-06/amid-coronavirus-outbreak-at-bakersfield-immigration-facility-emails-show-ice-deliberately-limited-testing>.

208. *Ibid.*

209. City News Service, "ACLU Says ICE Secretly Bans COVID-19 Testing of Adelanto Detainees," *NBC Los Angeles*, August 11, 2020, <https://www.nbclosangeles.com/news/local/aclu-says-ice-secretly-bans-covid-19-testing-of-adelanto-detainees/2411290/>.

210. Daniel Gonzalez, "COVID-19 cases spike again at immigrant detention center in Eloy," *Arizona Republic*, August 28, 2020, <https://www.azcentral.com/story/news/politics/immigration/2020/08/28/eloy-la-palma-immigrant-detention-coronavirus-outbreak/5662404002/>.

211. Kate Morrissey, "First ICE detainee dies from COVID-19 after being hospitalized from Otay Mesa Detention Center," *San Diego Union-Tribune*, May 6, 2020, <https://www.sandiegouniontribune.com/news/immigration/story/2020-05-06/first-ice-detainee-dies-from-covid-19-after-being-hospitalized-from-otay-mesa-detention-center>; Noah Lanard, "A Honduran Man Has Died of COVID-19 After Leaving an ICE Jail Plagued by the Virus," *Mother Jones*, May 14, 2020, <https://www.motherjones.com/politics/2020/05/a-honduran-man-has-died-of-covid-19-after-leaving-an-ice-jail-plagued-by-the-virus/>; Hamed Aleaziz, "An Immigrant Man In ICE Custody Died After Contracting The Coronavirus," *Buzzfeed News*, May 24, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/immigrant-ice-coronavirus-death>; Associated Press, "Mexican man with coronavirus dies in ICE custody," July 13, 2020, <https://abcnews.go.com/US/wireStory/mexican-man-coronavirus-dies-ice-custody-71765951>; Dan Glaun, "How ICE Data Undercounts COVID-19 Victims," *PBS News*, August 11, 2020, <https://www.pbs.org/wgbh/frontline/article/how-ice-data-undercounts-covid-19-victims/>; Hamed Aleaziz, "A 50-Year-Old Honduran Immigrant Who Died In ICE Custody Had Tested Positive For COVID-19," *Buzzfeed News*, August 30, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/a-50-year-old-honduran-immigrant-who-died-in-ice-custody>; Hamed Aleaziz, "A Judge Ordered Him Released From Prison Due To COVID-19 Concerns. He Died Of The Disease Two Months Later In ICE Custody," *Buzzfeed News*, September 23, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/immigrant-released-then-dies-of-covid-in-ice-custody>.

212. See Em Nguyen, "Kamala Harris Calls for Release of ICE Detainees to Contain COVID-19," *Spectrum News 1*, April 2, 2020, <https://spectrumnews1.com/ca/la-west/politics/2020/04/02/kamala-harris-calls-for-release-of-ice-detainees-to-contain-covid-19>.

213. See Elvia Malagón, "Immigration advocates call on ICE to release 'low-risk detainees' to curb spread of COVID-19: 'It's a ticking time bomb,'" *Chicago Tribune*, March 31, 2020, <https://www.chicagotribune.com/coronavirus/ct-coronavirus-immigration-ice-detainees-release-20200331-6u7yj34uuvcb-4u3o5ihmpy-story.html>.

214. Mallory Falk, "A Public Health Nightmare Waiting To Happen: Doctors Call For ICE To Release Detainees," *Texas Public Radio*, March 28, 2020, <https://www.tpr.org/post/public-health-nightmare-waiting-happen-doctors-call-ice-release-detainees>.

215. Matt Katz, "ICE Releases Hundreds Of Immigrants As Coronavirus Spreads in Detention Centers," *NPR*, April 16, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/04/16/835886346/ice-releases-hundreds-as-coronavirus-spreads-in-detention-centers>.

216. Rapid Defense Network, "Daily COVID-19 Decisions Updates & Documents," last accessed April 27, 2020, <https://www.defensenetwork.org/covid> (collecting cases); Kim Langona, "Ongoing Litigation over Migrants' Release Amid COVID-19," *Crimmigration.com*, last accessed April 27, 2020, <http://crimmigration.com/2020/04/03/ongoing-litigation-over-migrants-release-amid-covid-19/>.

217. Southern Poverty Law Center, "Fraiht v. ICE Community Resources," April 24, 2020, <https://www.splcenter.org/news/2020/04/24/fraiht-v-ice-resources-0>.

218. Immigration and Customs Enforcement, "Detention Management: Detention Statistics," last accessed April 24, 2020, <https://www.ice.gov/detention-management>. Data on prior weekly numbers on file with authors.

219. *Ibid.*

220. *Ibid.*

221. *Ibid.*

222. Daniel Coombs & Michael Irvine, et al., "Modeling COVID-19 and impacts on U.S. Immigration and Enforcement (ICE) detention facilities," *Journal of Urban Health*, April 2020, [https://whistleblower.org/wp-content/uploads/2020/04/Irvine\\_JUH\\_ICE\\_COVID19\\_model.pdf](https://whistleblower.org/wp-content/uploads/2020/04/Irvine_JUH_ICE_COVID19_model.pdf).

223. *Associated Press*, "Canadian Held at Virginia Immigration Detention Center Dies," August 7, 2020, <https://apnews.com/article/virus-outbreak-immigration-virginia-a46c03b0e7ef34665b0b797f73eb52e9>.

224. Daniel Coombs & Michael Irvine, et al., "Modeling COVID-19 and impacts on U.S. Immigration and Enforcement (ICE) detention facilities," *Journal of Urban Health*, April 2020, [https://whistleblower.org/wp-content/uploads/2020/04/Irvine\\_JUH\\_ICE\\_COVID19\\_model.pdf](https://whistleblower.org/wp-content/uploads/2020/04/Irvine_JUH_ICE_COVID19_model.pdf).

225. Nomaan Merchant, "2 guards at Richwood Correctional die after contracting coronavirus," *Associated Press*, April 29, 2020, <https://www.thenewsstar.com/story/news/2020/04/29/2-guards-ice-jail-die-after-contracting-coronavirus/3052669001/>.

226. Patricia Sulbarán Lovera, "Coronavirus: Immigration detention centres in crisis," *BBC News*, May 1, 2020, <https://www.bbc.com/news/world-us-canada-52476131>.

227. TRAC, "Immigration Court Backlog Tool," last accessed July 21, 2020, [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/).

228. TRAC, "State and County Details on Deportation Proceedings in Immigration Court," last accessed April 29, 2020, <https://trac.syr.edu/phptools/immigration/nta/>.

229. TRAC, "Details on MPP (Remain in Mexico) Deportation Proceedings," last accessed September 8, 2020, <https://trac.syr.edu/phptools/immigration/mpp/>.

230. Julia Preston, "Migrant Children Still Face Speedy Deportation Hearings in COVID-19 Hotspots," *The Marshall Project*, April 10, 2020, <https://www.themarshallproject.org/2020/04/10/migrant-children-still-face-speedy-deportation-hearings-in-covid19-hotspots>.

231. Madison Alder, "Immigration Judges Call to Halt Mass Hearings Amid Virus," *Bloomberg News*, March 12, 2020, <https://news.bloomberglaw.com/us-law-week/immigration-judges-call-to-halt-mass-hearings-while-doj-silent>.

232. *Ibid.*

233. Madison Alder, "DOJ Halts Mass Immigration Hearings, Upping Virus Response," *Bloomberg News*, March 16, 2020, <https://news.bloomberglaw.com/us-law-week/doj-halts-mass-immigration-hearings-nationwide-upping-response>.

234. Priscilla Alvarez, "Justice Department closes more immigration courts, postpones hearings," *CNN*, March 18, 2020, <https://www.cnn.com/2020/03/18/politics/immigration-court-closures/index.html>.

235. Department of Justice, "Department of Justice and Department of Homeland Security Announce Plan to Restart MPP Hearings," July 17, 2020, <https://www.justice.gov/opa/pr/department-justice-and-department-homeland-security-announce-plan-restart-mpp-hearings>.

236. *Ibid.*

237. Camila DeChalus, "Immigration attorneys face courtroom challenges amid pandemic," *Roll Call*, June 17, 2020, <https://www.rollcall.com/2020/06/17/immigration-attorneys-face-courtroom-challenges-amid-pandemic/>.

238. Tweet by the Executive Office for Immigration Review, June 15, 2020, [https://twitter.com/DOJ\\_EOIR/status/1272540860958334979](https://twitter.com/DOJ_EOIR/status/1272540860958334979).

239. Shannon Dooling, "Boston's Immigration Court Set To Reopen. Critics Say It's Too Soon," *WBUR*, June 26, 2020, <https://www.wbur.org/news/2020/06/26/boston-immigration-court-reopening>.

240. American Immigration Lawyers Association, "AILA Tracks EOIR's Historical Operational Status During Coronavirus Pandemic," last accessed September 15, 2020, <https://www.aila.org/advo-media/issues/all/covid-19/eoir-operational-status>.

241. Executive Office of Immigration Review, Policy Memorandum 20-13, "EOIR Practices Related to the COVID-19 Outbreak," June 11, 2020. <https://www.justice.gov/eoir/page/file/1284706/download>.

242. Office of Senator Elizabeth Warren, "Warren Leads Colleagues Questioning DOJ Office's Decision to Reopen Immigration Courts and Resume Hearings Amid COVID-19 Pandemic," June 23, 2020, <https://www.warren.senate.gov/oversight/letters/warren-leads-colleagues-questioning-doj-offices-decision-to-reopen-immigration-courts-and-resume-hearings-amid-covid-19-pandemic>.

243. Executive Office for Immigration Review, "EOIR Operational Status During Coronavirus Pandemic," last modified September 15, 2020, <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>.

244. Julia Preston, "Migrant Children Still Face Speedy Deportation Hearings in COVID-19 Hotspots," *The Marshall Project*, April 10, 2020, <https://www.themarshallproject.org/2020/04/10/migrant-children-still-face-speedy-deportation-hearings-in-covid19-hotspots>.

245. Suzanne Monyak, "Chaos, Confusion Reign As Immigration Courts Stay Open," *Law360*, March 27, 2020, <https://www.law360.com/articles/1257798/chaos-confusion-reign-as-immigration-courts-stay-open>.

246. *Ibid.*

247. Suzanne Monyak, "Chaos, Confusion Reign As Immigration Courts Stay Open," *Law360*, March 27, 2020, <https://www.law360.com/articles/1257798/chaos-confusion-reign-as-immigration-courts-stay-open>; Executive Office for Immigration Review, "EOIR Operational Status During Coronavirus Pandemic," last accessed April 30, 2020, <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>.

248. See Executive Office for Immigration Review, "Standing Order of the Aurora Immigration Court Relating to Telephonic Appearances of Counsel and Permitted Attendees at Detained Master Calendar and Individual Hearings," April 15, 2020, <https://www.justice.gov/eoir/page/file/1264456/download> ("Any party appearing telephonically waives the right to object to the admissibility of any document offered in Court on the sole basis that they are unable to examine the document.")

249. Executive Office for Immigration Review, "EOIR Operational Status During Coronavirus Pandemic," last accessed April 30, 2020, <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>.

250. WHO Director General Tedros Adhanom, "Opening remarks at the media briefing on COVID-19," March 11, 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>.

251. President Donald J. Trump, "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," March 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

252. Rosie Perper, Ellen Cranley and Sarah Al-Arshani, "Almost all states U.S. states have declared states of emergency to fight coronavirus – here's what it means for them," *Business Insider*, March 17, 2020, <https://www.businessinsider.com/california-washington-state-of-emergency-coronavirus-what-it-means-2020-3>.

253. Jason Silverstein, "43 states now have stay-at-home orders for coronavirus. These are the 7 that don't," *CBS News*, April 6, 2020, <https://www.cbsnews.com/news/stay-at-home-orders-states/>.

254. Tami Luhby, "1.3 million Americans filed first-time unemployment claims last week," *CNN*, July 16, 2020, <https://www.cnn.com/2020/07/16/economy/unemployment-benefits-coronavirus/index.html>.

255. Bureau of Economic Analysis, "Gross Domestic Product, 1<sup>st</sup> Quarter 2020," April 29, 2020, <https://www.bea.gov/news/2020/gross-domestic-product-1st-quarter-2020-advance-estimate>.

256. Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116<sup>th</sup> Cong. (2020), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

257. Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, Sect. 3211 & 3811, 116<sup>th</sup> Cong. (2020), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

258. Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, Sect. 2201, 116<sup>th</sup> Cong. (2020), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

259. Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, Sect. 2201(a)(1)-(2), 116<sup>th</sup> Cong. (2020), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.
260. See Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, Sect. 2201(d), 116<sup>th</sup> Cong. (2020), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>. See also Internal Revenue Service, “Determining Alien Tax Status,” January 15, 2020, <https://www.irs.gov/individuals/international-taxpayers/determining-alien-tax-status>.
261. American Immigration Council, *The Facts About the Individual Tax Identification Number (ITIN)* (Washington, DC: January 2, 2018), <https://www.american-immigrationcouncil.org/research/facts-about-individual-tax-identification-number-itin>.
262. Silva Mathema, *Keeping Families Together: Why All Americans Should Care About What Happens to Unauthorized Immigrants* (Washington, DC: Center for American Progress, March 16, 2020), <https://www.americanprogress.org/issues/immigration/reports/2017/03/16/428335/keeping-families-together/>.
263. Steve Wamhoff, “How the Tax Rebate in the Senate’s Bill Compares to Other Proposals” (Washington, DC: Institute on Taxation and Economic Policy, March 25, 2020), <https://itep.org/how-the-tax-rebate-in-the-senates-bill-compares-to-other-proposals/>.
264. The Mexican American Legal Defense and Educational Fund, “MALDEF Sues Federal Government Over Denial of COVID-19 Relief to Mixed-Status Married Couples,” April 28, 2020, <https://www.maldef.org/2020/04/maldef-sues-federal-government-over-denial-of-covid-19-relief-to-mixed-status-married-couples/>.
265. Coronavirus Aid, Relief, and Economic Security Act, S. 3548, Sect. 3504, 116<sup>th</sup> Cong. (2020), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.
266. See Frequently Asked Questions about the Emergency Financial Aid Grants to Students under Section 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, U.S. Dept. of Education, <https://fas.org/sgp/crs/homesecc/IN11308.pdf>.
267. See U.S. Department of Education, “Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act,” June 17, 2020, <https://www.federalregister.gov/documents/2020/06/17/2020-12965/eligibility-of-students-at-institutions-of-higher-education-for-funds-under-the-coronavirus-aid>.
268. See Caitlin Dickerson, “My World is Shattering’: Foreign Students Stranded by Coronavirus,” *New York Times*, April 25, 2020, <https://www.nytimes.com/2020/04/25/us/coronavirus-international-foreign-students-universities.html?searchResultPosition=29>. See also Wesley Whistle, “DeVos Blocks DACA Students From Coronavirus Emergency Grant Aid,” *Forbes*, April 21, 2020, <https://www.forbes.com/sites/wesleywhistle/2020/04/21/devos-blocks-daca-students-from-coronavirus-emergency-grant-aid/#43427a1762a9>.
269. See *Washington v. DeVos*, E.D. Wash., No. 2:20-cv-0182-TOR, June 12, 2020; See also *Oakley et al v. DeVos et al*, N.D. Calif. 4:20-cv-03215, May 11, 2020.
270. See *Washington v. DeVos*, E.D. Wash., Order Granting Plaintiff’s Motion for Preliminary Injunction, June 12, 2020, <https://www.bloomberglaw.com/public/desktop/document/StateofWashingtonvDeVosetalDocketNo220cv00182EDWashMay192020Court171594916699>; see also *Oakley et al. v. DeVos et al.*, N.D. Calif., June 17, 2020, [https://www.pacermonitor.com/public/filings/DUYDUSGI/Oakley\\_et\\_al\\_v\\_DeVos\\_et\\_al\\_candce-20-03215\\_0044.0.pdf](https://www.pacermonitor.com/public/filings/DUYDUSGI/Oakley_et_al_v_DeVos_et_al_candce-20-03215_0044.0.pdf).
271. Governor Gavin Newsome, “Governor Newsom Announces New Initiatives to Support California Workers Impacted by COVID-19,” April 15, 2020, <https://www.gov.ca.gov/2020/04/15/governor-newsom-announces-new-initiatives-to-support-california-workers-impacted-by-covid-19/>.
272. *Ibid.*
273. Mayor Bill de Blasio, “Mayor de Blasio Announces New York City COVID-19 Immigrant Emergency Relief Program with Open Society Foundations,” April 16, 2020, <https://www1.nyc.gov/office-of-the-mayor/news/262-20/mayor-de-blasio-new-york-city-covid-19-immigrant-emergency-relief-program-open>.
274. *Ibid.*
275. See e.g. Grantmakers Concerned with Immigrants and Refugees, California Immigrant Resilience Fund, last accessed May 9, 2020, <https://www.immi-grantfundca.org/>.
276. See United We Dream, “United We Dream Launches National UndocuFund for COVID-19 Relief,” April 20, 2020, <https://unitedwedream.org/2020/04/unit-ed-we-dream-launches-nationalundocufund-for-covid-19-relief/>.
277. Coronavirus Aid, Relief, and Economic Security Act, S. 3548, Sect. 4201, 116<sup>th</sup> Cong. (2020), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.
278. *Ibid.*
279. National Immigration Law Center, “Overview of Immigrant Eligibility for Federal Programs,” December 2015, [https://www.nilc.org/wp-content/uploads/2015/11/tbl1\\_ovrww-fed-pgms.pdf](https://www.nilc.org/wp-content/uploads/2015/11/tbl1_ovrww-fed-pgms.pdf).
280. *Ibid.*
281. *Ibid.*
282. Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, Title VI, 116<sup>th</sup> Cong. (2020), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.
283. *Ibid.*
284. *Ibid.*