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American
Immigrant
Representation
Project

What Lies Ahead for Asylum Under the Biden Administration

December 8, 2020

Agenda

- Background: Trump Administration's War on Asylum
- Asylum Under Biden: What It May Look Like
 - At policy level
 - Along U.S./Mexico border
 - In ICE detention in U.S.
- How You Can Help

Speakers

- **Laura Peña**, Pro Bono Counsel, American Bar Association's Commission on Immigration
- **Laura Lunn**, Detention Program Managing Attorney, Rocky Mountain Immigrant Advocacy Network (RMIAN)
- **Aaron Reichlin-Melnick**, Policy Counsel, American Immigration Council
- **Jennie Guilfoyle**, Deputy Director of Programs, Immigration Justice Campaign

www.immigrationjustice.us

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Fighting together for a fair day in court.

Only 14% of detained immigrants have an attorney. We are mobilizing attorneys nationwide to stand alongside immigrants in court.

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RESOURCES

Asylum in the U.S. Since 1980

- Eligibility based on:
 - Persecuted/ “well-founded fear” of persecution
 - By gov’t/person(s) gov’t unable/unwilling to control
 - “On account of” race, religion, nationality, political opinion, or membership in a particular social group

- Process: can apply for asylum:
 - People who enter U.S. with a visa, passport
 - People who come to port of entry without visa, passport
 - People who enter U.S. away from port of entry, “without inspection”
 - People who traveled through other countries en route to U.S.

Asylum Process Before Trump Administration

- **People not stopped at border**
 - Asylum Interview with USCIS
 - If denied, can apply before immigration judge in removal hearing
- **People stopped at border**
 - Must pass “credible fear interview” to stay in U.S. and apply for asylum
 - Apply for asylum before immigration judge in removal hearing

Trump Administration War on Asylum

- Blocking people from entering U.S.
- Severe restrictions on asylum process in U.S.
- Changes to asylum law that make it much harder to qualify

1. Blocking people from entering U.S.

- Remain in Mexico



- Agreements with Guatemala, El Salvador and Honduras to send asylum seekers there
- Title 42 expulsions for "public health"

2. Restrictions on Asylum Process in U.S.

- Obstacles to passing "credible fear" screening interviews
- Making immigration court process much more difficult
 - Changes include: judges turning away asylum seekers without a hearing; judges not allowing asylum seekers time to get attorneys; charging fees for asylum applications
 - Via regulations, policy memos, changes to immigration forms and immigration court rules

3. Changes to Asylum Law

- Attorney General decisions targeting domestic violence, gang, family-based cases
- Regulation creating new bars to asylum
 - Currently not in effect thanks to litigation
- Regulation that will eviscerate asylum eligibility for almost everyone

Repairing the Damage: Executive Orders

- What can be done on Day One of the Biden administration?
 - The fragility of executive orders
 - Lessons learned from the DACA fight - dot your “i”s and cross your “t”s
 - The urgency of upcoming deadlines in 2021
- Why political will is so important.
- Effect of COVID-19?

Repairing the Damage: Regulations

- Power of settlements!
 - Possible solution to rapid regulatory change to restore pre-Trump status quo.
 - Most major Trump administration rules still in litigation.
 - But: Department of Justice must be convinced to settle in cases where it would normally oppose settlement.
- Alternatives to settlements?
Dropping appeals.

Repairing the Damage

- Need for **systemic change**:
 - Independent immigration courts
 - Welcoming processes at the border
 - Restoring discretion to the immigration enforcement system
 - Overhauling legal immigration system
- Regulations vs. statutory change.
- **The need for advocacy will continue.**

Biden Administration Plans

Promises made during campaign or announced during transition:

- Immediately lift the Muslim Ban/Travel Ban on Day One
- Freeze deportations for 100 days while eliminating policies put in place under Trump
- **End Remain in Mexico/Migrant Protection Protocols**
- **Withdraw from all Asylum Cooperative Agreements**
- Create a family separation task force
- Issue new enforcement priorities curbing collateral arrests
- Halt all new border wall construction
- **Review CDC border expulsions policy to “ensure that people have the ability to submit their asylum claims while ensuring that we are taking the appropriate COVID-19 safety precautions.”**

Asylum Seekers at the Border in 2021



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Title 42 (COVID pretext) expulsions

- What these mass expulsions mean for asylum seekers stuck in Mexico
- What is happening in ICE detention in Rio Grande Valley
- Ending Title 42 expulsions: what it would mean in Rio Grande Valley

MPP ("Remain in Mexico")

- Possible scenarios for ending MPP
 - Prospective only
 - Prospective, with some relief for those already subjected to MPP
- Plans by border communities
- What pro bono volunteers can do to help

Asylum Seekers in ICE Detention in 2021



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Current detention landscape

- Population
- Severe problems in conditions of confinement
 - Deaths in detention
 - Medical abuse and neglect
- Targeting certain populations
 - Iraqis
 - Cameroonians
 - Cubans
 - Indonesians
 - Somalis

Detention in 2021

- What has Biden promised?
 - Ending contracts with private prison companies (Geo Group, CoreCivic)
 - Shorter time in detention, with improved conditions

Need to end detention outright

- End many years of abusive detention policy
 - Family separation
 - Detention abusively targets Black and Brown bodies
 - Undermines public safety, erodes communities
- COVID has unintentionally shown the way
 - Detention numbers now lower than they have been in many years
 - Community-based alternatives exist and work

What would ending detention look like?

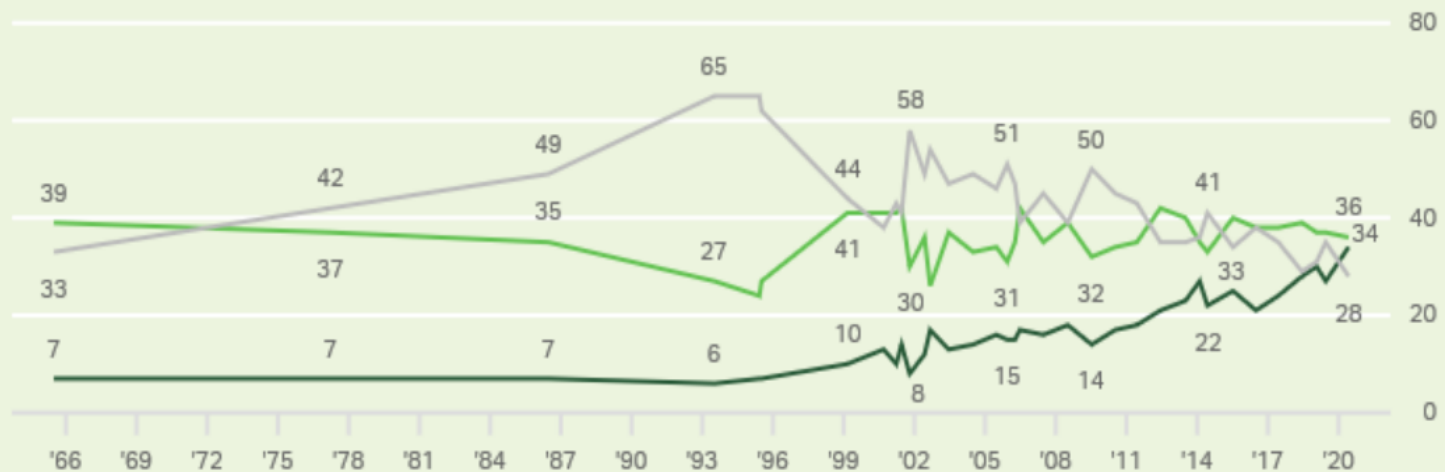
- Public facility detention not the answer
- Community-based alternatives exist and work
- Fiscal:
 - ICE detention costs \$3 billion/year
 - Community-based support is ~ \$3 million/year

Looking to the Future

- Gallup polls, 1965-2020

In your view, should immigration be kept at its present level, increased or decreased?

■ % Present level ■ % Increased ■ % Decreased



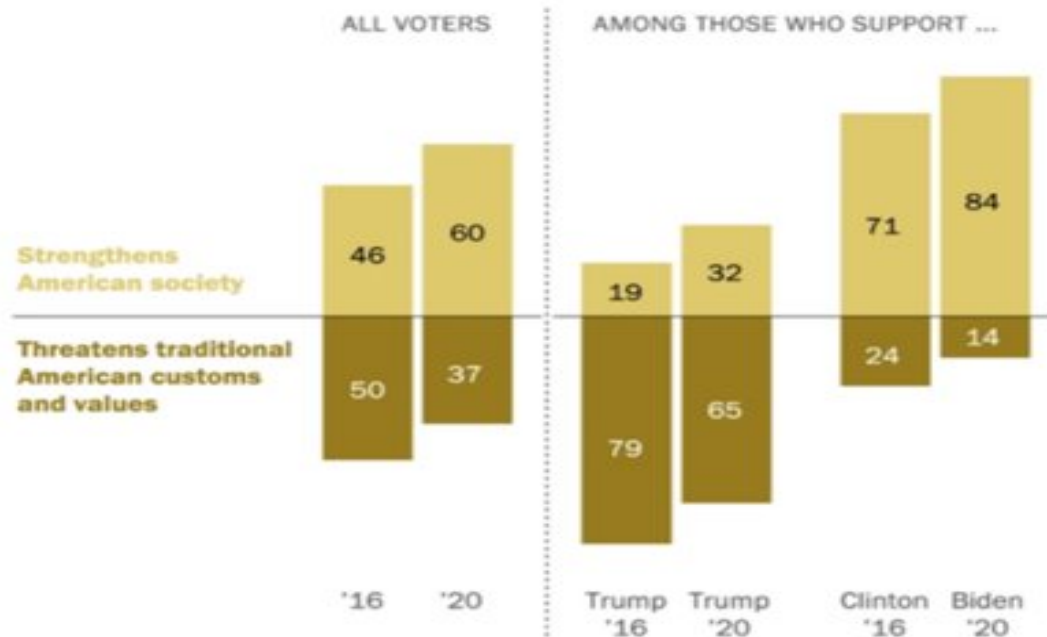
GALLUP

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Looking to the Future

Majority of voters say growing number of newcomers to the U.S. strengthens American society

% of registered voters who say the growing number of newcomers from other countries ...



Notes: Based on registered voters. No answer responses not shown.
Source: Survey of U.S. adults conducted July 27-Aug. 2, 2020.

PEW RESEARCH CENTER

How You Can Help

- Take Action - comment on proposed regulations
 - Look out for comment campaign on new proposed regulation on denying continuances
 - www.immigrationjustice.us
- Volunteer with Immigration Justice Campaign
 - Attorneys
 - Other opportunities
 - Sign up at www.immigrationjustice.us

Questions?

www.immigrationjustice.us