

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

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

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# 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.

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# 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. 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 four 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 pandemic has also led to new barriers on legal immigration. The Trump administration implemented a proclamation, effective April 24, 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.

**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 should be terminated, as it is a thinly veiled attempt to implement drastic changes to our system of family-based immigration 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. Over 20,000 people have since been “expelled” at the southern border.

**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.

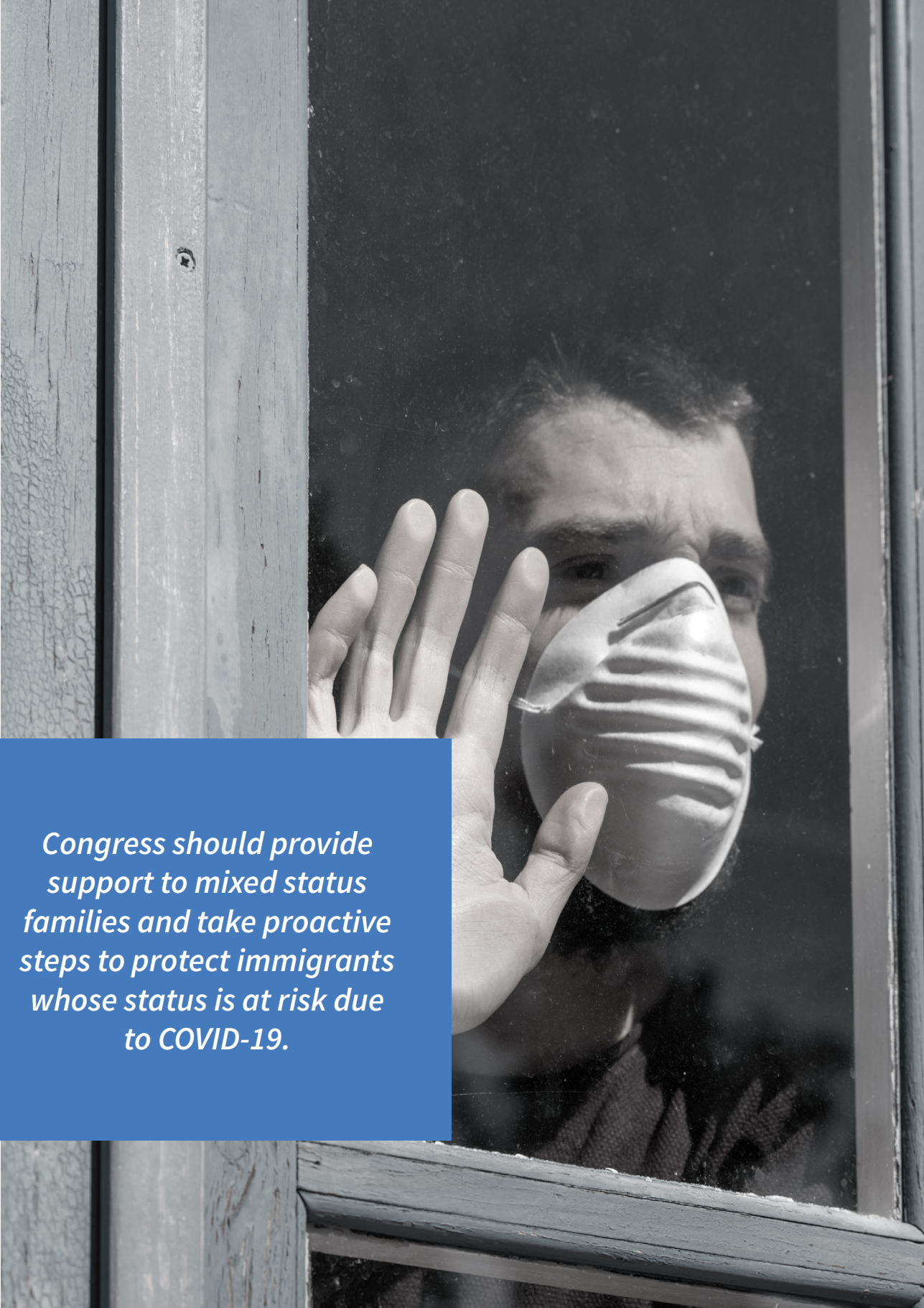
## The Effect of COVID-19 on Immigration Processing Inside the United States

As of April 24, 2020, USCIS suspended all in-person services at its offices through at least June 4, 2020. As a result, interviews for all immigration benefit applications and asylum applications are postponed and will be rescheduled when normal operations resume. USCIS also “temporarily suspended” all biometrics appointments, meaning that new fingerprints cannot be taken. The agency suspended naturalization oath ceremonies, although a very limited number of small ceremonies have taken place in some jurisdictions. This has unnecessarily 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 which 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 current national emergency declared by the president on March 13, 2020.

**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

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should also administer oath ceremonies online to approved naturalization candidates.

## 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 three people have died after contracting COVID-19 while detained.

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, EOIR has not suspended all other hearings. Hearings

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continue for all immigrants held in detention, as well as for unaccompanied children held in shelters by the HHS Office of Refugee Resettlement.

**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.

## 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.


**Analysis and Recommendations:** These bills 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.

# 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>





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# 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 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 non-immigrants (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. The stated purpose of the proclamation was preserving 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 non-immigrants 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 May 24, similar restrictions were imposed on travel from Brazil.<sup>7</sup> The 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>8</sup>

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

- an 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>9</sup>

## Limitations on Visa and Refugee Processing Abroad

On March 20, the DOS suspended “routine visa services” at all embassies and consulates worldwide.<sup>10</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 halted the processing of applications for nonimmigrant visas for visitors, students, and skilled workers. However, consulates

remain open for “emergency” visa appointments.<sup>11</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>12</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>13</sup>

The suspension of visa services temporarily halted the J-1 Exchange Visitor Program, which brings thousands of foreign doctors to the United States.<sup>14</sup> However, medical professionals with an approved visa petition or certificate of eligibility in an approved exchange visitor program can seek an emergency visa appointment at the nearest U.S. embassy or consulate.<sup>15</sup> Given the uncertainty involved in seeking emergency visa appointments, this measure may not meet the need for foreign medical professionals to work in COVID-19 hot spots. As a result, the suspension of visa services at consulates overseas could seriously restrict the ability of medical professionals to get visas. For those that do manage to enter the United States, closures of USCIS offices jeopardize their ability to remain in status once here.<sup>16</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 and the International Organization for Migration, who facilitate the processing and travel of refugees abroad, temporarily suspended travel by refugees to their country of resettlement.<sup>17</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>18</sup>

On April 22, 2020, President Trump signed Proclamation 10014 (the COVID-19 immigration ban), suspending the entry of certain immigrants into the United States for an initial period of 60 days, beginning on April 24.<sup>19</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>20</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>21</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>22</sup> Unlike the Travel Ban, the COVID-19 immigration ban suspends the entry of immigrants based on their purported negative impact on the U.S. labor market, not on national security grounds.<sup>23</sup> The proclamation does not include any analysis 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 immigration 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 exceptions.

Despite the president's suggestion that the ban is needed to help American workers, the COVID-19 immigration 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 does, 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>24</sup>

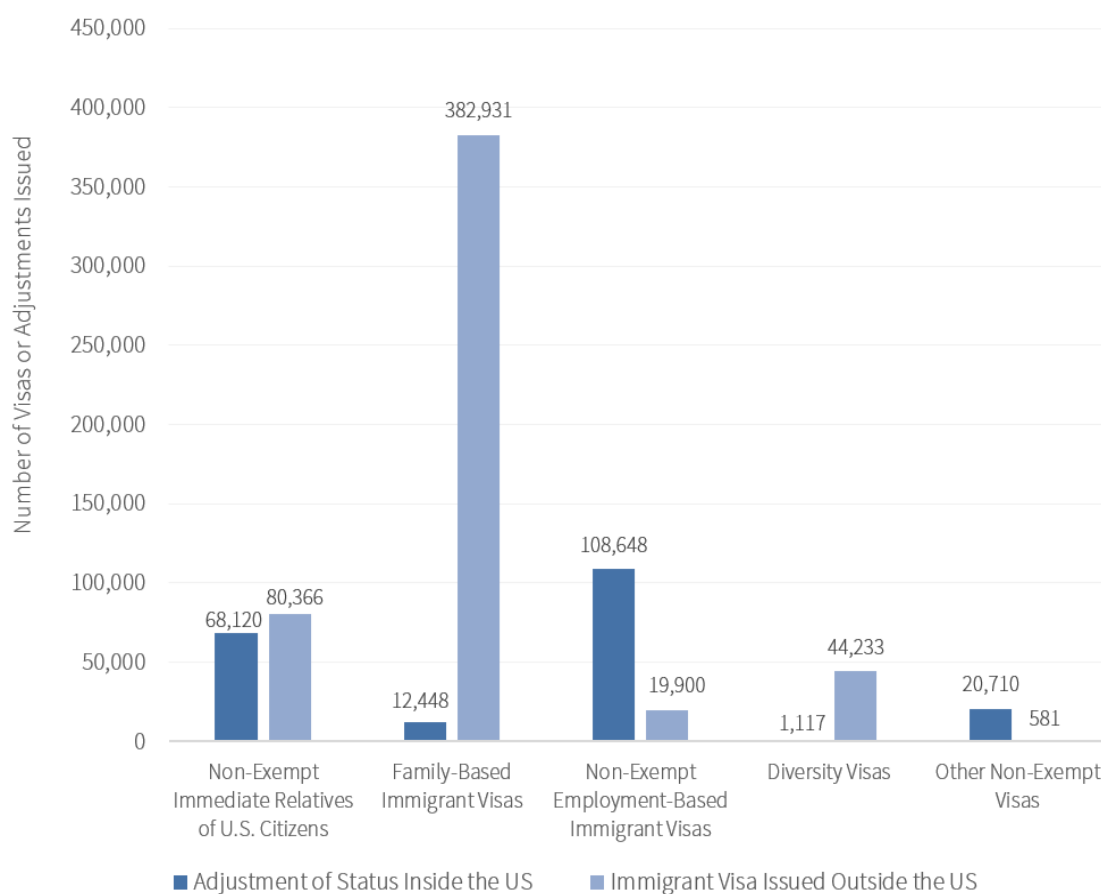
## Individuals Directly Impacted, Exempted, or Otherwise Unaffected by the COVID-19 Immigration Ban

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</li> </ul>	<ul style="list-style-type: none"> <li>Anyone who seeks to come to the U.S. in any of the non-immigrant visa categories, including all employment-based categories.</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/>



**FIGURE 1:** FY 2018 Immigration in Categories Not Exempt From COVID-19 Immigration 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>.

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 obtain permanent residency through the family-based categories do so from abroad.<sup>25</sup> The majority of people—80 percent—who apply for green cards through the employment-based categories do so from within the United States through the adjustment of status process.<sup>26</sup>

The practical effect of these variations means that the greatest impact of the proclamation will be felt by people who attempt to obtain permanent residency through the family-based categories. Noncitizens who are eligible to obtain permanent residency through employment, and those who are eligible to come to the United States as temporary workers, are almost entirely unaffected (Figure 1).

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.

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 proclamation 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>27</sup> Administration officials indicated that the proclamation is part of a long-term strategy, and that its effective period will almost certainly be extended beyond the initial 60 days.<sup>28</sup>

## 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 in countries around the world, led to a significant reduction in travel 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>29</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 Immigration Ban.<sup>30</sup> The most recent statistics from the Department of State confirm that visa issuance plummeted under 50,000 in April 2020, down from 713,000 in January 2020.<sup>31</sup> This trend is likely to continue while consulates remain closed.

### 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

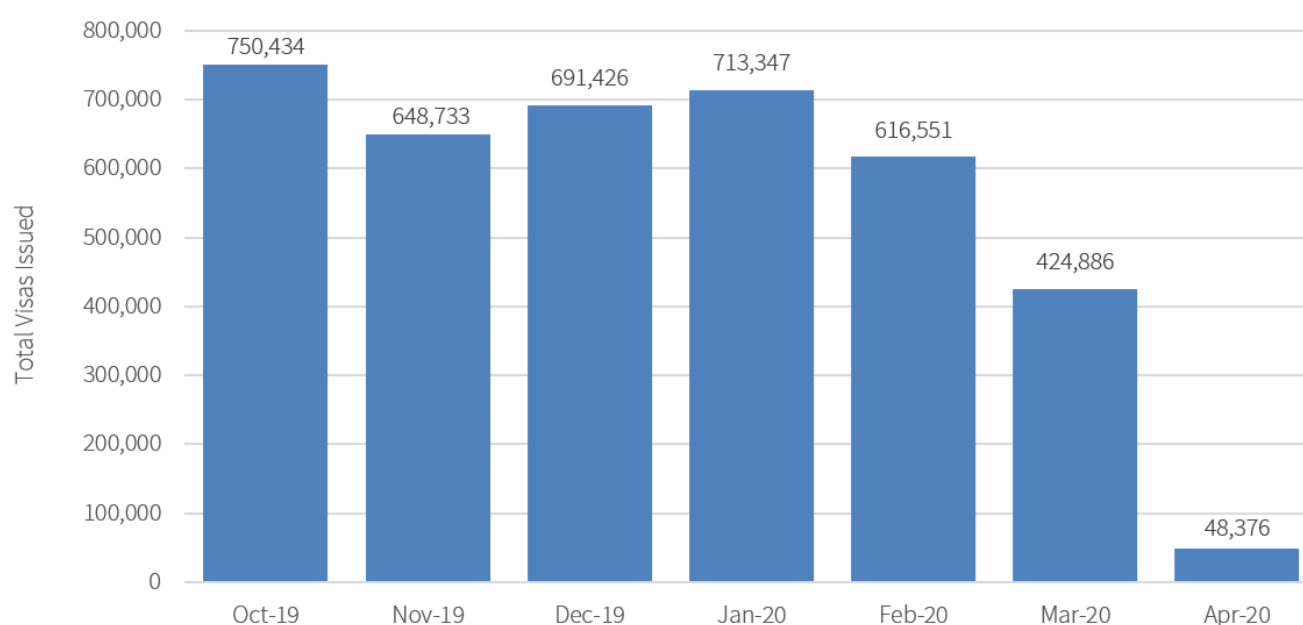
pandemic across the country, standing shoulder-to-shoulder with their U.S.-born colleagues.

- The COVID-19 Immigration Ban is a thinly veiled attempt to implement drastic changes to our system of family-based immigration under the guise of preserving economic opportunities for native-born Americans, and it 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.

**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>.



*Immigrants play a critical role in combatting the COVID-19 pandemic across the country, standing shoulder-to-shoulder with their U.S.-born colleagues.*

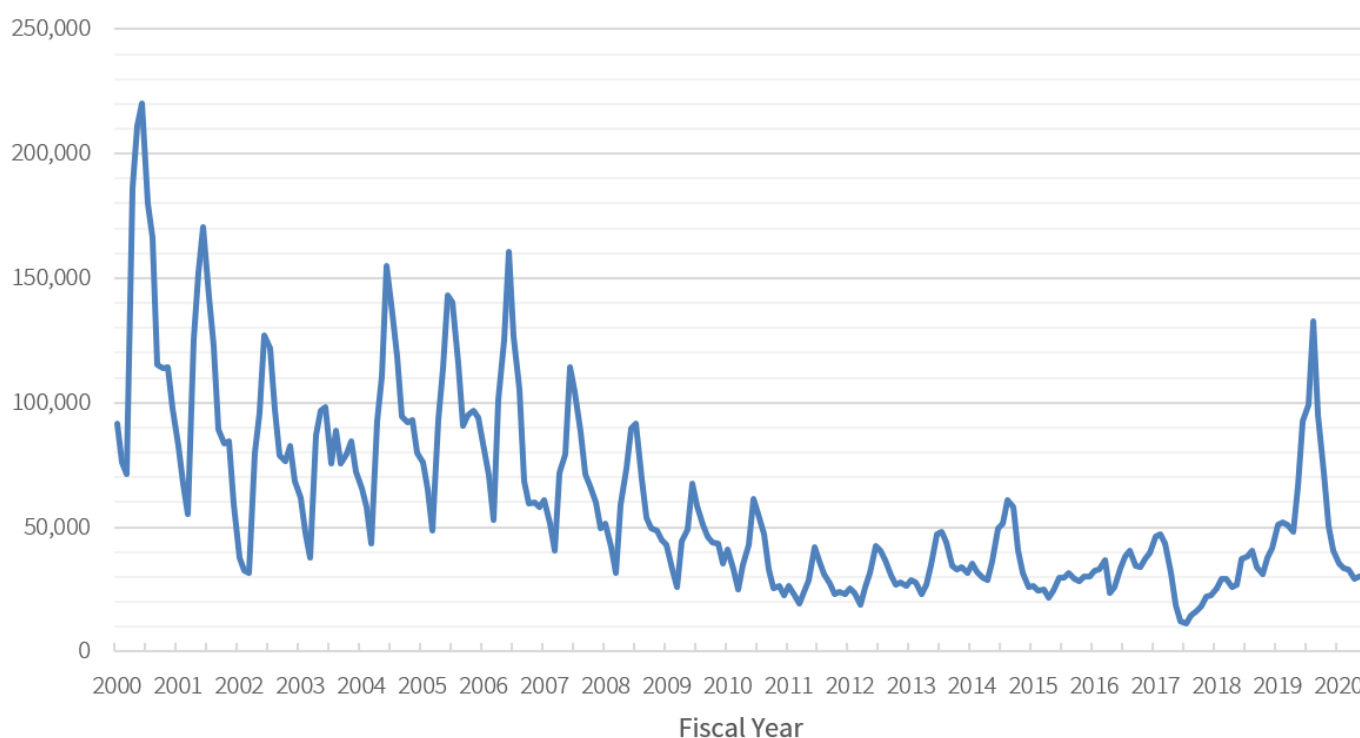
# THE EFFECT OF COVID-19 ON IMMIGRATION PROCESSING AT U.S. LAND BORDERS

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>32</sup> Similarly, hundreds of thousands of people crossed the U.S.-Canada border each day, and goods flowed in both directions.<sup>33</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>34</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>35</sup> In early 2019, the Trump administration began implementing a suite of new policies affecting asylum seekers at the border.<sup>36</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>37</sup> Both

agreements defined non-essential travel as including “travel that is considered tourism or recreational in nature.”<sup>38</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>39</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 the restrictions twice, with a current end date of June 22, 2020.<sup>40</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>41</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>42</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>43</sup>

The same day, the Director of the CDC, Robert R. Redfield, issued an order suspending the “introduction” of certain individuals who have been in “Coronavirus Impacted Areas.”<sup>44</sup> The order targeted 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>45</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 authority, 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>46</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>47</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>48</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>49</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>50</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>51</sup>

In addition to turning away asylum seekers, CBP has used this order to turn away and deport more than 1,000 unaccompanied children,<sup>52</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>53</sup>

On April 20, 2020, the order was extended a second time.<sup>54</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>55</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>56</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 land border.<sup>57</sup>

## 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>58</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>59</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>60</sup>

*In addition to turning away asylum seekers, CBP has used this order to turn away and deport unaccompanied children.*

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>61</sup>

In November 2019, DHS began implementing an “Asylum Cooperative Agreement” with Guatemala.<sup>62</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>63</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>64</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>65</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

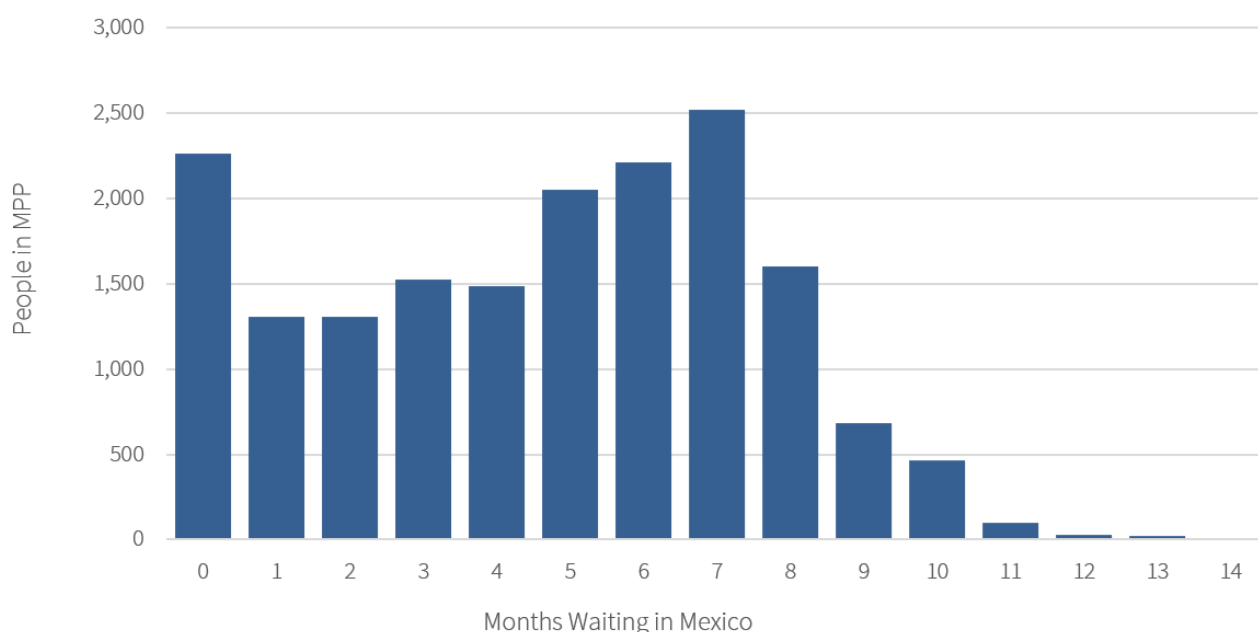
subject to summary removal from the United States.<sup>66</sup>

From March 20 through the end of April, CBP “expelled” over 20,000 people encountered at the border from the United States to Mexico.<sup>67</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>68</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>69</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 remain suspended through June 22.<sup>70</sup> As a result, nearly 18,000 people remain in Mexico in a dangerous state of limbo<sup>71</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>72</sup>

**FIGURE 4:** Number of People Waiting in Mexico, By Months Since First Sent Back to Mexico



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>73</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.

## 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.





*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>74</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>75</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-being 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>76</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>77</sup> Students 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>78</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>79</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>80</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>81</sup> In addition, many

undocumented workers perform vital functions on farms<sup>82</sup> and in healthcare.<sup>83</sup>

## Changes that Affect Immigration Processing

As of April 24, 2020, USCIS suspended all in-person services at its offices through at least June 4.<sup>84</sup> As a result, interviews for all immigration benefit applications and asylum applications are postponed and will be rescheduled when normal operations resume. During this period, USCIS will continue to process applications that do not require in-person interviews.

USCIS also “temporarily suspended” all biometrics appointments, meaning that new fingerprints cannot be taken.<sup>85</sup> Along with this suspension, USCIS has announced that individuals who applied for an extension of their Employment Authorization Document (or work permit) and are unable to submit new biometrics because of the suspension of services will have their application processed using previously submitted biometrics.<sup>86</sup> However, this applies only to individuals who had a biometrics appointment scheduled on or after March 18.<sup>87</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>88</sup> Importantly, this does not help people who received requests, notices, or decisions dated earlier than March 1 that are due now.

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>89</sup> USCIS provided some flexibility regarding I-9 employment eligibility verification requirements, 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>90</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>91</sup> The employee must present an acceptable unexpired document within 90 days after the temporary policy ends.<sup>92</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>93</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>94</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>95</sup> On March 5, the department said that it would make available 35,000 extra H-2Bs<sup>96</sup> given that the visa cap for the second half of FY 2020 was reached on February 18.<sup>97</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>98</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>99</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>100</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>101</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>102</sup>

Along with the changes made by USCIS, ICE—which manages some aspects of compliance with the terms of student visas—has issued new guidance 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>103</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>104</sup> Colleges and universities are still required to report any changes that affect foreign students.<sup>105</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.

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>106</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>107</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>108</sup> Applying for permission to change job sites can be time consuming since USCIS suspended premium processing, an accommodation for some workers which speeds up the process.<sup>109</sup>

In response to the pandemic, USCIS has also postponed naturalization oath ceremonies—although a very limited number of small ceremonies have taken place in some jurisdictions as of May 25.<sup>110</sup> The cancellation of the ceremonies is preventing tens of thousands of eligible immigrants from becoming U.S. citizens, meaning that they would be ineligible to register to vote ahead of the 2020 elections.<sup>111</sup> USCIS has not approved any alternatives to in-person oath ceremonies that would allow these individuals to finalize the process of becoming U.S. citizens.

USCIS has also been criticized for refusing to suspend the

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

Trump administration’s public charge rule, which limits access to green 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>112</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>113</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>114</sup> In response to this drop in revenue, the agency 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>115</sup>

## Recommendations

- 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
- 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.



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

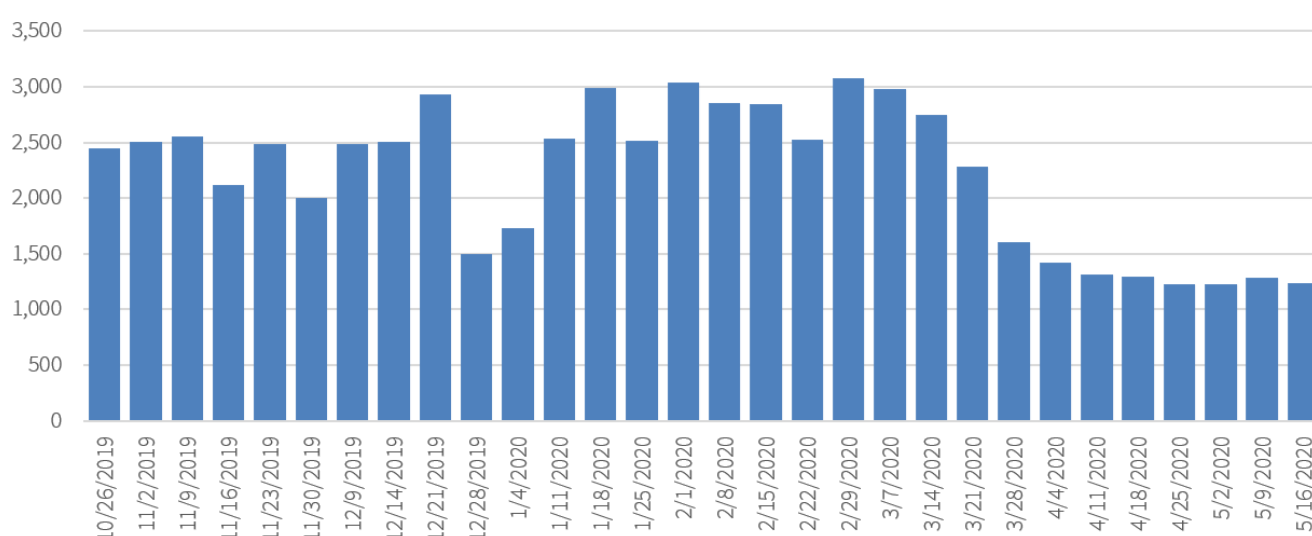
Every day, ICE Enforcement and Removal Operations officers detain noncitizens across the United States for alleged violations of immigration law. Individuals in ICE custody include undocumented immigrants and people with lawful immigration status such as visitors, international students, temporary workers, 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>116</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>117</sup>

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



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

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>118</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>119</sup> This was later reduced to 99 degrees.<sup>120</sup> On April 23, 2020, ICE announced that it would begin coronavirus testing some individuals prior to deportation.<sup>121</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>122</sup> Guatemala responded by suspending deportation flights temporarily.<sup>123</sup> In response to Guatemala and other

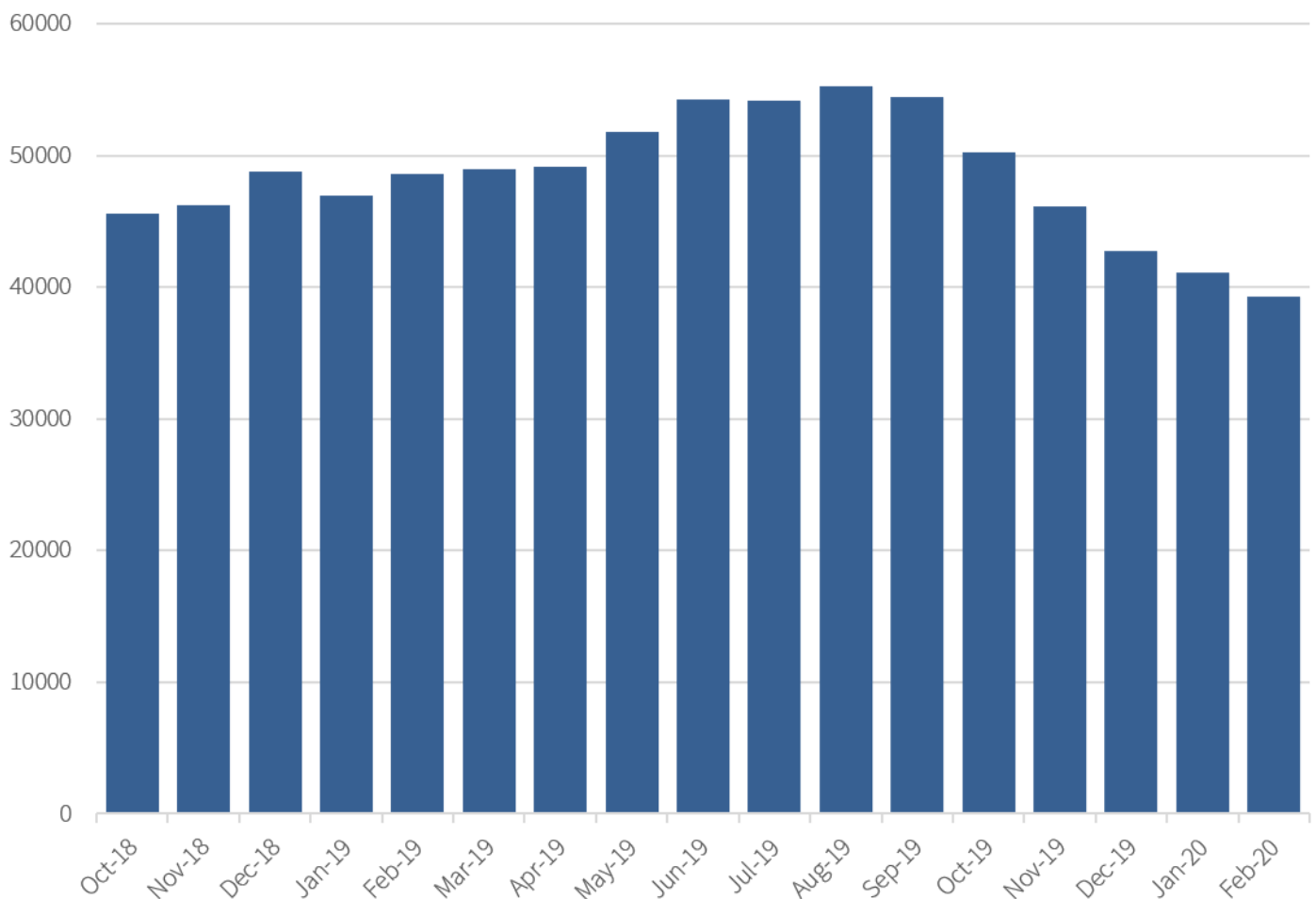
countries threatening or suspending deportation flights due to the pandemic, the White House issued a memorandum on April 10, 2020, that threatened visa sanctions on any country that refused to accept ICE deportation flights.<sup>124</sup> The memorandum declares that any government which “denies or 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>125</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>126</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>127</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>128</sup>

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

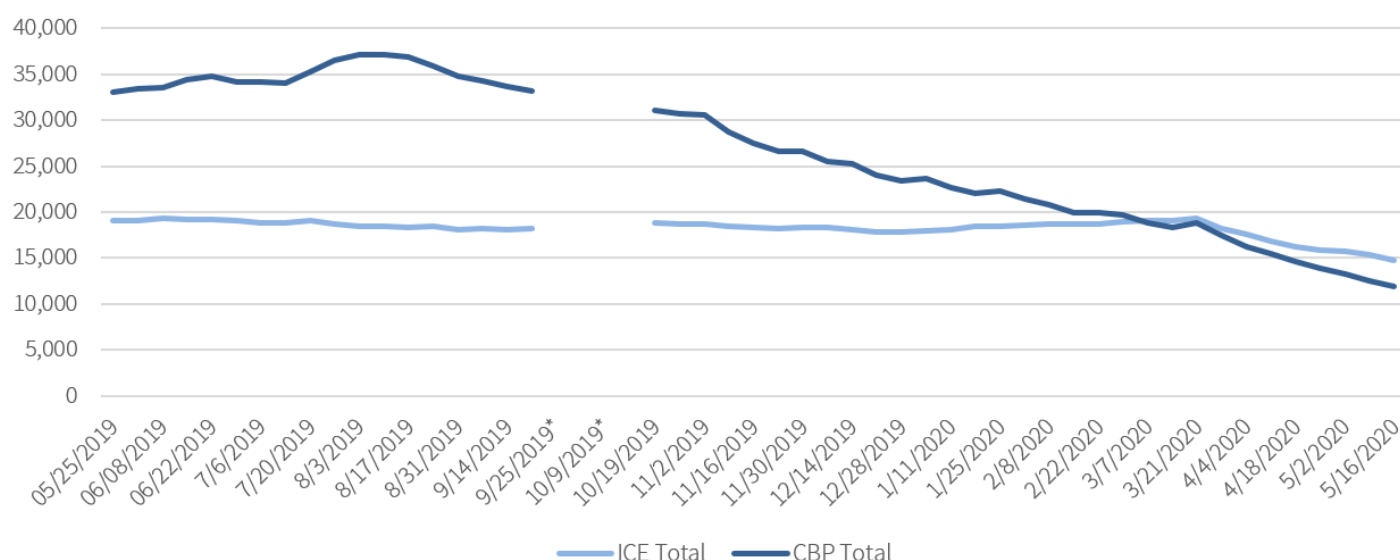
At the end of February, when the coronavirus pandemic was just emerging in the United States, ICE had 38,537 people in its custody in a network of detention centers around the country, down from record highs the previous year<sup>129</sup> (see Figure 6).

**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 – April 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>130</sup> At its peak in early August, 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>131</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>132</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>133</sup> These facilities are spread throughout the United States, with hundreds of facilities contracted to hold anywhere from dozens to thousands of people.<sup>134</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>135</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>136</sup> Face masks are difficult to obtain or simply not distributed at all.<sup>137</sup>

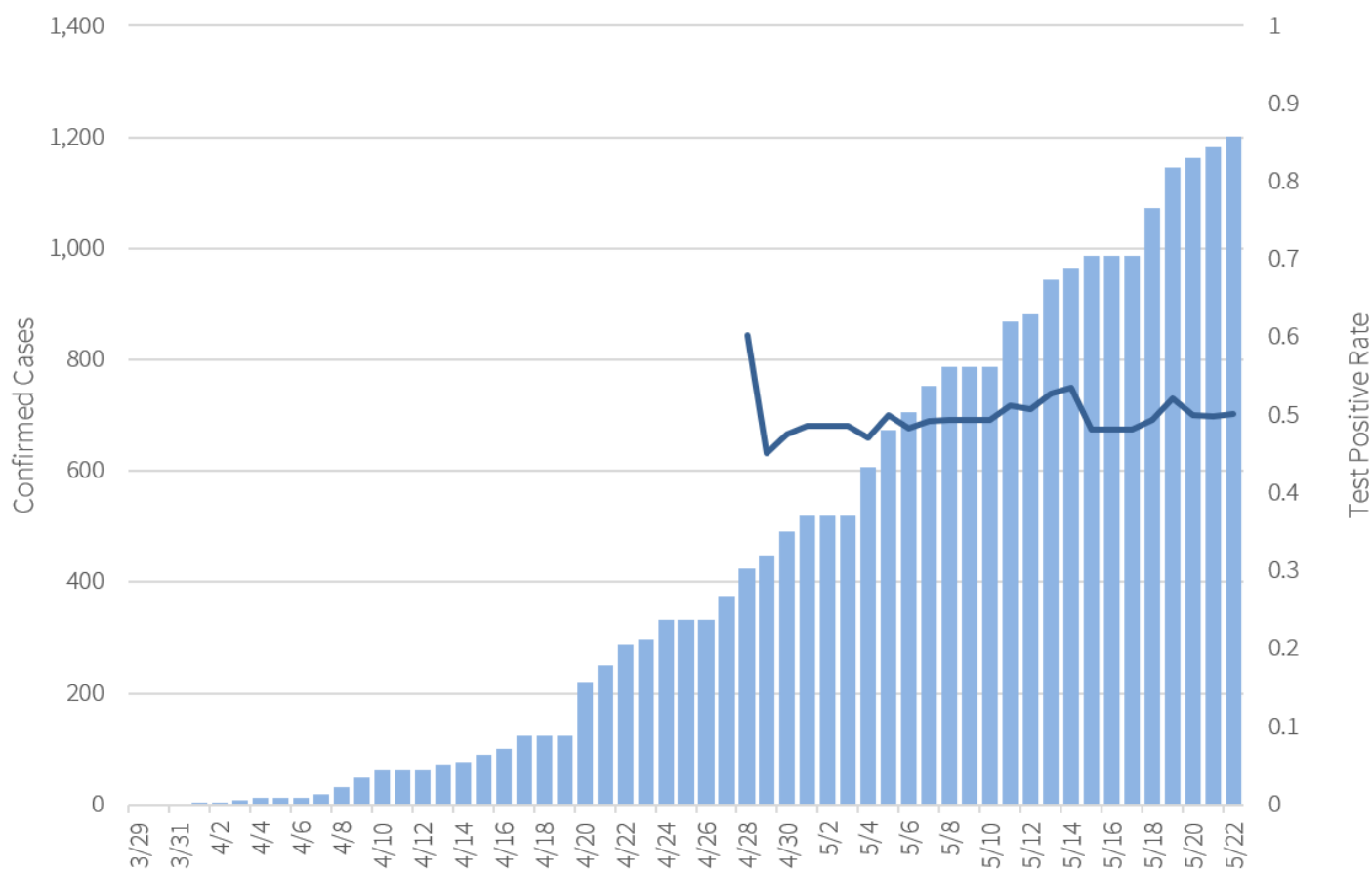
The risk of the virus spreading to ICE detention centers is exacerbated by the agency’s practice of routinely transferring people from one detention center to another, often multiple times.<sup>138</sup> ICE carries out this practice in order to ensure that minimum bed space numbers in contracts with private prisons and state and local jails are met, in order to limit overcrowding, and to coordinate flights for deportations.<sup>139</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>140</sup> These warnings were quickly realized when, on March 24, ICE announced the first case of the coronavirus inside detention centers.<sup>141</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>142</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>143</sup> In December 2018, a whistleblower from the ICE Health Services Corps (IHSC) declared in an email to Matthew Albence, now ICE Acting Director, that “IHSC is severely dysfunctional and unfortunately preventable harm and death to detainees has occurred.”<sup>144</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 May 22, ICE’s public statistics showed that 1201 detained individuals and 44 employees of ICE (not counting third-party contractors) who work at detention centers had tested positive for the virus.<sup>145</sup>

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



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



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>146</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>147</sup> This suggests that the spread of the virus is far wider than ICE's public numbers.

At least three people have died after contracting COVID-19 while in ICE custody. Two people have died while still detained by ICE, and another individual died shortly after being released.<sup>148</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>149</sup> advocacy organizations,<sup>150</sup> and doctors<sup>151</sup> called on the agency to ensure that ICE released 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>152</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>153</sup> On April 20, 2020, a federal court in California ordered ICE to immediately review prior custody decisions for all individuals

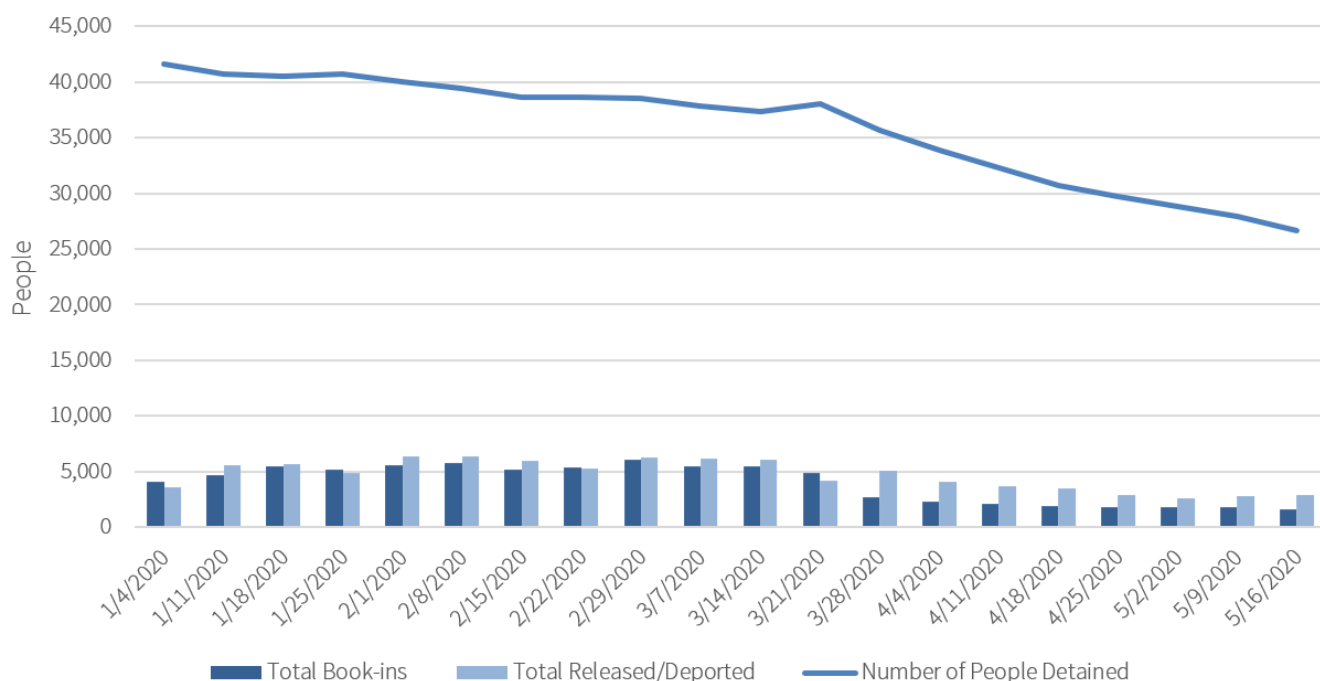
held in ICE detention who are at a heightened risk of severe illness or death due to the coronavirus.<sup>154</sup>

However, during the same time, ICE detention numbers fell significantly more than the few hundred releases due to the coronavirus. This significant drop in detention numbers was largely due to fewer people entering ICE detention than before, while the pace of people leaving detention due to release or deportation remained fairly constant (see Figure 9).<sup>155</sup>

Over the four-week period from February 23 to March 21, 2020, a total of 21,916 people were booked 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>156</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>157</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>158</sup>

**FIGURE 9: ICE Book-ins and Departures, January – May 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>159</sup>

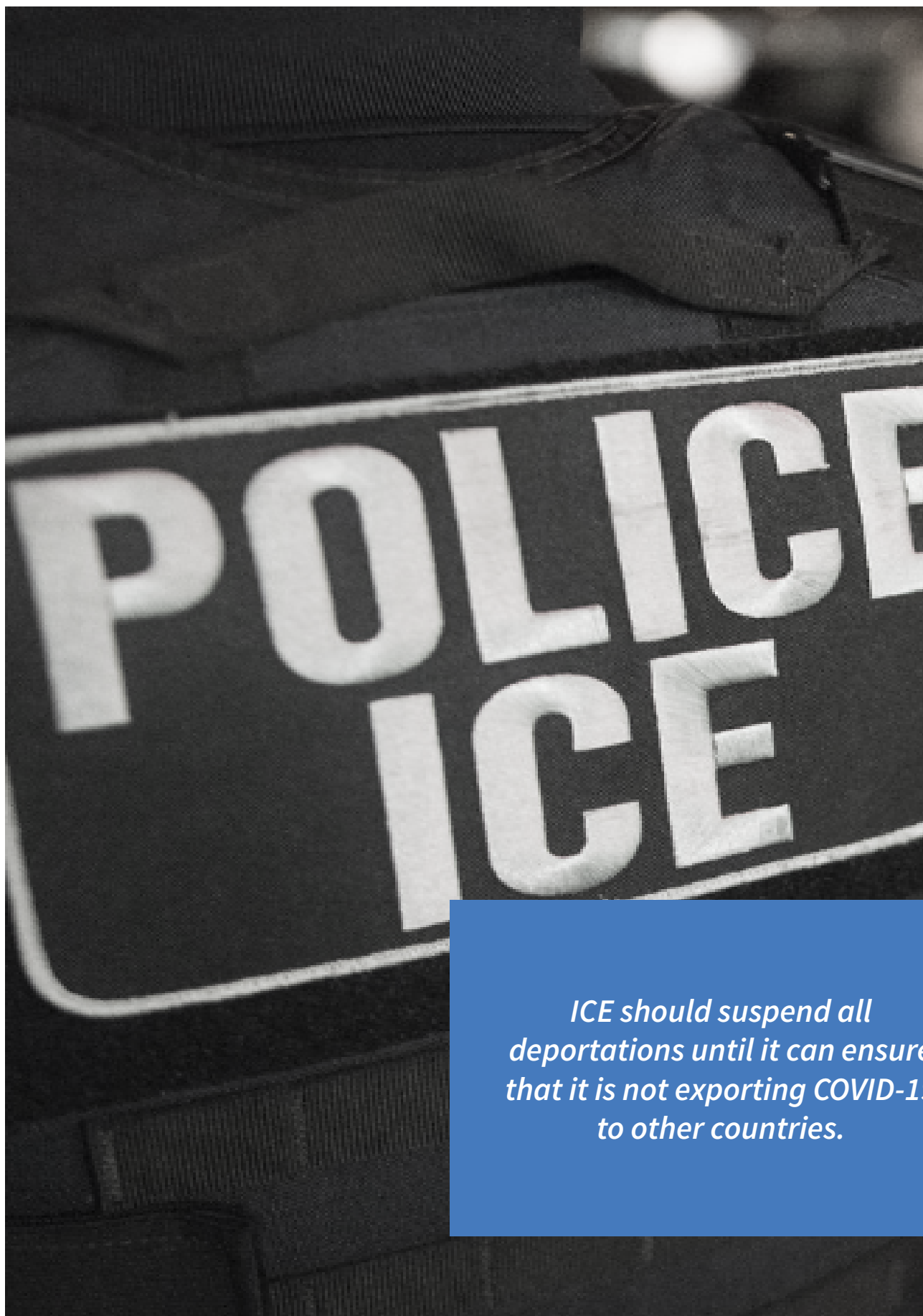
Once the virus has spread widely within a detention center, it risks overwhelming local hospitals, especially those in rural areas with limited numbers of intensive care units.<sup>160</sup> If ICE transfers a detainee with COVID-19 to a new location, that person may spread the virus to detention center 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>161</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>162</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 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.*



*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 March 2020, there were over 1.1 million cases pending in immigration court.<sup>163</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>164</sup> another roughly 18,000 cases where a person is currently in Mexico as part of MPP,<sup>165</sup> and at most a few thousand cases of unaccompanied children currently in shelters run by the Office of Refugee Resettlement (ORR).<sup>166</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>167</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>168</sup> Despite these calls, it was not until On March 16, EOIR postponed large master calendar hearings nationwide.<sup>169</sup> Two days later, EOIR postponed all non-detained hearings, including individual hearings where an immigrant was seeking relief from removal.<sup>170</sup> All non-detained hearings have been suspended through at least June 12.<sup>171</sup> In addition, all MPP hearings have been suspended through at least June 22.<sup>172</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>173</sup> Because many of these hearings occur through video teleconferencing 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>174</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>175</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>176</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>177</sup>

EOIR made several changes to its practices during the pandemic, including the following measures:<sup>178</sup>

- 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 1.1 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 suspend 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 due process concerns, it is the only viable option during this worldwide pandemic.
- EOIR should conduct all bond hearings by telephone or video. With nearly 28,000 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.

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

# 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>179</sup> President Trump subsequently declared a national emergency in the United States on March 13, 2020.<sup>180</sup> As of March 17, 2020, 48 states had declared states of emergency in an effort to combat the spread of the virus.<sup>181</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>182</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, nearly more than 38 million Americans filed for unemployment.<sup>183</sup> The U.S. gross domestic product decreased by 4.8 percent in the first quarter of 2020.<sup>184</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>185</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>186</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>187</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>188</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>189</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>190</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>191</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>192</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>193</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>194</sup> Subsequent 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>195</sup> Many noncitizens, including millions of international students and DACA recipients, are deemed ineligible for grants under this section, and they are

left with few-to-no options to obtain economic assistance during the pandemic.<sup>196</sup>

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

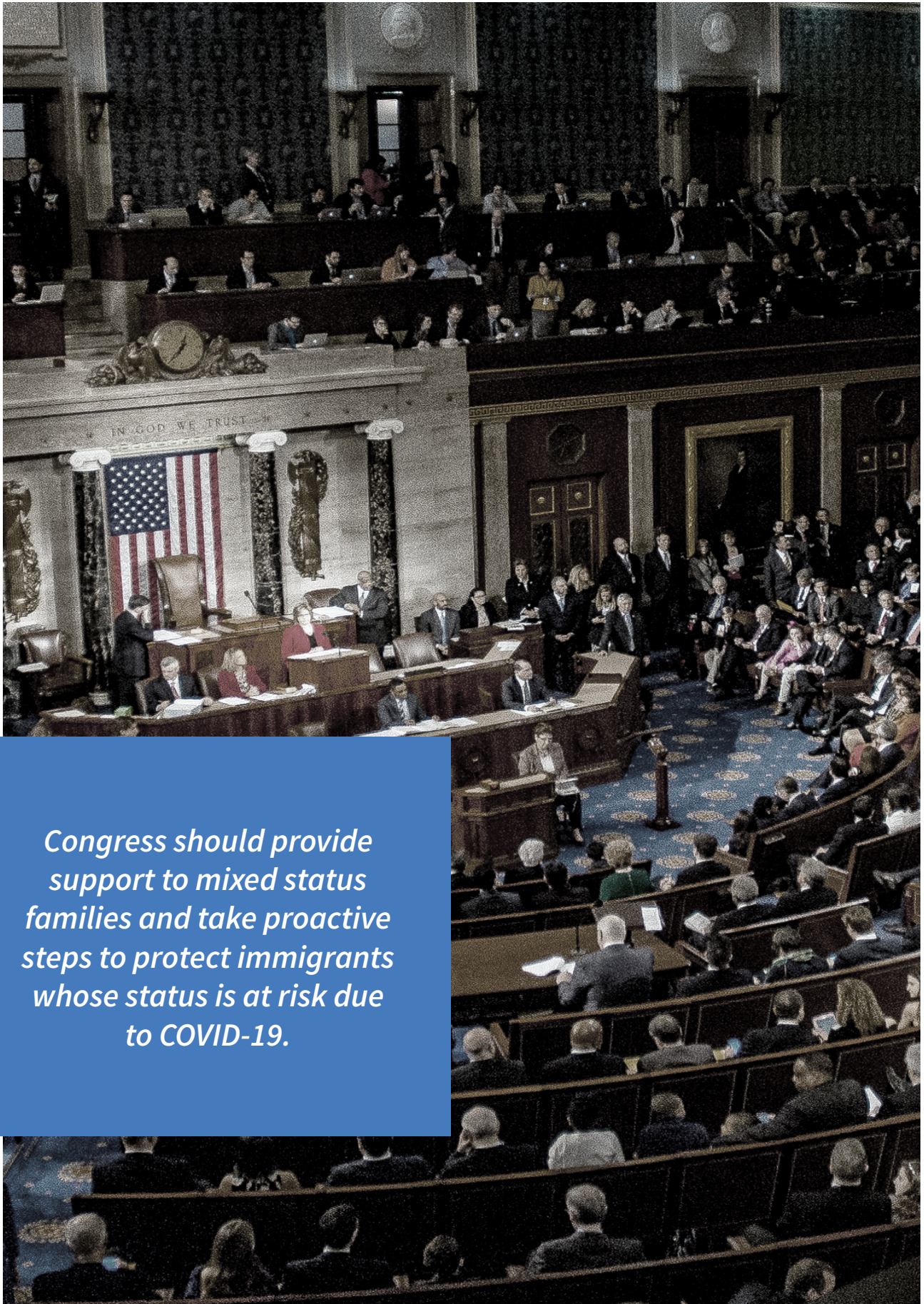
State and private-sector actors have created separate programs to assist noncitizens impacted by the COVID-19 pandemic who are ineligible for relief from the federal government. The state of California created a \$75 million disaster relief fund to provide support to 150,000 immigrant workers impacted by the pandemic.<sup>197</sup> This includes direct payments of up to \$500 for noncitizen workers, up to \$1,000 per

household.<sup>198</sup> The state of New York created a similar program to provide 20,000 noncitizen workers and their families with direct, one-time relief payments.<sup>199</sup> This includes direct payments of up to \$400 for individuals, up to \$1,000 per household.<sup>200</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>201</sup> Nonprofit organizations created national programs intended to provide limited assistance to noncitizens impacted by the pandemic in paying for food and expenses.<sup>202</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.*





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



## COVID-19 Testing and Treatment

The CARES Act includes significant increases for COVID-19 testing and treatment.<sup>203</sup> This includes expansions to Medicaid to provide health coverage for many low-income individuals in all states.<sup>204</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>205</sup> Qualified immigrants include LPRs, refugees, asylees, and people granted parole, among others.<sup>206</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>207</sup>

## Immigration Enforcement

The CARES Act appropriated increased funding for DHS for the purpose of COVID-19 prevention, preparation, and response.<sup>208</sup> This includes the purchase of personal protective equipment and sanitization materials to respond to the coronavirus.<sup>209</sup> The Act contains explicit language preventing the department from transferring appropriated funds between accounts for other purposes, including immigration enforcement.<sup>210</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 legislation 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 may 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.
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