

COVID-19 Legal Update on Employment-Based Immigration-Related Issues

Friday, April 24
3:00 p.m. ET



Presidential Proclamation Suspending Immigration – April 22, 2020

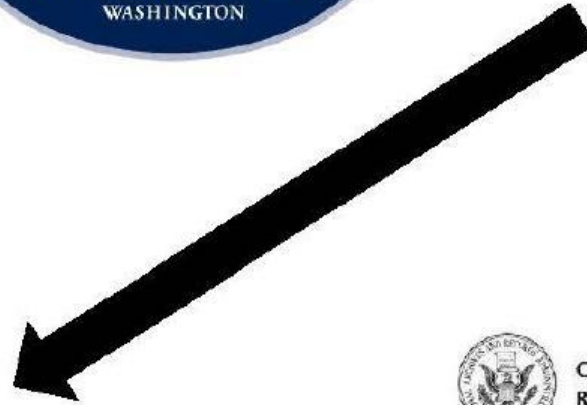
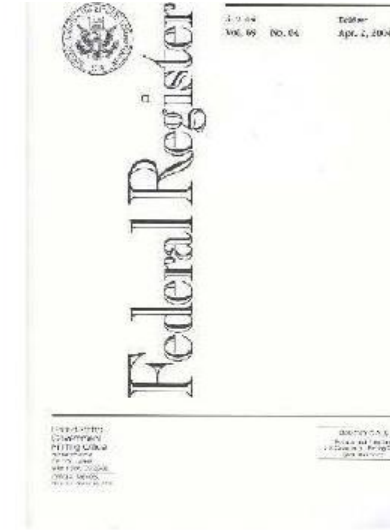
New Immigration Suspended for 60 Days

- **Applies to:**

- **Any individual seeking to enter the U.S. who...**
 - **Is OUTSIDE the U.S.**
 - **Does not have a valid immigrant visa as of April 23, 2020**
 - **Does not have a valid official travel document (advance parole, boarding foil)**

- **Does NOT apply:**

- **FN on NIVs (H-1Bs, L-1s, Es, TNs, F-1s, Js, O-1s) WITHIN the U.S.**
 - **FNs applying for AOS (green card) within the U.S.**
 - **FNs and their dependent spouses and children seeking to enter the U.S. as IV physician, nurse, healthcare worker.**
 - **EB-5 Immigrant Investors.**
 - **Spouses and children (<21 y.o.) of USCs.**
 - **Several categories of exempted categories of immigrants...**



**CODE OF FEDERAL
REGULATIONS**

Title 3
The President

Revised as of January 1, 2012

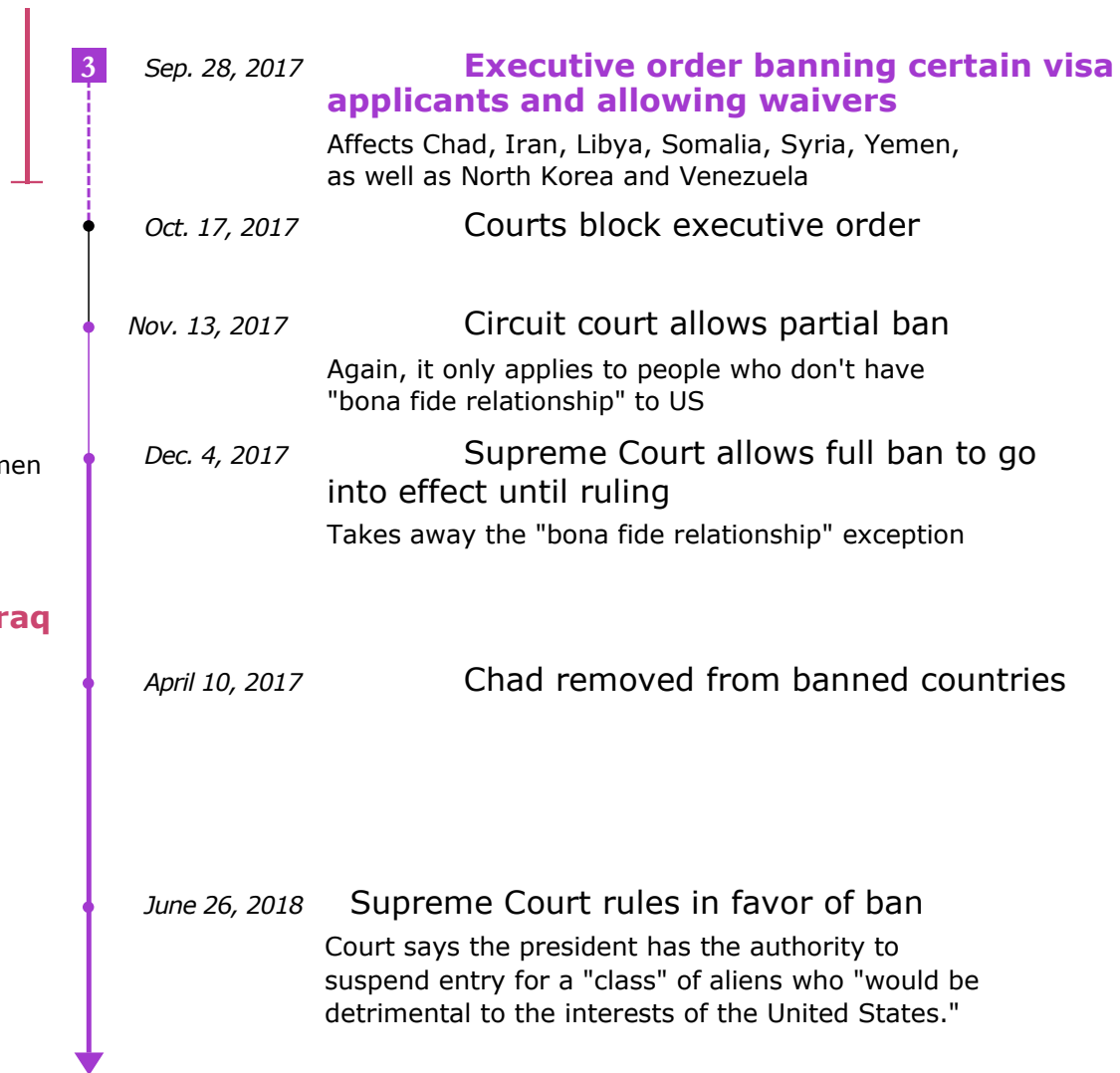
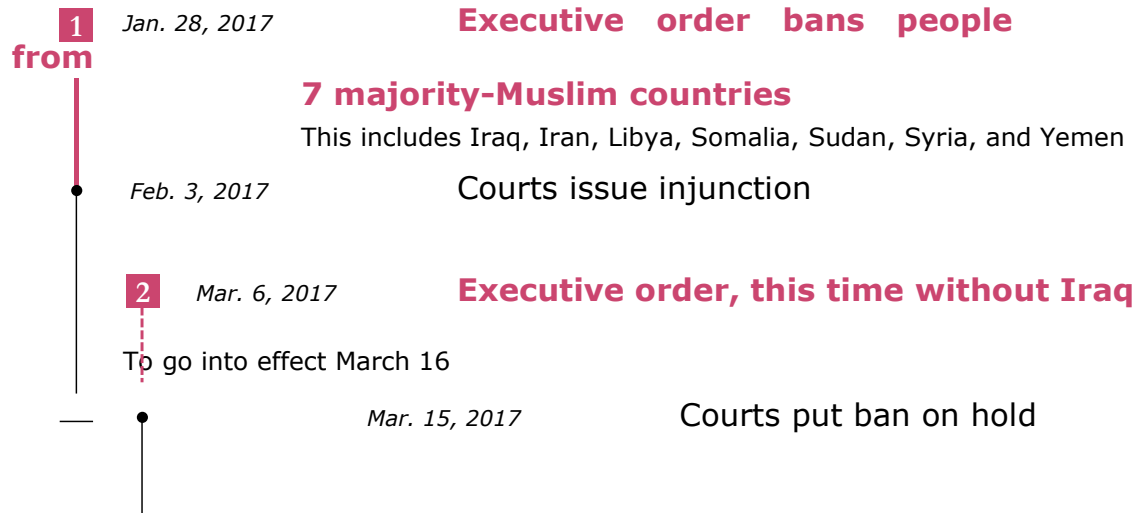
2011 Completion and Parts 100-102

Weekly Compilation of
**Presidential
Documents**



Monday, January 12, 2009
Volume 45—Number 1
Pages 1-30





How can one be pro-employment-based immigration when unemployment is well over 20M people?

What the President Has Said:

- "... By pausing immigration, we'll help put unemployed Americans first in line for jobs as America reopens.... It would be wrong and unjust for Americans laid off by the virus to be replaced with new immigrant labor flown in from abroad...." *April 21, White House Briefing.*
- He may issue a second executive order to limit the exceptions to his first order, one of which is H-1B nonimmigrants. *Id.*

How can one be pro-employment-based immigration when unemployment is well over 20M people?

What the President Has Said:

- African Americans and other minorities, those without a college degree, and the disabled are workers who, at the margin between employment and unemployment, are likely to bear the burden of excess labor supply. *April 22, Proclamation.*
- Lawful permanent residents, once admitted, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Most immigrant visa categories do not require employers to account for displacement of United States workers. While some employment-based visas contain a labor certification requirement, because visa issuance happens substantially after the certification is completed, the labor certification process cannot adequately capture the status of the labor market today. *Id.*

The Proclamation is unnecessary. COVID-19, combined with prior Trump administration executive orders and policy memoranda have already reduced the flow of immigrants into the U.S.

U.S. Dept. of Homeland Security

Legal Immigration and Adjustment of Status

Report Fiscal Year 2019, Quarter 4

- Approximately 1,031,000 foreign nationals obtained lawful permanent resident (LPR) status in Fiscal Year (FY) 2019. Of these admissions, 572,000 adjusted status from within the United States, and 459,000 entered as new arrivals. Compared to FY 2018, total FY 2019 admissions decreased by 6%, new arrivals decreased by 13%, and adjustments of status increased by 0.8%.
- In FY 2019, 39% of new LPRs were from six top countries of nationality: Mexico, the People's Republic of China (China), India, the Dominican Republic, the Philippines, and Cuba (see Table 1A below). In FY 2018, the top six countries (Mexico, Cuba, China, India, the Dominican Republic, and the Philippines) represented 42% of new LPRs.
- In FY 2019, 49% of new LPRs obtained status as immediate relatives of U.S. citizens, followed by an additional 20% who obtained status under a family-sponsored preference category. Employment-based preferences and refugees were the third and fourth largest classes of admission, accounting for 14% and 7.9% of new LPRs, respectively. In FY 2018, these four categories represented 44%, 20%, 13%, and 14% of new LPRs, respectively.

- The recent "Public Charge" rule.
- The recent expanded Travel Ban (Travel Ban 4.0) which places new restrictions on six additional countries: Myanmar (also known as Burma), Eritrea, Kyrgyzstan, Nigeria, Sudan and Tanzania. Trump has banned travel from 13 primarily Muslim countries and approximately 7% of the world population.
- Migrants crossing the border, including those asking for humanitarian protection, are immediately turned back.
- U.S consulates have paused most visa processing, making it tough to bring over family or workers.
- Immigrant visa interviews in the U.S. have been postponed, along with citizenship interviews.
- Refugees have stopped coming.
- In January, entry restrictions imposed on foreign nationals who had traveled anywhere in China within the previous two weeks.
- In March, travel banned by foreign nationals from Europe to the U.S., with some exceptions.
- Later that month, the administration used an emergency public-health law to effectively close the southern border to illegal border-crossers and asylum seekers, saying migrants posed an unknown coronavirus risk to the country.

***Reducing legal immigration will not reduce
the U.S. unemployment rate.***

Immigration does not increase unemployment of U.S. workers.

- A May 2018 study for the National Foundation for American Policy by Madeline Zavodny, an economics professor at the University of North Florida (UNF) in Jacksonville and formerly an economist at the Federal Reserve Bank of Atlanta, found that “immigration does not increase U.S. natives’ unemployment or reduce their labor force participation.”
- To the contrary, “having more immigrants reduces the unemployment rate and raises the labor force participation rate of U.S. natives within the same sex and education group.” Zavodny used a state-level analysis to research the impact of immigrants for the years 2005 to 2013 and controlled for economic conditions that could affect the number of immigrants in a state.
- See <https://nfap.com/wp-content/uploads/2018/05/IMMIGRANTS-AND-JOBS.NFAP-Policy-Brief.May-2018-1.pdf>

Immigration does not decrease wages of U.S. workers.

- A University of California–Davis economics professor, Giovanni Peri, examined 30 years of research on the topic and concluded in May 2014, “Decades of research have provided little support for the claim that immigrants depress wages by competing with native workers. Most studies for industrialized countries have found, on average, no effect on the wages of native workers. There is little evidence of immigration lowering wages of less educated native workers.”
- See <https://wol.iza.org/uploads/articles/42/pdfs/do-immigrant-workers-depress-the-wages-of-native-workers.pdf>

Immigration helps economic growth.

- A May 2018 study by the financial institution Citi and economists at Oxford University found that reducing or “suspending” legal immigration will make it more difficult for the U.S. to accelerate economic growth and recover from the current downturn. Without immigrants contributing to the quantity and quality of the labor supply, the majority of the economic growth gains America saw between 2011 and 2016 following the recession would have been eliminated.
 - See https://www.oxfordmartin.ox.ac.uk/downloads/reports/2018_OMS_Citi_Migration_GPS.pdf.
- “In the past decade, population growth, including immigration, has accounted for roughly half of the potential economic growth rate in the United States,” noted Morgan Stanley’s chief global strategist Ruchir Sharma. “Virtually no nation has ever sustained rapid economic growth without strong population growth. And at a time when every major country, including the United States, faces continued decline in population growth, workers are an increasingly precious source of national economic strength.”
 - See May 6, 2017 Opinion, New York Times, <https://www.nytimes.com/2017/05/06/opinion/sunday/to-be-great-again-america-needs-immigrants.html>

The Proclamation is based on faulty premises and will harm U.S. businesses that have followed the laws for employment-based immigration.

- Although it is true that family-based immigrants are granted "open-market" employment authorization, the same is not true for individuals who immigrate based on an offer of permanent employment - i.e., apply for green cards through employers. These individuals constitute a smaller, yet economically important group of immigrants in the science, technology, engineering, and other high-skill occupations.
- They pose no threat to American workers who are "at the margin between employment and unemployment" as described in the Proclamation. Notwithstanding the economic downturn, high-skill immigrants remain in demand and, in fact, are necessary to America's economic comeback. Employers would not spend the time and money required to sponsor them for green cards if the employers could find similarly skilled American workers. Such employers would still be able to hire foreign workers on a temporary basis, for instance through H-1B visas, but the ability to offer permanent resident status is often seen as crucial to recruiting highly sought-after workers with specialized skills who demand stability for themselves and their families.

- Because the new restrictions would not curtail temporary worker programs that bring high-tech employees in on temporary visas, it is unlikely that the new policy would open up many of those jobs to Americans, who often command higher salaries than immigrants.
- About 140,000 employment-based green cards were granted in 2018, often to people who were educated in the United States or who first arrived on temporary work visas. Even though the Proclamation allows workers to continue renewing their temporary status, its announcement has caused widespread concern among foreign professionals who have long sought the stability of being able to settle in the United States. All of these individuals and their employers have followed legal procedures to gain lawful permanent residence based on employment in the U.S. They have invested substantial time and money into the process. Many of the foreign nationals have waited years to finally get their green cards. President Trump's Proclamation throws all of this into turmoil.

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