

# NISKANEN C E N T E R

## PROJECT 2025: Unveiling the far right's plan to demolish immigration in a second Trump term

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### Key takeaways

The Heritage Foundation's Project 2025 is the policy playbook for a second Trump administration, and its impacts on immigration would be far more complex and destructive than previously reported. It isn't simply a refresh of first-term ideas, dusted off and ready to be re-implemented. Rather, it reflects a meticulously orchestrated, comprehensive plan to drive immigration levels to unprecedented lows and increase the federal government's power to the states' detriment. These proposals circumvent Congress and the courts and are specifically engineered to dismantle the foundations of our immigration system. The most troubling proposals include plans to:

- Block federal financial aid for up to two-thirds of all American college students if their state permits certain immigrant groups, including Dreamers with legal status, to access in-state tuition.
- Terminate the legal status of 500,000 Dreamers by eliminating staff time for reviewing and processing renewal applications.
- Use backlog numbers to trigger the automatic suspension of application intake for large categories of legal immigration.
- Suspend updates to the annual eligible country lists for H-2A and H-2B temporary worker visas, thereby excluding most populations from filling critical gaps in the agricultural, construction, hospitality, and forestry sectors.
- Bar U.S. citizens from qualifying for federal housing subsidies if they live with anyone who is not a U.S. citizen or legal permanent resident.
- Force states to share driver's licenses and taxpayer identification information with federal authorities or risk critical funding.

These proposals, along with the others discussed herein, mark a significant divergence from traditional conservative immigration priorities like promoting merit-based immigration, fostering assimilation, and enhancing interior enforcement. Instead, they are designed to cripple the existing immigration system without regard for the extraordinarily harmful effects on the health and wealth of our country. They would weaken our nation's prosperity and security and undermine the vitality of our workforce, with far-reaching consequences for future generations of Americans.

Leading up to the 2024 primaries, predictions about immigration policy’s prospects under a second Trump administration were bleak.<sup>1</sup> While there is little doubt that a second term for Trump would be grim for immigrants, the headlines do not capture the depth of the proposed changes or the lengths the administration would go to implement them.

Based on a detailed playbook the far-right published last year, the reality of what could emerge is even more clever and destructive than previously imagined. The 920-page tome — a blueprint for a second Trump administration across all policy areas — spells out precisely how a new Trump administration will dismantle the U.S. immigration system and how those policy changes will impact jobs, housing, education, transportation, and commerce for both immigrants and Americans.

The Heritage Foundation has published regular iterations of its “Mandate for Leadership” (hereafter referred to as the “Mandate”) for over 40 years, each detailing its recommendations and plans for the next Republican administration.<sup>2</sup> The Foundation boasts a significant success rate: the Trump administration implemented nearly 64 percent of its recommendations within the first year.<sup>3</sup> The latest edition, “Project 2025,” captures the work of over 400 conservative scholars.<sup>4</sup> It highlights the writing of several high-profile Trump administration officials, including Rick Dearborn, former White House Deputy Chief of Staff; Christopher Miller, former acting Secretary of Defense; and Ken Cuccinelli, former Deputy Secretary of the Department of Homeland Security.<sup>5</sup>

In preparation for a 2025 presidential transition, the Mandate proposes overhauls to nearly every federal agency and includes over 175 immigration provisions. Unlike in the previous years when immigration policy changes were relatively insulated, Project 2025 elucidates how the administration would halt legal immigration, centralize power in the federal government, decimate privacy protections, and risk American security and prosperity, all in pursuit of a political obsession with immigration.

## Cutting off legal immigration

Legal immigration, including high-skilled and temporary employment, family reunification, and humanitarian protection, has been a foundational part of the American culture and economy for decades. Legal immigrants fill jobs American workers don’t want or can’t fill, empower our workforce to be more efficient, and feed the diversity and innovation that has always been at the heart of our economic strength.<sup>6</sup> Yet another Trump administration plans to bring it to a halt. Project 2025’s Mandate for Leadership outlines an intricate set of policies that, when implemented in coordination, could effectively end many types of legal immigration without direction from Congress.

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1. Charlie Savage, et al., “Sweeping Raids, Giant Camps and Mass Deportations: Inside Trump’s 2025 Immigration Plans”, *New York Times*, November 11, 2023.

2. “Project 2025 Publishes Comprehensive Policy Guide, ‘Mandate for Leadership: The Conservative Promise’”, The Heritage Foundation, April 21, 2023.

3. Ibid.

4. Ibid.

5. “Mandate for Leadership: The Conservative Promise”, The Heritage Foundation, 2023.

6. Policy Manual: Volume 6, Part E, [Chapter 7 – Schedule A Designation Petitions, U.S. Citizenship and Immigration Services](#); Patricia Cortés and José Tessada, “Low-Skilled Immigration and the Labor Supply of Highly Skilled Women”, *American Economic Journal*, 2011.; Kyung Min Lee, et al., “[Are Immigrants More Innovative? Evidence from Entrepreneurs](#)”, U.S. Census Bureau, November 2023.

## Functional limitations to legal immigration

### *H-2 temporary worker programs*

The H-2A and H-2B visa programs are essential employment programs that fill temporary and seasonal gaps in agricultural and nonagricultural labor markets.<sup>7</sup> The Mandate ultimately intends Congress to wind down the H-2 visa programs over the next 10 to 20 years. In the interim, it instructs the Secretary of Homeland Security not to issue any updates to the list of H-2 eligible countries.<sup>8</sup>

Though the program is enshrined in statute, the Department of Homeland Security (DHS), in consultation with the Department of State (DOS), maintains the authority to publish an eligible countries list in the Federal Register, defining which countries' nationals are eligible for the H-2 visa program based on risk evaluations and prior overstay rates.<sup>9</sup> Although the list can be amended if new factors need to be considered, the list is typically valid for one year.

Refusing to update the list would mean that after the expiration of the 2024 list, no countries would be eligible to participate in the program, thus grinding it to a halt. U.S. Citizenship and Immigration Services (USCIS) can still approve individual, case-by-case basis H-2A and H-2B petitions for nationals not included on an eligible countries' list, but only if doing so is "in the national interest of the United States."<sup>10</sup> Of course, this significantly increases the burden on petitioning employers, raising the bar from demonstrating their own need for these employees to demonstrating a national interest.

The agricultural industry would be particularly hard hit by such a policy change, losing up to 10 percent of its already stretched-thin workforce or even larger shares on some farms.<sup>11</sup> The construction, forestry, hospitality, and landscaping industries will likely face detrimental labor losses under the Mandate's direction.<sup>12</sup>

### *T & U visa programs*

Similarly, the Mandate outlines how the executive branch can impede the use of T and U visas by revising the criteria for approval through internal memos and policy manual updates.

The T visa is a temporary visa issued to victims of severe forms of human trafficking, such as sex trafficking or slavery, if the victim assists law enforcement officers with their efforts to investigate and prosecute traffickers.<sup>13</sup> The U visa is a temporary visa for victims of certain crimes committed in the U.S. who have suffered mental and physical abuse and who have been helpful to law enforcement and government officials in the investigation and prosecution of criminal activity.<sup>14</sup>

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7. [H-2A Temporary Agricultural Workers](#), USCIS.; [H-2B Temporary Non-Agricultural Workers](#), USCIS.

8. "Mandate for Leadership", 2023, pgs. 611, 138.

9. "DHS Announces Countries Eligible for H-2A and H-2B Visa Programs", USCIS, November 8, 2023.

10. Ibid.

11. Marcelo Castillo, et al., "[The H-2A Temporary Agricultural Worker Program in 2020](#)", USDA Economic Research Service, U.S. Department of Agriculture, August 2022.

12. "[Industries with High Prevalence of H-2B Workers](#)", Wage and Labor Division, U.S. Department of Labor, 2023.

13. [Victims of Human Trafficking: T Nonimmigrant Status](#), USCIS.

14. [Victims of Criminal Activity: U Nonimmigrant Status](#), USCIS.

These visas were created to promote public safety for Americans and immigrants alike.<sup>15</sup> They encourage victims to report crimes and provide valuable testimony to law enforcement. Ultimately, these reports make Americans safer by allowing law enforcement to be aware of and prosecute dangerous criminals in or around the United States.<sup>16</sup>

Project 2025's Mandate instructs the Secretary of Homeland Security to restrict eligibility for these programs to those "*actively* [emphasis added] providing significant material assistance to law enforcement." By requiring "active" assistance, the change would effectively exclude applicants whose visa adjudication and approval do not happen simultaneously with the criminal prosecution.<sup>17</sup>

As of January 2024, the T visa has a processing time of 17 months, and the U visa has a processing time of over five years.<sup>18</sup> To be approved for the visa under the Mandate's revised eligibility, a victim would have to be providing significant insight to the police at the time of filing and at the time of adjudication or approval, potentially years later. Increasing the standard this way would likely decimate the program and justify the denial of most petitions without Congressional approval.

#### *Specialty occupation graduate employment*

The U.S. educates some of the world's brightest minds, and benefits from retaining students after graduation and capitalizing on the skills – particularly in STEM fields – obtained from U.S. universities. Two-thirds of U.S. graduate students in artificial intelligence-related programs are foreign-born, as are approximately 80 percent in electrical engineering, petroleum engineering, and computer science.<sup>19</sup> Losing these students to competitor nations harms U.S. competitiveness and economic prosperity.<sup>20</sup>

The H-1B visa for temporary employment in a specialty occupation is one of the most commonly used mechanisms for graduates of U.S. universities to remain in the country after completing their degrees.<sup>21</sup> In FY2022, nearly 44 percent of all H-1B petitions for initial employment were issued to individuals changing from student status, accounting for 77 percent of H-1B petitions requesting a change of status from within the U.S.<sup>22</sup>

Prevailing wage guidelines overseen by the Department of Labor (DOL) govern how H-1B employees are paid. These guidelines protect American workers by ensuring that hiring a foreign worker will not adversely affect the wages or working conditions of similarly situated U.S. workers.<sup>23</sup> There are only four

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15. Matthew La Corte and Judith Teruya, "[The 'Law and Order Visa': How the U-Visa Unites Law Enforcement and Immigrant Communities for Public Safety](#)", Niskanen Center, August 2019.

16. "[The U and T Visa: A Tool to Support Victims, Communities, and Increase Participation in the Criminal Justice System](#)", International Association of Chiefs of Police.

17. "[Mandate for Leadership](#)", 2023, pg. 150.

18. [Processing Times](#), USCIS, January 2024.

19. Remco Zwetsloot, et al., "[Keeping Top AI Talent in the United States](#)", Center for Security and Emerging Technology, December 2019.; Elizabeth Redden, "[Foreign Students and Graduate STEM Enrollment](#)", Inside Higher Ed, October 10, 2017.

20. "[The Role of International Students in U.S. Innovation and Global Competitiveness](#)", Higher Ed Immigration Portal.; "[Retaining U.S. International Student Graduates Could Help the U.S. Win the Global Talent Race](#)", FWD.us, February 3, 2022.; Cecilia Esterline, "[A roadmap for preserving American advantage in the global fight for talent](#)", Niskanen Center, September 6, 2023.

21. "[Get Your Diploma and Know Your Options](#)", Department of Homeland Security, June 12, 2014.

22. "[Characteristics of H-1B Specialty Occupation Workers](#)", USCIS, March 13, 2023.

23. Office of Foreign Labor Certification, "[Prevailing Wages](#)", Department of Labor.

wage levels, and they are divided according to the tasks, knowledge, skills, and educational or vocational preparation required to succeed in the required role.<sup>24</sup>

Despite advanced educational backgrounds, many recent graduates fill roles that fall into the lowest Level I or Level II wage categories for entry and qualified workers, respectively.<sup>25</sup> The Mandate instructs the Department of Labor (DOL) to eliminate those two lowest wage levels, excluding most foreign-born graduates from these job opportunities.<sup>26</sup>

Even though USCIS would retain the authority in evaluating the specialty nature of an H-1B beneficiary's proposed employment, cutting off DOL's ability to certify the wages of any position not meeting the experience requirements of wage levels III and IV would functionally close the program to many recent graduates.<sup>27</sup> Concurrently, many U.S. economic competitors are actively working to attract and retain more international students, recognizing their unique value and eager to attract talent that the U.S. educates but cannot retain.<sup>28</sup>

#### *Restrict visa eligibility by country*

Furthermore, the Mandate proposes that the new administration should use its existing authority to aggressively suspend the issuance of immigrant visas, nonimmigrant visas, or all visas if a country is categorized as recalcitrant or uncooperative regarding the receipt of deported nationals.<sup>29</sup>

As of June 2020, 13 countries—including China, Russia, India, Cuba, and Eritrea—are classified as recalcitrant, many of which comprise the largest origin countries for U.S.-based international students, foreign high-skilled workers, or family reunification beneficiaries.<sup>30</sup> Leveraging entire visa categories as collateral in foreign policy negotiations would result in aggressive restrictions on legal immigration. Rather than holding the noncompliant governments responsible, these restrictions would only punish the country's nationals and the American families, universities, and businesses that rely on them.

#### *Increase application fees and limit fee waivers*

Under the direction of the Mandate, a new administration would also increase application fees across the board, including on citizenship applications, spousal sponsor forms, and employment petitions (among others), add a fee to the asylum application, and severely restrict the availability of fee waivers.<sup>31</sup> While

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24. Employment and Training Administration, "[Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs](#)", Department of Labor, November 2009.

25. Ibid.

26. "[Mandate for Leadership](#)", 2023, pg. 167.

27. "[Prevailing Wage Determination Policy Guidance](#)", 2009.

28. "[Peak body calls for strategy to double Germany's retention of international students by 2030](#)", ICEF Monitor, March 15, 2023.; "[Japan aims to rebuild foreign enrolment by 2027](#)", ICEF Monitor, March 22, 2023. "[EMN study: Attracting and retaining international students in the EU](#)", European Commission, September 4, 2019.; Cecilia Esterline, "[Previously unreported data: the U.S. lost 45,000 college grads to Canada's high-skill visa from 2017 to 2021](#)", Niskanen Center, March 14, 2023.; Cecilia Esterline, "[Canada's ploy to use U.S.-trained immigrants to surpass American innovation](#)", Niskanen Center, July 21, 2023.; Elisabeth Kamm and Thomas Liebig, "[Retention and economic impact of international students in the OECD](#)", OECD, 2022.; "[International students boost UK economy by £41.9 billion](#)", Universities UK, May 16, 2023.

29. "[Mandate for Leadership](#)", 2023, pgs. 167, 177.

30. Jill H. Wilson, "[Immigration: 'Recalcitrant' Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals](#)", Congressional Research Service, July 10, 2020.

31. "[Mandate for Leadership](#)", 2023, pg. 146.

some increases may be necessary to cover processing costs, extensive changes could render critical programs inaccessible to American families, businesses, and vulnerable individuals.

## Undermining humanitarian relief

### *Temporary Protected Status*

The next Republican administration aligning with the Mandate would also strip hundreds of thousands of individuals, many of whom have been in the U.S. for decades, of their legal protections by repealing all Temporary Protected Status (TPS) designations.<sup>32</sup>

Congress established TPS as part of the Immigration Act of 1990, signed into law by Republican President George H. W. Bush offering legal protections and work authorization to nationals of countries designated as unfit for return due to ongoing armed conflicts, environmental disasters, or other extraordinary conditions.<sup>33</sup> The Secretary of Homeland Security maintains authority over the designation of TPS countries and controls the timeline under which the individuals must have maintained continuance residence to be eligible for protection.<sup>34</sup>

Nearly 700,000 individuals would lose legal protections and work authorization by repealing all active TPS designations.<sup>35</sup> Not only would it create an enormous burden for Immigration Customs and Enforcement (ICE) to attempt to remove these individuals, but it would also have devastating consequences for our labor market, families who have resided in the U.S. for decades, and our economy, as home and business owners are forced to leave the country.<sup>36</sup>

### *Deferred Action for Childhood Arrivals (DACA), Ukraine parolees, and refugees*

New or renewing applicants to other existing protection programs like DACA and Uniting for Ukraine would also face significant barriers as the Mandate orders DHS management to prohibit the use of staff time on these programs.<sup>37</sup>

Over 500,000 young adults are protected by DACA, and 176,000 Ukrainians have fled to the U.S. under the Uniting for Ukraine program.<sup>38</sup> Without staff to process applications and renewals, these individuals would be unable to obtain or renew their legal protection or work authorization, pushing them out of status or the country.

Similarly, the Mandate directs the Bureau of Population, Refugees, and Migration (PRM) staff to abandon refugee vetting in favor of addressing the situation at the southern border.<sup>39</sup> Refugees are the most

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32. "[Mandate for Leadership](#)", 2023, pg. 145.

33. "[Temporary Protected Status: An Overview](#)", American Immigration Council, September 14, 2023.; [Temporary Protected Status, USCIS](#).

34. Ibid.

35. Jill H. Wilson, "[Temporary Protected Status and Deferred Enforced Departure](#)", Congressional Research Service, December 11, 2023.

36. "[The Contributions of Temporary Protected Status Holders to the U.S. Economy](#)", American Immigration Council, September 2023.

37. "[Mandate for Leadership](#)", 2023, pg. 145.

38. "[Count of Active DACA Recipients](#)", USCIS, September 30, 2023.; Camilo Montoya-Galvez, "[Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting](#)", CBS News, January 22, 2024.

39. "[Mandate for Leadership](#)", 2023, pg. 178.

thoroughly screened individuals admitted to the U.S., so the refugee program will essentially cease to exist without staff dedicated to the vetting process.<sup>40</sup>

### *Work authorization*

The Mandate further advises the next administration to take regulatory action to limit the classes of nonimmigrants eligible for work authorization.<sup>41</sup> While the Mandate does not specify who would be affected by these regulations, likely targets include spouses of employment-based visa holders and certain beneficiaries of humanitarian relief. Humanitarian relief without work authorization is a lose-lose scenario for Americans. Beneficiaries would lack the opportunity to make money and care for themselves and their families, and the U.S. would miss out on economic contributions and valuable labor. Between neglecting the staffing needs of existing programs and stripping them of work eligibility, the Mandate would effectively bring these otherwise legal programs to a close.

### **Manufacturing inefficiencies to create backlogs and cut off applications**

Another way the Mandate intends to impede legal immigration is by pausing the intake of applications for any immigration benefit category with a backlog deemed “excessive.”<sup>42</sup> Many categories of immigration applications and petitions are currently experiencing backlogs.<sup>43</sup> It is unclear whether any backlog would trigger the pause or whether there will be a numerical or time limit. Even still, this change, in addition to the other provisions discussed below, is meant to create new inefficiencies and backlogs and is almost certainly meant to pause processing indefinitely.

First, the Mandate proposes ending flexibilities introduced during the COVID-19 pandemic, including biometric reuse.<sup>44</sup> This provision allowed USCIS to reuse previously collected biometric data for applicants seeking work authorization or work authorization renewal who had previously appeared at an Application Support Center for photographing and fingerprinting.<sup>45</sup>

Pandemic-era policies also led to the temporary suspension and eventual exemption of nearly all applicants requesting an extension or change of nonimmigrant status from the biometrics process entirely.<sup>46</sup> Reinstating the biometrics requirement for low-risk applicants would create significant administrative and bureaucratic hurdles for USCIS, immigrants, and the businesses that employ them, adding to delays.<sup>47</sup>

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40. [“Refugee Security Screening Fact Sheet”](#), USCIS, June 3, 2020.

41. [“Mandate for Leadership”](#), 2023, pg. 151.

42. *Ibid.*, pg. 146.

43. [“Net Backlog By Form Type”](#), USCIS, September 30, 2023.

44. [“Mandate for Leadership”](#), 2023, pg. 145.

45. [“USCIS to Continue Processing Applications for Employment Authorization Extension Requests Despite Application Support Center Closures”](#), USCIS, March 30, 2020.

46. [“USCIS Temporarily Suspends Biometrics Requirement for Certain Form I-539 Applicants”](#), USCIS, May 13, 2021.; [“USCIS Exempts Biometric Services Fee for all Form I-539 Applicants”](#), USCIS, September 25, 2023.

47. [“Extension of Temporary Waiver of 60-Day Rule for Civil Surgeon Signatures on Form I-693”](#), USCIS, September 29, 2022.; [“USCIS Removes 60-Day Rule for Civil Surgeon Signatures on Form I-693”](#), USCIS, March 31, 2023.

### *National security sensitive designation for USCIS*

Not only would the reinstatement of these policies stretch staff resources, but the Mandate also directs USCIS to be reclassified as a national security-sensitive agency, thereby requiring all its employees to be reclassified as holding national security-sensitive positions.<sup>48</sup>

To meet the Mandate's requirements, USCIS employees would need to reach at least tier 3 for a non-critical sensitive position, thus requiring a background investigation rather than just a background check.<sup>49</sup> Each tier 3 investigation costs \$345, or over \$6.5 million for current USCIS staff.<sup>50</sup> If a position were designated as critical sensitive, the cost of a single investigation would jump to \$4,435, totaling more than \$84 million for the entire staff population.<sup>51</sup>

The cost aside, introducing these security requirements would be incredibly time-intensive. Each employee must be fingerprinted if not previously subject to an investigation.<sup>52</sup> An investigator would then need to look into each employee's credit history, employment history, educational background, criminal background, substance use, and international travel, contacting employees' friends, landlords, family, or neighbors if necessary.<sup>53</sup>

Although time frames may vary based on workload and case complexity, an investigation can take two to nine months.<sup>54</sup> During this time, the employees could not work in security-sensitive positions. The Mandate also states that USCIS employees should be retrained to boost vetting and fraud detection while deprioritizing processing speed.<sup>55</sup> Between investigations and retraining, USCIS's application and petition processing capacity will likely be severely reduced while the staff is otherwise occupied or awaiting proper clearance. If these new requirements create backlogs deemed excessive, entire categories of immigration could be cut off until capacity is rebuilt.

The Mandate also increases the frequency with which applicants must reapply for work authorization. The Mandate directs USCIS to use sub-regulatory authority to reduce the validity of employment authorization documents (EADs), requiring beneficiaries to reapply more frequently, even if their underlying status remains valid.<sup>56</sup> This will create additional financial barriers for beneficiaries, additional oversight requirements for American employers, and increase USCIS's workload.

The Mandate also intends to use internal guidelines to require interviews for nearly 100% of adjustment applicants, effectively eliminating the use of interview waivers.<sup>57</sup> Currently, USCIS officers have

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48. "Mandate for Leadership", 2023, pg. 147.

49. Ibid.

50. Division of Personnel Security and Access Control, "[Billing Rates for Badges & Investigation Services](#)", National Institutes of Health, September 19, 2023; "[Mission and Core Values](#)", USCIS.

51. "[Billing Rates](#)", September 19, 2023.

52. "[Investigations & Clearance Process](#)", Defense Counterintelligence and Security Agency.

53. Ibid.

54. "[Receive and Maintain Your National Security Eligibility](#)", Center for Development of Security Excellence, May 2023.

55. "Mandate for Leadership", 2023, pg. 144.

56. Ibid, pg. 145.

57. Ibid.



the authority to waive interviews on a case-by-case basis when they determine it is unnecessary, such as when the applicant is ineligible or is an unmarried minor child of a U.S. citizen or green card holder.<sup>58</sup> Eliminating this authority would decrease USCIS's processing capacity, leading to further delays and backlogs.

#### *Fraud Detection and National Security Directorate approval requirement*

To create additional delays and backlogs, the Mandate states that the Fraud Detection and National Security Directorate (FDNS) must sign off on all approved applications and petitions before approval notices can be issued.<sup>59</sup>

FDNS is tasked with detecting and deterring fraud in the lawful immigration system.<sup>60</sup> FDNS conducts unannounced site visits and compliance reviews in employment-based immigration cases and manages a diverse workload of cases flagged by USCIS adjudicators for further review.<sup>61</sup> Annual case completion rates fluctuate, but between fiscal years 2016 and 2021, FDNS completed fewer than 35,000 cases in any single year.<sup>62</sup> USCIS, on the other hand, completed 8.6 million applications, petitions, and requests in fiscal year 2022.<sup>63</sup> Requiring FDNS review on approved applications and petitions would increase FDNS's annual workload by millions, significantly delaying the distribution of approval notices and blocking USCIS-approved applicants and beneficiaries from legal status or work authorization.

These revisions would fundamentally change how USCIS can process petitions and applications. Each drop in efficiency can create insurmountable delays and backlogs, which, if deemed excessive, could bar entire categories of immigrants from applying. This is not only detrimental to the individuals seeking initial approval, but it could also have devastating consequences for individuals who are already here.

Some already-present nonimmigrants benefit from ongoing work authorization or legal status as long as an extension has been requested promptly—an option they'll lose if USCIS stops accepting applications.<sup>64</sup> The impacts of these seemingly minor revisions could have devastating consequences for our legal immigration system and the American families and businesses that rely on it.

### **Immediate removals of rejected visa applicants and beneficiaries**

The Mandate also states that any applicant rejected for an immigration benefit or status should be required to leave the U.S. immediately, at least until USCIS has cleared all case backlogs.<sup>65</sup> On the surface, this may seem like an innocuous or even common sense policy change; in reality, its impacts would be significant.

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58. Policy Manual: Volume 7, Part A, [Chapter 5 - Interview Guidelines](#), USCIS.

59. "Mandate for Leadership", 2023, pg. 145.

60. "Fraud Detection and National Security Directorate (FDNS)", USCIS, May 2022.

61. "Administrative Site Visit and Verification Program", USCIS.; Rebecca Gambler, et al., "U.S. Citizenship and Immigration Services: Additional Actions Needed to Manage Fraud Risks", Government Accountability Office, September 2022.

62. Ibid.

63. "Annual Statistical Report FY 2022", USCIS.

64. Handbook for Employers M-274, "5.1 Automatic Extensions Based on a Timely Filed Application to Renew Employment Authorization and/or Employment Authorization Document", USCIS.; Handbook for Employers M-274, "7.7 Extensions of Stay for Other Nonimmigrant Categories", USCIS.

65. "Mandate for Leadership", 2023, pg. 146.

The language of the Mandate conflates two definitions: rejection of an application and denial of a benefit. USCIS rejects applications and petitions when they cannot be adjudicated because they are incomplete, lack a proper signature, or include payment for the incorrect fee amount.<sup>66</sup> While rejections cannot be appealed, they do not preclude an applicant from refile once the error is corrected.<sup>67</sup>

Denials, conversely, indicate that USCIS has adjudicated the request and denied a benefit or status.<sup>68</sup> Petitioners and applicants generally retain the right to file an appeal or a motion to reopen or reconsider.<sup>69</sup> The Mandate's suggestion would bulldoze these established procedures and instead require all beneficiaries of rejected or denied applications and petitions to leave the country immediately.

This policy not only ignores the possibility that someone could refile a timely request that includes a previously missing page or present new facts in an appeal or a motion; it also ignores the reality that many individuals seeking immigration benefits or statuses have an underlying legal status that would not be affected by a denial or rejection.

For instance, if a married couple with legal permanent residence (“green card”) status applied for U.S. citizenship simultaneously and included a single combined check for their two naturalization applications, both applications would be rejected for improper payment.<sup>70</sup> Per the Mandate, these individuals would be required to leave the country immediately despite having valid green cards. Similarly, a company could petition for a current international student to obtain H-1B status for a position that would begin in the future. If the petition is denied, the Mandate suggests that the student must leave the country immediately, even before completing their studies, despite holding a valid student visa and their prospective employer wanting to file a motion to reconsider.

Furthermore, the Mandate indicates that standard procedures only resume once all backlogs are cleared.<sup>71</sup> All applicants would be punished by that measure, even if only one category has a backlog. The Mandate's authors are likely relying on this to create a chilling effect that would discourage applicants and petitioners from submitting requests entirely. The student who maintains a valid student visa would, understandably, be hesitant to allow an employer to apply on his behalf if there were a risk that he would lose his student status and be unable to finish his degree.

## Limiting Americans' access to student aid

The Mandate instructs the Department of Education to “deny loan access to students at schools that provide in-state tuition to illegal aliens,” which the authors have defined to include DACA recipients.<sup>72</sup>

Twenty-three states and the District of Columbia (D.C.) permit undocumented immigrants — illegal

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66. Policy Manual: Volume 1, Part B, “[Chapter 6 - Submitting Requests](#)”, USCIS.

67. *Ibid.*

68. Policy Manual: Volume 1, Part E, “[Chapter 9 - Rendering a Decision](#)”, USCIS.

69. “[Questions and Answers: Appeals and Motions](#)”, USCIS.

70. [N-400, Application for Naturalization](#), USCIS.

71. “[Mandate for Leadership](#)”, 2023, pg. 146.

72. *Ibid.*, pgs. 145; 166-7.

aliens — to access in-state tuition. Twenty-six states and D.C. permit DACA recipients to access in-state tuition.<sup>73</sup> California, Texas, and New York have the largest student populations in the country, and all permit undocumented students, including DACA recipients, to access in-state tuition.<sup>74</sup>

In total, there are nearly 10.7 million American students enrolled in higher education in states allowing “illegal aliens” to access in-state tuition.<sup>75</sup> Under the proposed policy, up to 67 percent of all Americans enrolled in U.S. higher education could lose access to federal student aid because their state or university offers in-state tuition to undocumented or DACA students.<sup>76</sup>

In-state tuition eligibility is an authority held by the states.<sup>77</sup> Each state establishes criteria for accessing in-state tuition. However, if forced to sacrifice their constituents’ access to necessary loans or risk losing American students to neighboring states, many states would likely have to consider prohibiting undocumented students and DACA recipients from accessing in-state tuition.

Undocumented students, including DACA recipients, are already ineligible for federal student aid. This policy would only harm U.S. citizens and green card holders who rely on federal student aid to pursue their education.<sup>78</sup>

## Centralizing power in a hyper-politicized federal government

Traditional conservatives aim to limit the federal government’s power in favor of decentralization and state authority. Yet, the Mandate aggressively pursues an agenda that centralizes more power in the executive branch, undermining the checks and balances essential to our democracy.

### Limiting state and local authority

The Mandate’s recommendations have been designed to enable the executive branch to exercise new authority and jurisdiction over the processes and procedures of state and local governments.

#### *Conditioning federal disaster funding on information collection and sharing*

The Mandate requires that any state or local government recipient of Federal Emergency Management Agency (FEMA) funds certify that they are registered for and using E-Verify, a voluntary program that uses DHS and Social Security Administration (SSA) data to confirm eligibility for employment in the U.S.<sup>79</sup>

A functional system that reliably confirms work eligibility could indeed protect U.S. interests. However, the current E-Verify system falls woefully short. First, only ten states require most or all employers to

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73. “[Undocumented Tuition Map](#)”, Higher Ed Immigration Portal.

74. “[Total fall enrollment in degree-granting postsecondary institutions, by state or jurisdiction](#)”, National Center for Education Statistics.

75. Author’s analysis of data published by “[Undocumented Tuition Map](#)”, Higher Ed Immigration Portal. This figure excludes all first-generation immigrant students, some of whom may have legal permanent residence or even U.S. citizenship, and all international students.

76. “[Undocumented Tuition Map](#)”.

77. “[The Federal Role in Education](#)”, Department of Education.

78. “[Eligibility for Non-U.S. Citizens](#)”, Federal Student Aid.

79. “[Mandate for Leadership](#)”, 2023, pg. 137; “[Verify Employment Eligibility \(E-Verify\)](#)”, Department of Homeland Security.

use it.<sup>80</sup> It has also faced widespread criticism for shortcomings that have allowed many unauthorized migrants to pass through undetected and many authorized workers to be rejected, including Americans.<sup>81</sup>

In addition to implementing E-Verify, state and local governments must commit to total information-sharing to receive FEMA funding.<sup>82</sup> The Mandate's authors emphasize that state and local governments must share Department of Motor Vehicle information, including license and identification data, photographs, names, and addresses.<sup>83</sup> Like many of the Mandate's recommendations, this provision punishes so-called sanctuary cities that do not currently obligate state and local agencies, including law enforcement, to share information with the federal government for immigration enforcement purposes.<sup>84</sup>

Currently, 19 states and the District of Columbia permit unauthorized immigrants to obtain driver's licenses,<sup>85</sup> and courts have previously upheld that it is within their authority.<sup>86</sup> These decisions are often rooted in public safety concerns and economic interests. Licensure for the undocumented population has been associated with a decreased likelihood of hit-and-run accidents, lower shares of fatal accidents classified as hit-and-runs, increases in undocumented men's work hours, lower average auto insurance costs, declining poverty rates, and lower rates of uninsured motorists.<sup>87</sup>

In 2022, state and local governments in every U.S. state received FEMA funds, so the Mandate's recommendations would almost certainly have wide-reaching effects.<sup>88</sup> Requiring state governments to share license information with enforcement officials would undermine states' interests by introducing a chilling effect that would dissuade unauthorized immigrants from obtaining and updating licenses. Although jurisdictionally states have the authority to determine who is eligible for their driver's licenses, the Mandate's suggestions would increase the pressure and influence the federal government has over those criteria.

#### *Eliminating state prosecutorial discretion*

Similarly, the Mandate instructs the Department of Justice (DOJ) to initiate legal action against local officials, including district attorneys, who do not prosecute certain cases based on immigration status or other defining characteristics.<sup>89</sup>

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80. Gordon Middleton, "[Navigating E-Verify: State-by-State Mandate](#)", Experian Employer Services, November 13, 2023.

81. Alex Nowrasteh, "[Why E-Verify is failing](#)", *Politico*, October 19, 2019.

82. "[Mandate for Leadership](#)", 2023, pg. 138.

83. *Ibid.*

84. Emily Van Fossen, "[What is a Sanctuary City?](#)", Niskanen Center, April 16, 2020.

85. "[States Offering Driver's Licenses to Immigrants](#)", National Conference of State Legislatures, March 13, 2023.

86. Jimmy Vielkind, "[Judge Dismisses Challenge to New York Law Allowing Driver's Licenses for Illegal Immigrants](#)", *The Wall Street Journal*, December 13, 2019.; Kate M. Manuel and Michael John Garcia, "[Unlawfully Present Aliens, Driver's Licenses, and Other State-Issued ID: Select Legal Issues](#)", Congressional Research Service, March 28, 2014.; "[Deciding Who Drives](#)", The Pew Charitable Trusts, August 2015.

87. Hans Lueders, et al., "[Providing driver's licenses to unauthorized immigrants in California improves traffic safety](#)", Proceedings of the National Academy of Sciences of the United States of America, April 3, 2017.; Catalina Amuedo-Dorantes, et al., "[Labor market impacts of states issuing of driver's licenses to undocumented immigrants](#)", *Labour Economics*, April 2020.; Catalina Amuedo-Dorantes and Eva Dziadula, "[How Does Granting Driving Privileges to Undocumented Migrants Affect Traffic Fatalities?](#)", The Center for Growth and Opportunity, April 12, 2023.; Deborah Gonzalez, et al., "[A Legal and Policy Analysis of Driver's Licenses for Undocumented Rhode Islanders](#)", Latino Policy Institute at Roger Williams University School of Law, June 2016.

88. [Emergency Management Performance Grants - v2](#), FEMA, August 2023.

89. "[Mandate for Leadership](#)", 2023, pg. 553.

Prosecutorial decisions occur at the district level, and district attorneys can choose which cases to prosecute and how to prosecute them based on their district's capacity, needs, and interests.<sup>90</sup> Threatening legal action increases federal government influence over decisions, including economic choices to prosecute certain crimes over others, that would otherwise remain in the hands of locally appointed or elected officials.

The Mandate aims to extend that influence by creating financial disincentives that punish districts that do not align with the executive branch.<sup>91</sup> For instance, the Mandate suggests that DOJ and FEMA funds require recipients to comply fully with immigration detainers and requests from Immigration and Customs Enforcement (ICE) for local law enforcement to detain individuals suspected to be removable under federal immigration law.<sup>92</sup> These requests are non-binding, and compliance with them is voluntary.<sup>93</sup> Some courts have even found that the issuance of or compliance with immigration detainers in certain states could be unlawful.<sup>94</sup> In some cases, compliance could expose jurisdictions to liabilities related to unlawful detention under the Fourth Amendment to the U.S. Constitution.<sup>95</sup>

Immigration enforcement is the federal government's responsibility. Previous court decisions have found that states and local law enforcement officials generally lack the legal authority to enforce federal immigration law unless it occurs under a cooperative agreement per section 287(g) of the Immigration and Nationality Act (INA).<sup>96</sup> Although there are over 18,000 state and local law enforcement agencies, only 137 have current 287(g) agreements with ICE.<sup>97</sup> The Mandate's recommendations that the federal government coerces state and local law enforcement agencies into carrying out federal immigration enforcement in exchange for funding, even when it violates states' interests, would represent a significant overstep of federal authority and potentially expose local agencies to additional legal liabilities.

## Politicizing the federal government

In addition to centralizing power in the executive branch, the Mandate recommends limiting the power of future Presidents—Republican and Democrat alike—by suggesting Congress prohibit future presidential administrations from abandoning or revoking asylum agreements enacted by former administrations, even if circumstances, needs, or interests change.<sup>98</sup> Additionally, the Mandate outlines how the next administration should utilize its existing executive authorities to politicize every federal government level to increase its influence.

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90. Bruce Frederick and Don Stemen, "[The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making – Technical Report](#)", Vera Institute of Justice, December 2012.

91. "[Mandate for Leadership](#)", 2023, pg. 566.

92. Ibid, pgs. 137, 566.; [Immigration Detainer - Notice of Action](#), Department of Homeland Security.; Kristie De Peña, "[The Slippery Slope of ICE Detainers](#)", Niskanen Center, June 24, 2020.

93. "[Sanctuary Policies: An Overview](#)", American Immigration Council, October 21, 2020.; "[What's a Sanctuary Policy? FAQ on Federal, State and Local Action on Immigration Enforcement](#)", National Conference of State Legislatures, June 20, 2019.

94. [Judgment: Case 2:12-cv-09012-AB-FFM](#), U.S. District Court, Central District of California, Western Division, February 5, 2020.

95. "[Sanctuary Policies](#)", 2020.; Christopher Lasch, Esq., "[The Faulty Legal Arguments Behind Immigration Detainers](#)", American Immigration Council, December 18, 2013.

96. Hillel R. Smith, "[Immigration Arrests in the Interior of the United States: A Primer](#)", Congressional Research Service: Legal Sidebar, November 30, 2021.

97. "[Department of Justice Review of the Transition of Law Enforcement Agencies to the National Incident-Based Reporting System \(NIBRS\)](#)", Department of Justice, January 2023.; "[Delegation of Immigration Authority Section 287\(g\) Immigration and Nationality Act](#)", U.S. Immigration and Customs Enforcement, June 2023.

98. "[Mandate for Leadership](#)", 2023, pg. 149.

The federal government relies on a delicate balance between appointees representing political interests and long-standing civil servants providing continuity of governance and subject-matter expertise. The Mandate aims to disrupt this balance and to allow the White House to assert additional control over the day-to-day operations of federal agencies by directing DHS and DOS to hire more political appointees and to redistribute career personnel to bolster political decision-making.<sup>99</sup>

The Mandate argues that the Office of the Secretary of Homeland Security must have its own designated team of political appointees and that DHS must have a political-only line of succession in decision-making, going as far as to say, “No one in a leadership position on the morning of January 20 should hold that position at the end of the day.”<sup>100</sup>

If implemented, the Mandate would ensure political-only decision-making, rather than expertise, would drive the day-to-day functionality of the federal government. Further, the adjustment and training period required to overhaul the leadership of federal agencies overnight would likely disrupt the stability of administrative transitions and the continuity of regular government programming.

### Limiting Congressional and judicial checks and balances

Beyond politicizing the federal government, the Mandate’s recommendations intend to increase executive authority by evading legislative and judicial jurisdiction and oversight. The Mandate suggests that despite the statutory authorization for programs like the diversity visa and the student visa, the executive would have the authority to evaluate its visa programs to ensure they align with the administration’s objectives.<sup>101</sup> If open to evaluation, these programs could also be subject to termination or modification based on White House priorities and resource availability.<sup>102</sup>

As described previously regarding USCIS practices, the Mandate has no qualms about creating inefficiencies or procedural burdens and utilizing resource limitations to justify failing to implement Congressionally-authorized immigration programs. Likewise, this recommendation for DOS to reconsider its participation in well-established programs undermines the authority of Congress in favor of administrative and political priorities.

Similarly, the Mandate would direct the next administration to issue an executive order extending the President’s authority in Section 212(f) of the INA to the Secretary of Homeland Security.<sup>103</sup> This would allow the Secretary to suspend the entry of certain foreign nationals if deemed necessary to prevent or curtail an actual or anticipated mass migration.<sup>104</sup>

Under the Mandate, the executive order would ensure that the Secretary’s actions would not be subject to Administrative Procedures Act requirements—like a notice and comment period—and the expulsion of

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99. *Ibid*, pgs. 137, 162, 173.

100. *Ibid*, pgs. 136, 173.

101. 8 U.S.C. § 1153. *Allocation of immigrant visas*, U.S. Code.; 8 U.S.C. § 1184. *Admission of Nonimmigrants*, U.S. Code.; “Mandate for Leadership”, 2023, pg. 178.

102. *Ibid*, pg. 178.

103. *Ibid*, pg. 152; 8 U.S.C. § 1182. *Excludable aliens*, U.S. Code.

104. “Mandate for Leadership”, 2023, pg. 152.

noncitizens would be permissible under such rules for any period deemed necessary by the Secretary.<sup>105</sup> The Mandate further suggests that the Secretary should be permitted to waive the legal requirements of Title 8 if believed to be necessary to prevent or curtail mass migration.<sup>106</sup> Because the language permits such actions even before a mass migratory threat occurs, the Mandate’s instructions would constitute a broad—and likely unlawful—expansion of Secretarial authority.

The Mandate further isolates the executive’s immigration decisions from external review, recommending that USCIS not honor court decisions that impede the enactment of the administration’s regulatory or sub-regulatory efforts if no court jurisdiction exists.<sup>107</sup> Agencies already benefit from a substantial amount of deference from courts regarding regulatory interpretations, so the Mandate’s recommendations warn potential opponents that the next administration intends to exploit its regulatory authority to the fullest extent possible.<sup>108</sup>

## Decimating privacy protections

Intimidation is a crucial component of the Mandate’s immigration strategy. It directs the next administration to decimate privacy protections for anyone other than U.S. citizens and green card holders to enshrine that intimidation in federal policy.

The Mandate states that all DHS issuances must be updated to reflect that their privacy obligations only apply to U.S. citizens and legal permanent residents.<sup>109</sup> It also states that the next administration should eliminate any guidance or direction that limits Customs and Border Protection (CBP) from publishing detailed information regarding their border security and enforcement actions.<sup>110</sup>

This allows for the weaponization of information-sharing that exposes names, birthdates, addresses, and photographs of individuals encountered at the border and nearly any other foreign national, including children and legally present visa holders, thereby exposing them to potential harm, harassment, or discrimination.

For instance, the Mandate directs Congress to condition all new federal contracts on the requirement that at least 70 percent of the contractor’s staff be American citizens, increasing to 95 percent within the next ten years.<sup>111</sup> Currently, most federal contractors must utilize E-Verify to confirm legal work eligibility, but work eligibility is not restricted to only those with U.S. citizenship.<sup>112</sup> Complying with such

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105. Ibid.

106. Ibid.

107. “[Mandate for Leadership](#)”, 2023, pg. 146.

108. Connor Raso, “[The Supreme Court curtails but retains agency rule deference – How much will it matter?](#)”, Brookings Institute, September 24, 2019.

109. “[Mandate for Leadership](#)”, 2023, pg. 165.

110. Ibid, pg. 139.

111. Ibid, pg. 612.

112. “[Who is Affected by the E-Verify Federal Contractor Rule](#)”, E-Verify, Department of Homeland Security.

a condition would burden employers heavily and likely subject them to lawsuits for violating existing anti-discrimination and employment laws.<sup>113</sup>

The Mandate's emphasis on total information sharing will also require the Department of the Treasury to provide DHS with all tax information on illegal immigrants.<sup>114</sup> Many unauthorized immigrants utilize Individual Taxpayer Identification Numbers (ITINs) to file tax returns with the IRS. ITINs are available to anyone who does not qualify for a Social Security Number (SSN), including undocumented immigrants and legally present immigrants who are not authorized to work.<sup>115</sup>

In 2015, these ITIN filers paid over \$5.5 billion in payroll and Medicare taxes and \$23.6 billion in total taxes.<sup>116</sup> If unauthorized immigrants are earning income but know that the Internal Revenue Service (IRS) will share their information with immigration enforcement officials, many will likely choose not to file a tax return, meaning that American citizens will miss out on the contributions these individuals may have otherwise made.

The Mandate further requires the Department of Housing and Urban Development (HUD) to limit access to federally subsidized housing to U.S. citizens and green card holders.<sup>117</sup> HUD already restricts housing subsidies to U.S. citizens and certain eligible noncitizens.<sup>118</sup> The current restrictions were written to allow families to qualify for prorated assistance should they share the eligibility information of only one or some family members.<sup>119</sup> For example, a U.S. citizen whose step-child is on a student visa could submit certification of citizenship for the head of household to qualify. Although they would only receive a prorated subsidy based on the share of eligible family members, the family would not be prohibited from living in the unit on that basis.

Current HUD policy states that families only need to provide citizenship or visa information on behalf of eligible family members.<sup>120</sup> Under the Mandate's policies, citizenship information would be required for every unit occupant. Given the Mandate's emphasis on total information sharing, that information would not be subject to any privacy guarantee unless the applicant is a green card holder or U.S. citizen. This would not only create a culture of fear among mixed-status families but also restrict the access that law-abiding U.S. citizens have to subsidies that they need, simply because of who they may live with.

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113. Handbook for Employers M-274, "[4.0 Completing Section 2: Employer Review and Verification](#)", USCIS.; Handbook for Employers M-274, "[11.1.1 Overview of Federal Employment Discrimination Laws](#)", USCIS.

114. "[Mandate for Leadership](#)", 2023, pg. 167.

115. Debra Holland, "[Individual Taxpayer Identification Numbers \(ITINs\): IRS Processes Create Barriers to Filing and Paying for Taxpayers Who Cannot Obtain Social Security Numbers](#)", National Taxpayer Advocate, Internal Revenue Service, 2015.

116. Ibid.

117. "[Mandate for Leadership](#)", 2023, pg. 167.

118. HUD Occupancy Handbook, "[Chapter 3: Eligibility for Assistance and Occupancy](#)", Department of Housing and Urban Development.

119. Ibid.

120. Ibid.



## An obsession at a cost

In its totality, the Mandate aims to demolish the American immigration system, coerce states and localities into cooperating with administrative schemes, and intimidate immigrants present in the United States. Its plot spans nearly every federal government level and expands executive control beyond the current confines of our checks and balances system. It will knock down statutorily authorized programs through ingenuitive program impediments and create new inefficiencies and barriers that will bulldoze over Congressional intent.

The far-right has a political obsession with immigration. While they wield it as a rallying cry and a scapegoat, the recommendations outlined in the Mandate are incongruent with the “safety” and “security” talking points. If implemented, the Mandate would pursue the destruction of programs and laws made to promote public safety. It would disadvantage our economy as competitor nations scoop up the top talent the U.S. abandons. It would block millions of Americans from higher education and foster a society that is inherently less safe and offers fewer opportunities. The Mandate’s suggestions are theoretical for now, but as we march towards the November elections and a potential Trump second-term, the threat of their enactment is very real.