



# A WAY FORWARD

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IMMIGRATION



FEBRUARY 2019

# IMMIGRATION REFORM: A TIME TO ACT

## FOR NATIONAL SECURITY, COMPASSION AND WORKFORCE ECONOMIC REALITIES

Our nation's rich heritage and global economic influence have been made possible by generations of immigrants who have had the courage to leave their homelands, families and fortunes to call America their new home. Over the centuries, they have made the American experiment possible, helping to turn the United States into an exceptional nation and an unrivaled global leader.

America is indeed a nation of immigrants, but America has also become a nation with a broken immigration system. Manufacturers believe our leaders not only have an obligation to fix this system but also a historic opportunity to do so at a moment when Americans' attention is focused on the issue like almost none other.

Decades of neglect and lack of enforcement of existing laws and regulations have eroded the confidence of our citizens in the sanctity of our borders—while also leaving those who know no home other than the United States worried about their future, living in uncertainty and fear. Now, the conflict between those who rightly want our laws followed and those who recognize the contributions of immigrants and continued immigration to the United States has become a flashpoint.

A vast majority of Americans, however, believe it is time to push past the existing arguments, completely overhaul our immigration system and fix the problems that exist today by listening to the concerns of all sides. The right approach is holistic and enduring—one that bolsters our national security, upholds our rule of law, demonstrates compassion and establishes a modern, well-functioning system for welcoming new people to the United States.

This is the type of reform that manufacturers have long advocated. But while it is one thing to call for reform, it is another to offer a plan. Because manufacturers are in the business of building solutions, the National Association of Manufacturers is putting forth a reasonable and practical proposal designed to address the problems created by our current system and to fix those issues once and for all. It is with the goal of unifying a fractured country that we offer this proposal.

We are calling on Congress and the administration to seize this opportunity and end the division that has been created over this issue. Not every element of this plan will appeal to all people. A comprehensive solution requires compromise, and A Way Forward is designed with that in mind. But if our leaders follow this course, the result will be a safer America and a stronger, smarter economy.

We will have given those who deserve it a chance to be a productive and contributing part of our country. And we will have upheld the values that make this nation of immigrants exceptional: free enterprise, competitiveness, individual liberty and equal opportunity.



Jay Timmons  
President and CEO

# 1 STRENGTHEN BORDER SECURITY—WITH WALLS AND OTHER MEASURES

**Establishing control over our southern border to prevent future illegal border crossings is an essential part of any comprehensive immigration solution.** Any modern nation has a right and a duty to control its own borders. A nation with open borders lacks appropriate security and safety controls, creating undue risk to its citizens. The federal government must manage multiple avenues of entry—air, land and sea—that are exploited by those who wish to enter illegally every day. The ongoing politicization of the issue adds to the challenge of appropriately funding and managing border security through additional personnel, infrastructure, technology and enforcement. These are basic measures for a nation to protect itself and its citizens from illicit drug and human trafficking, smuggling, terrorism and other illegal activities that endanger the homeland. Congressional inaction will encourage further illegal immigration and incur additional social and financial costs to our nation.

## Security Critical to Commerce

A safe and secure southern border is also essential to facilitating more than \$1 billion of daily commerce between the United States and Mexico. For manufacturers in the United States, efficient movement of goods across the border by truck and rail is a critical part of their business operations, global supply chains and ability to remain globally competitive. Addressing the southern border must be a long-term, sustained effort that requires elected officials from both political parties to find agreement and pursue real solutions.

## A Snapshot of Commerce and the Southern Border

- Thirty-one major ports of entry<sup>1</sup> support **more than \$1 billion in commerce per day**<sup>2</sup> across the southern border. Trucks transport 70 percent of total commerce across the border.<sup>3</sup>
- U.S. goods and services trade with Mexico totaled an estimated **\$615.9 billion** in 2017.<sup>4</sup>
- **Nearly 1 million U.S. jobs** are supported by manufactured goods exports to Mexico.<sup>5</sup>
- **The U.S. exported nearly \$220 billion** worth of manufactured goods to Mexico in 2017, with computers and electronics (\$41.9 billion), transportation equipment (\$31.7 billion), chemicals (\$23.6 billion), petroleum and coal products (\$21.6 billion), machinery (\$20.7 billion) and electrical equipment (\$16.8 billion) leading the way.<sup>6</sup>

## Steps for Congress to Pursue:

- Fund multiyear border security and infrastructure improvements along the southern border to reduce illegal crossings by adding walls, fencing, surveillance technology and other innovative measures that match the geographic diversity of the southern border and the needs of the officials responsible for patrolling these regions.
- Fund significantly higher staffing levels for U.S. Customs and Border Protection, including U.S. Border Patrol.
- Devote resources toward the advancement of new technologies and infrastructure at ports of entry to support safe, secure and reliable border crossings for truck and rail commerce.
- Increase resources and funding for federal courts near the border, including adding federal judges, magistrate judges, prosecutors and others to help facilitate consistent and speedy prosecution of those who cross the border illegally.



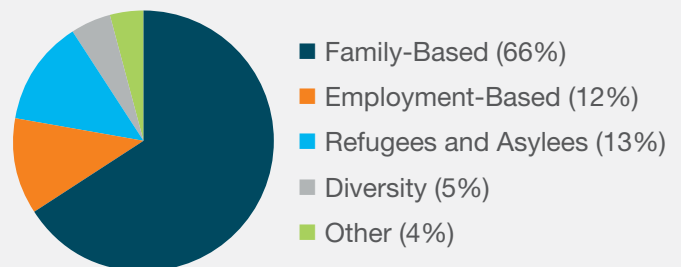
# 2 PRIORITIZE AMERICA'S WORKFORCE NEEDS THROUGH REFORMS TO LEGAL IMMIGRATION

**We need to incentivize the admittance of the best and the brightest to enhance America's economic leadership.** Family-based immigration has long been an accepted part of America's immigration system, and our policies should continue to reflect the importance of family unification as both an American value and a critical part of building a life in a new place. However, the current system fails to reflect employer needs, market forces or workforce demands. It does not allow us to reach our full potential for economic growth and leadership. Employment-based immigration represents a very small percentage of permanent legal immigrants, and the system is difficult for both employers and applicants to navigate.

## Lawful Permanent Residents

The Immigration and Nationality Act established a "permeable" cap of 675,000 new lawful permanent residents (LPRs) per year. Due to the entry of new LPRs from categories not subject to statutory caps, in 2017 the United States admitted just more than 1.1 million new LPRs. Two-thirds of this total (66.4 percent) were family-based immigrants.<sup>7</sup> Employment-based immigrants totaled a mere 12.2 percent.<sup>8</sup>

## Categories of LPRs Admitted in 2017<sup>9</sup>



## Steps for Congress to Pursue:

- Process visas to eliminate the current backlog of approved employment- and family-based applications held up due to current numerical caps and limits on country of origin with a focus on only immediate, nuclear family members. Siblings of adult U.S. citizens—who make up 60 percent of the 4 million who possess approved LPR visa petitions but have not yet been issued visas—would no longer be eligible for entry into the United States through family-based immigration.
- Increase employment-based immigrants as a percentage of overall new LPRs to respond to economic needs and to keep talent in the United States.
  - Remove the limits on specific types of high-skilled employment-based immigrants. For example, Congress should increase the allowable number of advanced degree graduates of U.S. universities in the science, technology, engineering and math (STEM) fields for employment-based categories. At the same time, the U.S. must take direct steps to improve American primary and secondary education to further cultivate talent at home and thus rely less on this type of solution moving forward.
  - Allow employers to efficiently hire and keep talent graduating from American universities for permanent employment by building off the success of the STEM Optional Practical Training program, a limited temporary visa for foreign-born U.S. students in STEM fields.
  - Do not count spouses and minor children of employment-based immigrants toward numeric caps of LPRs.
  - Prioritize applicants based on workforce demands and remove per-country limits for employment-based immigrants.
  - Create a regular review process (every five years) to solicit economic and industry feedback and make recommendations for updates to employment-based categories based on market dynamics to inform changes to caps and categories for congressional review.
- Update family-based immigration and reconsider future family member eligibility, with a focus on immediate nuclear family members, eliminating eligibility for adult siblings.<sup>10</sup>
- Increase the annual per-country limit for family-based immigrants from 7 percent to 15 percent so that families are not constrained based on their country of origin.
- Phase out the diversity lottery visa program, as a reformed immigration system will inherently promote diversity, with ongoing congressional oversight to ensure appropriate outcomes.

“Immigration is integral to the nation’s economic growth. The inflow of labor supply has helped the United States avoid the problems facing other economies that have stagnated as a result of unfavorable demographics, particularly the effects of an aging workforce and reduced consumption by older residents. In addition, the infusion of human capital by high-skilled immigrants has boosted the nation’s capacity for innovation, entrepreneurship and technological change.”<sup>11</sup>

**Report by the National Academies of Sciences, Engineering and Medicine, *The Economic and Fiscal Consequences of Immigration*, September 2016**

# 3 REFORM NONIMMIGRANT VISAS AND TEMPORARY WORKER PROGRAMS TO REFLECT EMPLOYER NEEDS

**Making key changes to visa programs for specialty occupations and temporary guest workers—which currently fail to meet the needs of both employers and workers—will boost U.S. economic competitiveness and ensure the United States remains a global leader in innovation.** The United States grants temporary entry to individuals through nonimmigrant visas (there are many categories of nonimmigrant visas, including visas for tourists, foreign students, temporary agriculture workers, entertainers, diplomats and religious workers), and the duration of stay and the ability to engage in certain activities, such as working in the United States, depend on the type of visa.<sup>12</sup> Unfortunately, while the current employment-based visa categories focus heavily on professional skills and those with extraordinary abilities, they do not represent the full spectrum of employment needs. Moreover, current visa categories do not allow employers to hire lesser-skilled foreign-born employees for in-demand jobs. This is another example of how the current immigration system fails to meet employer needs.





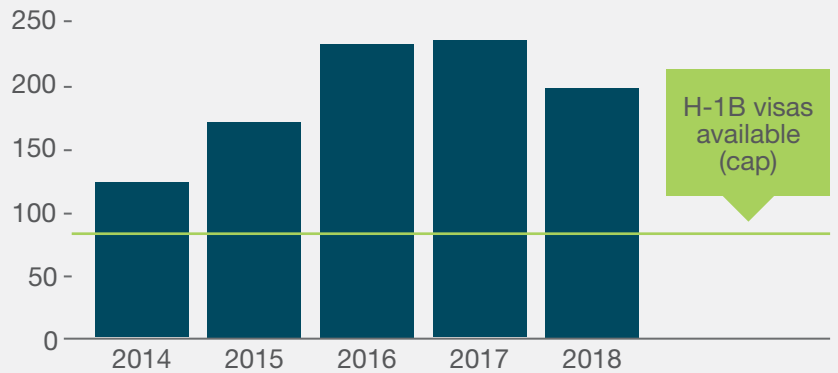
## H-1B

H-1B visas are employer-sponsored visas available for highly educated foreign professionals in specialty occupations. By statute, there are 65,000 H-1B visas available each year, plus an additional 20,000 visas for foreign professionals with advanced degrees from U.S. universities. Each year, the number of applications received from employers far exceeds the number of visas available. In 2018, U.S. Citizenship and Immigration Services received 190,098 H-1B visa applications within days of the filing period opening.<sup>13</sup>

## H-1B Visa Demand<sup>14</sup>

**H-1B visa applications have exceeded supply for the past five years.**

*Number of Capped H-1B Applications, by Fiscal Year, in Thousands*



Source: Pew Research Center analysis of U.S. Citizenship and Immigration Services data.

## H-2A and H-2B

H-2A and H-2B visas are the two main avenues for temporary guest workers in the United States. H-2A visas are for agricultural workers, and H-2B visas are for nonagricultural seasonal workers. While there is no statutory cap on H-2A visas, in recent years the Department of Labor has issued only approximately 140,000 H-2A visas, which represent a small percentage of the 750,000 farm workers in the country.<sup>15</sup> H-2B visas are capped at 66,000 per year, and employer demand for H-2B workers regularly exceeds the statutory cap<sup>16</sup> and is evenly divided by summer and winter seasons. The hospitality and fishing industries rely heavily on these visas, but they are also used in some industrial settings, such as boatyards, food packaging and other sectors with seasonal needs.



## Steps for Congress to Pursue:

### ■ Pursue H-1B reform.

- Double the current number of available H-1B visas to better reflect current workforce needs and eliminate barriers on retaining the most-qualified applicants to enable the U.S. to retain its competitive edge.
- Increase federal oversight and enforcement of H-1B-dependent employers so that American workers are not displaced or disadvantaged.
- For all H-1B employers, ensure that pay is fair across sectors and industries so that salaries reflect the regional market and so that American workers are not competing against underpaid labor.
- Provide work authorization for spouses of certain H-1B workers.
  - ▶ The U.S. is competing with other countries to attract the best workers. Without spousal work authorization, families who rely on two incomes are more likely to decide to work in countries that provide this opportunity.
- Provide a simplified processing program for H-1B employers with proven records of compliance to reduce processing times and paperwork burdens on employers, employees and the government.
- Streamline the green card application process for H-1B workers hired into permanent positions.

### ■ Enact guest worker reform.

- Reform H-2A and H-2B programs to be flexible for employers and workers and provide for longer-term employment for temporary workers in sectors such as agriculture and food processing.

### ■ Establish a modern, fully electronic and mandatory employment verification system that ensures undocumented workers do not displace American workers and provides employers' confidence in hiring workers.

- Employers need a reliable, accurate and efficient employment eligibility verification system that also provides fair enforcement of the laws. A federal verification system should preempt state laws regarding verification and limit employer liability for those following good compliance practices.

### ■ Create a new visa category to address temporary economic needs in the U.S. so that other skilled needs can be addressed. Congress should consider following Bureau of Labor Statistics jobs data to reflect these employment needs.

- A formal legal structure for foreign-born employees who want to fill available jobs not covered by the current system would reduce the incentive to enter illegally and/or falsify records to obtain employment.

### ■ Fund STEM training.

- Use visa application fees to fund training and retraining programs for K-12 students and U.S. workers in STEM fields.



# WHY ACT NOW?



Population growth is at .62 percent, the lowest rate since 1937.<sup>17</sup>



There are 6.9 million available jobs across sectors, close to 500,000 are in manufacturing, and the next decade will present 4.6 million manufacturing jobs to fill.<sup>18</sup>



There are 138 million housing units available across the country.<sup>19</sup>



# 4 PROVIDE A PERMANENT SOLUTION FOR POPULATIONS FACING UNCERTAINTY

**Dreamers—individuals brought to the United States as children by their parents—continue to face uncertainty and fear that they will lose the only home they have known. Americans broadly support a pathway to legal status for individuals brought to the country illegally as children, and Congress should act to immediately provide certainty on the fate of this population.**<sup>20</sup> The Dreamer population is larger than 800,000, and any solution must be inclusive of the broader Dreamer community (which is closer to 1.5 million people), provided similar eligibility criteria to that under the Deferred Action for Childhood Arrivals (DACA) program are met. As such, we must establish requirements for the Dreamer population to achieve provisional legal status (with the possibility of receiving U.S. citizenship once certain conditions are met).

**Temporary Protected Status (TPS) is a humanitarian program that responds to ongoing global and regional challenges by allowing individuals to remain in the United States due to unsafe or unstable conditions in their home countries.** Many individuals in TPS status have lived in the United States for decades and are integrated into life in this country. With work authorizations provided by DHS, the majority of TPS beneficiaries are gainfully employed and filling key workforce demands in sectors such as construction, food service and home health care. The labor participation rate of the TPS beneficiary population from El Salvador is close to 90 percent, and labor participation rates are high across all populations.<sup>21</sup> We must also provide a pathway to permanent legal status for individuals with TPS who are fleeing natural disasters, armed conflict or other extraordinary conditions and unable to return home.

## DACA

In 2012, the Department of Homeland Security (DHS), under the Obama administration, established the DACA program, which provided relief from deportation and work authorization eligibility for undocumented individuals who were brought to the United States as children. Eligible individuals were under age 16 at the time of entry into the United States; were under age 31 on June 15, 2012; resided in the United States for at least five years before June 15, 2012; not convicted of a felony, a significant misdemeanor or three or more misdemeanors and not otherwise a threat to national security or public safety; and in school, graduated from high school or honorably discharged from the U.S. Armed Forces or the Coast Guard.

DHS under the Trump administration rescinded the DACA program in September 2017. Prior to rescinding the program, DHS approved nearly 800,000 DACA applications. Based on current court orders, DHS is required to process renewal applications for DACA recipients, but the government is not approving new DACA applications.

## Temporary Protected Status

DHS can grant TPS to individuals who are fleeing natural disasters, armed conflict or other extraordinary conditions and are unable to return to their home country. For example, DHS granted TPS to individuals from El Salvador, Guatemala, Honduras and Nicaragua in the late 1990s due to a series of natural disasters. More recently, DHS announced TPS for migrants from Haiti following the earthquake there in 2010 and to individuals from Yemen in 2015 due to armed conflict in the country. As of fall 2018, there are approximately 437,000 individuals from 10 countries living in the United States on TPS.<sup>22</sup>

DHS reviews TPS designations on a regular basis and can terminate or renew the status. The Trump administration indicated an intent to end TPS status for segments of this population as the country-specific renewals come due. If this occurs, and without congressional action, these individuals will be subject to deportation.

## TPS by Country<sup>23</sup>:

### Immigrants from 10 nations have TPS.<sup>23a</sup>

Nation	Estimate
Nepal	8,950
Honduras	57,000
Yemen	1,000
Somalia	250
Sudan*	1,040
Nicaragua*	2,550
South Sudan	70
Haiti*	46,000
El Salvador*	195,000
Syria <sup>23b</sup>	7,000

\*Administration attempted to terminate TPS status. As of February 2019.

**Pew Research Center**

## Steps for Congress to Pursue:

- Establish requirements for the DACA population to achieve provisional legal status with the possibility of receiving U.S. citizenship provided conditions such as background checks and educational requirements are met.
- Clarify that LPR status for the DACA population does not count against existing limits.
- Maintain a clear definition of the eligible DACA population to include those who were brought to this country as children and have remained in the United States; clarify that eligibility will not apply to future arrivals to deter people from coming to the United States with the hope of being part of a future DACA population.
- The population should include all individuals initially eligible for DACA, including those who have received DACA status and those who have not yet applied.
- Provide a separate pathway for permanent legal status for individuals in TPS, with the opportunity to apply for citizenship if individuals in TPS have been present and employed in the United States for several years and meet certain additional requirements, including a criminal background check.

# 5 REFORM ASYLUM AND REFUGEE PROGRAMS FOR A MORE ORDERLY AND HUMANE SYSTEM

**Congress should seek to improve the asylum process and avoid the tragedy of family separations at all possible costs.** Asylum seekers are individuals arriving in the United States seeking protection, or refuge, to remain in the country based on a credible fear of persecution if they return to their home country. Refugees are individuals seeking protection in the United States from abroad. Asylees in the United States can apply for lawful permanent residence status after one year in the country and for citizenship after four years. U.S. migration policy must continue to reflect the difference between economic migrants and legitimate asylum seekers. American asylum laws and processes must adhere to our nation's values and obligations under international laws.

## Asylum

The United States has seen a dramatic increase in asylum claims in recent years. From fiscal 2017 to fiscal 2018, the total number of individuals arriving at the southern border with credible fear claims grew from 55,584 to approximately 93,000, a nearly 70 percent increase.<sup>24</sup> Nearly 60 percent of these asylum seekers were families.<sup>25</sup> The shift over the years from mostly male, economic migrants arriving at the southwest border to family units claiming asylum status has created challenges for immigration enforcement authorities. Due to backlogs in immigration courts, the asylum process can take up to four years to complete.<sup>26</sup> While an asylum case is pending, migrants are often admitted into the country to await their court date.

In April 2018, the Trump administration announced a “zero-tolerance policy,” calling for criminal prosecution of all illegal border crossings, to include detaining individuals until their case was completed.<sup>27</sup> The policy change resulted in family separations at the border, with adults detained and prosecuted and children transferred to the custody of the Department of Health and Human Services as unaccompanied alien children. This type of scenario should be avoided at all possible costs.



**733,000**

## **PENDING CASES**



**2018**  
**721**  
**DAYS**

## **AVERAGE WAIT TIME**

### **Immigration Courts Can't Keep Up:**

- The number of asylum claims has skyrocketed from nearly 45,000 in 2012 to nearly 160,000 in 2018<sup>28</sup>—a 255 percent increase.
- Resourcing our immigration courts has not kept pace; the total number of immigration judges increased from 267 in 2012 to 395 in 2018<sup>29</sup>—only a 48 percent increase.
- As of July 2018, there were more than [733,000 pending immigration](#) cases, and the average wait time for an immigration hearing was [721 days](#).<sup>30</sup>
- It would take three and a half years for the courts to clear this backlog, which does not account for new cases that will come before the courts.<sup>31</sup>

### **Steps for Congress to Pursue:**

- Create standards for asylum that are guided by U.S. civil rights laws and policies as well as consistent with U.S. values (such as asylum claims for persecution for religious beliefs, race, gender, national origin, sexual orientation and political beliefs). Congress needs to consider and decide the issue of gang and domestic violence as a basis for asylum given the conditions in Central America.
- Reduce the backlog in asylum cases by increasing funding for immigration courts, including judges and caseworkers.
- Explicitly prohibit the separation of minor children from their parents.
- Establish and fund alternatives to detention for family units guaranteed to ensure appearance at court hearings.
- Increase criminal penalties for human trafficking organizations and organized crime groups that profit from exploiting migrants.
- Target foreign aid resources to address the “push factors” that drive regional migration, including gang and domestic violence in migrants’ home countries.
- Increase opportunities for asylum seekers to apply in country rather than risking a dangerous journey to the U.S.
- Cooperate with allies and regional partners to reduce migration across Central America.

# 6 FIX THE PROBLEM OF THE UNAUTHORIZED POPULATION WITH A FIRM RESET

**There are nearly 11 million undocumented individuals living in the United States, and it is illogical to believe that this population can simply be uprooted and deported without significant disruptions to communities and local economies. By finally addressing this problem with a firm reset, the United States will be in a better position to strongly enforce its laws and to deter illegal immigration in the future.** While these individuals clearly broke immigration laws to relocate or stay in the United States without authorization, they did so under a very broken system. Providing a path forward is essential for not only individuals living in the shadows but also the employers that rely on their talents.

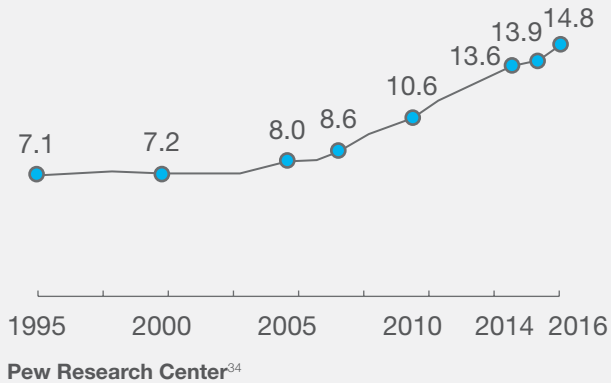
## **Integrated into Society and in the Shadows**

In 2016, the number of unauthorized immigrants in the United States totaled 10.7 million.<sup>32</sup> These individuals have become part of the fabric of our society, with two-thirds of unauthorized adults in the United States having lived in the country for a decade or more.<sup>33</sup> Deportation of this population is impractical and costly. It would prove economically damaging and run counter to the values of our nation. But there is no doubt that the status quo is also unacceptable and that finding compromise on this sensitive issue will be essential to establishing a workable immigration system for our nation's future.



## The typical unauthorized immigrant has lived in the U.S. for nearly 15 years.

*Median Years of U.S. Residence for Adult Unauthorized Immigrants*



## Steps for Congress to Pursue:

- Establish an orderly process for this population, with the goal of offering a pathway to legal status for unauthorized individuals in the country after the individual has gone through a criminal background check, paid penalties and back taxes and met conditions necessary to demonstrate skills/knowledge necessary for successful participation in society.
- Deport individuals who fail to come forward during the provided window to obtain legal status.
- Include employers as part of the solution by providing legal protections for meeting conditions to promote compliance and discourage the hiring of illegal labor.



# 7 STRENGTHEN THE RULE OF LAW SO IT IS RESPECTED AND FOLLOWED BY ALL

**Knowing who wants to enter our country and having clear knowledge of who is within our borders is a national security imperative.** There is no ambiguity on this issue. Managing the immigration pipeline is critical to preventing illegal activity and reducing future risks. Fixing the broken system will close decades-old loopholes created by political inaction, leaving no excuse for noncompliance. To accomplish critical national security and public safety goals, key steps must be taken.

## **Steps for Congress to Pursue:**

- Criminals must be deported and expelled from the United States through prioritized enforcement based on the appropriate felony level.
- Moving forward, visa overstays must be addressed and prevented, including approved accountability measures for visa holders.
- Criminal prosecution of gang violence must be a top priority, and state and local authorities must be required to cooperate to root out gang activity at our border and in our communities.
- States and localities must be required to cooperate to advance consistent enforcement or face consequences.

# ENDNOTES

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7. <https://www.dhs.gov/immigration-statistics/visualization/2017>
8. *Ibid.*
9. [https://www.dhs.gov/sites/default/files/publications/Lawful\\_Permanent\\_Residents\\_2017.pdf](https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2017.pdf)
10. Immediate, nuclear family members would include unmarried sons and daughters of U.S. citizens, spouses and minor children of LPRs, unmarried sons and daughters of LPRs and married sons and daughters of U.S. citizens. It would eliminate the existing fourth preference family-sponsored category of siblings of adult U.S. citizens.
11. <https://www.nap.edu/resource/23550/RiB-fiscal-immigration.pdf>
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