

THE WHITE HOUSE

WASHINGTON

1/23/2017

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANDREW BREMBERG

SUBJECT: Executive Order on Protecting Taxpayer Resources by Ensuring
Our Immigration Laws Promote Accountability and Responsibility

Purpose

With this Executive Order, President Trump will help fulfill a number of key campaign promises by ensuring that our immigration laws are enforced in a manner that promotes accountability and responsibility, thereby protecting American taxpayers and promoting immigrant self-sufficiency.

Background

Our country's immigration laws are designed to protect American taxpayers and promote immigrant self-sufficiency. Yet, households headed by aliens (legal and illegal) are much more likely than households headed by native-born citizens to use federal means-tested public benefits. Our immigration laws must be enforced in a manner that achieves the goal of protecting our taxpayers and promoting self-sufficiency. Indeed, for over a century it has been the policy of the United States, as required by statute, to deny entry to foreigners who are likely to become a public charge, but past administrations in recent years have failed to enforce this policy. The immigration laws must ensure the United States does not welcome individuals who are likely to become or have become a burden on taxpayers.

Discussion

This Executive Order fulfills several key campaign promises related to immigration by, among other things: (1) directing the Director of the Office of Management and Budget to compile a report detailing how the federal government will save \$100 billion by ensuring that aliens receive only the public benefits that they are eligible to receive, and that the sponsors of aliens fulfill their obligations to reimburse the government for the cost of welfare benefits provided to such aliens; (2) requiring DHS and the State Department to establish new standards and regulations for determining when aliens will become subject to the "public charge" grounds of inadmissibility and deportability (i.e. their likelihood of requiring public assistance after being admitted to the United States); (3) directing the Commissioner of Social Security to issue a report on the impact of low-skilled foreign workers on the Social Security Trust Fund's long-term solvency; (4) directing the Secretary of State to publish a report on the long-term costs of the Refugee Admissions Program at the federal, state, and local levels; and, (5) directing DHS

and the State Department to submit a report on the efforts that they are taking to combat the birth-tourism phenomenon.

Recommendation

I recommend that you sign the attached Executive Order.

Approve _____

Disapprove _____

Needs more discussion _____

Executive Order—Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility

EXECUTIVE ORDER

PROTECTING TAXPAYER RESOURCES BY ENSURING OUR IMMIGRATION LAWS
PROMOTE ACCOUNTABILITY AND RESPONSIBILITY

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), as amended (PRWORA), I hereby order as follows:

Section 1. Purpose. Our country's immigration laws are designed to protect American taxpayers and promote immigrant self-sufficiency. Yet households headed by aliens are much more likely than those headed by citizens to use Federal means-tested public benefits. Our immigration laws must be enforced in a manner that protects our taxpayers and promotes self-sufficiency.

Sec. 2. Policy. It is the policy of the United States to:

- (a) deny admission to any alien who is likely to become a public charge;
- (b) identify and remove, as expeditiously as possible, any alien who has become a public charge and is subject to removal; and
- (c) seek reimbursement from all sponsors of immigrants for the costs of Federal means-tested public benefits provided to sponsored immigrants.

Sec. 3. Reforms to Immigration Policies and Procedures. In furtherance of the policies described in section 2 of this order, I hereby direct:

- (a) the Secretary of Homeland Security:
 - (i) to rescind any field guidance concerning the inadmissibility or deportability of aliens on the ground that they are likely to be or have become public charges, as applicable (public-charge grounds), and replace it immediately with new field guidance consistent with the provisions of this order;
 - (ii) to propose for notice and comment a rule that provides standards for determining which aliens are inadmissible or deportable on public-charge grounds, and that specifies that an alien is inadmissible as a public charge if he is likely to receive, and is deportable as a public charge if he does receive, public benefits for which eligibility or amount is determined in any way on the basis of income, resources, or financial need;

(iii) to propose for notice and comment a rule that provides standards for determining whether an alien is deportable under 8 U.S.C. 1227(a)(5) for having become a public charge within five years of entry, from causes not affirmatively shown to have arisen since entry, and that defines "public charge" in a manner consistent with section 3(a)(ii) of this order;

(iv) to propose for notice and comment a rule that defines "means-tested public benefits" under 8 U.S.C. 1183a for purposes of Federal programs, and that require reimbursement from sponsors of aliens who have signed affidavits of support under 8 U.S.C. 1183a(a)(1), to include all Federal programs for which eligibility for benefits, or the amount of such benefits, are determined in any way on the basis of income, resources, or financial need; and

(v) within 270 days of the date of this order, to submit to the President a report, in consultation with the Secretary of State and the Governor of the Commonwealth of the Northern Mariana Islands, describing steps taken to combat the problem of "birth tourism," whereby individuals travel for the purpose of giving birth in the United States.

(b) the Attorney General to certify immediately and review any Board of Immigration Appeals decisions that have frustrated or impeded Department of Homeland Security enforcement of the public-charge grounds of inadmissibility and deportability;

(c) the Secretary of State:

(i) within one year of the date of this order, to provide a report on the long-term costs of the Refugee Admissions Program at the Federal, State, and local levels; and

(ii) within six months of the date of this Order, to amend the Foreign Affairs Manual to ensure that its public-charge provisions are consistent with the goals of this Order;

(d) the Secretary of the Treasury, to propose for notice and comment a rule that requires submission of a Social Security Number by a taxpayer and by the taxpayer's qualifying dependent child to claim the Child Tax Credit;

(e) the Director of the Office of Management and Budget:

(i) within one year of the date of this order, to provide a report detailing how much the Federal Government could realize in savings by ensuring that aliens receive Federal public benefits, including Federal means-tested public benefits, Supplemental Security Income, Food Stamps, Temporary Assistance for Needy Families, Social Service Block Grants, and Medicaid only as allowed by PRWORA and ensuring that executive departments and agencies that provide Federal means-tested public benefits to sponsored immigrants obtain reimbursement from the immigrants' sponsors who have signed legally enforceable affidavits of support;

(ii) within one year of the date of this order, to provide a report detailing how any savings can be invested in programs and services designed to benefit impoverished American communities, including inner-city communities, and to disadvantaged youth; and

(iii) every six months after submitting the report described in paragraph (i) of this subsection, to provide a report detailing the extent of the Federal Government's success in ensuring that aliens receive federal public benefits, including Federal means-tested public benefits, Supplemental Security Income, Food Stamps, Temporary Assistance for Needy Families, Social Service Block Grants, and Medicaid only as allowed by PRWORA and in obtaining reimbursement from the sponsors of immigrants for the Federal means-tested public benefits provided to the immigrants;

(f) the Council of Economic Advisers:

(i) to provide a report within six months after the conclusion of each new fiscal year on the cost to American taxpayers of providing means-tested public benefits in that fiscal year to households headed by illegal aliens;

(ii) to provide a report within six months after the conclusion of each new fiscal year on the number of non-citizens receiving means-tested public benefits in such fiscal year;

(iii) within one year of the date of this order, to provide a report on the impact of low-skilled immigrant workers on the long-term solvency of the Social Security Trust Fund;

(g) the Secretary of State and the Secretary of Homeland Security, in consultation with the Commissioner of Social Security, within 18 months of the date of this order, to implement fully, to the extent permitted by law, the recommendations set forth in the Social Security Benefits Reform Joint Working Group Study, in order to prohibit aliens from receiving, for Social Security benefit eligibility purposes, credit for wages earned during periods of unauthorized work;

(h) the Director of the Census Bureau to publish an annual report comparing welfare use among alien-headed households and U.S. citizen-headed households; and

(i) the heads of all executive departments and agencies:

(i) to seek reimbursement from sponsors who signed legally enforceable affidavits of support under 8 U.S.C. 1183a(a)(1) for the costs of Federal means-tested public benefits within their authority that were provided to sponsored aliens, and bring court actions against or refer to the Attorney General those sponsors if necessary to compel reimbursement;

(ii) following the issuance of the proposed rule issued pursuant to the directive in section 3(a)(iv) of this order, to propose for notice and comment a rule, consistent with such

proposed rule, that lists all Federal benefits within their authority for which eligibility or amount is determined on the basis of income, resources, or financial need as “Federal means-tested public benefits” for purposes of determining the eligibility of aliens for those benefits under PRWORA; and

(iii) inform the Department of Homeland Security whenever they provide any alien with Federal means-tested public benefits, as defined in the proposed rule issued pursuant to the directive in section 3(a)(iv) of this order.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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MEMORANDUM FOR THE PRESIDENT

FROM: ANDREW BREMBERG

SUBJECT: Executive Order on Protecting American Jobs and Workers by
Strengthening the Integrity of Foreign Worker Visa Programs

Purpose

With this Executive Order, President Trump will help fulfill several campaign promises by aligning immigration policies with the national interest, and ensuring that officials administer our laws in a manner that prioritizes the interests of American workers and—to the maximum degree possible—the jobs, wages, and well-being of those workers.

Background

A primary factor driving illegal immigration to the United States is the availability of jobs and benefits. Eliminating this jobs magnet will reduce the flow of illegal entries and visa overstays. The unlawful employment of aliens has had a devastating impact on the wages and jobs of American workers, especially low-skilled, teenage, and African-American and Hispanic workers.

Discussion

This Executive Order fulfills several key campaign promises related to immigration by, among other things: (1) aligning with the law the issuance of work permits to aliens in the United States; (2) reviewing and terminating parole programs that were created to avoid immigration caps and programs authorized by Congress; (3) directing DHS to align many other nonimmigrant visa programs with congressional intent; (4) establishing a commission to analyze our current immigration program and make recommendations on how to make it better serve the national interest and be more merit-based; (5) directing DHS to identify ways to expand the use of E-Verify within the bounds of existing law; and, (6) publishing data in a format easy for the public to understand regarding immigration patterns to the United States and a detailed description of the effect of immigration on wages and employment of U.S. workers since FY 2000.

Recommendation

I recommend that you sign the attached Executive Order.

Approve _____
Disapprove _____
Needs more discussion _____

Executive Order—Protecting American Jobs and Workers by Strengthening the Integrity of Foreign Worker Visa Programs

EXECUTIVE ORDER

Protecting American Jobs and Workers by Strengthening the Integrity of Foreign Worker Visa Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. Purpose. Our country’s immigration policies should be designed and implemented to serve, first and foremost, the U.S. national interest. In particular, visa programs for foreign workers, as well as all the other lawful methods of admission to our country that authorize foreign nationals to work here, should be administered in a manner that protects the civil rights of American workers and current lawful residents, and that prioritizes the protection of American workers—our forgotten working people—and the jobs they hold.

Sec. 2. Policy. It shall be the policy of the executive branch to implement the immigration laws, to the extent consistent with law, in a manner that prioritizes the national interest and protects, to the maximum degree possible, the jobs, wages, and well-being of United States workers.

Sec. 3. Definitions. For purposes of this order:

- (a) The term “B-1” refers to the nonimmigrant visa classification for temporary business visitors, defined at section 101(a)(15)(B) of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1101(a)(15)(B)).
- (b) The term “E-2” refers to the nonimmigrant visa classification for aliens entering the United States under treaties of commerce and navigation to manage enterprises in which they have invested, defined at section 101(a)(15)(E)(ii) of the INA (8 U.S.C. 1101(a)(15)(E)(ii)).
- (c) The term “E-Verify” refers to the electronic employment authorization verification program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, div. C, as amended (8 U.S.C. 1324a note).
- (d) The term “H-1B” refers to the nonimmigrant visa classification for “specialty occupation workers,” defined at section 101(a)(15)(H)(i)(b) of the INA (8 U.S.C. 1101(a)(15)(H)(i)(b)).

(e) The term “H-2A” refers to the nonimmigrant visa classification for temporary agricultural workers defined at section 101(a)(15)(H)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(f) The term “J-1 Summer Work Travel program” refers to the visa program, described at 22 C.F.R. 62.32, for foreign college and university students participating in Summer Work Travel Programs in the United States, and admitted under section 101(a)(15)(J) of the INA (8 U.S.C. 1101(a)(15)(J)).

(g) The term “L-1” refers to the nonimmigrant visa classification for intracompany transferees, defined at section 101(a)(15)(L) of the INA (8 U.S.C. 1101(a)(15)(L)).

(h) The term “United States worker” (or “U.S. worker”) has the meaning given in section 212(n)(4)(E) of the INA (8 U.S.C. 1182(n)(4)(E)).

Sec. 4. Agency Responsibilities for Reforming Immigration Policies and Procedures. In furtherance of the policy described in section 2 of this order, I hereby direct that:

(a) The Secretary of Homeland Security shall—

(i) within 90 days of the date of this order, review all regulations that allow foreign nationals to work in the United States, determine which of those regulations violate the immigration laws or are otherwise not in the national interest and should be rescinded, and propose for notice and comment a rule to rescind or modify such regulations;

(ii) (A) propose for notice and comment a regulation that would conform the use of the Secretary’s parole authority to the requirements of the immigration laws and would clarify that parole may never be used to circumvent statutory immigration policy or admit into the United States entire classes of foreign nationals who do not qualify for admission under existing immigration categories; and

(B) immediately terminate all existing parole policies, guidance, and programs that do not comport with the principles described in subparagraph (A) of this paragraph or that otherwise do not comport with the requirements of the INA;

(iii) in consultation with the Secretaries of State and Labor, as appropriate, propose for notice and comment a regulation (or make changes to policy or operations, as appropriate) to restore the integrity of employment-based nonimmigrant worker programs and better protect U.S. and foreign workers affected by those programs;

(iv) consider ways to make the process for allocating H-1B visas more efficient and ensure that beneficiaries of the program are the best and the brightest;

(v) within 180 days of the date of this order,

(A) start performing site visits at places of employment of L-1 nonimmigrant workers, including third-party worksites where L-1 workers have been placed by the U.S. employers that petitioned for them; and

(B) develop a plan to expand the site-visit program within two years to cover all employment-based visa programs;

(vi) within one year of the date of this order, establish a commission or advisory committee—

(A) to analyze the nation's current immigration policies and their impact on our society, the economy, U.S. workers, and the foreign policy and national security interests of the United States; and

(B) to provide recommendations for making U.S. immigration policy better serve the national interest, and to recommend changes to the immigrations laws to move towards a merit-based system;

(vii) propose for notice and comment a regulation that would reform practical training programs for foreign students to prevent the disadvantaging of U.S. students in the workforce, better protect U.S. and foreign workers affected by such programs, restore the integrity of student visa programs, ensure compliance, and improve monitoring of foreign students;

(viii) propose for notice and comment a regulation that would clarify comprehensively what activity is and is not permissible by aliens who enter on business/tourist visas, ensuring that the statutory prohibition on the performance of skilled or unskilled labor in such status is enforced;

(ix) within 90 days of this order, submit to the President a list of options for ensuring the efficient processing of petitions for the H-2A nonimmigrant agricultural visa program, while maintaining programmatic integrity; and

(x) within 90 days of the date of this order, submit to the President a list of options for incentivizing and expanding participation by employers in E-Verify, including by conditioning, to the maximum extent allowed by law, certain immigration-related benefits on participation in E-Verify;

(b) The Secretary of State and the Secretary of Homeland Security, as appropriate, shall—

(i) within 30 days of the date of this order, conform to Congressional intent the manner in which the Department of State and the Department of Homeland Security determine when an immigrant visa is “immediately available”; and

(ii) propose for notice and comment a regulation that would reform the manner in which aliens file for adjustment to lawful permanent residence in order to reduce inefficiencies in the way immigrant visas are allocated; and

(iii) propose for notice and comment a regulation that would reform the E-2 treaty investor visa category for foreign entrepreneurs so that activity allowed for such entrepreneurs conforms to the requirements of the immigration laws;

(c) The Secretary of State shall propose for notice and comment a rule that would reform the J-1 Summer Work Travel program to improve protections of U.S. workers and participating foreign workers; and

(d) The Secretary of Labor shall—

(i) in consultation with the Secretary of State, the Attorney General, and the Secretary of Homeland Security,

(A) initiate an investigation of the extent of any injury to U.S. workers caused by the employment in the United States of foreign workers admitted under nonimmigrant visa programs or by the receipt of services from such foreign workers by American employers, and

(B) within 18 months of the date of this order, provide the President a report based on such investigation; and

(ii) provide the President an initial report within nine months of the date of this order on the actual or potential injury to U.S. workers caused, directly or indirectly, by work performed by nonimmigrant workers in the H-1B, L-1, and B-1 visa categories.

Sec. 5. Transparency. To be more transparent with the American people, and in order to more effectively implement policies and practices that serve the national interest, I hereby direct that:

(a) the Secretary of Homeland Security shall—

(i) for every fiscal year—

(A) publish a report, within one month of the end of the first half of the fiscal year, detailing the number of new Employment Authorization Documents (EADs) issued during the first half of that fiscal year, the total number of individuals within the United States with EADs, and the categories or bases for issuance of all such EADs; and

(B) publish a report, within one month of the end of the fiscal year, detailing the total number of EADs issued during that fiscal year, the total number of individuals within the United States with EADs, and the categories or bases for issuance for all such EADs;

(ii) twice each fiscal year, and in consultation with the Secretaries of State and Labor, publish a report detailing—

(A) the total number of foreign-born persons authorized to work in the United States, disaggregated by immigration status; and

(B) the total number of persons in the United States in each of the employment-based nonimmigrant statuses; and

(iii) immediately restart work on regular benefit fraud assessments for all immigration benefits categories;

(b) the Director of the U.S. Census Bureau, in consultation with the Secretaries of State, Commerce, Labor, and Homeland Security, shall publish a report each year on immigration patterns in the United States, including an estimate of the size of the foreign-born population in the United States;

(c) the Director of the U.S. Census Bureau shall include questions to determine U.S. citizenship and immigration status on the long-form questionnaire in the decennial census; and

(d) within 18 months of the publication of this order, the Secretary of Labor, in consultation with the Secretaries of State and Homeland Security, shall publish a report detailing the effect of immigration (both legal and illegal) and of the employment of foreign temporary workers on wages and employment of U.S. workers since Fiscal Year 2000.

Sec. 6. Rescission. The heads of all executive departments and agencies shall rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing the programs rescinded by this order, in the manner and to the extent consistent with law.

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect—

(i) the authority granted by law to an executive department, agency, or the head thereof;
or

(ii) the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.