

BACKGROUNDER

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President Trump and Joe Biden: Comparing Immigration Policies

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KEY TAKEAWAYS

While in office, President Trump has made many immigration changes to address illegal immigrant caravans, terrorist travel to the U.S., asylum fraud, and more.

A potential Biden Administration would almost certainly roll back changes made to both legal and illegal immigration during the Trump Administration.

The contrast between Trump and Biden's immigration policies is stark. If Biden becomes President, expect a return to many Obama-era immigration policies.

n 2016, then-candidate Donald Trump campaigned heavily on border security and immigration issues. He promised to build a border wall, rescind the Obama Administration's Deferred Action for Childhood Arrivals (DACA) program, and enforce America's immigration laws. Many Americans voted for Donald Trump because of his immigration promises.

While in office, President Trump has made many immigration changes to address caravans of illegal immigrants from Central America, terrorist travel to the U.S., asylum fraud, and more. Because the U.S. Congress has been unable and unwilling to pass meaningful immigration legislation for decades, the Trump Administration has made policy and operational changes through executive orders and regulatory revisions.

Candidate Joe Biden intends to roll back immigration changes made during the Trump Administration. This would make a Biden Administration look much like the Obama Administration on immigration matters. The following is a comparison of major immigration policies between President Trump's Administration and Joe Biden's campaign.

The Wall

Trump. The U.S.–Mexican border is nearly 2,000 miles long, 654 of which had a border barrier prior to the Trump Administration.¹ Border Patrol agents have long said that border wall systems, along with personnel and technology, make their jobs easier to stop illegal immigration, drugs, and human smuggling from crossing our border between the ports of entry.² The Trump Administration's goal was to build 450 to 500 miles of new wall by the end of 2020.³ As of October 2020, the Administration has completed over 350 miles of new wall system, including access roads, lighting, and sensors.⁴ With over 200 additional miles under construction and approximately 150 miles under pre-construction, the Administration appears to be on track to build 450 miles of new wall system by the end of 2020.⁵

Biden. Joe Biden has stated he would not build another foot of border wall in his administration. According to his campaign website, a Biden Administration would stop using Department of Defense funding to build the wall. "Building a wall will do little to deter criminals and cartels seeking to exploit our borders," his website states. Biden claims that he would instead direct federal resources to smart border enforcement efforts like investments in improving screening infrastructure at our ports of entry. Rather than between the ports of entry, Biden has stated that "all the bad stuff is happening" at the ports of entry.

DACA

Trump. In June 2012, President Obama—without legal authority under any immigration statute or even public-notice-and-comment rulemaking under the Administrative Procedures Act—directed the Department of Homeland Security (DHS) to establish the Deferred Action for Childhood Arrivals program. DACA provided a temporary promise (deferred action) that the DHS would not deport illegal aliens who arrived in the U.S. before their sixteenth birthday; had resided continuously in the U.S. since June 15, 2007; and were under the age of 31 as of June 2012. This administrative

amnesty was renewable every two years. It also provided government benefits such as work authorization. Over 825,000 illegal aliens applied for and received DACA benefits. 10

Five years later, Attorney General Jeff Sessions said, when he announced the six-month wind-down of the program on September 5, 2017, it was "an unconstitutional exercise of authority by the Executive Branch." Predictably, opponents immediately filed numerous lawsuits and successfully sought nationwide injunctions keeping the program in place for DACA renewals, though not for new DACA applications. The cases went to the Supreme Court, where a Justice Roberts 5–4 majority stated that although DHS has authority to rescind the DACA program, the government did not do so in a manner acceptable to the court majority. The Trump Administration is currently drafting a revised DACA rescission to address the points raised by the Court.

Biden. Biden's campaign website states, "Dreamers and their parents should have a roadmap to citizenship through legislative immigration reform. But in the meantime, Biden will remove the uncertainty for Dreamers by reinstating the DACA program, and he will explore all legal options to protect their families from inhumane separation." Biden would also make "Dreamers" eligible for federal student aid (loans, Pell grants) and debt-free community college. 14

Note: It is important to note the difference between DACA recipients and "Dreamers."

- DACA recipients are those who applied for and received DACA benefits from DHS and number approximately 825,000 people.
- "Dreamers" are a broad label for anyone who came to the U.S. illegally by up to age 18 on the date a Dreamer bill would be enacted. This "Dreamer" population is estimated to be at least 3.6 million.¹⁵

The population of illegal-alien parents in the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program is also estimated to number about 3.6 million. This means that half of all illegal aliens (11 million) living in the U.S. could receive amnesty via DACA or DAPA.¹⁶

General Amnesty

Trump. President Trump has indicated a willingness to discuss amnesty with Congress as part of a negotiation for other immigration amendments

that he deems are needed.¹⁷ Congress, however, has been unwilling to negotiate with him. Whether the Trump Administration would agree to an amnesty for just DACA recipients, for a larger "Dreamer" population, or an even larger scope of illegal aliens is unclear at this point.

The President's base of supporters do not agree with an amnesty of any size for illegal aliens.¹⁸ If he wins a second term, the pressure of satisfying the base for a reelection would be behind him. It is possible he would agree to an amnesty as part of a deal, but it is uncertain right now.

Biden. In contrast, the Biden campaign states that a Biden Administration would immediately and "aggressively advocate" for legislation to keep "families together by providing a roadmap to citizenship for nearly *11 million* undocumented immigrants."¹⁹

The campaign justifies amnesty for 11 million illegal aliens by stating that they "have been living in and strengthening our country for years. These are our mothers, fathers, brothers, and sisters. They are our neighbors, co-workers, and members of our congregations and Little League teams. They contribute in countless ways to our communities, workforce, and economy. In 2015, the IRS collected \$23.6 billion from 4.4 million workers without Social Security numbers—many of whom were undocumented." The campaign states the eligibility requirements for such amnesty are that aliens register, are up-to-date on their taxes, and have passed a background check. ²¹

Illegal aliens who are living in the U.S. using stolen Social Security numbers would also likely receive this amnesty. Prosecutors and courts often turn a blind eye to illegal aliens using stolen Social Security numbers. ²² As such, the offense would likely be waived as part of a Biden amnesty program.

Travel Restrictions

Trump. In 2017, President Trump issued a series of executive orders and a proclamation seeking to improve vetting procedures for aliens travelling to the U.S. and to identify shortcomings in the information needed to assess the national security threats posed by those aliens. After an extensive and in-depth review of all threats posed by individuals from foreign countries by the DHS and the State Department, the President restricted entry from eight countries—Chad (later removed from the list), Iran, Iraq, Libya, North Korea, Syria, Venezuela, and Yemen—that were state sponsors of terrorism, provided safe havens for terrorists, or provided insufficient information to U.S. authorities. The presidential documents provided exemptions for permanent resident aliens and case-by-case waivers under certain circumstances for alien travelers (such as undue hardship).

The President acted pursuant to 8 U.S.C. § 1182(f), which gives him the authority to "suspend the entry of all aliens or any class of aliens…or impose on the entry of aliens any restrictions he may deem to be appropriate" when he determines that their entry "would be detrimental to the interests of the United States." The proclamation provides that the DHS will assess, on a continuing basis, whether those entry restrictions should be modified and report to the President every 180 days. ²⁴

Numerous nationwide injunctions were issued by lower federal courts against the proclamation and executive orders, claiming the President was acting beyond his authority or had an improper motive—a supposed "bias" against Muslims. However, in 2018, the U.S. Supreme Court dissolved those injunctions, holding that the President had lawfully exercised the broad discretion granted to him under § 1182(f) to suspend the entry of aliens into the country. Chief Justice John Roberts, writing for the majority, stated that through the "comprehensive evaluation of every single country's compliance with the information and risk assessment baseline" established by the DHS to determine the "deficiencies in the practices" of foreign governments, the President "undoubtedly fulfilled" the requirement in the statute that he determine if the entry of covered aliens would be "detrimental" to the interests of the country and our national security.

These entry restrictions remain in place. Based on the recommendation of DHS Acting Secretary Chad Wolf, on January 31, 2020, the President imposed restrictions on the entry of aliens from six additional countries that "failed to meet a series of security criteria": Burma, Eritrea, Kyrgyzstan, Nigeria, Sudan, and Tanzania. Acting Secretary Wolf explained that the countries on this short list have the ability to remove themselves from the list by providing the U.S. basic travel information that countries across the globe share, such as lost and stolen passport and criminal background information. Before the store of the st

Biden. The Biden campaign website states the following on this subject:

Rescind the un-American travel and refugee bans, also referred to as "Muslim bans." The Trump Administration's anti-Muslim bias hurts our economy, betrays our values, and can serve as a powerful terrorist recruiting tool. Prohibiting Muslims from entering the country is morally wrong, and there is no intelligence or evidence that suggests it makes our nation more secure. It is yet another abuse of power by the Trump Administration designed to target primarily black and brown immigrants. Biden will immediately rescind the "Muslim bans." ²⁹

Sanctuary Jurisdictions and ICE

Trump. Sanctuary jurisdictions are cities, counties, and states that refuse to cooperate with federal enforcement of immigration laws and, in some cases, actually attempt to obstruct federal enforcement. At the same time, these states and localities, like other jurisdictions, receive federal grant money for law enforcement and homeland security programs, equipment, training, and more. States and localities must apply for federal grants; they are not a right. In addition, states and localities apply for grants with the understanding that they must provide federal agencies with specified information, including criminal alien information. Receiving federal grant money is part of an agreement: Recipients have responsibilities as well as benefits.

President Trump issued an executive order on January 25, 2017, directing the Attorney General and the Secretary of Homeland Security to "ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. §1373 (sanctuary jurisdictions) are not eligible to receive Federal grants." Opponents of the executive order filed multiple lawsuits against the Administration. Due to the conflicting opinions of the U.S. circuit courts of appeal and, with no U.S. Supreme Court decision, the Department of Justice is able to enforce the conditions against sanctuary jurisdictions in some parts of the country, but not others.

Biden. The Biden campaign makes no mention of sanctuary jurisdictions on its website. It does, however, discuss Immigration and Customs Enforcement (ICE). Under the heading, "Restore Sensible Enforcement Priorities," his website states:

Targeting people who have never been convicted of a serious criminal offense and who have lived, worked, and contributed to our economy and our communities for decades is the definition of counterproductive. Biden will direct enforcement efforts toward threats to public safety and national security, while ensuring that individuals are treated with the due process to which they are entitled and their human rights are protected. President Biden will end workplace raids to ensure that threats based on workers' status do not interfere with their ability to organize and improve their wages and working conditions. He will also protect sensitive locations from immigration enforcement actions. No one should be afraid to seek medical attention, go to school, their job, or their place of worship for fear of an immigration enforcement action.³²

In addition, a Biden Administration would "[e]nsure that ICE and Customs and Border Patrol (CBP) personnel abide by professional standards and are held accountable for inhumane treatment. Biden will increase resources for training and demand transparency in and independent oversight over ICE and CBP's activities."³³

Asylum

Trump. To address the caravans of illegal aliens traveling toward the U.S. from Central America and the abuse of the asylum system by aliens seeking to enter and remain in the U.S., the Trump Administration implemented several regulatory and operational changes. The Migrant Protection Protocols (MPP) were the most significant of the changes. Also known as the "Remain in Mexico" initiative, the Administration implemented a section of the Immigration and Nationality Act ignored by prior Administrations, which states that asylum applicants who arrive "on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States" can be returned "to that territory" while their claims for asylum are pending.³⁴

In addition, the Administration published the "Safe Third Country" rule to encourage aliens to apply for asylum in the first safe country in which they arrive—rather than traveling through multiple countries to apply for asylum in the U.S.³⁵ To help implement this, the Administration negotiated agreements with Mexico and Central American countries to accept immigrants back into their country to pursue asylum applications there. Unsurprisingly, many applicants chose to return home rather than seek asylum in a neighboring Central American country.³⁶

Biden. According to the Biden campaign website, Biden would end many of President Trump's asylum policies, starting with the MPP. Instead of returning asylum applicants to Mexico to await their court dates, Biden would "direct the necessary resources to ensure asylum applications are processed fairly and efficiently, while treating families and children with compassion and sensitivity."³⁷

Biden would dramatically increase U.S. government resources to support aliens awaiting assessment of their asylum claims and the network of organizations such as faith-based shelters, nongovernmental aid organizations, legal nonprofits, and refugee assistance agencies providing for their needs.³⁸

Refugees

Trump. When President Trump first came into office, the executive branch was operating under President Obama's fiscal year (FY) 2017 refugee admissions ceiling, set at 110,000—the highest refugee admissions ceiling in 20 years.³⁹ The new Administration was concerned because of the large number of refugees fleeing the armed conflict in Syria, the difficulty of vetting individuals from a war-torn area, and the rapidly growing asylum application backlog.

President Trump immediately suspended the U.S. Refugee Admissions Program (USRAP) for 120 days, pending a review of the procedures for screening refugee applicants. He directed the Secretary of State to resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence jointly determined that such additional procedures were adequate to ensure the security and welfare of the United States. He also lowered the FY 2017 admissions ceiling to 50,000 as a more manageable number to provide adequate vetting. He

In each subsequent year, President Trump lowered the refugee ceiling further. For fiscal years 2018, 2019, and 2020, the ceilings were set at 45,000, 30,000, and 18,000, respectively. The Administration justified the decreases for the refugee program with the resource demand needed to address the mammoth asylum application backlog that had formed due to lower prioritization under the Obama Administration, as well as the ballooning volume of new credible-fear claims and asylum applications made by Central Americans streaming to our southwest border. In its FY 2020 report to Congress, the State Department cited the U.N. High Commissioner for Refugees' statistic that the U.S. led the world in new asylum applications in calendar years 2017 and 2018.

The Trump Administration also terminated a distinct, but related, refugee and parole program created by the Obama Administration via a fact sheet. The Central American In-Country Refugee/Parole Program in El Salvador, Guatemala, and Honduras was created "to provide a safe, legal, and orderly alternative to the dangerous journey that some children" were taking to the United States. This Central American Minor (CAM) program allowed parents who were lawfully present in the U.S., though not a lawful permanent resident or U.S. citizen (and therefore not eligible to file an immigrant visa petition for the family member), to request access to the USRAP for their under-21, unmarried children still in one of those three countries. The program went further. Children found ineligible for refugee admission, "but still at risk of harm," were considered for parole into the U.S. to be reunited with a parent in the United States.

The Trump Administration announced its termination of the CAM Parole program in an August 2017 Federal Register Notice for several reasons. 46 The CAM Parole program was created outside the public-notice-and-comment Administrative Procedures Act process; it violated the definition of parole, which is only to be provided on a case-by-case basis for urgent humanitarian reasons or significant public benefit; few applicants were found to be refugees; and the program required considerable resources.

Biden. If elected President, Biden would set the annual refugee admissions cap to 125,000, and seek to raise it over time "commensurate with our responsibility, our values, and the unprecedented global need."⁴⁷ He would also revive the CAM program for children seeking to reunify with U.S. relatives, allowing them to apply for entry from their home countries, and expand efforts to register and process refugees in the Central American region for resettlement in the U.S. and other countries.⁴⁸ Further, Biden would send humanitarian aid and assistance to Central American countries that are receiving refugees. His website states, "As a leader in the region, the U.S. has a responsibility to help our neighbors and partners process and support refugees and asylum seekers. This will also help relieve the pressure at our own border."⁴⁹

Public Charge Rule

Trump. In August 2019, the DHS published a final rule amending regulations to define whether an alien applying for admission or adjustment of status will be deemed inadmissible because the alien is likely to become a "public charge." A "public charge" is an individual who is unable to support himself, and instead relies on public benefits such as welfare assistance. The public charge rule is based on a long-standing principle of U.S. immigration law, first implemented at the federal level in 1882.

The rule defines a "public charge" as one who receives one or more designated public benefits for more than 12 months, in the aggregate, within any 36-month period (such that, for example, receipt of two benefits in one month counts as two months). ⁵¹ The rule defines "public benefit" to include any federal, state, local, or tribal cash benefits for income maintenance (including Social Security, Temporary Assistance for Needy Families, and General Assistance), Supplemental Nutrition Assistance Program, most forms of Medicaid, Section 8 Housing/Rental Assistance, and public housing. Adjudicators use a "totality of the circumstances" test, meaning an adjudicator weighs all factors, including health, age, skills, etc.—not just use of public benefits. ⁵²

Benefits not considered include emergency medical assistance; disaster relief; national school lunch programs; Women, Infants and Children nutrition program; Children's Health Insurance Program; foster care and adoption subsidies; government-subsidized student and mortgage loans; energy assistance; food pantries; homeless shelters; and Head Start.

The rule does not apply to humanitarian-based immigration programs for refugees, asylum seekers, victims of sex trafficking, or other special cases (such as victims of qualifying criminal activity, including domestic violence). It does not apply to aliens who serve in the U.S. military or to pregnant women and aliens under the age of 21 who receive Medicaid benefits. It also does not apply to Medicaid benefits paid for emergency medical or school-based services (such as provided under the Individuals with Disabilities Education Act). Additionally, if the DHS decides that an immigrant is not admissible because of the public charge rule, in limited circumstances, the DHS will offer the alien the opportunity to post a public bond.

Biden. A Biden Administration would reverse Trump's public charge rule. The campaign states the rule "runs counter to our values as Americans and the history of our nation." Basing the adjudication of a visa or permanent resident application on the applicant's "use of government services such as SNAP [Supplemental Nutrition Assistance Program] benefits or Medicaid, their household income, and other discriminatory criteria undermines America's character as land of opportunity that is open and welcoming to all, not just the wealthy." ⁵⁴

Temporary Protected Status

Trump. The Trump Administration sought to return Temporary Protected Status (TPS) to its original intent, consistent with the law. TPS may be designated when a country experiences:

- 1. Ongoing armed conflict;
- 2. A natural disaster; or
- 3. There exist extraordinary and temporary conditions in the country that prevent nationals of the country from returning in safety.⁵⁵

Prior Administrations regularly extended and expanded TPS designations. The majority of the 10 countries with TPS designations at the beginning of the Trump Administration had designations, extensions, and

expansions for at least 10 years. 56 The countries with the longest designations were Honduras and Nicaragua, which were first designated by former Attorney General Janet Reno for devastation they experienced from Hurricane Mitch—in 1998. 57

These and other TPS countries have successfully lobbied past and current Administrations for extensions—showing their reliance on the benefit to boost their own economy, both in not having to receive their nationals back into their own weak economies, and more important, the remittances the TPS beneficiaries send back to their families in the home country. The Secretary of DHS, in consultation with the Secretary of State, decided to terminate TPS for six of the 10 countries with TPS: El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan. The Administration has extended TPS for Somalia, South Sudan, Syria, and Yemen.

Biden. A Biden Administration would "order an immediate review of TPS for vulnerable populations who cannot find safety in their countries." The Biden campaign states that the Trump Administration's "politically-motivated decisions" to rescind protected status for these countries is a "recipe for disaster." Biden promises his administration would protect TPS and Deferred Enforced Departure holders from being returned to countries that are unsafe and offer them a path to citizenship through legislation. 60

Merit-based/Family-based Immigration and Diversity Visa

Trump. The Trump Administration's goal is to transition the U.S. immigration system from a predominantly family-based chain migration system to a more merit-based one. In an October 2017 letter to House and Senate Leaders, the President wrote how this should be accomplished:

- End family-based chain migration as it currently exists by limiting family-based green cards to immediate family members (spouses and minor children of U.S. citizens), and replacing it with a merit-based system with a special emphasis on "skills and economic contributions" to the U.S. economy;
- Establish a point system for green cards;
- Eliminate the "visa lottery" (also known as the Diversity Visa) program, which provides 50,000 immigrant visas annually to random individuals from countries with low rates of immigration to the United States; and

Limit the number of refugees to "prevent the abuse of the generous
U.S. Refugee Admissions Program and allow for effective assimilation
of admitted refugees into the fabric of our society."⁶¹

To qualify for a visa in the Diversity Visa Program, an applicant need only have either a high school education (or its equivalent) or at least two years of recent qualifying work experience. ⁶² Importantly, the program is run as an annual lottery. In other words, 50,000 immigrants to our country are chosen by chance each year, rather than for needed skills or to reunify family.

The first three changes above would require legislative changes by Congress. Due to Congress' unwillingness to pass focused immigration legislation or to negotiate with the Trump Administration on immigration matters, a merit-based immigration system is a goal that would have to be pursued in a second presidential term. The Trump Administration has lowered the number of refugee admissions admitted to the U.S. each year, as discussed above.

Biden. Joe Biden not only disagrees with pursuing a merit-based immigration system, but would *expand* family-based chain migration. A Biden Administration would allow any approved family visa beneficiary, whose green card is not yet available due to the annual country cap, to receive a temporary visa and enter the U.S. anyway until the permanent visa ("green card") becomes available.⁶³ In addition, Biden would support legislation that:

- 1. Expands the definition of "immediate relative" beyond spouses; minor, unmarried children; and parents of U.S. citizens to add spouses and children of green card holders, exempting them from caps; and
- 2. Allows parents to bring their minor children with them at the time they immigrate into the U.S. 64

Biden would continue the Diversity Visa program, stating it brings needed diversity. Biden's website states of President Trump:

He has disparaged the system as a 'horror show' and repeatedly misrepresents how the lottery is administered, while demonizing and insulting with racist overtones those who receive the visas. Diversity preferences are essential to preserving a robust and vibrant immigration system. As president, Biden will reaffirm our core values and preserve the critical role of diversity preferences to ensure immigrants everywhere have the chance to legally become U.S. citizens.⁶⁵

"High-Skilled" (H-1B) Visas

Trump. In a "Buy American, Hire American" initiative and Executive Order, President Trump addressed the H-1B visa program. The Executive Order states: "[T]o create higher wages and employment rates for workers in the United States, and to protect their economic interests, it shall be the policy of the executive branch to rigorously enforce and administer the laws governing entry into the United States of workers from abroad."66

He further requested reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries "to promote the proper functioning of the H-1B visa program." The Trump Administration has also sought to combat H-1B abuse and fraud and to protect both U.S. workers and foreign workers. 68

Biden. The Biden campaign website states that "high skilled temporary visas should not be used to disincentivize recruiting workers already in the U.S. for in-demand occupations. An immigration system that crowds out high-skilled workers in favor of only entry level wages and skills threatens American innovation and competitiveness." He would seek to protect high-skilled wages and workers and expand the number of visas offered, according to his campaign. ⁷⁰

Employment-Based Permanent Visas

Trump. As part of its merit-based immigration request, the Trump Administration has recommended that the ratio of employment-based immigrant visas increase in relation to family-based visas. However, the Administration has not indicated support for increasing the *total* number of permanent visas.

With respect to providing science, technology, engineering, and math (STEM) PhD graduates with green cards upon graduation, the Administration has not indicated support for such legislation. The Hire American philosophy discussed above for H-1B visas applies to permanent employment visas as well. The Administration has favored American STEM graduates in the context of the COVID-19 economic fallout by temporarily limiting foreign student and employment visas to prioritize American employment. It is unclear whether the Trump Administration would support providing green cards to foreign STEM PhD graduates upon graduation in a second term.

Biden. The Biden campaign states that if he is elected President, he would work with Congress to increase the number of permanent

employment-based visas based on macroeconomic conditions. The campaign states that the current annual employment visa cap of 140,000 hinders a market approach to respond to demand.⁷² He also favors eliminating the country caps on employment-based visas, stating they create "unacceptably long backlogs."⁷³

He would also exempt from any cap recent graduates of PhD programs in STEM fields in the U.S. According to his campaign website, Biden believes that foreign graduates of a U.S. doctoral program should be given a green card with their degree and that losing these highly trained workers to foreign economies is "a disservice to our own economic competitiveness."⁷⁴

Conclusion

The contrast between President Trump and Biden's immigration policies is stark. In a second term, President Trump would pursue merit-based immigration reform with Congress, navigate rescinding DACA while negotiating an amnesty with Congress (for anywhere from 800,000 to up to 11 million illegal aliens), and continue to secure the border in the face of strong COVID-economy immigration push factors. If Biden were to become President, he would return to many of the same immigration policies in place during the Obama Administration. This would include protecting and expanding the DACA program, admitting at least 125,000 refugees annually, and seeking amnesty for 11 million illegal aliens.

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