



## How the United States Immigration System Works

U.S. immigration law is based on the following principles: the reunification of families, admitting immigrants with skills that are valuable to the U.S. economy, protecting refugees, and promoting diversity. This fact sheet provides basic information about how the U.S. legal immigration system is designed and functions.

The body of law governing U.S. immigration policy is called the Immigration and Nationality Act (INA). The INA allows the United States to grant up to 675,000 permanent immigrant visas each year across various visa categories. On top of those 675,000 visas, the INA sets no limit on the annual admission of U.S. citizens' spouses, parents, and children under the age of 21.<sup>1</sup> In addition, each year the president is required to consult with Congress and set an annual number of refugees to be admitted to the United States through the U.S. Refugee Admissions Program.<sup>2</sup>

Once a person obtains an immigrant visa and comes to the United States, they become a lawful permanent resident (LPR). In some circumstances, noncitizens already inside the United States can obtain LPR status through a process known as "adjustment of status."

LPRs are eligible to apply for nearly all jobs (i.e., jobs not legitimately restricted to U.S. citizens) and can remain in the country permanently, even if they are unemployed. After residing in the United States for five years (or three years in some circumstances), LPRs are eligible to apply for U.S. citizenship. It is impossible to apply for citizenship through the normal process without first becoming an LPR.

Each year the United States also admits a variety of noncitizens on a temporary basis. Such "non-immigrant" visas are granted to everyone from tourists to foreign students to temporary workers permitted to remain in the country for years. While certain employment-based visas are subject to annual caps, other non-immigrant visas (including tourist and student visas) have no numerical limits.

### I. Family-Based Immigration

Family unification is an important principle governing U.S. immigration policy. The family-based immigration system allows U.S. citizens and LPRs to bring certain family members to the United States. Family-based immigrants are admitted either as immediate relatives of U.S. citizens or through the family preference system.

An unlimited number of visas are available every year for the immediate relatives of U.S. citizens. Prospective immigrants in this category must meet standard eligibility criteria, and petitioners must meet certain age and financial requirements.<sup>3</sup> Immediate relatives are:

- spouses of U.S. citizens;
- unmarried minor children of U.S. citizens (under 21 years old);<sup>4</sup> and
- parents of U.S. citizens (petitioner must be at least 21 years old to petition for a parent).

A limited number of visas are available every year under the family preference system. Prospective immigrants in the family preference system must meet standard eligibility criteria, and petitioners must meet certain age and financial requirements.<sup>5</sup> The family preference system includes:

- adult children (married and unmarried) and brothers and sisters of U.S. citizens (petitioner must be at least 21 years old to petition for a sibling); and
- spouses and unmarried children (minor and adult) of LPRs.

In order to balance the overall number of immigrants arriving based on family relationships, Congress established a complicated system for calculating the available number of family preference visas for any given year. The number is determined by starting with 480,000 (the maximum number in principle allocated for all family-based immigrants) and then subtracting the number of immediate relative visas issued during the previous year and the number of aliens “paroled” into the United States during the previous year.<sup>6</sup> Any unused employment preference immigrant numbers from the preceding year are then added to this total to establish the number of visas that are available for allocation through the family preference system.<sup>7</sup> However, by law, the number of family-based visas allocated through the preference system may not be lower than 226,000.<sup>8</sup> The number of immediate relatives often exceeds 250,000 in a given year and triggers the 226,000 minimum for preference visas. As a result, the total number of family-based visas often exceeds 480,000.<sup>9</sup> In Fiscal Year (FY) 2019, family-based immigrants comprised 68.8 percent of all new LPRs in the United States.<sup>10</sup>

The family-based immigration system is summarized in Table 1.

**Table 1: Family-Based Immigration System**

Category	U.S. Sponsor	Relationship	Numerical Limit
Immediate Relatives	U.S. Citizen adults	Spouses, unmarried minor children, and parents	Unlimited
Preference allocation			
1	U.S. citizen	Unmarried adult children	23,400*
2A	LPR	Spouses and minor children	87,900
2B	LPR	Unmarried adult children	26,300
3	U.S. citizen	Married adult children	23,400**

4	U.S. citizen	Brothers and Sisters	65,000***
* Plus any unused visas from the 4th preference.			
** Plus any unused visas from 1st and 2nd preference.			
***Plus any unused visas from all other family-based preferences.			
Worldwide level of family preference allocation: 480,000 minus visas issued to immediate relatives and parolees, plus unused employment-visas from previous fiscal year. Floor for preference categories: 226,000.			
Source: William A. Kandel, <i>U.S. Family-Based Immigration Policy</i> (Washington, DC: Congressional Research Service, February 9, 2018), 4, <a href="https://fas.org/sgp/crs/homsec/R43145.pdf">https://fas.org/sgp/crs/homsec/R43145.pdf</a> .			

In order to be admitted through the family-based immigration system, a U.S. citizen or LPR sponsor must petition for an individual relative, establish the legitimacy of the relationship, meet minimum income requirements, and sign an affidavit of support stating that the sponsor will be financially responsible for the family member(s) upon arrival in the United States or adjustment to LPR status within the United States.<sup>11</sup> The individual relative also must meet certain eligibility requirements that include submitting to a medical exam and obtaining required vaccinations (including a COVID-19 vaccination<sup>12</sup>), an analysis of any immigration or criminal history, as well as demonstrating that they will not become primarily dependent on the government for subsistence.<sup>13</sup>

The spouses and children who accompany or follow the principal immigrant (the one sponsored by the U.S. citizen or LPR under the family-preference category) are referred to as derivative immigrants. Derivative immigrants also count toward the numerical caps for the categories in Table 1. That means that many of the visa slots allotted for members of these categories are often actually used by the spouses and children of the members. For example, in FY 2019, 61,031 people were admitted in the category “brothers and sisters” of U.S. citizens, but only 22,179 of them were actual brothers or sisters of U.S. citizens. The rest were spouses (14,956) and children (23,896) of the siblings of U.S. citizens.<sup>14</sup>

## II. Employment-Based Immigration

The United States provides various ways for immigrants with valuable skills to come to the country on either a temporary or a permanent basis.

### Temporary Visa Classifications

Temporary employment-based visa classifications permit employers to hire and petition for foreign nationals for specific jobs for limited periods. Most temporary workers must work for the employer that petitioned for them and have limited ability to change jobs.<sup>15</sup> There are more than 20 types of visas for temporary nonimmigrant workers. These include L-1 visas for intracompany transfers; various P visas for athletes, entertainers, and skilled performers; R-1 visas for religious workers; various A visas for diplomatic employees; O-1 visas for workers of extraordinary ability; and various H visas for both highly skilled and lesser-skilled workers. The visa classifications vary in terms of their eligibility requirements, duration, whether they permit workers to bring dependents, and other factors. In most cases, these workers must leave the United States if their status expires or if their employment is terminated. It may be possible, depending on the type of job and the foreign national’s qualifications, for an employer to sponsor the worker for permanent employment. A foreign national does not

have to be working for the employer in order to be sponsored. However, depending on the permanent immigration category sought and the foreign national’s current nonimmigrant category, he or she may be able to complete the steps to become an LPR while continuing to live and work in the United States.

**Permanent Immigration**

The overall numerical limit for permanent employment-based immigrants is 140,000 per year.<sup>16</sup> This number includes the immigrants plus their eligible spouses and minor unmarried children, meaning the actual number of employment-based immigrants is less than 140,000 each year.<sup>17</sup> Any unused family preference immigrant numbers from the preceding year are added to this cap to establish the number of visas that are available for allocation through the employment-based system.<sup>18</sup> The total number of available visas is then divided into five preference categories.<sup>19</sup> For some categories, the sponsor must first test the U.S. labor market under terms and conditions established by the Department of Labor, and the Secretary of Labor must certify that the petitioner’s application meets certain requirements before the sponsor may file a petition with U.S. Citizenship and Immigration Services (USCIS). For some categories, the sponsor’s first step is to file a petition with USCIS or the foreign national may self-petition. The final step is the foreign national’s application for an immigrant visa at a U.S. embassy or consulate abroad or an application to adjust status to LPR if in lawful status in the United States. For consular processing, the immigrant visa application cannot be filed until after USCIS approves the immigrant petition. For adjustment of status, the time to file the application depends on whether a visa number is considered to be immediately available.<sup>20</sup>

The employment-based immigration system is summarized in Table 2.

**Table 2: Permanent Employment-Based Preference System**

Preference Category	Eligibility	Yearly Numerical Limit
1	“Persons of extraordinary ability” in the arts, science, education, business, or athletics; outstanding professors and researchers, multinational executives and managers.	40,040*
2	Members of the professions holding advanced degrees, or persons of exceptional ability in the arts, science, or business.	40,040**
3	Skilled workers with at least two years of training or experience, professionals with college degrees, or “other” workers for unskilled labor that is not temporary or	40,040*** “Other” unskilled laborers restricted to 5,000

	seasonal.	
4	Certain “special immigrants” including religious workers, employees of U.S. foreign service posts, former U.S. government employees and other classes of foreign nationals.	9,940
5	Persons who will invest \$500,000 to \$1 million in a job-creating enterprise that employs at least 10 full time U.S. workers. For petitions filed on or after 11/21/2019 the investment amounts increase to \$900,000 to \$1.8 million, with future increases at specified intervals. <sup>21</sup>	9,940
*Plus any unused visas from the 4 <sup>th</sup> and 5 <sup>th</sup> preferences.		
**Plus any unused visas from the 1 <sup>st</sup> preference.		
***Plus any unused visas from the 1 <sup>st</sup> and 2 <sup>nd</sup> preferences.		
Worldwide level of employment-based immigrants: 140,000 for principal applicants and their dependents.		
<i>Source:</i> Ruth Ellen Wasem, <i>U.S. Immigration Policy on Permanent Admissions</i> (Washington, DC: Congressional Research Service, March 13, 2012), 4, <a href="https://www.fas.org/sgp/crs/homesec/RL32235.pdf">https://www.fas.org/sgp/crs/homesec/RL32235.pdf</a> .		

In FY 2019, immigrants admitted through the employment preferences made up 13.5 percent of all new LPRs in the United States.<sup>22</sup>

### III. Per-Country Ceilings

In addition to the numerical limits placed on the various immigration preference categories, the INA also places a limit on how many immigrants can come to the United States from any one country. Currently, no group of permanent immigrants (family-based and employment-based combined) from a single country can exceed seven percent of the total number of people immigrating to the United States in a single fiscal year.<sup>23</sup> This is not a quota to ensure that certain nationalities make up seven percent of immigrants, but rather a limit that is set to prevent any immigrant group from dominating immigration flows to the United States.

### IV. Refugees and Asylees

**Refugees** are admitted to the United States based upon an inability to return to their home countries because of a “well-founded fear of persecution” due to their race, membership in a particular social group, political opinion, religion, or national origin.<sup>24</sup> Refugees apply for admission from outside of the United States, generally from a “transition country” that is outside their home country. The admission of refugees turns on numerous factors, such as the degree of risk they face, membership in a group that is of special concern to the United States (designated yearly by the president and Congress), and whether or not they have family members in the United

States.

Each year, the president, in consultation with Congress, determines the numerical ceiling for refugee admissions.<sup>25</sup> The overall cap is broken down into limits for each region of the world. After September 11, 2001, the number of refugees admitted into the United States fell drastically. After the Bush administration put new security checks in place, annual refugee admissions returned to their previous levels and rose during the Obama administration. During the Trump administration, the refugee ceiling fell sharply, from 110,000 in FY 2017 to 45,000 in FY 2018 and 30,000 in FY 2019.<sup>26</sup> For FY 2020, the ceiling was set at an all-time low of 18,000—although only 11,814 were actually admitted (the lowest number of admitted refugees since the system was created in 1980.)<sup>27</sup> The FY 2021 ceiling was set at 15,000 by the Trump administration, but was subsequently raised to 62,500 by the Biden administration.<sup>28</sup> However, as of August 31, 2021, only 7,637 refugees had been admitted with just one month remaining in the current fiscal year.<sup>29</sup>

Of the 62,500 admissions determined by the president for FY 2021, the regional allocations are shown in Table 3 below. Given the slow pace of admissions, it is unlikely that any of these allocations will be met.

**Table 3: Presidential Determination on Refugee Admissions, FY 2021**

Africa	22,000
East Asia	6,000
Europe and Central Asia	4,000
Latin America/Caribbean	5,000
Near East/South Asia	13,000
Unallocated Reserve	12,500
<b>TOTAL</b>	<b>62,500</b>
<i>Source:</i> U.S. Department of State, Bureau of Population, Refugees, and Migration, “Refugee Admissions Report as of July 31, 2021,” <a href="https://www.wrapsnet.org/documents/Refugee%20Admissions%20Report%20as%20of%2031%20Jul%202021.xlsx">https://www.wrapsnet.org/documents/Refugee%20Admissions%20Report%20as%20of%2031%20Jul%202021.xlsx</a> .	

**Asylum** is available to persons already in the United States who are seeking protection based on the same five protected grounds upon which refugees rely.<sup>30</sup> They may apply at a port of entry at the time they seek admission or within one year of arriving in the United States. There is no limit on the number of individuals who may be granted asylum each year, nor are there specific categories for determining who may seek asylum. In FY 2019, 46,508 individuals were granted asylum.<sup>31</sup>

Refugees and asylees are eligible to become LPRs one year after admission to the United States as a refugee or one year after receiving asylum.<sup>32</sup>

## V. The Diversity Visa Program

The Diversity Visa Program was created by the Immigration Act of 1990 as a dedicated channel for immigrants from countries with low rates of immigration to the United States. Each year, 55,000 visas are allocated randomly

through a computer-generated lottery to nationals from countries that have sent fewer than 50,000 immigrants to the United States in the previous five years.<sup>33</sup> Of the 55,000, up to 5,000 are made available for use under the Nicaraguan Adjustment and Central American Relief Act program, created in 1997 to provide relief to certain asylum seekers who applied for asylum before a specific date. This results in a reduction of the actual annual diversity visa limit to 50,000.<sup>34</sup> The program was originally intended to favor immigration from Ireland (during the first three years of the program at least 40 percent of the visas were exclusively allocated to Irish immigrants).<sup>35</sup> Diversity visas are now distributed on a regional basis and benefit Africans and Eastern Europeans in particular.<sup>36</sup>

To be eligible for a diversity visa, potential applicants from qualifying countries must have a high-school education (or its equivalent) or have, within the past five years, a minimum of two years working in a profession requiring at least two years of training or experience. Spouses and minor unmarried children of the principal applicant may also enter as derivatives.<sup>37</sup>

Immigration bans implemented by the Trump administration effectively shut down the Diversity Visa Program in 2020 and left roughly 43,000 of that year's lottery winners without their visas.<sup>38</sup> Those 2020 lottery winners who did not receive visas by the end of the fiscal year lost their chance to immigrate to the United States, prompting some of them to file lawsuits against the federal government in an effort to obtain their visas.<sup>39</sup> Although the Biden administration subsequently lifted the immigration bans, the Diversity Visa Program has resumed at a very slow pace. By the end of June 2021, the State Department had issued only 3,094 diversity visas for FY 2021.<sup>40</sup> Some FY 2021 lottery winners have filed lawsuits demanding that the State Department issue their visas before the end of the fiscal year.<sup>41</sup>

## VI. Other Forms of Humanitarian Relief

**Temporary Protected Status (TPS)** is granted to people who are in the United States but cannot return to their home country because of “natural disaster,” “extraordinary temporary conditions,” or “ongoing armed conflict.”<sup>42</sup> TPS is granted to a country for six, twelve, or eighteen months and can be extended beyond that if unsafe conditions in the country persist.<sup>43</sup> TPS does not necessarily lead to LPR status or confer any other immigration status.

**Deferred Enforced Departure (DED)** provides protection from deportation for individuals whose home countries are unstable, therefore making return dangerous.<sup>44</sup> Unlike TPS, which is authorized by statute, DED is at the discretion of the executive branch. DED does not necessarily lead to LPR status or confer any other immigration status.

**Deferred Action for Childhood Arrivals (DACA)** is a program established in 2012 which permits certain individuals who were brought to the United States while under the age of 16 and who have resided continuously in the United States since June 15, 2007, to remain in the United States and work lawfully for at least two years, so long as they have no significant criminal record and have graduated high school or college or received a degree equivalent.<sup>45</sup> It does not confer any path to permanent legal status and requires renewal every two years.<sup>46</sup> In

2017, the Trump administration attempted to end DACA,<sup>47</sup> but this action was challenged in court. In June 2020, the Supreme Court ruled that the administration's attempt to terminate the program was unlawful.<sup>48</sup> The Trump administration subsequently tried to impose new limits on DACA,<sup>49</sup> but this action was also challenged in court and a federal judge in New York ordered the administration to set aside the newly imposed limits.<sup>50</sup> Separately, a federal judge in Texas ruled that DACA was unlawful and that no new, first-time applications should be accepted.<sup>51</sup> In January 2021, President Biden issued a memorandum reaffirming the federal government's commitment to DACA and pledging to appeal the Texas ruling.<sup>52</sup>

**Humanitarian parole** allows certain individuals to enter the United States, even though they may not meet the definition of a refugee and may not be eligible to immigrate through other channels. Parolees may be admitted temporarily for urgent humanitarian reasons or significant public benefit.<sup>53</sup>

## **VII. U.S. Citizenship**

In order to qualify for U.S. citizenship through naturalization, an individual must have had LPR status (a green card) for at least five years (or three years if he or she obtained the green card through a U.S.-citizen spouse or through the Violence Against Women Act, VAWA). There are other exceptions including, but not limited to, members of the U.S. military who serve in a time of war or declared hostilities.<sup>54</sup> Applicants for U.S. citizenship must be at least 18 years old, demonstrate continuous residency, demonstrate "good moral character," pass English and U.S. history and civics exams (with certain exceptions), and pay an application fee, among other requirements.<sup>55</sup>



## Endnotes

1. This number results from adding the family-based annual limit, the employment-based annual limit, and the diversity program annual limit. See Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (Washington, DC: Congressional Research Service, March 13, 2012), 3, <https://www.fas.org/sgp/crs/homesec/RL32235.pdf>.
2. American Immigration Council, *An Overview of U.S. Refugee Law and Policy* (Washington, DC: July 9, 2021), <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy>.
3. INA §212(a) and INA §212(a)(4). Also see William A. Kandel, *U.S. Family-Based Immigration Policy* (Washington, DC: Congressional Research Service, February 9, 2018), 3, 6-7, <https://fas.org/sgp/crs/homesec/R43145.pdf>.
4. Visa numbers are also available for children adopted by U.S. citizens. See U.S. Department of State, "Intercountry Adoption," last accessed August 27, 2021, <https://travel.state.gov/content/adoptionsabroad/en.html>.
5. INA §212(a) and INA §212(a)(4). Also see William A. Kandel, *U.S. Family-Based Immigration Policy* (Washington, DC: Congressional Research Service, February 9, 2018), 3, 6-7, <https://fas.org/sgp/crs/homesec/R43145.pdf>.
6. INA §201(c).
7. Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (Washington, DC: Congressional Research Service, March 13, 2012), 2, <https://www.fas.org/sgp/crs/homesec/RL32235.pdf>.
8. INA §201(c)(1)(B)(ii).
9. Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (Washington, DC: Congressional Research Service, March 13, 2012), 3-4, <https://www.fas.org/sgp/crs/homesec/RL32235.pdf>.
10. Ryan Baugh, *Annual Flow Report: U.S. Lawful Permanent Residents: 2019* (Washington, DC: U.S. Department of Homeland Security, Office of Immigration Statistics, September 2020), 4, [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/lawful\\_permanent\\_residents\\_2019.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/lawful_permanent_residents_2019.pdf).
11. U.S. Citizenship and Immigration Services, "Green Card Processes and Procedures," last updated June 27, 2017, <https://www.uscis.gov/green-card/green-card-processes-and-procedures>. An affidavit of support is a document an individual must sign to accept financial responsibility for another person who is coming to the U.S. to live permanently. Sponsors of the affidavit of support must be at least 18 years old, be a U.S. citizen or lawful permanent resident, and reside in the U.S. and provide evidence showing that their annual income is no less than 125% of the federal poverty level. See U.S. Citizenship and Immigration Services, "Affidavit of Support," last updated March 19, 2021, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/affidavit-support>.
12. Centers for Disease Control and Prevention, "CDC Requirements for Immigrant Medical Examinations: COVID-19 Technical Instructions for Panel Physicians," last updated August 17, 2021, <https://www.cdc.gov/immigrantrefugeehealth/panel-physicians/covid-19-technical-instructions.html>.
13. U.S. Citizenship and Immigration Services, "Green Card Processes and Procedures," last updated June 27, 2017, <https://www.uscis.gov/green-card/green-card-processes-and-procedures>.
14. U.S. Department of Homeland Security, *2019 Yearbook of Immigration Statistics*, "Table 7. Persons Obtaining Lawful Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2019," <https://www.dhs.gov/immigration-statistics/yearbook/2019/table7>.
15. Some nonimmigrant visa classifications permit foreign workers to work in the United States without an employer having first filed a petition on the foreign worker's behalf. These include such nonimmigrant classifications as E-1, E-2, E-3, and TN. U.S. Citizenship and Immigration Services, "Temporary (Nonimmigrant) Workers," last updated September 7, 2011, <https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers>.
16. INA §201(d); U.S. Department of State, "Employment-Based Immigrant Visa," last accessed August 27, 2021, <https://travel.state.gov/content/visas/en/immigrate/employment.html>.
17. U.S. Department of Homeland Security, *2019 Yearbook of Immigration Statistics*, "Table 7. Persons Obtaining Lawful Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2019," <https://www.dhs.gov/immigration-statistics/yearbook/2019/table7>.
18. Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (Washington, DC: Congressional Research Service, March 13, 2012), 2, <https://www.fas.org/sgp/crs/homesec/RL32235.pdf>.

19. *Ibid.*, 4.
20. U.S. Citizenship and Immigration Services, "Green Card Processes and Procedures," last updated June 27, 2017, <https://www.uscis.gov/green-card/green-card-processes-and-procedures>. Whether a visa is immediately available is determined by the foreign national's "priority date." When labor certification is required, the foreign national's "priority date" is the date that the sponsor filed the application with DOL. But the "priority date" does not "attach," as to the foreign national's ability to receive an immigrant visa number, unless DOL issues the labor certification and USCIS approves the immigrant petition. If no labor certification is required, the "priority date" is the date USCIS accepted the immigrant petition for filing, but USCIS petition approval is required for the date to "attach." If the "priority date" that would attach upon agency approval is current when the immigrant petition is being filed, then the foreign national, and derivatives if applicable, in lawful status in the United States, may file their adjustment applications at that time. If the annual and per country limits result in too few visas available for the demand, then a backlog occurs and the "priority date" gives the foreign national a place in the backlog queue. When the "priority date" is reached, then the foreign national (and derivatives, if applicable) may file an application to adjust status if lawfully in the United States and the immigrant petition is pending or has been approved. If the immigrant petition is not approved (or in some situations, was not approvable when filed), then the priority date will not "attach" and USCIS also will deny the adjustment applications.
21. 84 Fed. Reg. 35750, 35808 (July 24, 2019) (to be codified at 8 C.F.R. § 204.6(f)(1)-(3)). The regulations also specify how the increases are to be calculated and when. *Id.*
22. Ryan Baugh, *Annual Flow Report: U.S. Lawful Permanent Residents: 2019* (Washington, DC: U.S. Department of Homeland Security, Office of Immigration Statistics, September 2020), 4, [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/lawful\\_permanent\\_residents\\_2019.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/lawful_permanent_residents_2019.pdf).
23. INA §202(a)(2). There are exceptions to this limit, mainly in the area of family-based immigration. For example, 75% of the second family preference immigrants are exempt from the per-country limit. See William A. Kandel, *U.S. Family-Based Immigration Policy* (Washington, DC: Congressional Research Service, February 9, 2018), 5-6, <https://fas.org/sgp/crs/homesecc/R43145.pdf>.
24. 8 U.S.C. §§1101 et seq. P.L. 96-212, March 17, 1980. This definition conforms with the definition used in the United Nations Convention and Protocol relating to the status of refugees.
25. INA §207(a).
26. Andorra Bruno, *Refugee Admissions and Resettlement Policy* (Washington, DC: Congressional Research Service, December 18, 2018), 2, <https://fas.org/sgp/crs/misc/RL31269.pdf>.
27. U.S. Department of State, Bureau of Population, Refugees, and Migration, "Refugee Admissions Report as of July 31, 2021," <https://www.wrapsnet.org/documents/Refugee%20Admissions%20Report%20as%20of%2031%20Jul%202021.xlsx>.
28. Congressional Research Service, "FY2021 Refugee Ceiling Increase," May 11, 2021, [https://www.everycrsreport.com/files/2021-05-11\\_IN11669\\_e3a59c7639a891e55d4ccc56ae5e18b65a3a06b3.pdf](https://www.everycrsreport.com/files/2021-05-11_IN11669_e3a59c7639a891e55d4ccc56ae5e18b65a3a06b3.pdf).
29. U.S. Department of State, Bureau of Population, Refugees, and Migration, "Refugee Admissions Report as of August 31, 2021," <https://www.wrapsnet.org/documents/Refugee%20Admissions%20Report%20as%20of%2031%20Aug%202021.xlsx>.
30. INA §208.
31. U.S. Department of Homeland Security, *2019 Yearbook of Immigration Statistics*, "Table 16. Individuals Granted Asylum Affirmatively or Defensively: Fiscal Years 1990 to 2019," <https://www.dhs.gov/immigration-statistics/yearbook/2019/table16>.
32. INA §209(a). Asylees may apply for LPR status after one year but are not required to do so. There are no numerical limitations on refugee or asylee adjustments of status.
33. INA §203(c).
34. Jill H. Wilson, *The Diversity Immigrant Visa Program* (Washington, DC: Congressional Research Service, October 15, 2019), 1-2, [https://www.everycrsreport.com/files/20191015\\_R45973\\_d9ae0040a7eeec8daf9ed3c323d008e2857b9144.pdf](https://www.everycrsreport.com/files/20191015_R45973_d9ae0040a7eeec8daf9ed3c323d008e2857b9144.pdf).
35. *Ibid.*, 1.
36. *Ibid.*, 2.
37. INA §203(c).
38. Elliot Spagat, "In ruling, judge throws lifeline to diversity visa lottery," *Associated Press*, September 5, 2020, <https://apnews.com/article/virus-outbreak-politics-travel-immigration-66bb9570fdbdc12491df3057cd03b588>.
39. *Ibid.*
40. U.S. Department of State, Monthly Immigrant Visa Issuance Statistics, "IV Issuances by FSC or Place of Birth and Visa Class," October 2020-

June 2021, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/immigrant-visa-statistics/monthly-immigrant-visa-issuances.html>.

41. Andy J. Semotiuk, "Once-In-A-Lifetime U.S. Visas To Be Lost Unless Court Intervenes," *Forbes*, June 23, 2021, <https://www.forbes.com/sites/andysemotiuk/2021/06/23/once-in-a-lifetime-us-visas-to-be-lost-unless-court-intervenes/?sh=500492536d1d>.
42. INA §244. Also see American Immigration Council, "Temporary Protected Status: An Overview" (Washington, DC: August 2021), <https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview>.
43. INA §244.
44. U.S. Citizenship and Immigration Services, "Delayed Enforced Departure," last updated August 17, 2021, <https://www.uscis.gov/humanitarian/deferred-enforced-departure>.
45. U.S. Citizenship and Immigration Services, "Consideration of Deferred Action for Childhood Arrivals (DACA)," last updated July 19, 2021, <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca>.
46. *Ibid.*
47. Memorandum from Elaine Duke, Acting Sec., Department of Homeland Security, to James McCament, Acting Director, U.S. Citizenship and Immigration Services et al., Subj: Memorandum on Recession of Deferred Action for Childhood Arrivals (DACA) (September 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.
48. Nina Totenburg, "Supreme Court Rules for DREAMers, Against Trump," *NPR*, June 18, 2020, <https://www.npr.org/2020/06/18/829858289/supreme-court-upholds-daca-in-blow-to-trump-administration>; Dept. of Homeland Sec. v. Regents of the U. of California, 140 S. Ct. 1891 (2020).
49. Memorandum from Chad Wolf, Acting Sec. Department of Homeland Security, to Mark Morgan, Senior Official Performing the Duties of Commissioner, at al., Subj: Reconsideration of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (July 28, 2020), [https://www.dhs.gov/sites/default/files/publications/20\\_0728\\_s1\\_daca-reconsideration-memo.pdf](https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf).
50. Michelle Hackman, "DACA Is Restored After Court Rules DHS Head Served Illegally," *The Wall Street Journal*, November 15, 2020, <https://www.wsj.com/articles/federal-judge-invalidates-trump-administration-s-daca-rollback-11605400169?page=1>; Maria Sacchetti, "Federal judge restores DACA, orders DHS to accept first-time applications from immigrants," *The Washington Post*, December 4, 2020, [https://www.washingtonpost.com/immigration/daca-restored-dreamers/2020/12/04/37254908-367a-11eb-8d38-6aea1adb3839\\_story.html](https://www.washingtonpost.com/immigration/daca-restored-dreamers/2020/12/04/37254908-367a-11eb-8d38-6aea1adb3839_story.html).
51. Maria Sacchetti and Amy B Wang, "U.S. Judge blocks new applicants to program that protects undocumented 'dreamers' who arrived as children," *The Washington Post*, July 17, 2021, [https://www.washingtonpost.com/immigration/daca-court-decision/2021/07/16/6c9a35be-e677-11eb-a41e-c8442c213fa8\\_story.html](https://www.washingtonpost.com/immigration/daca-court-decision/2021/07/16/6c9a35be-e677-11eb-a41e-c8442c213fa8_story.html); *State of Texas, et al., v. The United States of America, et al., and Karla Perez and the State of New Jersey*. United States District Court: Southern District of Texas, Civil Action No. 1:18-CV-00068, July 16, 2021, <https://cliniclegal.org/resources/humanitarian-relief/deferred-action-childhood-arrivals/state-texas-et-al-v-united-states>.
52. Memorandum from President Joseph R. Biden, Jr., to the Attorney General and Secretary of Homeland Security, Subj: Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA), January 21, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/>.
53. U.S. Citizenship and Immigration Services, "Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States," last updated August 26, 2021, <https://www.uscis.gov/humanitarian/humanitarian-parole>.
54. INA §319.
55. Holly Straut-Eppsteiner, *U.S. Naturalization Policy* (Washington, DC: Congressional Research Service, updated May 3, 2021), 3-6, <https://fas.org/sgp/crs/misc/R43366.pdf>.

A REPORTER AT LARGE FEBRUARY 8, 2021 ISSUE

# THE RACE TO DISMANTLE TRUMP'S IMMIGRATION POLICIES

*Trump transformed immigration through hundreds of quiet measures. Before they can be reversed, they have to be uncovered.*

**By Sarah Stillman**

February 1, 2021

In 2017, Lucas Guttentag  
system. Illustration by Grace

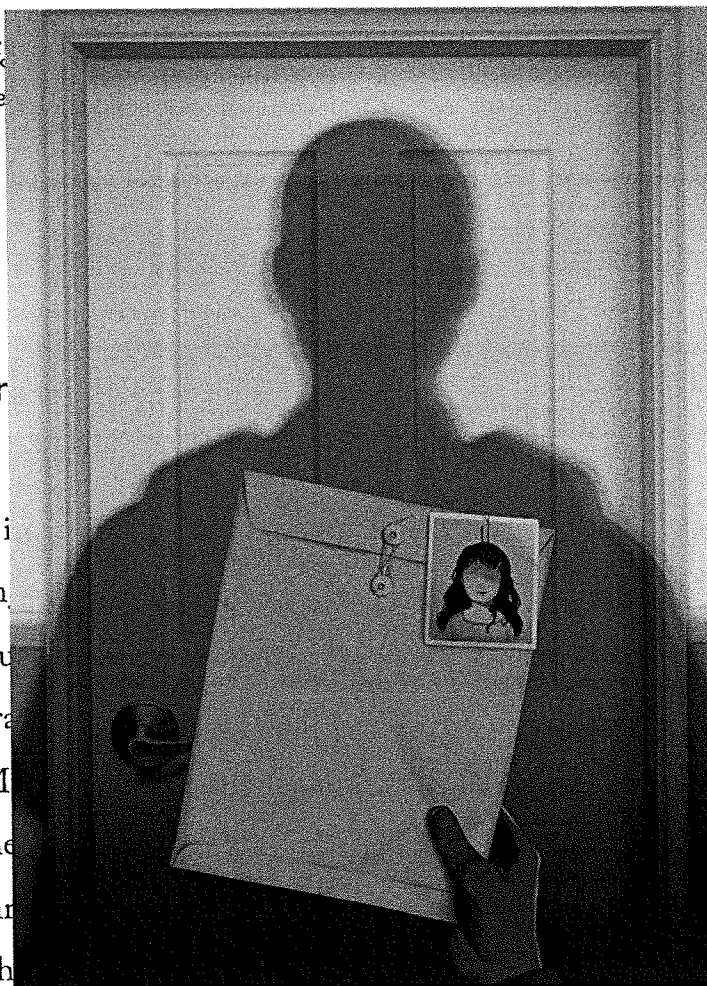
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English-language  
ight, at about 8 P.M., a  
who works with a

nonprofit called the Door. Maria hustled to the administrator's office, wearing her pajamas and a mask. Flamm told her, “If immigration agents come for you tonight, I want you to know that you don't have to talk to them, O.K.?”

Flamm had just got a tip that U.S. Immigration and Customs Enforcement planned to execute a warrant for Maria's removal, and to put her on a 3 A.M. flight to Texas, and then to Honduras. The news struck Flamm as bizarre, and likely illegal. As an unaccompanied child seeking asylum, Maria had the right to make her case to an asylum officer, and, if necessary, to get a full hearing before an immigration judge. Moreover, ICE had said that most immigration raids would be placed on pause during the pandemic lockdown. Flamm couldn't believe that agents would seek to deport a child in the middle of the night, during a global crisis, without informing her attorney or her family. She told Maria that she was on her way to Abbott House and cautioned her that she was not obliged to sign any documents until she arrived.

Maria had fled Honduras in 2019, after her father was killed, and her teen-age sister was kidnapped and tortured by gunmen, including a Honduran policeman. (Maria and her family members requested the use of pseudonyms to protect their safety.) At the southern border, Maria and her mother, Gabriela, claimed asylum, but were redirected to a new program called the Migrant Protection Protocols, and made to await their hearing in a dangerous Mexican border town. After a few months, they lost the case. Gabriela, in anguish, sent Maria back to the border on her own, hoping that, as an unaccompanied minor, she would be given protections. During the past few years, Maria, once outgoing, had become withdrawn. "It's like she's locked inside herself," Gabriela told me. At Abbott House, where Maria was given a diagnosis of post-traumatic stress disorder, a therapist taught her meditation techniques, and how to differentiate among Minor Problems, Medium Problems, and Big Problems. As she walked back to her room, Maria spotted a Big Problem: an ICE agent holding a manila envelope with her photograph taped to the front, and a child's suitcase.

Flamm, on her way to Abbott House, made urgent calls to colleagues, trying to figure out what was going on. She reached an attorney from the A.C.L.U. of Pennsylvania, who told her that, two days earlier, ICE had tried to send his teen-age client back to Guatemala on a 3 A.M. flight. The Justice Action Center, a nonprofit based in Los Angeles, had recently filed a lawsuit, with other groups, on behalf of three siblings who had been similarly targeted for removal. Esther Sung, a lawyer on the case, found evidence that, amid the pandemic, ICE had sought to round up and deport asylum-seeking kids, some as young as eight, in government shelters around the country, "without having a real plan for what would happen to the children, and into whose custody they would be placed, once they were removed." It seemed as though ICE had quietly decided to target children who had lost cases with their families at the border, through the Migrant Protection Protocols, and then sought asylum on their own. (ICE did not respond to requests for comment.)

The Presidency of Donald Trump may be defined, in part, by his assaults on the immigration system, many of which are well known. During his first full week in office, he banned travel from seven Muslim-majority countries, and temporarily blocked all refugee resettlement. Months later, he rescinded Deferred Action for Childhood Arrivals (DACA), which sheltered hundreds of thousands of undocumented youths from deportation. His Administration also separated nearly five thousand children from their parents and guardians at the southern border, hundreds of whom have still not

been reunited. But, in the past several years, Flamm and her colleagues at the Door have also found themselves pitted against an extensive, unpublicized bureaucratic effort to transform immigration through rule changes, adjustments to asylum officers' guidelines, modifications to enforcement norms, and other measures. Flamm has worked tirelessly to keep up. "At first, I'd print out and highlight each new change," she told me. But, in a matter of months, "it was just a monstrous pile of paper on my desk."

When Flamm arrived at Abbott House, Maria finished up her drawing on a piece of paper that her art teacher had given her; underneath, the teacher had written, "Women warriors don't let themselves be defeated. . . . Be strong. Be brave." A colleague of Flamm's eventually reached a judge, who agreed that Maria's case was an emergency, and, at 11:47 P.M., temporarily halted Maria's removal, granting her time to spell out her legal claims. Ten days later, Maria boarded a flight to join her cousin in Miami, where she would await news of her fate. In a journal she kept, she wrote, of the night the ICE agent appeared, "It was one of the most traumatic and ugly experiences I've had."

Flamm's organization, along with the law firm Paul, Weiss, has since filed a federal lawsuit on Maria's behalf, *A.D.R.S. v. William Barr*, aiming to stop Maria's removal to Honduras. Several weeks ago, the Justice Action Center and other groups filed another lawsuit that seeks to reinstate the rights of children in Maria's position. The cases are ongoing, and attorneys hope that they will set a valuable precedent for hundreds of kids. Sung, at the Justice Action Center, has also submitted a Freedom of Information Act request to unearth details about why the government chose to target unaccompanied minors like Maria. "We knew that something had changed," Flamm told me. "But we didn't know exactly what."

**O**n Joe Biden's first day as President, he began an effort to dismantle Trump's most notorious anti-immigrant policies, calling them "a stain on our national conscience." Just hours after entering the Oval Office, Biden proposed legislation granting an eight-year path to citizenship for nearly eleven million undocumented immigrants, and restoring and expanding refugee resettlement. He also released executive actions ending the travel ban, halting the construction of the border wall, and strengthening DACA. But for every Trump-era policy that Biden has reversed, hundreds of lesser-known measures remain. A month after Trump's Inauguration, Steve Bannon, his chief strategist, promised to pursue "the deconstruction of the Administrative state." But Trump made aggressive use

of executive power in the realm of immigration. Stephen Miller, a senior policy adviser to the President, convened a weekly meeting to devise creative methods of restricting immigration.

“Stephen knew how to control immigration policy by getting his people into key positions and using whatever levers of executive authority he could,” one of his White House colleagues told me.

Some of the changes that came out of Miller's meetings were pushed through as formal rules, which must be published in the Federal Register, and opened to public comment. But others were crafted through less visible administrative actions. In 2015, a Libertarian scholar named Clyde Wayne Crews, Jr., coined the term “regulatory dark matter” to describe the vast array of internal guidance memos, bulletins, circulars, and “thousands of other such documents that are subject to little scrutiny or democratic accountability.” In astrophysics, Crews wrote, “dark matter and dark energy make up most of the universe, rendering the bulk of existence beyond our ability to directly observe. Here on Earth, in the United States, there is also ‘regulatory dark matter’ that is hard to detect, much less measure.” His criticism was aimed at the Obama Administration, which often used administrative action to bypass congressional gridlock, but Trump's immigration team embraced the approach. Unlike rules, regulatory dark matter does not have to be announced, which can make it both difficult to enumerate and difficult for future Administrations to reverse.

In the past four years, immigrants'-rights groups have improvised ways of keeping track. Kids in Need of Defense tallied changes that affected unaccompanied minors, and the Migration Policy Institute did the same for other vulnerable groups, including refugees who were stranded abroad. Immigrants have devised their own tools. In a detention facility in Florida, a group of African asylum seekers kept, on the walls of their cell, a list of the harshest immigration judges, developing a star system akin to Uber ratings. In Tijuana, asylum seekers kept a tattered notebook called La Lista, in which they tracked people waiting to present at a port of entry, given that Customs and Border Protection, through a policy called “metering,” was allowing only a small number to cross each day. “This has never been a political game for us,” Greisa Martinez Rosas, the executive director of United We Dream, told me, of her own group's efforts. “We had to follow how Trump used the full extent of his political office to bring detention and deportation and death to our communities.”

One of the most fastidious chroniclers of this vast record is Lucas Guttentag, a law professor at Yale and Stanford. Guttentag is in his sixties, with plastic-framed glasses and the warmth of a genial



high-school principal. In the eighties, he founded the A.C.L.U.'s Immigrants' Rights Project, and later worked in Barack Obama's Department of Homeland Security. When Trump came to power, Guttentag was alarmed not just by the pace of executive orders but also by the dozens of provisions tucked within them like "ticking time bombs," as he put it. One created a special office to study the effects of crimes committed by "criminal aliens." Another sought to expand the use of "expedited removal," a tool for fast-tracking deportations.

In the fall of 2017, Guttentag assembled a group of law students in a wood-panelled room at Yale. He proposed creating a communally sourced database of every change that Trump made to the immigration system. "So many things have happened in year one of Trump that are already receding from our memory, because we're looking at the latest disaster," he said. "If we don't keep track, it will take a new Administration years just to unearth everything that's happened." They called it the Immigration Policy Tracking Project. Guttentag hoped that the database would prove useful to whoever succeeded Trump. "Going forward, we're going to capture everything," he told the team. "Someday we'll need a road map for reversing all this damage."

**T**he students carved up immigration policy into what one of them, Rebecca Chan, described to me as "little fiefdoms": humanitarian protections, labor laws, immigrant visas, citizenship. Then they performed a kind of public-policy forensics, searching for evidence of new policies in the

Federal Register, legal blogs, government Web sites, Listservs for immigration attorneys, and nonprofit newsletters. When they found a change, they logged it in a private database, along with the text of the Obama-era policy that preceded it, and might otherwise be lost. They worked in relative secrecy: some students worried that their database would get hacked by white-supremacist trolls or be co-opted by Trump officials for bragging rights.

Many of the tweaks in the Tracker seem deceptively mundane. Last year, the Administration finalized a rule to nearly double the cost of the naturalization application, from six hundred and forty dollars to a thousand and thirty. (A federal judge in California blocked the rule's implementation, much as dozens of other changes identified in the Tracker have been enjoined in court.) Guttentag told me, "Literally changing one single word on a form can make a lot of difference." In January, 2020, the ombudsman for U.S. Citizenship and Immigration Services issued an alert that the agency had begun rejecting certain paperwork if the blank spaces weren't filled out with the term "N/A," for "non-applicable." In December, U.S.C.I.S. redesigned the civics exam given to those applying for citizenship, doubling the number of questions, and giving some answers a conservative bent. The answer to the question "Who does a U.S. Senator represent?" used to be "All people of the state," but now specifies "Citizens of their state." All told, new administrative hurdles and other obstacles have cut the number of legal immigrants to the U.S. nearly in half.

By the end of Trump's Presidency, Guttentag's Trackers had logged a thousand and fifty-eight changes to the immigration system. Early in the process, he gave me access to the Tracker, and I began to report on the human toll of the lesser-known policies, enlisting a team of postgraduate fellows from the Global Migration Project at Columbia's Journalism School. In the past few years, we have spoken to two hundred people who bore the brunt of these changes, and found more than sixty cases of irreparable harm that resulted, including torture, sexual assault, and death.

We followed, for instance, one of the "ticking time bombs" that Guttentag spotted in Trump's early orders: the sanctioning of countries that refused to accept deportees. Recent conflict zones, including Somalia, Iraq, and Afghanistan, were pressured into receiving deportees even as their own governments expressed doubts about their ability to insure the safety of those who had been repatriated. In 2017, the number of people deported to these so-called "recalcitrant" countries more than doubled; Mauritania saw a tenfold increase between 2016 and 2018, despite the fact that Black

Mauritians are often imprisoned and tortured by the government. My Columbia team matched the pressures placed on “recalcitrant countries” to more than a dozen cases in which people faced irreparable harm.

Soon after Trump took office, thousands of Somalis were slated for deportation. (The Obama Administration, too, had pushed the country to accept deportees.) Some reported being shackled for forty hours, beaten, called the N-word, and told that they were being flown “back to the jungle.” (ICE has denied the beatings, and declined to comment on the racist language.) Ahmed Salah, an asylum seeker in his late twenties, was forcibly returned to Somalia during Trump’s first week in office. His cellmate claims that ICE agents coerced his signature on the required paperwork, and said, “Trump decides now.” (ICE did not respond to requests for comment on Salah’s case.) Two years later, Salah was killed in a car bombing likely set off by Al-Shabab insurgents. “He was a victim on both sides,” Salah’s wife told me, from Mogadishu. “The anti-American extremists on the one hand, and the anti-immigrant Americans on the other.”

**G**uttentag developed a deep understanding of technocratic minutiae during his time in the Obama Administration. After years spent suing the federal government, he joined D.H.S., in 2014, as a senior counsellor; at the time, Obama was trying to address critics’ claims that he had become the country’s “Deporter-in-Chief.” The Republican Speaker of the House had already blocked an immigration-reform bill that the President had supported. So Obama began issuing far-reaching executive actions, and D.H.S. approved internal guidance memos, directives, and memoranda—its own dark matter. Guttentag embraced the idea as a savvy way of effecting change in light of congressional obstinance.

At the time, ICE often placed transgender women seeking asylum in men’s detention facilities for months or even years, where they were subjected to rampant verbal, physical, and sexual abuse. As a result, many surrendered legitimate claims. If they were released on bond, the vast majority appeared at their immigration hearings. “We realized it was crucial to mandate the presumption of release for vulnerable categories of people, including L.G.B.T. people,” Guttentag told me. A D.H.S. team, working with ICE, crafted a directive to speed the release of transgender detainees, as well as pregnant women, the elderly, and people with disabilities. One member of the team recalled meeting at D.H.S. headquarters with eight transgender women, who told “extremely wrenching” stories of abuse

in detention. “That really accelerated our desire to get the directive through,” the staffer said. The directive was ready to go by the eve of the 2016 Presidential election.

On Election Night, Guttentag had planned to toast Hillary Clinton at a bar on Capitol Hill, and then to welcome her immigration-policy transition team. When Trump won, Guttentag and his colleagues raced to push through their detention reforms. The Obama Administration would be in power for another seventy-three days. “The issue was gnawing at many of us,” Carlos Guevara, a member of the D.H.S. team, recalled. “We had a new sense of urgency.” Then, Guttentag got a call from a senior ICE official. “I’m sorry,” he said. “We’re not doing it.” Guttentag stressed that the memo was ready to go. “That was before,” the official said. “Now it’s different.”

In February of 2019, I travelled to El Salvador with my Columbia team, to cover the story of Camila Diaz Cordova, a twenty-nine-year-old trans woman who grew up in La Paz. When Diaz came out as trans, at seventeen, family members threatened her with violence. She fled to the capital, San Salvador, and began living with two older trans women, Monica and Virginia; they called themselves the Three Musketeers. Since 1993, more than six hundred L.G.B.T.+ people have been murdered in El Salvador, almost always with impunity, according to COMCAVIS Trans, an activist group. In 2011, Monica was shot dead on a bus by gang members, and the police failed to investigate. Diaz endured several brutal beatings by the police. In 2015, she fled to Mexico, but, in Tapachula, she barely survived an attack by a group of men with clubs. In 2017, she sought asylum at the California border, carrying photographs from a time that gang members had broken her jaw. “That was the only card she had left to play,” Virginia told me.

Diaz was transferred to a private detention facility in Otay Mesa, California. “Please, put me on the women’s side—I’m a woman,” she told the guards. They laughed. “You’re a man,” one said. Officials took away her bra and gave her men’s boxer briefs. Paola, a trans woman who arrived in detention with Diaz, told me, “We thought in the U.S. they didn’t discriminate, but we saw the crude reality.” The pair faced daily taunts from guards and other detainees: “You’re a freak”; “You’re a sin.” Diaz was forbidden a razor, so her facial hair began to grow. “Look at your beard,” a guard said. “You really think you’re a woman?” (ICE did not respond to requests for comment on Diaz’s case.)

In the cafeteria, Diaz told Paola that she was growing desperate. She went before a judge three times. In the first hearing, she asked, “How long will I need to be detained?” The judge explained that the only people who could release her in the next six months were ICE officials. In a second hearing, Diaz explained her fears of returning to El Salvador. “There’s a high rate of assassinations,” she said. But she also described the pain of remaining in detention: “Lately, I’ve been feeling depressed.” At the next hearing, Diaz announced that she was withdrawing her case, and wished to leave detention. “Are you no longer afraid to return to El Salvador?” the judge asked. “I have fear,” Diaz said, but she couldn’t endure detention. “I wake up at midnight, and I’m very scared.” She preferred to be sent home. “How long will it take?” she asked.

Virginia welcomed her back to San Salvador with a white cake topped with peaches. Worried about Diaz’s depression, she took her to bathe in a local river, and cooked her favorite food, tomato salad with cilantro. As a trans woman, Diaz struggled to find legal work, so she earned a living as a sex worker. She faced constant threats from the police. On the night of January 30th, she texted Virginia to say that she feared for her life. That night, she was kidnapped by police, handcuffed, beaten, and tossed from a moving vehicle. Virginia found her in a morgue in San Salvador. A group of friends escorted her body to her home town in La Paz. “She’d been rejected by her family, but she was loved by the family she’d made,” Virginia told me.

Guttentag was shaken by Diaz’s story. “To hear the devastating consequences of detention, so starkly, for someone under circumstances we were trying to address, that’s very difficult,” he told me. Since Diaz’s death, Virginia has been living in hiding and pushing, with a group of activists, to hold Diaz’s killers accountable, while fighting for trans rights in El Salvador. Last summer, three of the police officers involved were found guilty of murder and sentenced to twenty years in prison—the first known convictions for the homicide of a transgender person in the country’s history. “Camila’s biggest dream was freedom—the freedom to be who she was,” Virginia told me. “And now she is just another name on the list.”

As the Immigration Policy Tracking Project gained momentum, Guttentag recruited law students at Stanford to join the team. Eventually, it included more than seventy students and fifteen immigration experts. Computer programmers funnelled the changes from the Trackers’ database into a sleek, password-protected Web site with an interactive time line; users could search it

by date, agency, and other key details. I focussed my review on the asylum system, to which the team logged ninety-six changes.

The consequences of these changes weren't always self-evident. Last year, the government made it more difficult for asylum seekers to obtain work permits. Jennifer Anzardo Valdes, of Americans for Immigrant Justice, in Miami, told me that, as a result, "we're going to see young people enter into dangerous situations to survive, situations in the underground economy that subject them to labor or sex trafficking." Other entries in the Tracker had clear stakes. In 2019, U.S. Border Patrol began having law-enforcement agents, rather than trained asylum officers, conduct "credible fear" interviews. "It's been one thing after another," Michael Knowles, the president of a local union that represents asylum officers, told me afterward. "Our officers' heads are spinning. They aren't sleeping. They come to me in tears."

As Hannah Flamm dug into the case of Maria, the fourteen-year-old asylum seeker from Honduras, she realized how many Trump-era changes had affected the girl's life. I tallied at least half a dozen, upon reviewing hundreds of pages of legal records. "If Maria had reached the border before Trump came to office, there's no question she'd be an asylee today," Flamm told me. "She'd be a high schooler with legal status. And she would never have been separated from her mother."

Maria grew up in La Ceiba, a port city in Honduras. Her family called her Chicken Wing, for her favorite food. Her mother, Gabriela, volunteered in politics. Her father, a shopkeeper, worried that his wife's work would provoke the ire of local criminal groups, and insisted that political recruiters leave his family alone. Gabriela later denounced the politicians, earning enemies on all sides. One December morning in 2016, Maria's father stepped out for his morning cigar, and a gunman in a car opened fire. Maria ran outside to find her mother cradling her father on the porch, as he bled to death. Two years later, Maria's teen-age sister, Paulina, a grocery-store clerk, was kidnapped and sexually tortured by a group of men. A Honduran police officer sat on the bed and watched. The men flashed photographs of Maria and Gabriela, threatening that they would be next. After Paulina's escape, Gabriela knew that she had to go North with her girls. "I didn't know what else to do to save my daughters," she told me.

On September 15, 2019, they reached the southern border. Because Paulina was eighteen, she was sent to a detention facility and then swiftly deported to Honduras. Maria and her mother were shuttled into the Migrant Protection Protocols. The program, engineered in part by Stephen Miller, rerouted asylum seekers to makeshift camps in Mexican border cities, many of which are controlled by cartels. Maria and Gabriela went to Matamoros, where a dirt plot was crowded with tents. The State Department has ranked the security of Tamaulipas, where Matamoros is located, as comparable to that of wartime Syria, and Human Rights First has documented more than thirteen hundred incidents of rape, kidnapping, and other attacks against families waiting in the program. During Donald Trump's Presidency, an estimated seventy thousand people were pushed into the Migrant Protection Protocols.

The camp was so crowded that some mothers slept sitting up, their children in their laps. "One Honduran woman saw us crying and offered us a spot of soil under her palm tree," Gabriela recalled. The stranger showed her how to forage through the trash for cardboard boxes to convert into beds. At night, cartel operatives circled the camp, looking for migrants to kidnap for ransom. "The food is ready!" they shouted, pretending to be aide workers. Desperate to find a safer place to stay, Gabriela and Maria rented a cheap apartment in Matamoros, though, Gabriela told me, "the gangs sell drugs and girls there like caramels." One evening, two men followed Maria and Gabriela to a grocery store. They hid in an aisle of boxed milk and tortillas until the men left.

After four months, Maria and Gabriela arrived, at 5 A.M., at a border checkpoint, where officials escorted them to an asylum hearing. The immigration judge, Shelly Schools, a recent Trump appointee, appeared on a video screen. She questioned Gabriela for two hours, according to a recording, then took a recess to “look at the law.” When Schools returned, she said, “If there was some legal way I could provide you protection in the United States, I certainly would try.” But granting asylum had grown more difficult. Trump’s Justice Department had aggressively used a strategy known as “self-referral” to take back cases from the Board of Immigration Appeals and issue alternative rulings. In a case called *Matter of A.B.*, Attorney General Jeff Sessions overruled a well-established decision affirming the ability of gender-based-violence survivors and gang victims to win asylum; he deemed their suffering to be “private violence,” rarely meriting protection.

Gabriela noted that a police officer had been involved in Paulina’s assault, another detail that strengthened their case for asylum, but Trump’s Board of Immigration Appeals had narrowed this protection, too.

“Do you know if this officer was involved in sexually assaulting your daughter personally?” the judge asked.

“He was watching as she was being raped,” Gabriela replied.

“Do you know if the police officer ever touched your daughter himself?” the judge asked.

“He only watched,” Gabriela said.

The judge said that her hands were tied. “The death of your husband and the kidnapping of your daughter are certainly serious events,” Schools said. “However, the harm did not occur to either of you.” In any case, Maria and Gabriela had passed through Guatemala and Mexico on their way to the U.S. A Trump-era policy, called the “transit bar,” required them to request asylum in those countries first, making them ineligible in the U.S. “I’m very sorry for what has happened to your



family,” Schools said. “I hope you can find a safe place to live.” Gabriela feared that Maria wouldn’t survive in Matamoros. One morning, at 3 A.M., she led Maria to a bridge that crosses the Rio Grande into Texas. “It’s O.K., Chicken Wing,” she said. Then Maria walked across.

When Trump issued the so-called “Muslim ban,” thousands of people raced to airports in protest, chanting, “Let them in!” and “Shame!” But after public outcry faded, the Trackers logged dozens more barriers to refugee resettlement, enacted with less fanfare. According to a former White House communications aide, Miller had once said, “I would be happy if not a single refugee foot ever again touched American soil.” The White House later said this wasn’t “the policy of the Administration.” Yet Miller nearly got his wish. In 2016, Obama approved a hundred and ten thousand yearly slots for refugees. By 2020, the Trump Administration had slashed that number to eighteen thousand, failed to fill even two-thirds of those slots, and then slashed it once more, to fifteen thousand. I spoke to more than a dozen refugees who suffered physical or sexual harm as a result of being stuck in the resettlement pipeline.

In 2018, I met Sam, a fifty-six-year-old former elementary-school teacher from Fallujah, Iraq, who became an interpreter for an Army Reserve unit stationed there in 2003. The Army had prepped Allen Vaught, the captain who commanded the unit, with a handful of lessons in Turkish instead of Arabic. He relied on Sam and four other interpreters, whom he paid five dollars a day. Sam went on raids against insurgents and uncovered a local plot to sell poisoned cigarettes to U.S. troops. “I would go anywhere, and do anything,” he told me.

Vaught was hit by an I.E.D. later that year, and sent back to the U.S., where he received a Purple Heart. When he got home, he tried to secure the safety of his interpreters, who were often targeted by insurgents for their perceived disloyalty. (Sam asked to be called by his Army nickname, for his safety.) One of the interpreters was admitted to the U.S. in 2007, and lived briefly in Vaught’s guest bedroom; he is now a U.S. citizen. Another arrived soon afterward with his family, after escaping several attempted assassinations. “Of the five translators I hired, two were executed, and we got the other two out,” Vaught told me. “That leaves Sam. He was too loyal, and he stayed too long.”

As Sam was returning from work one evening in 2004, gunmen pulled up in a car and fired at him with AK-47s. “I felt the heat of a bullet pass my ear, and I played dead,” he said. The next day,

someone threw two explosives through the window of his home. He moved to Baghdad, but militiamen there threatened his life. In 2014, he fled to Cairo and wrote to Vaught, who pledged to help him and his wife and daughters resettle in the U.S. “You can have a job on my cattle ranch,” Vaught told him, adding that Sam’s wife could work at his wife’s fashion boutique. The Obama Administration had pledged to aid interpreters who’d supported U.S. troops in Iraq and Afghanistan, but, even then, the vetting process was exhaustive—fingerprints, biometric scans, interviews—and often excruciatingly slow. Finally, a month before Trump took office, Sam was contacted by the International Organization for Migration, which helps manage resettlement, telling him that he would soon be leaving for the U.S. Vaught’s wife sold T-shirts that read, “Humanity Isn’t Lost in Translation,” setting aside the profits so that Sam would have pocket money upon his arrival.

After Trump issued the Muslim ban, in 2017, temporarily halting refugee resettlement, Sam grew nervous. But in October came good news: he was told to prepare for his flight to the U.S. “This is major happiness,” he told his lawyers. Later that month, Trump issued a lesser-known order called “Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities,” which purported to end the ban on resettlement of refugees like Sam but introduced onerous vetting requirements. “They’re still rechecking our loyalty after all this?” Sam asked. Vaught couldn’t sleep. “I’m the one who got Sam into this,” he told me. Another former officer, desperate to help Sam, researched how to “extract” a refugee from Egypt and bring him to the U.S., hoping to commission a ship for the job. (Sam had no inkling of the plot.) That November, Vaught and Sam signed on as plaintiffs in a lawsuit against Trump’s recent order, filed by the International Refugee Assistance Project. Two days before Christmas, a federal judge enjoined the order. “Sam should be wheels up soon,” Vaught announced on Facebook.

But in January, 2018, an official asked Sam to provide the address of every home where he’d lived for more than thirty days in the past ten years, and the phone number and e-mail address of every close relative. The delay, as far as Sam could tell, was now the point. That summer, Reuters reported that a special program for refugees who had helped U.S. troops or other allies had admitted only forty-eight people, with a backlog of a hundred thousand. “The extra vetting isn’t presenting any meaningful new information on security threats,” Becca Heller, the director of IRAP, told me. “It’s designed like an M. C. Escher drawing, a cycle you can follow forever but never complete.”

On a smoggy afternoon, in 2018, I met with Sam at a dimly lit restaurant in downtown Cairo, which a friend had said would be safe. Sam lived in fear of deportation, and rarely ventured out. Just as a waitress arrived, a uniformed Egyptian officer sat down at the table beside us. Sam leaped from his chair and whispered, “We have to go.” We rushed outside. “I haven’t left my house in a year, and now this!” he said. “I’m illegal! I’ll be deported to Iraq!” He told me that one day, earlier that year, when he went out for a loaf of bread, a car had pulled up, and two men—Egyptian police, he believes—hopped out and pulled him into the vehicle. The men interrogated him, rifled through the receipts in his wallet, stole his money and his phone, and pushed him back into the street. “I thought they’d kill me,” Sam said.

We ventured up to my hotel-room balcony overlooking the Nile, which glittered with passing party boats. Sam lit a cigarette, then pulled out a blue folder of case materials that he’d been hiding beneath his vest. It included “Achievement” certificates and photographs from his days with the U.S. military. A “loyal and valuable asset,” one letter, from an Army colonel, read. “Quick to point out dangerous areas that would jeopardize Soldiers’ lives,” another said. Sam rolled up his khaki pants to show me shrapnel embedded in his calf, from the attempt on his life in 2004. “I keep my evidence close,” he said.

As dusk fell, Sam became worried again; walking at night would be risky. He gathered the folder and stuffed it beneath his vest. “In Iraq, I was like an amulet,” he said. “I kept every soldier I worked with safe. But now my life is lived in a prison.”

In February, 2020, IRAP reached a settlement with the government, slating Sam and some three hundred others for swift resettlement. “It’s my moment of deliverance!” Sam told his wife. Then the pandemic struck, and the government stopped refugee resettlement, leaving Sam stranded in Cairo. He tried to maintain hope, studying the stars from his roof, and listening to Frank Sinatra. In July, resettlement began again, but Sam is still waiting for his security check to be completed. His medical clearance has expired, so he’ll have to re-start that process if the vetting is ever finished. “They want me to lose hope, but I won’t,” he told me. “I’m not a criminal. I’m a veteran.”

Last February, I joined Guttentag and a group of new Trackers around a big wooden table at Stanford Law School. Danny Martinez, Guttentag’s research assistant, passed out Girl Scout

cookies, turned off the lights, and projected the Trackers' time line onto an enormous screen from his laptop. (His charger read, "I am my ancestors' wildest dreams," a nod to his family's migration from Mexico.) On the time line, hundreds of red dots represented each Trump-era regulation that the team had logged. In some months, the dots were scattered and faint; elsewhere, they formed dense clusters. Then Martinez pulled up the master spreadsheet, which included a description of each new policy, the verbatim text of the change that had been made, tags marking the agencies and the issues involved, and a copy of whatever norms had come before it. "I know it's dizzying," Martinez told the new members, who squinted and leaned in close. After the presentation, one student raised her hand, and admitted, "The spreadsheet didn't make that much sense to me." Others laughed in agreement.

"That's a good sign," Guttentag said. "If it did, I'd be worried about you." Part of the challenge of tracking the Administration's regulatory overhaul, Guttentag explained, was the byzantine nature of the work. "We're aggregating and distilling and organizing the public record," he said.

The students were eager to see their work lead to political change. "Will we ultimately make this public?" another asked. Yes, Guttentag promised. "People need to see what in the world has happened." The goal was "addressing and undoing the horrific policies that have been put into place since January, 2017." He acknowledged that reverting to the regulations of the Obama years would be insufficient; many in the group knew that the Obama Administration had locked up asylum seekers in family detention centers, sped unaccompanied children through immigration court without attorneys, and presided over a record three million deportations. Still, he said, "we hope a reform agenda can start off where the country was before the Trump Administration came in."

When the pandemic struck, Guttentag holed up in his home office, near Berkeley, overlooking a lemon tree, and watched to see how the Administration would respond. COVID-19 arguably justified certain border restrictions. Early on, Trump issued an order known as the China Ban, which barred entry from China for most non-citizen travellers, and, soon afterward, issued similar bans for Iran and much of Europe. By mid-March, Guttentag had e-mailed several Trackers, instructing them to pay careful attention to how the Administration might use the pandemic as a pretext for anti-immigration regulations. On March 23rd, the government announced that it would postpone all hearings for asylum seekers in the Migrant Protection Protocols program, leaving thousands of families in limbo.

Three days earlier, the C.D.C. had issued an even more alarming policy, called “Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists.” The order tossed out decades of congressionally mandated humanitarian protections; immigration agents were instructed to pursue immediate “expulsion,” for the sake of public health. It made little epidemiological sense: the Administration wasn’t blocking the travel of truck drivers, those commuting for educational purposes, or most citizens and legal permanent residents. The order drew on quarantine laws dating as far back as 1893, intended to prevent the spread of diseases such as smallpox and yellow fever. When Guttentag examined the history of the original laws, he found that the new regulation contradicted their intent. (In the drafting of the 1893 law, a senator from Wisconsin had argued that the word “immigrants” should be changed to “all passenger travel,” pointing out that U.S. citizens could also carry diseases. “I think it ought not to be an authority which discriminates,” he said.)

Border agents soon began using the rule to conduct clandestine “expulsions.” They held asylum seekers and undocumented border crossers in secret hotel rooms, facilitated by government contractors, and then deported them without due process. According to the A.C.L.U., the government expelled at least two hundred thousand people in this manner, including thirteen thousand unaccompanied children. In McAllen, Texas, the Texas Civil Rights Project staked out a

Hampton Inn & Suites hotel where immigrant children and others were being stashed, outside normal legal protocols, and then expelled. One of the nonprofit's attorneys, Andrew Udelsman, entered the hotel, and began to walk the halls, calling out offers of legal representation, as a colleague filmed. Three burly private contractors accosted him. "Get out, if you're smart," one said. Another violently shoved Udelsman into a hotel elevator. A Texas Civil Rights Project employee named Roberto Lopez photographed the hotel's windows, where adults cradling children held handwritten messages up to the glass. "We need your help," one read. "We don't have a phone," read another. The next day, the organization filed a suit, arguing that the system was "arbitrary, capricious, and contrary to law."

On Election Night, 2020, asylum seekers and refugees around the world tuned in to the media coverage, knowing that their fates were tied to swing-state ballots. Sam, in Cairo, cooked himself a chicken, and sat glued to CNN. Gabriela, Maria's mother, watched in Mexico. "We need a miracle," she told me. Hannah Flamm, Maria's lawyer, said, "If Biden can undo even a fraction of the harm this Administration has done, it will totally transform Maria's case, and her life." Dozens of migrants at the camp in Matamoros gathered to pray. When the press called the race, some asylum seekers chanted, "Biden! Biden! Biden!" A small crowd of migrants, including one in a Grim Reaper getup, paraded beside a wagon stuffed with a piñata-style figure of Trump, dressed, according to Valerie Gonzalez, in *The Monitor*, in "clothing left behind by migrants who abandoned their asylum claims under the prolonged Trump administration policies." Serenaded by a song that went, "Fuck your mother, Donald Trump!," they set the effigy ablaze.

The Biden Administration has already wielded its executive authority to undo some of Trump's policies. Biden's acting head of D.H.S., David Pekoske, paused some deportations for a hundred days, and suspended Trump-era enforcement policies, pending a closer review. (Less than a week later, the attorney general of Texas challenged the moratorium, and a judge agreed to a temporary halt.) With a Democratic Congress, Biden may have a shot at passing his immigration-reform bill. But reversing the subtler changes will take endurance, particularly amid so many other priorities. Don Moynihan, a professor of public policy at Georgetown, told me, "You basically need someone who is as knowledgeable and enthusiastic about reversing administrative burdens as Stephen Miller was about constructing them."

Last September, Guttentag was asked to join Biden's transition team as a volunteer adviser on immigration. Before he did, he shared a vision with his Trackers for how to use the database to help determine which policies to target first. "I think about future change in quadrants," Guttentag had told me. "If you draw a graph"—and he began doing so, on a scrap of paper—"the x-axis is the greatest impact for the greatest number of people, and the y-axis is the level of ease, or difficulty, when it comes to making the change." Some measures can be undone with a single, swift executive action. Others will require a drawn-out legislative battle, or a formal rule-making process. Some may have steep political costs. "We need to find the low-hanging fruit—the stuff that's really important to change, and really easy," he said. But he cautioned that, if you've never been inside an Administration, "you don't always anticipate how hard the y-axis is."

According to Guttentag's Tracker, more than a hundred of Trump's immigration policies are currently subject to litigation. Courts recently blocked the asylum ban, as well as dozens of other Trump efforts that were deemed "arbitrary and capricious." Biden can settle many of these lawsuits. "If you reach a good settlement agreement or consent decree, it can be a really effective way to make sure that the most egregious harms don't happen again," Jaya Ramji-Nogales, a professor at Temple Law School, told me. In 1997, Janet Reno, Bill Clinton's Attorney General, settled a decade-old lawsuit filed by an unaccompanied minor from El Salvador, and created the Flores settlement, in which the government agreed to swiftly release children from immigration detention and place them in "the least restrictive setting" possible. Under Obama, advocates leaned on Flores as a tool for fighting family detention, and, under Trump, it proved crucial to winning the release of children who'd been taken from their parents at the border. During the pandemic, the existence of Flores underpinned the argument that Maria, at Abbott House, should be released to her cousin while her lawyers fought her removal.

Some policies fall in the bottom right corner of Guttentag's graph: extremely high-stakes, but difficult to unravel. During Biden's campaign, he promised to end the Migrant Protection Protocols on his first day in office, noting that migrants in Mexican border towns face "a horrifying ecosystem of violence and exploitation." He has now asked for time to sort out what to do. D.H.S. has announced the end of new enrollments in the program, but has not resolved what will happen to the thousands who remain stranded. Some of Biden's advisers fear the political consequences of having thousands of asylum seekers coming into the country after Biden's Inauguration, particularly amid

the pandemic. Conservatives have warned of a “caravan” of COVID-infected migrants, and nicknamed the President No Borders Biden. But a new generation of immigrants’-rights activists plan to keep the pressure on. “We need a bold and completely different direction,” Greisa Martinez Rosas, of United We Dream, told me. “We need Biden to prioritize the true safety of immigrant communities, because the forces that enabled Donald Trump to rise to power aren’t going away.”

In politics, the status quo has uncanny power. In 2008, during Obama’s first Presidential campaign, he promised to close Guantánamo Bay. On the night that he won, detainees at Guantánamo chanted, “Obama! Obama! Obama!”; defense lawyers paraded before military prosecutors in a conga line, singing, “Hey hey hey, goodbye!” Obama issued an executive order on his third day in office, calling for Guantánamo’s closure within a year. But he was soon fighting with Congress, which passed legislation that made transferring detainees to the U.S. difficult, and engaging in tense negotiations with foreign countries about their willingness to accept prisoners. Toward the end of his second term, Obama was asked, by a seventh grader, if he had any regrets. “I would have closed Guantánamo on the first day,” he said. “The path of least resistance was just to leave it open.”

Today, Guttentag hopes that the minutiae won’t be forgotten. Later this month, he will make his Tracker public. He hopes that it will provide a useful model for reversing Trump-era policies in other sectors of the government as well. At Harvard Law School, a team has created a “Regulatory Rollback Tracker,” to log the ways in which Trump eroded environmental regulations. The Leadership Conference on Civil and Human Rights has inventoried dozens of assaults on civil rights. “To undo the damage, we’ll have to keep getting deeper and deeper into the weeds,” Guttentag told me. “That’s where so much of the change still needs to happen.”

Maria, in Miami, knows that her fate depends, in part, on how quickly Biden transforms asylum policy. Noemi Samuel Del Rosario, a lawyer at Americans for Immigrant Justice, which is working with the Door to fight Maria’s removal, told me that she hopes Biden will go further than ending the Migrant Protection Protocols; he also, she said, “needs to right the wrongs for families like Maria’s, who didn’t get a fair chance to present their cases in the way they should have in the first place.” Maria’s mother, Gabriela, is in hiding. Her sister, Paulina, is on the run in Honduras. “My wish is to eat around the same table as my family,” Maria told me. She still has the sketch of the pink hibiscus flower that she drew on the night that ICE came for her at Abbott House. She kept her journal from



the facility, too, in which she did an exercise envisaging her life ten years in the future. She imagined herself as a lawyer, in a pink suit, fighting for immigrant kids in court. “I’m proud of all that you’ve been able to achieve,” she wrote. “I see you as a woman warrior.” ♦

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