

# MIRREM

Measuring Irregular Migration

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## United States Country Brief on Irregular Migration Policy Context

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## THE MIRREM PROJECT

MIRREM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

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MIRREM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRREM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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### **KEYWORDS**

Irregular migration; policy measures; pathways into and out of irregularity

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# United States

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

## 1.1 POLICY PRIORITIES

- **Regularisation**

The Obama and Biden administrations have launched different attempts to regularise unauthorised migrants<sup>1</sup>, including President Obama’s Deferred Action for Childhood Arrivals (DACA) and Border Security, Economic Opportunity and Immigration Modernization Act and President Biden’s US Citizenship Act of 2021. Yet, attempts to regularise unauthorised immigrants have been largely unsuccessful for the past two decades. Administrations have struggled both with building sufficient political support and with legal challenges to their proposed policy changes.

- **Border security**

Since 9/11, the issue of border security has been front and centre on the political agenda of different political administrations. Especially the Trump administration focused on ramping up border control through investing in the US-Mexico border wall and deploying the US military at the border through Operation Faithful Patriot.

- **Deportations**

Over the past 15 years, there has been an increased focus on deporting unauthorised migrants across various administrations. While President Bush founded Immigration and Customs Enforcement (ICE), President Obama ramped up deportations to a record-high number under the Secure Communities deportation programme. This programme was likely launched to build bipartisan support for broader migration

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<sup>1</sup> In the US context, the term “unauthorized migrants” is used to apply to those without legal status, as well as those with temporary statuses, including DACA and TPS holders, and those who benefit from executive discretion and relief from deportation.

policies but was unsuccessful in achieving this goal, after which Obama abandoned this programme in 2014. The policy of deportation has a significant impact on irregular migrant communities because it constructs a perpetual position of precarity over their future for those without legal residence status. President Trump reinstated the Secure Communities programme and started using Title 42 during the COVID-19 pandemic to expel arrivals at the USA border, without giving people the opportunity to apply for asylum, based on public health concerns. While President Biden reduced the emphasis on expulsion, for example by attempting to implement a 100-day suspension of deportations, and attempted to limit the scope of ICE's work, he left Title 42 in place until two years into his presidency.

## 1.2 OVERVIEW OF THE UNITED STATES' POLICY FRAMEWORK

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See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

### ***1.2.1 Policy implementation measures and impact***

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- **DACA**

In 2012, the Obama administration issued an executive order that introduced the Deferred Action for Childhood Arrivals (DACA) policy. The DACA programme provided two years of deportation relief and work authorisation to eligible young unauthorised immigrants. To be eligible, one must be, amongst other requirements, at least 15 years old, have entered the United States before age 16, have continuously resided in the United States since June 15, 2007, and be enrolled in school. More than 800,000 people have benefitted from DACA (Soto & Gelatt, 2023).

- **Deportations**

President Obama's expansion of the Secure Communities programme facilitated the proactive removal of an unprecedented number of undocumented migrants by ICE based on their criminal records, resulting in a record-high number of deportations totalling over three million over the span of Obama's administration (Hing, 2018). This focus on deportation can be understood in the context of Obama's broader efforts to build bipartisan support for his immigration reform plans, such as DACA. Under President Biden, new priorities for deportation have been put in place, focusing on deporting those people who have committed serious criminal offences rather than those with minor offences. However recent research has shown these guidelines have not yet shifted ICE's approach.

- **Temporary Protection Status**

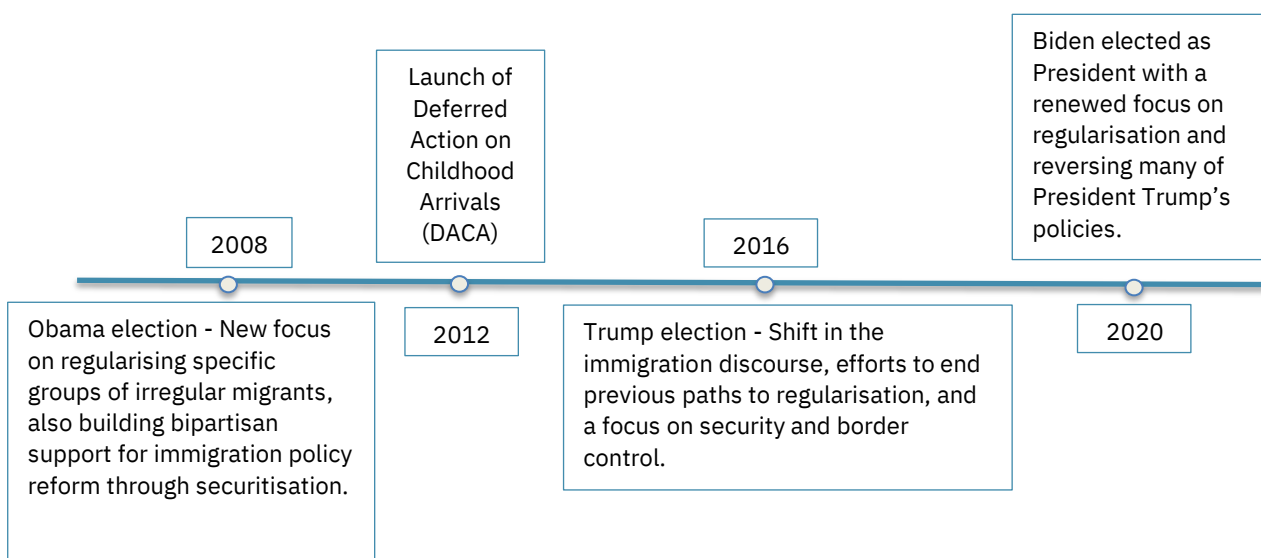
President Trump terminated Temporary Protection Status for nationals from 6 countries (97% of all beneficiaries of Temporary Protection Status at the time). President Biden, on the other hand, extended Temporary Protection Status to about

475,000 people from Venezuela, Afghanistan, Ukraine, and Myanmar already in the US (Esterline & Batalova, 2022). TPS offers temporary legal protection and work authorisation to nationals of countries facing natural disasters, armed conflict, or other temporary and extraordinary circumstances, as designated by the Department of Homeland Security (DHS). Its purpose is to provide temporary protection to those subject to removal until the country of origin is again safe for repatriation.

- **Title 42**

During the COVID-19 pandemic, Title 42 has been used to impose broad restrictions on land entry for migrants on the basis of posing a health risk, including suspending asylum proceedings and expelling those who arrived at the US border without authorisation to enter. While in place, Title 42 has resulted in over 2.8 million expulsions at the US-Mexico border (Chishti & Bush-Joseph, 2023). It has effectively foreclosed the possibility of seeking asylum at the border for the great majority of Mexicans and nationals of Central American countries. It has also been used to deny entry to large numbers of Haitian border crossers (Gelatt & Chishti, 2022). Title 42 expired on May 11, 2023.

### 1.2.2 Policy evolution: Main turning points



### 1.2.3 Policy Challenges in Addressing Migrant Irregularity

- **Migration is a highly politicised issue and administrations struggle to find political majorities to implement policy changes**

Migration is a highly political issue and Democrats and Republicans often fail to find

common ground, leaving the executive branch with few tools to pass policies related to irregular migration. Both Democrats and Republicans use the highly politicised issue of immigration to gain political attention. With rare exceptions, in recent years policies led by Democrats generally focus more on paths to legal status for undocumented migrants, while those led by Republicans have primarily focused rather on border security and deportation of undocumented migrants (Oliphant & Cerda, 2022).

- **Legal action prevents policies from being passed**

Many policies have been paused, ended, or reinstated due to legal intervention. Federal courts have hindered the implementation of policies aimed at regularising unauthorised migrants or granting them some form of relief, as was the case with the overturning of Obama’s Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) initiative, a decision that was later upheld by the Supreme Court (Bolter et al., 2021, p.16). Furthermore, continuous court challenges have prevented the Biden administration from reviving and expanding the DACA program as they have prohibited the DHS from granting DACA requests and requests for employment authorisation made by new applicants (Esterline & Batalova, 2022, p.23).

- **Backlogs and capacity issues**

As of 1 November 2021, more than 4.1 million visa applications for permanent immigration (including green cards and visas for spouses and minor children) were on the waiting list of visa requests submitted to the State Department. The number of pending cases jumped from about 328,000 in fiscal year (FY) 2012 to around 656,000 in FY 2017 and then to 1,979,000 in April 2023 (Chishti et al., 2023, p.11). This backlog is driven by combined factors of particularly high demand for visa and asylum procedures that puts stress on the US’s procedural structures and adds to pre-existing backlog, as well as lack of funding for sufficient staff and the fact that the existing database still awaits renovation and digitalisation from a still primarily paper-based system. US Citizenship and Immigration Services processing delays means that noncitizens who rely on regular renewals of their work authorisation—such as DACA holders, the spouses of certain visa holders, and asylum seekers—are at times precluded from lawfully working, affecting their livelihoods as well as their employers’ operations.

- **Non-compliance of authorities**

Some stakeholders at times do not comply with official policies. For example, research found that ICE’s enforcement activities were not in line with the Biden Administration’s priorities for ICE to focus on deporting people who committed serious criminal offences, but not those with minor offences (American Immigration Council, 2023). At the same time, sanctuary cities, counties, or states, have a written (or unwritten) policy, that discourages local law enforcement from reporting the immigration status of individuals, unless it involves a serious crime. These communities do not honour requests by ICE to detain undocumented immigrants apprehended for misdemeanour crimes or investigations.

Table 1: Relevant American institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Congress	Enacts legislation, which needs to pass both the Senate and the House of Representatives, the two chambers of Congress. It sets the number of available green cards each year and seasonal work visas.	<a href="#">Link (EN)</a>
2.	President	Every year, the president in consultation with Congress sets the annual refugee admissions ceiling and allocations by region of origin. The President can also issue a Deferred Enforced Departure directive granting relief to unauthorised immigrants of a certain nationality. This is a presidential directive that is not legislation and therefore does not require the approval of the Congress.	<a href="#">Link (EN)</a>
3.	Department of Homeland Security	DHS is the primary agency that engages in immigration enforcement to prevent unlawful entry into the United States. It also engages in the apprehension and repatriation of non-citizen immigrants who have failed to comply with relevant immigration laws. It can exercise prosecutorial discretion not to remove unauthorised migrants, grant parole in place (which allows a noncitizen/foreign national in the US without authorisation to stay for a certain period of time) and temporary protection status.	<a href="#">Link (EN)</a>
4.	US Customs and Border Protection (CBP)	Within the DHS, the CBP enforces immigration laws at borders/ports of entry.	<a href="#">Link (EN)</a>
5.	US Immigration and Customs Enforcement (ICE)	Within the DHS, ICE is responsible for interior enforcement and detention/removal operations. It can grant deferred action, even after an order of removal. (While deferred action does not confer lawful status over an individual, it is a discretionary determination to defer	<a href="#">Link (EN)</a>



		removal action of an individual as an act of prosecutorial discretion).	
6.	US Citizenship and Immigration Services (USCIS)	Within the DHS, the USCIS adjudicates petitions and applications for naturalisation and immigration benefits. It can grant deferred action and provide parole in place.	<a href="#">Link (EN)</a>
7.	Immigration Judges	Can grant deferred action and close a court case, impeding the return of an unauthorised migrant.	<a href="#">Link (EN)</a>
8.	US Supreme Court and Federal Courts	Article III of the US Constitution invests the judicial power of the United States in the federal court system. It creates the US Supreme Court and gives Congress the authority to create the lower federal courts. The US Supreme Court rules on the validity of immigration laws when challenged- especially when the United States is a party to the case and when there is an allegation of a violation of the United States Constitution or a federal law among other things.	<a href="#">Link (EN)</a>

### 1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN THE UNITED STATES: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in the US

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayers	Persons admitted on temporary visas who either stay beyond the expiration of their visas or otherwise violate their terms of admission. Visa overstayers are estimated to represent around 25% to 40% of unauthorised migrants. Penalties in the US include: Deportation from the US; Visa voidance; A three-year bar to re-enter the US if the person remained in the country unlawfully for

	<p>more than 180 days but less than one year; A ten-year bar to re-enter the US if the person remained in the country unlawfully for a period longer than one year; A permanent bar if the person re-enters or attempts to re-enter the US after having accumulated more than one year of unlawful presence (Unlawful presence may accrue during multiple visits to the United States).</p>
<p>Entries without inspection (irregular entry)</p>	<p>Persons entering the US territory without inspection (e.g. clandestine entrants) or with false documents.</p>
<p>Most relevant categories of migrants with a reasonable claim to a provisional status</p>	<p>Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)</p>
<p>Persons within the immigration backlog</p>	<p>E.g., persons having applied for asylum but waiting for it to be issued, or persons who are immediate relatives or fiancés of legal residents and waiting for their final papers.</p>
<p>Undocumented noncitizens holding employment authorisation documents (EADs)</p>	<p>For some persons with a pending decision or residence status, EADs can be issued. This includes both applicants for a permanent resident (e.g. green card) or temporary resident status.</p>
<p>Persons with Temporary Protected Status (TPS)</p>	<p>TPS offers temporary legal protection and work authorisation to nationals of countries facing natural disasters, armed conflict, or other temporary and extraordinary circumstances, as designated by DHS. Its purpose is to provide temporary protection to those subject to removal until the country of origin is again safe for repatriation. The statute does not define a time period that could be considered “temporary.”</p> <p>As of September 2020, ca. 320,000 people from ten countries had TPS. All had been in the United States for at least three years, though 80% (256,000) had TPS for at least ten years. TPS status currently applies to immigrants from El Salvador (until March 9 2025); Haiti (August 3 2024); Honduras (July 5 2025); Nepal (June 24 2024); Nicaragua (July 5, 2025); Sudan (April 19, 2025).</p>
<p>Deferred Enforced Departure (DED)</p>	<p>DED protects undocumented nationals from specific countries (currently Liberia and Hong Kong) from being returned. DED for Venezuelans (for which estimates range from 94,000 to 200,000) expired on July 20, 2022 but they are eligible to apply for TPS. The main difference between DED and TPS is who makes the decision to extend the benefit. DED is issued by the President while TPS is issued by the DHS. Both relief options are used in</p>

	crisis situations such as war, natural disaster, or widespread civil strife. It is typically issued through a directive by presidential order which states the conditions of the relief, including the possibility of applying for work authorisation.
Parole in place	Parole in place predominantly aims to prevent the separation of military families by allowing certain family members to remain in the United States, potentially to receive work authorisation, and may open a path to permanent residence. It can be granted to unauthorised migrants that are already on US territory and applies to spouses, children, and parents of specific members of the military and veterans. It is granted on a case-by-case basis.
Long-Term Residents with Discretionary Relief	In the U.S. context, DACA, TPS and DED recipients, as well as those who benefit from executive discretion and relief from deportation, are often included in estimates of the broader “unauthorised” population. 60% (6.6 million) of the estimated 11 million unauthorised immigrants in the US, including some with DACA and TPS, have resided in the country for ten years or longer, as stated above. Segments of this long-term population have been granted various forms of discretionary relief by DHS or by immigration judges, in the form of stays of removal or deferred action, for example. Discretionary relief protects unauthorised immigrants from deportation, and some forms allow eligibility for work authorisation. The protections are temporary and sometimes can be terminated with little or no prior notice. They do not offer a pathway to permanent residence.
Undocumented with a final removal order	If asylum applications are rejected following appeal, immigrants may be issued a final removal order. Of the 11 million undocumented noncitizens in the US, around 1.19 million are estimated to have a final removal order but remain in the country because of official executive discretion or because they abscond.

### ***1.3.1 Pathways into and out of irregularity***

- **Overstaying visas**

One of the most common ways migrants enter into irregularity in the US is by overstaying their visas. This can be for different reasons, e.g., once a worker’s visa has expired, it can typically be renewed only from outside the US. Yet with long wait times at embassies and consular offices, workers either postpone their return or spend long wait times in their home country before they can travel back to the US.

- **Entering without inspection**

As many as two-thirds of unauthorised immigrants enter the country by crossing the US-Mexico border.

- **Green Card**

A sizeable group of undocumented immigrants in the US are believed to be eligible for status adjustment through either family or employer sponsorship or other provisions. For example, undocumented migrants may be able to adjust their status and obtain green cards by marrying a US citizen or by showing they are immediate relatives of a US citizen. In addition, well-educated undocumented migrants may be eligible for green card sponsorship through their employers. However – and as for other green card options – application from the country of origin may be necessary.

- **Administrative action**

In the United States, the executive can grant legal protection and other forms of relief to unauthorised migrants. This includes grants of deferred action (like the DACA programme that provided temporary relief from deportation to eligible young unauthorised immigrants) but also parole in place and Temporary Protection Status, for which fourteen countries are currently designated.

### **1.3.2 Regularisation**

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Since 2010, lawmakers in the US have put forward multiple bills proposing pathways to a green card resembling amnesty, yet none has been able to move forward. Certain existing laws may permit similar outcomes in specific circumstances, but a comprehensive and widespread amnesty has not been enacted (see DACA for instance which provides temporary relief from deportation and work authorisation).

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## ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Immigration Reform and Control Act	1986	Introduced civil and criminal penalties to employers who knowingly hired undocumented immigrants or individuals unauthorized to work in the U.S; Also offered legalization, which led to lawful permanent residence (LPR) and prospective naturalization to undocumented migrants, who entered the country prior to 1982.	<a href="#">Link (EN)</a>
2	Temporary Protection Status (TPS)	1990	<p>Under In 2020, the Trump's Presidency, TPS for nationals of six Sudan, Nicaragua, Haiti and El Salvador countries thatwho represented up toapproximately 97% of the total beneficiaries at the time was terminated, on the grounds that they could now safely return to their countries of origin.</p> <p>Under Biden's Presidency temporary protections was extended to just under 475,000 Venezuelans, Afghans, Ukrainians, and Burmese already in the United States.The Trump administration set the ceiling of refugee admission at the lowest since the resettlement program was formally created in 1980. In 2020, a Regulation entered into force which extended the period for asylum applicants to get a work permit while their applications are still pending from 6 months to 1 year.</p>	n/a

3	Illegal Immigration Reform and Immigrant Responsibility Act	1996	Adding penalties for undocumented immigrants who commit crimes while in the United States or who stay in the U.S. for statutorily defined periods of time- allowed stipulated removals.	<a href="#">Link (EN)</a>
4	Help Haiti Act	2010	The law made it possible for certain Haitian orphans paroled into the United States to become lawful permanent residents (LPR) of the United States and get green cards.	<a href="#">Link (EN)</a>
5	Deferred Action for Childhood Arrivals (DACA) program	2012	<p>Provided two years of deportation relief and work authorization to eligible young unauthorized immigrants.</p> <p>To be eligible, one must be at least 15 years old, have entered the United States before age 16, have continuously resided in the United States since June 15, 2007, be enrolled in school, have earned a high school diploma or its equivalent, or be an honourably discharged veteran and have not been convicted of a felony, a significant misdemeanour, or three or more misdemeanours; or otherwise pose a threat to public safety or national security.</p>	<a href="#">Link (EN)</a>

6	Executive Order 13769 and 13780	2017	<p>Revoked Executive Order 13769 and replaced it.</p> <p>The actions directed by Executive Order 13780 have—among other things—raised the baseline for the vetting and screening of foreign nationals, with an intent to improve the US government’s ability to prevent the entry of malicious actors. The Order in effect imposed a temporary pause on entry of nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen subject to categorical exceptions and case by case waivers and does not apply to persons falling under the exceptions category such as lawful permanent US Residents, and diplomats.</p> <p>Issuance of visa to Iraqi nationals was subject to additional scrutiny to determine if applicants had connections with terrorist organizations.</p>	n/a
7	Farm Workforce Modernization Act	2019	<p>Provides reforms to the H-2A agricultural guestworker program and creates a first-of-its-kind, merit-based visa program specifically designed for the agricultural sector;</p> <p>Allows many undocumented farmworkers, as well as their spouses and minor children, to apply for Certified Agricultural Worker (CAW) status during an 18-month application period.</p>	<a href="#">Link (EN)</a>
8	Liberian Refugee Immigration Fairness Act	2020	<p>Provides an opportunity for certain Liberian nationals and their spouses, unmarried children under 21 years old, and unmarried sons and daughters 21 years old or older living in the United States who meet the eligibility requirements to obtain lawful</p>	<a href="#">Link (EN)</a>



			permanent resident status (receive Green Cards).	
9	Title 42	2020	Was put in place to regulate border crossings under the premise of increased COVID-19 precautions.  Title 42 ended on May 11 at 11:59 p.m., upon which time the pre-COVID Title 8 immigration procedures resumed.	<a href="#">Link (EN)</a>
10	Guidelines for the Enforcement of Civil Immigration Law	2021	Restricted ICE agents from seeking out deportations on the basis of lesser offenses, such as drug possession or charges without convictions, and instead focus on individuals with a history of more serious criminal convictions such as murder, rape, and child abuse or who pose a threat to national security. Those who committed felonies more than 10 years ago or with “loose” gang affiliations can also no longer be deported. The new guidelines also require the permission of the ICE director for arrests of suspects outside of jails and prisons.	n/a
11	Public Charge Rule	2022	The Biden administration rescinded a Trump-era rule from 2019 that prevented noncitizens who accessed certain public benefits from becoming lawful permanent residents, a change that the Supreme Court has allowed to stand.	<a href="#">Link (EN)</a>

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	1983	The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping.	<a href="#">Link (EN)</a>

2	Affordable Care Act (ACA)	2014	Affordable Health Insurance available to more people. It improved health insurance coverage rates for both the U.S. born and immigrants.	<a href="#">Link (EN)</a>
3	Asylum Application, Interview, and Employment Authorization for Applicants  Implementation of Vacatur	2022	Applicants for asylum need not wait 365 calendar days to apply for employment authorization, and can submit applications for employment authorization 150 days after filing their asylum application.	<a href="#">Link (EN)</a>

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