



The Biden Administration: A New Narrative on Immigration?

1. Introduction

Among the very first acts of President Biden after his inauguration was to sign 17 Executive Orders¹ effectively overturning a number of the more egregious policies of the Trump administration. Included amongst these Orders were several relating to aspects of immigration. The President also announced that he would send an Immigration Bill, called the US Citizenship Act of 2021, to Congress for consideration.² Other Orders dealt with re-joining the Paris Climate Agreement and stopping the withdrawal of the USA from the WHO; still others deal directly with COVID-19 issues.³

In carrying out these actions President Biden is making good on his election promises. During the run up to the election he critiqued President Trump for his “unrelenting assault on our values and our history as a nation of immigrants” and promised a different approach.⁴ Commentators regard the Trump administration’s policies as “the most aggressive approach to enforcement in recent history.”⁵ In his election manifesto Biden proposed 28 reforms to immigration policies.⁶ They ranged from lifting the ban on immigrants from predominantly Muslim countries, to the halting of the construction of the border wall between the USA and Mexico, the re-introduction of support and protection against deportation for the ‘Dreamers’, and the creation of a road map for the 11m who have been living in and contributing to the well-being of people in the USA for many years but who remain unauthorised. Biden noted in his campaign that in 2015 the IRS collected \$23.6bn from 4.4m workers without social

security numbers, mainly because they were undocumented.⁷

At the top of his list of reforms, Biden proposes to stop the separation of children from parents and the detention of children in facilities apart from their parents. Pope Francis has called this practice “cruelty of the highest form.”⁸ Earlier, President Biden also promised to lift the cap on the number of refugee admissions. In 2020 it stood at 18 000, the lowest since 1980; Biden has promised to raise it to 125 000.⁹ This is seen by many as a reason for hope that the new administration will take practical steps to counter the pervasive sense that refugee issues are unimportant.

2. Rationale for This Paper

One key reason for examining the actions of the Biden administration in this paper is that, in the field of mobile people, policy positions around the world are for good or bad profoundly influenced by positions held by the USA. Its narratives thus have serious international repercussions. Indeed, the impact of such positions bears directly on questions and policies which South Africa has to deal with, and the direction offered by these Orders strengthens some of the arguments in the public domain here. So, for example, it is worth noting that despite earlier government hesitancy around the roll-out of the vaccine for undocumented migrants in South Africa, President Ramaphosa has announced that they will indeed be included. It is a hopeful intimation of a more balanced policy in this regard.¹⁰

Secondly, in these actions a value-based vocabulary is also being reintroduced into international debates, raising the discussion above the polarised, binary language that this discussion has been mired in. This was especially true during the Trump administration. It in turn bolstered attempts by other governments to adopt similar positions, and encouraged nationalist and populist groups to amplify an anti-immigrant rhetoric. There is little doubt that these admirable ideals of President Biden will not be implemented without considerable debate, horse-trading and political compromise and opportunism. However, they open new possibilities for discussion. From a theological point of view, the substance of the Orders mirrors the values embedded in Catholic Social Teaching in this field and in the 'theology of encounter', which is a key tenet of Pope Francis' teaching.

Finally, in an article in the *Mail & Guardian*, the point was made that that the immediate actions of the Biden administration underline the importance of supporting regional integration and regional bodies that build solidarity. This is seen particularly in the movement of peoples regionally. The article says: "Africa has to show more seriousness in building regional institutions that break down barriers and borders in bids to realise the age-old vision of pan-Africanism and continental integration."¹¹ This emphasis on regional solidarity, on more responsible ways of allowing movement in the region, would be an important, immediate point to take from the new administration.

3. Some Initial Responses

Even a most conservative reading of both the Bill and the Executive Orders shows a totally different, much more humane narrative with regard to immigration. As such it has been welcomed by many organisations: "Business groups, including technology giants Google and Apple, have applauded President Joe Biden's steps to initiate immigration reforms, underlining that the move would boost the American economy, create jobs and attract talent from across the world."¹²

Churches also praised these Orders: "Los Angeles Archbishop José H. Gomez, President of the U.S. Conference of Catholic Bishops, and Auxiliary Bishop Mario E. Dorsonville of Washington, head of the bishops' Committee on Migration, likewise praised this move 'toward ensuring that

immigration enforcement in our country is balanced and humane."¹³

(These commentaries by the US Bishops serve the important purpose of grounding or contextualising the general theological principles. Hence the recurring references to them in this paper. This provides an important service to public theology which seeks to engage faith with public realities.)

4. The Key Executive Orders and Responses from the Church

4.1. Young People

It was during the Obama-Biden administration that the DACA¹⁴ legislation was introduced, promising support and protection against deportation for children brought to the USA even though their presence was technically illegal. The administration struggled greatly at the time to get this through Congress. Many of these people (known more commonly as Dreamers) have passed through all the civic rites of passage, served the country, and become upright young members of society. Mr Biden's Order calls on Congress to enact legislation providing permanent status and a path to citizenship for these immigrants. This will probably affect some 800 000 young people. The US Bishops have welcomed this Order: "We welcome the announcement preserving and fortifying DACA. For years, DACA youth have been enriching our country. They are contributors to our economy, veterans of our military, academic standouts in our universities and leaders in our parishes and communities. They and their families deserve certainty, compassion, generosity and justice."¹⁵

4.2. The Census and Demarcated Groups

Another Executive Order revokes the Trump administration's plan to exclude non-citizens from the census count, while another one overturns a Trump Executive Order that pushed aggressive efforts to find and deport unauthorized immigrants. Yet another Order blocks the deportation of Liberians who have been living in the United States.¹⁶ It is estimated that around 10 000 Liberian nationals are eligible for the relief envisaged in this Order, and in addition about 100 spouses and 200 children.¹⁷

This Order raises a question very pertinent to the South African landscape around special

concessions for demarcated groups. It is of importance now because the three groups covered by special concessions, namely people from Angola, Lesotho and Zimbabwe staying in SA under 'Special Permits', face the expiry of those permits on 31st December 2021. There is a strong and very logical call for a further renewal of those permits, but should they not be renewed the holders would face detention and deportation. All those affected are already living and working in SA, most have already had two renewals and so are reasonably settled in the country. The Special Permit does not lead to a right to permanent residence, so those who argue against the renewal on those grounds are arguing from a false premise. There is also a sound financial argument for concessions to demarcated groups, since the costs of detention and deportation are costly and seldom productive. In 2013 this already amounted to R90m per annum.¹⁸

The Biden Order helps to visualise options other than detention and deportation. In the light of that SA needs to continue to look, for example, at implementing the envisaged SADC low skills visa and with that to make immediate preparations for renewing the Special Permits. In the case of the Angolans, the much publicised promise in 2019 of offering permanent residence to this small group has not materialised and they live with the long term uncertainty which afflicts all the Special Permit holders.¹⁹ It would be more humane if the DHA were to confirm that such renewals will indeed take place. It should also take the bold step of granting permanent residence to this group, given their long and uninterrupted stay in South Africa and the fact that most are employed and many have married local people.

The US Bishops, in commenting on the inclusion of non-citizens in the census, said: "We welcome this return to more than a century of American precedent that ensures all residents will be counted and included in the census and apportionment. This return to our previous policy reflects the inalienable truth that all people matter and are imbued with human dignity."²⁰

They added a significant theological paragraph: "While the process of counting persons in the United States for the purposes of apportioning seats in the U.S. House of Representatives has not always been free of injustice—the Three-Fifths Compromise being a noteworthy example—Wednesday's executive order stands as a testament to the indisputable reality that

immigration status does not negate the inherent value of a human life, nor should it undermine any person's ability to contribute to the growth and wellbeing of our nation. Citizens and noncitizens alike must continue to be recognized as members of the same human family."²¹

There has been a growing call in SA to include migrants in planning for more adequate health, sanitation, education, housing and welfare infrastructures. "Keeping track of migration and urbanisation is difficult because of the challenges involved in collecting data from mobile people. But it's vital for population health that migration and urbanisation is well understood and planned for."²² This is true for both internal and cross-border migration. Another finding in 2019 made a similar point. "This research demonstrated that local government officials are assuming a population that is sedentary and geographically bounded, while migration is actively shaping communities. This mobility provides an opportunity for management practices to become more inclusive and effective."²³ It is sensible to acknowledge what in reality exists so as to have better provisions in future: to ignore the realities is certainly not going to change them.

4.3. The 'Muslim Ban'

An Executive Order has also ended the so-called Muslim ban, which blocked travel to the United States from several predominantly Muslim and African countries, including Sudan, Nigeria, Tanzania and Eritrea.²⁴ It clearly directs the State Department to restart visa processing for individuals from the affected countries and to develop ways to address the harm caused to those who were prevented from coming to the US because of the ban. Cardinal Timothy Dolan of New York issued a statement on the president's reversal of the Muslim ban "which will help ensure that those fleeing persecution and seeking refuge or seeking to reunify with family in the United States will not be turned away because of what country they are from or what religion they practice."²⁵

4.4. The Border Wall

Another Executive Order has halted construction of the much criticised wall on the US border with Mexico. The order includes an 'immediate termination' of the national emergency declaration that allowed the Trump administration to redirect billions of dollars to the wall. It says the administration will begin a close review of the legality of the effort to divert federal money to fund the wall. It further calls for the

redirection of funds earmarked for the wall and the repurposing of contracts.²⁶

Pope Francis once said that he was willing to tell President Trump in person that it is wrong to build border walls, and appeared to warn him not to resume a policy of separating families. Asked if he would tell Trump the same thing to his face if the president were sitting opposite him instead of the reporter, Francis said: "The same. The same because I say it publicly ... I have even said that those who build walls end up being prisoners of the walls they build."²⁷

It is worth noting that while public opinion and theological insight leans strongly against the idea of harsh orders and signs of inhospitality, South Africa has embarked on an ambitious plan to erect a border fence between it and Zimbabwe. It began just as the 2020 lockdown commenced; indeed in some circles it was called 'the COVID wall'. It cost the tax payer R37m to construct and was according to all reports not fit for purpose. It was mired in controversy and corruption from the beginning; the Special Investigating Unit called for the halting of two major contracts, citing irregularities in the tender process, and 14 departmental officials faced disciplinary hearings. Public Works Minister Patricia de Lille famously said that it took one day for smugglers to cut holes and break structural supports.²⁸ It is interesting that the Portfolio Committee on Public Accounts has recently refused further financial support for the repair of the wall. Committee chairperson Mkhuleko Hlengwa simply asked: "We can't be thinking about repairing a fence that ordinarily is not fit for purpose ... What are you actually repairing?" So overwhelming was the reaction that De Lille herself ended up conceding it might not have been the best of ideas. "I certainly share the anxiety of the committee, and I have also already expressed to the department that I do not accept the proposal that we repair."²⁹

The controversy around the wall both conceptually and cost-wise has raised again the fundamental discussion looking at more imaginative and rights-based approaches to border security. Civil society in South Africa has long argued that these types of deterrents are unsustainable and that harder questions need to be asked, including questions around thinking regionally when it comes to security but also to labour. It includes deciding whether border management will follow more

inclusive or exclusive models, and greater combatting of the misuse of resources that undermine the capacity of good control practices.

5. Political Pushback

As was to be expected, the Executive Orders have met with pushback from a number of quarters. Senator Ted Cruz said that these Orders would put immigrants ahead of American workers, and that illegal immigration was a threat to 'American' jobs. Cruz also said the president's Order preserving DACA promotes "open-borders legislation" that would grant permanent citizenship to "over 11 million illegal immigrants."

Another news outlet reported: "President Biden also plans to push an immigration reform bill that would provide a path to citizenship for the 11 million people living in the United States without legal status. The proposal will be an early test for how Biden will negotiate with lawmakers across the aisle on contentious issues. Democrats hold a razor-thin advantage in Congress. Biden will need to find Republican votes in the Senate to overcome the filibuster and deliver on immigration reforms that have proven elusive for decades."³⁰

Pushback is also very evident in South Africa. It sometimes takes the form of vicious xenophobic attacks, but it has also been noted in connection with the President's assurance of a universal roll out of COVID-19 vaccines. The former Mayor of Johannesburg and leader of the ActionSA party, Herman Mashaba, for example, has indicated his opposition to including undocumented migrants in the roll out.³¹

6. Conclusion

A statement of good policy is never an assurance of the desired outcome. Many of these Orders need to find legislative expression, and that could be an uphill battle for the new administration. The issue of immigration has long been a contentious issue and will become more so in an increasingly divided and politically polarised society. This is true not only of the USA but across the globe. It finds a reflection also in South Africa and that is why bold, value-based initiatives need to find expression in our political discourse.

Commentators have spoken of this moment being one of not only bringing immigrants out of the shadows, but of bringing the issues and policies into the light of open discussion. “Biden’s bold gamble on immigration is about America’s future.”³² To which one could add “and about the world’s future”. It might be helpful to return to the words of Pope Francis when he addressed US lawmakers in 2015. He said: “When the stranger in our midst appeals to us, we must not repeat the sins and the errors of the past. We must resolve

now to live as nobly and as justly as possible, as we educate new generations not to turn their back on our ‘neighbours’ and everything around us. Building a nation calls us to recognise that we must constantly relate to others, rejecting a mindset of hostility in order to adopt one of reciprocal subsidiarity, in a constant effort to do our best.”³³

These Executive Orders seem to point in the direction of that vision.

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²<https://www.forbes.com/sites/andyjsemotiuk/2021/01/22/bidens-first-day-17-executive-orders-included-major-changes-to-immigration/?sh=3e98306b345a>

³<https://www.irishtimes.com/news/world/us/biden-sets-to-work-reversing-trump-policies-and-unveils-ambitious-immigration-plan-1.4464139>

⁴<https://joebiden.com/immigration/>

⁵<https://www.miamiherald.com/news/local/immigration/article248597485.html>

⁶<https://joebiden.com/immigration/>

⁷<https://joebiden.com/immigration/>

⁸<https://www.motherscabin.org/news-and-publications/pope-francis-cruelty-of-the-highest-form/>

⁹<https://why.org/articles/people-can-breathe-easier-philly-immigration-advocates-react-to-biden-executive-orders/>

¹⁰<https://www.iol.co.za/news/politics/refugees-and-asylum-seekers-in-sa-will-receive-covid-19-vaccine-jab-f0250d20-adcd-47a1-b739-469425a23dba>

¹¹<https://mg.co.za/africa/2021-01-23-what-the-biden-presidency-may-mean-for-africa/>

¹²<https://www.livemint.com/industry/infotech/us-it-companies-applaud-biden-s-immigration-reforms-11611298594570.html>

¹³<https://www.catholicnews.com/biden-signs-flurry-of-executive-orders-undoing-trump-era-policies/>

¹⁴ Deferred Action for Childhood Arrivals

¹⁵<https://cathstan.org/news/us-world/bishops-welcome-biden-executive-order-that-strengthens-daca-program>

¹⁶<https://www.nytimes.com/2021/01/20/us/biden-executive-orders.html>

¹⁷https://cmsny.org/the-liberian-refugee-immigration-fairness-program-estimates-of-the-potentially-eligible/?utm_source=Center+for+Migration+Studies+Mailing+List&utm_campaign=e0adaf13cf-EMAIL_CAMPAIGN_2018_12_03_05_58_COPY_01&utm_medium=email&utm_term=0_74e5cba118-e0adaf13cf-115675530

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¹⁹<https://www.scalabrini.org.za/news/angolan-cessation-updates/>

²⁰<https://cruxnow.com/church-in-the-usa/2021/01/u-s-bishops-welcome-bidens-order-not-to-release-census-citizenship-data/>

²¹<https://www.usccb.org/news/2021/usccb-chairmen-affirm-administrations-order-ensuring-all-persons-included-census-and>

²²<https://theconversation.com/a-unique-picture-of-migration-patterns-in-south-africa-can-help-urban-planning-120633>

²³<https://www.emerald.com/insight/content/doi/10.1108/JPM11-2017-0116/full/html?skipTracking=true>

²⁴<https://www.nytimes.com/2020/01/31/us/politics/trump-travel-ban.html>

²⁵<https://cruxnow.com/church-in-the-usa/2021/01/catholic-leaders-praise-bidens-executive-actions-helping-immigrants/>

²⁶https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/?utm_source=Center+for+Migration+Studies+Mailing+List&utm_campaign=e0adaf13cf-EMAIL_CAMPAIGN_2018_12_03_05_58_COPY_01&utm_medium=email&utm_term=0_74e5cba118-e0adaf13cf-115675530

²⁷ <https://www.reuters.com/article/us-usa-immigration-pope-idUSKCN1SY23S>

²⁸ <https://select.timeslive.co.za/ideas/2021-02-02-editorial-covid-border-fence-idea-had-holes-in-it-from-the-word-go/>

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³⁰ <https://whyy.org/articles/people-can-breathe-easier-philly-immigration-advocates-react-to-biden-executive-orders/>

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³² <https://foreignpolicy.com/2021/01/21/biden-immigration-reform-trump-populism/>

³³ <https://www.theguardian.com/world/2015/sep/24/pope-francis-congress-speech-immigration-climate-change-abortion>

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