BIDEN’S 100 DAYS
Immigrants’ rights advocates can celebrate a glass half full 100 days after Biden’s inauguration. The new administration has quickly reversed some of the most egregious measures instituted by its predecessor. Over 1,000 asylum applicants who have been forced to wait in Mexico for their hearings have now been allowed into the US; local governments engaged in shielding undocumented migrants from deportation no longer risk the loss of their federal funding; construction of the infamous border wall has been halted; and a bill to restore pathways to U.S. citizenship for long-settled residents lacking a regular immigration status has been presented to Congress.

However, robust investment in an efficient and just asylum processing system — including for unaccompanied children — is not in sight, and thus prolonged family separation, inhumane detention, and delays will continue. The legacy of Trump’s opportunistic abuse of pandemic-related public health considerations (Title 42) continues, excluding single adults entitled to make asylum claims without proof that such exclusion is necessary as required by international law. ICE, the government’s immigration enforcement agency, continues its discriminatory activities with vastly expanded post-entry surveillance powers deployed against long-settled undocumented individuals and families who pose no threat to their communities and lack any criminal record. Firewalls should protect personal information held by state and private agencies from unauthorized disclosure to ICE.

An anti-racist, rights-respecting administration should urgently rectify these abuses. The right to asylum should be vigorously upheld, and the privacy of law-abiding residents should not be violated through clandestine government surveillance.
Beginning in July 2020, the Trump Administration executed 12 men and one woman — the first federal executions in 17 years. Pleas to the Supreme Court to save the prisoner’s lives were unavailing. During his presidential campaign, Joe Biden promised that he would “work to pass legislation to eliminate the death penalty at the federal level and incentivize states to follow the federal government’s example.” It was widely expected that Biden would, at the least, refuse to proceed with federal executions or commute outstanding death sentences to life in prison. Since becoming president, he has been silent on the issue, despite Chief of Staff Ron Klain stating shortly after the inauguration that the President would soon sign Executive Orders “relating to reforming our criminal justice system.”

On March 22, 2021, the Supreme Court granted a Trump Administration petition to review a lower court decision that overturned the death sentence of Boston marathon bomber Dzhokhar Tsarnaev due to errors by the trial judge. While Press Secretary Jen Psaki stated that the President had “grave concerns about capital punishment as currently administered,” Biden’s Acting Solicitor General failed to move to withdraw the appeal as had been done in other cases. Robert Dunham of the Death Penalty Information Center told the Times in April 2021 that “cases like this will tell us how serious [is] the President’s pledge to work to end the death penalty.”

The Biden Administration has demonstrated a commitment to the development of appropriate strategies to mitigate harms and maximize benefits of emerging technologies. Efforts such as the appointment of Professor Alondra Nelson as the Deputy Director of Science and Society within the White House Office of Science and Technology Policy (OSTP) and an Executive Order signed in late January emphasizing that “scientific and technological information, data, and evidence are central to the development and iterative improvement of sound policies” are promising. These efforts show that the administration is aware of the critical role the social sciences play in guiding responsible technology development, as well as the need for evidence-based policymaking.

Of course, in order to support evidence-based tech policymaking, there is a need for independent, peer-reviewed research. However, nascent data privacy legislation (e.g., EU GDPR and the California Consumer Privacy Act) have placed increased pressure on tech companies to restrict third party access to data. In an overly broad interpretation of the legislation, platforms are increasingly restricting third-party access to the data they collect. In doing so, they shield themselves from public transparency and accountability, and undermine efforts to support evidence-based policymaking.

Primary among the efforts that the Biden Administration should pursue, especially OSTP, is guidance on technology and policy strategies that can support privacy-preserving access to platform data for public interest research. In doing so, the administration will take critical steps toward achieving the goals it outlined in its Executive Order.
The Biden Administration has repudiated and repealed several Trump Administration human rights policies, including overturning the recommendations of the Pompeo Commission on Unalienable Rights and disbanding it, re-engaging with the United Nations Human Rights Council, restoring a commitment to LGBTQ+ rights and reproductive health, and lifting sanctions on International Criminal Court (ICC) officials. On the domestic front, the administration has made important steps on commitments to immigrants, refugees, and asylum seekers, as well as tackling gun violence and taking a science-based approach to the coronavirus response.

Looking ahead, the administration must confront the long history of systemic discrimination and racism in the United States by strengthening voting rights and civil rights, overhauling the criminal justice and policing systems, and closing the racial wealth gap by supporting reparations. On the immigration front, it is not enough to track and revoke the cruel Trump-era policies — the administration must build a more humane and rights-respecting system. On the public health front, tackling vaccine inequality within the United States and around the world must be a priority — both by sharing vaccine surplus with countries in the global South and by suspending intellectual property rights for COVID-19 vaccines. On the economic front, the administration must tackle the growing wealth and income inequality that has only become exacerbated by the pandemic. Managing so many urgent and important priorities on both domestic and international fronts is not easy, but perhaps the most important task ahead will be rebuilding trust in public institutions and leaders.

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One net result of the Trump Administration is a massive loss of American soft power in the world. Specifically for human rights, as Ken Roth of Human Rights Watch aptly put it, “Donald Trump was a disaster.” Antony Blinken and Joe Biden himself have already made clear that human rights will play a larger role in their foreign policy outlook, and generally, the Biden Administration seems to wish to restore the collaborative sides of American foreign policy. While this repair work will be the task of a decade (if it can be done at all), there is one new area that badly needs this administration’s attention: digital regulation.

The most striking proof of how badly digital regulation is lacking in the U.S. is that it was only through decisions made by Twitter and Facebook after the events of January 6, 2021, that Trump’s never-ending sequence of hateful disinformation was terminated. But a decision like that should never have been left to companies. Instead, internet regulation by the government should have been in place to demand norms of decency and truthfulness, even of its Chief Executive. Beyond that, the US is badly behind when it comes to regulating who owns digital spaces and data, and what kind of actions are acceptable in those spaces. The EU and some individual countries in Europe are much further along here. We live in the digital century, which demands that, in particular, human rights must be spelled out. This is an important task for Biden — but it is also a way to reconnect with old allies around shared values.
Biden entered the Presidential Office in the wake of the most serious domestic threat to American democracy in nearly a century. His first 100 days have been marked by a flurry of Executive Orders, legislative commitments, and policy statements aimed at reinvigorating democracy, civil rights, and civil liberties. These initiatives included efforts to protect voting rights, reform policing, strengthen civil rights laws, combat housing discrimination, reduce incarceration, address racial disparities in healthcare, and provide for the humane treatment of refugees and asylum seekers.

Whether Biden can succeed in any of these areas will depend on his ability to reduce political polarization, broaden the constituency that elected him, and mobilize public opinion for reform. His early success in enacting and gaining public support for a major pandemic relief bill was a positive sign. The new administration’s policy promises reflect many of the recommendations of a Carr Center report issued last October, *Reimagining Rights and Responsibilities in the United States*, and the results of a national poll conducted in July 2020 for the Carr Center by the National Opinion Research Center at the University of Chicago. The poll showed a surprising amount of public support for securing civil rights and civil liberties. A strong bipartisan majority agreed that “we have more in common than many people think,” and “without our freedoms, America is nothing.”

In a forthcoming article in *Foreign Affairs*, “Practice What You Preach: Global Human Rights Leadership Begins at Home,” John Shattuck and I argue that restoring US credibility in the world will require improvements not just to U.S. foreign policy, but also to the country’s domestic record on human rights. In its first 100 days, the Biden Administration has made important strides in this direction, such as issuing an Executive Order prohibiting discrimination on the basis of sexual orientation or gender identity by the executive branch and the military, and ending the cruel policy of forced separation of migrant children from their families at the border. Biden also reversed Trump’s ban on immigration from primarily Muslim countries, halted construction of the U.S.–Mexico border wall, and rescinded the “global gag rule,” which blocked U.S. funding for non-governmental organizations abroad that provide abortion counseling.

Despite these strides, there is still much human rights work to be done at home and abroad, including closing the U.S. military prison at Guantanamo Bay, where 40 prisoners remain in indefinite detention after nearly two decades. To reengage with international human rights organizations, the Biden Administration must first rescind Trump’s Executive Order authorizing sanctions against officials of the International Criminal Court. The United States should also rejoin the Human Rights Council, and work with the Inter-American Commission on Human Rights to address the repression that is a root cause of emigration from Central America and Venezuela.