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BILL KRISTOL:

Hi, I'm Bill Kristol. Welcome back to *Conversations*. I'm very pleased to be joined today by Aaron Reichlin-Melnick, an expert on immigration policy, and we're going to talk about immigration policy, a centerpiece of Donald Trump's campaign and probably of what he will announce next week in his first days, in the first days of his presidency. Aaron has been at the American Immigration Council for several years, one of the preeminent, maybe the preeminent think tank and advocacy organization on immigration policy. He's a genuine expert on it—I've learned a lot from him in various sessions—and a lawyer as well, so we won't hold that against you for the purposes of this conversation, Aaron.

So, we're going to talk about immigration, what's going to happen? It's been such a centerpiece of the campaign, and it will be of our politics at our public debate for the next several months maybe. It has been for a long time too, so really this is a real chance, I think, to get a good briefing on immigration policy. So, Aaron, thank you. Thank you for joining me.

AARON REICHLIN-MELNICK:

Thank you for having me.

BILL KRISTOL:

No, no, my pleasure. So, it was big in the campaign, and then Donald Trump has said, his lieutenants have said, big announcements coming right away and a lot of them on immigration policy. Let's go through the different areas maybe of the buckets of policy. There'll be the border, there'll presumably be a lot on the interior, the famous mass deportations, and that's legal immigration as well, visas and stuff, so let's... What about the border? Heard so much about the border, but it's kind of confusing actually. So what's actually happening and been happening at the border? And what do you expect the Trump administration to announce?

AARON REICHLIN-MELNICK:

Yeah, so the state of the border right now is unlike anything that we have seen a president take control of in their first days in the last decades, maybe ever. And that's because the border today looks very different than when it did when Donald Trump took office eight years ago. Right now, Mexico is carrying out its harshest and most significant crackdown on migration really in its history. Mexican immigration officials are setting arrest records nearly every month and blocking migrants from getting to the US-Mexico border at the scale that they had been for a lot of the last few years. Add to that the fact that the United States has built up an enormous amount of infrastructure at the border. There's half a dozen soft-sided detention facilities to hold people, more capacity to process people rapidly through the asylum system, and the Biden administration itself changed the practices by which the asylum processes carried out for migrants crossing the border in June of last year.

And the result of this is that border crossings are currently lower than they were at the time when President Biden took office. And in November, we actually hit a bit of a milestone, possibly for the first time ever in US history, more people were processed legally at ports of entry seeking asylum there than were apprehended crossing the border illegally. So President Trump will take office with the border quieter than it has been in four years and with the tools in place, should he keep the diplomatic issues going with Mexico, to potentially keep numbers lower.

BILL KRISTOL:

Can I just ask one thing? Just listening to you, it strikes me that often the border is described, and I myself have this vague impression of it's sort of irresistible, these forces, people want to come. There are many millions assembled. It's kind of impractical to keep them out or take draconian measures. But it does sound like you're saying that it's more susceptible to policy initiatives, wise or unwise, but from the US and I suppose from Mexico as well than one might've thought, right? I mean this is not something that's just... Policy matters in terms of the border.

AARON REICHLIN-MELNICK:

Yeah. Yes and no to some extent. So, the “no” is that there are of course still tens of thousands of people crossing the border between ports of entry every single month, and there are still thousands who are trying to do so without seeking asylum. For the last decade, we've had a very unusual set of circumstances at the border where we have had very large numbers of people crossing the border and immediately turning themselves in to the nearest border patrol agent to seek asylum, not attempting to evade arrest by sneaking through in camouflage with carpet shoes. The latter thing, people trying to sneak through without being caught is really what the border looked like for most of US history or the last century, really, since we invented the concept of undocumented immigrants by imposing restrictions on immigration.

But what we haven't really seen in the past and what has been going on in the past decade is very large numbers of people crossing and immediately availing themselves of the nearest law enforcement officer and not trying to hide, walking across and turning themselves in immediately. That latter behavior does seem to be more heavily impacted by policy.

BILL KRISTOL:

And why did people do that? Asylum is a good thing to have, or it's easier to get than it used to be? Or just...

AARON REICHLIN-MELNICK:

Well, it's not clear why this started. Of course, since 1980, immigration law has allowed any person crossing the border by whatever means to access the asylum process. One major change in the 1980s, after this law was passed, the Refugee Act of 1980, the Reagan administration largely ignored that and turned people away rapidly anyway, including people fleeing the death squads in El Salvador or the indigenous genocide in Guatemala in the 1980s, were turned away at a rate of 97 to 98% of asylum seekers.

The big shift really began under the Obama administration as more people began leaving El Salvador and Honduras, as MS-13 became ascendant in those countries and started recruiting young children for their gangs and taking women forcefully as "girlfriends" with no choice. You know, if you don't be my girlfriend, I kill your family. And a lot of parents started sending their kids to the US. The message got out that this was an accessible way to seek safety. And I think that knowledge has spread. Now different smuggling groups have arisen as well that can help share misinformation and sometimes truths about the border. So the knowledge that is a pathway to seek asylum in the United States is more widely spread than it has ever been, but the pathway itself is not new.

BILL KRISTOL:

So how many people are coming across the border, have come across in the last year or two, are coming across now, and what has Trump propose to do about this? Something you still consider is a big problem, even if the numbers are way down from where they were a year ago.

AARON REICHLIN-MELNICK:

Yeah, so a year ago, the situation was very different. In December of 2023, we saw 250,000 border patrol apprehensions, the highest number on record. I will note as a little bit of a

historical aside, it's not clear if that actually is the highest number of people who've ever crossed in a given month because 20, 30, 40 years ago, we had far less situational awareness of how many people were crossing. Border patrol only apprehended, according to some estimates, about one in three people who were crossing. In fact, it wasn't until 2012 that we actually took the majority of people crossing the border into custody. But setting that aside, 250,000 was an extraordinarily high number.

And then last month, the last month of border patrol data we have from November, there were 46,000 people taken into custody. So it is less than a fifth of the border patrol apprehensions compared to a year ago. And that gives you some sense of the change that has happened with the Mexican crackdown and the actions that President Biden took in June.

There are still about 250,000 or more migrants waiting in Mexico. Many of them are registered through the CBP One app, attempting to seek legal entry through a port of entry. And the Biden administration's carrot and stick policies seem to have shifted some behavior. What's more, the number of people coming through Panama's Darien gap from South America plummeted in December, dropping from about 25,000 in October to about 5,000 in December. So number of migrants coming to Mexico to seek entry has already slowed, possibly because people are taking a wait and see approach to the new administration.

BILL KRISTOL:

Interesting. Okay, but those numbers can go back up slowly, and it is interesting how much Biden's crackdown, I guess you'd call it, in the summer of 2024 really affected numbers, right? I'm just struck by that.

AARON REICHLIN-MELNICK:

Yeah, the Biden crackdown as well as Mexico's crackdown. So Mexico's crackdown had the lion's share of the impact, about 50% drop after Mexico began this. What Mexico is doing, to be clear, is something that's been called the merry-go-round. Migrants are essentially trapped in southern Mexico. Any migrant who's caught outside of the state of Chiapas is arrested, rounded up, and sent back to Chiapas in southern Mexico. So you have migrants traveling north, being arrested and found at a checkpoint, sent south. They try again, they get arrested again, they get sent south. They try again, this goes on over and over again. The number of people actually making it to Mexico's northern border with the United States is really lower than it has been in years.

BILL KRISTOL:

What does Trump propose to do on the border?

AARON REICHLIN-MELNICK:

Yeah, so we are hearing that there are about four or five different things that the Trump administration is going to propose and either implement on the first day or at least announce a plan to implement. First off, he has said repeatedly on the campaign trail that he's going to end the Biden administration's practice of expanding access to the asylum process at ports of entry and close the CBP One app by which people enter essentially a lottery system to get an appointment to enter the US and get one year of humanitarian parole after which they're placed into immigration court where they can apply for asylum. We also know—

BILL KRISTOL:

Just to get clear, so if you show up legally at a port of entry and say, "I want asylum," you fill out documents and so forth, and then you're okay for a year in the US until a trial or until appointment with an administrative judge or something like that?

AARON REICHLIN-MELNICK:

Yeah. So actually, right now, if you show up to a port of entry, you get turned away completely. You actually cannot simply go up to a port of entry and say, "I want to seek asylum." You have to register through an online process, share all of your information. You take a picture of your face so they can run you through facial recognition databases and sort of enter all of your information in this, and then you go into a literal lottery system.

Right now, average wait times are about eight or nine months. Once you get your appointment, after however long it's taken you to win this appointment lottery, then you go to a port of entry and you show up there. Then they take your fingerprints, they run you through a number of databases again, and under the CBP One process, you are then given one year of humanitarian parole. That lets you get a work permit so you can get on your feet more quickly. After a year, the humanitarian parole expires and you are placed into immigration court proceedings. But the hope is that you would've already applied for asylum in the interim and then be able to transition onto a work permit through an asylum application and sort of not end up being a burden on state and local governments because you can immediately work.

And that is sort of how the Biden administration has changed the incentives, trying to tell people, "Look, if you go through this process, you will have a much more stable way of supporting yourself in the United States. But if you enter illegally, there's a good chance we're going to turn you away or send you back to Mexico or deport you to your home country. And once you come in, you don't have any initial status, you are not going to be able to work legally. It's going to be a much more difficult time for you." And that really has, I think, is in a nutshell how the Biden administration has, by 2024, come to think about the border, as their goal is to incentivize using these alternate legal pathways and disincentivize people from crossing illegally.

BILL KRISTOL:

So Trump wants to end that? That app.

AARON REICHLIN-MELNICK:

Yeah.

BILL KRISTOL:

He's always complaining about that app. So therefore what? So people no longer have the opportunity to go through this legalized process, you might say, to request asylum.

AARON REICHLIN-MELNICK:

Yeah. And the goal of the Trump administration would be to essentially reduce all migration to zero, and including people who are seeking asylum without breaking any laws, including people who come to ports of entry. We actually saw this a lot during his first term. You had then-DHS Secretary Kirstjen Nielsen telling members of Congress that migrants should go to ports of entry and seek asylum. And standing at the White House podium, making a plea to migrants, saying, "Go to ports of entry." And then behind the scenes, signing memos to CBP, telling them, "Limit access to asylum at ports of entry. Don't let that many people in."

So what Trump is going to do is going to make it harder to access the asylum process legally at ports of entry. We know he's going to enter into international negotiations with a wide variety of countries to take migrants with Mexico, to potentially restart the Remain in Mexico program, with Guatemala, Honduras, and El Salvador to restart the so-called Asylum Cooperative Agreements, which were a sort of roulette system where if you were Guatemalan, they would send you to Honduras or El Salvador. If you were Salvadoran, they would send you to Honduras or Guatemala, and if you're Honduran, they would send you to Guatemala or El Salvador. It was a heads-I-win-tails-you-lose kind of circumstance. And also with the Honduran deal, they would also send you there if you were Mexican, Brazilian, or Ecuadoran. It was part of the deal they worked out, though that never actually went into effect.

BILL KRISTOL:

This was a way diplomatically to get other governments basically, other nations to take immigrants and keep them out of the US.

AARON REICHLIN-MELNICK:

Yeah, that's right. And the Trump administration pitched it at the time as a migrants should apply for asylum closer to home. That was completely made up. There was no requirement that you be anywhere from those, that you've ever been in one of those other countries. And the fact that they would send a Mexican born in Tijuana to Honduras 3,000 miles south shows that that wasn't really valid.

The best comparison is the United Kingdom made an extensive failed effort to get Rwanda to take migrants crossing the English Channel from France. And this is a similar thing to what the United States was doing. It would just be to offshore any migrants and sort of force them to go there. And when sent to Guatemala, Honduras, or El Salvador, it's not like you were still applying for protection in the US. They said, all right, to a Salvadoran or Honduran, "We're going to send you to Guatemala and you have to apply for asylum from Guatemala and you could stay there."

So we think the Trump admin's going to try to renegotiate those deals. We have also heard, through a wide variety of public reporting, that they want to sign a national emergency declaration to bring back money for the border wall, restart construction on the border wall that had been paused under the Biden administration, and then start building new projects. And then potentially reinstate Title 42, the public health policy that allows officers to expel people to another country without ever allowing them to seek asylum at all, which could actually have a very counterproductive effect on the border because last time they put Title 42 in effect, border crossings rose every single month for a year afterwards.

BILL KRISTOL:

Why was that?

AARON REICHLIN-MELNICK:

Title 42, despite a number of people in DC who talked about how vital this authority was, was a bit of a mess policy-wise. It created very perverse incentives because it was a public health law, it's not an immigration law. And because it's a public health law, there's no permanent immigration consequences for being expelled under Title 42.

BILL KRISTOL:

So you just try again. Yeah, yeah,

AARON REICHLIN-MELNICK:

Exactly. So under immigration law, if you are caught at the border and deported to Mexico, if you try recrossing, that's a felony now. You've committed a felony reentry after removal, and you could potentially be sent to prison and you can be redeported very quickly. If you get expelled back to Mexico, on the other hand, you could just turn around and try again and try again and try again and try again.

When Title 42 was in effect, some estimates are as high as one in three people caught crossing the border were on their second or higher failed attempt. And you had a lot of people who were just sent back to Mexico repeatedly as part of the program who would just make it in on their third, fourth, fifth, sixth try.

BILL KRISTOL:

So basically, to maybe conclude here on the border, when Trump says, "I'm going to close the border," not sure if he's literally said that, but he pretty much says that, he could be pretty close. Am I right? He could come pretty close to closing the border or shutting the border down.

AARON REICHLIN-MELNICK:

Yeah, so he can legally find ways to make it very difficult for any migrants to be allowed into the United States. But as we saw with Title 42 the first time around, even if you sign an order saying not a single person should be allowed into the United States because of COVID, that doesn't actually mean that not a single person will be able to enter the United States and remain here. Some obstacles remain.

First off, it's a 2,000 mile land border. It is extraordinarily difficult to stop everyone from crossing. And administrations have been trying for half a century, with not that much success, to bring numbers down to zero. No one's ever managed to bring numbers down to zero.

And then secondly, some diplomatic issues will remain. So a good example is people who come from countries that don't accept deportations. If you cross the border today and you come from, say, China, China has restarted accepting some deportations in recent months, but they're taking about one deportation flight a month, each flight carries about 135 people. So if 5,000 people from China cross the border, it doesn't matter what the policy on the ground actually says. In immigration, presence is nine-tenths of the law. You are now on US soil. If the United States wants to deport you, then it is going to have find a country that is willing to take you. And if no country is willing to take you, then there are just limits to what the United States can do.

This is not new, of course. This was the case for Cubans for 50 years. Wet foot, dry foot, the policy that was in effect from the Clinton administration through the last days of Obama was essentially an acknowledgement that there was little the United States could do once a Cuban got onto US soil. Cuba would not take people who made it onto US soil. And therefore, since the United States couldn't find too many other countries in the hemisphere that would take Cubans, we just decided it was much easier to let them stay.

BILL KRISTOL:

Yeah, the practical side of immigration—I was struck by this is I've learned a little more over the last year—so much more complicated than the slogans and even the actual laws on paper because so much of it's about what can happen and what can be done administratively and what other countries wish to do. Anyway, but on the border, it seems to me that if he can get, if Trump can keep cooperation from Mexico, it just feels like two or three months from now he could be saying border crossings are low, and they could have footage of the border being sort of quieter than it looked a year ago, right? Just for political [inaudible]…

AARON REICHLIN-MELNICK:

Yeah, absolutely. And there was a Trump effect eight years ago, the first time he came into office, where migrants looked at his rhetoric and said, "We're going to wait a little while to see what's actually going to happen." So in spring 2017, I think April 2017 saw the lowest number of border patrol apprehensions in 50 years since this 1970s, the early 1970s. And that's not because Trump had done anything. It's because migrants were looking at all of his rhetoric and going, "We'll see how much of this is bark and how much of this is actual bite." And I fully expect something similar to happen in the first few months of his term where border crossings will drop, not because of any change in policy, but more because people are just waiting to see whether he's going to carry out these harsh policies that he said he would on the campaign trail.

BILL KRISTOL:

And just to finish with this, none of this really has big legislative implications, it sounds like this is all stuff Trump can just do.

AARON REICHLIN-MELNICK:

There are some significant legislative implications, and that's really around funding. Same is going to be true for mass deportation. We have a reconciliation bill coming up in the next two months—

BILL KRISTOL:

So let's get to that because that's important, I think.

AARON REICHLIN-MELNICK:

Yeah.

BILL KRISTOL:

Yeah, yeah. But in the very first months, he can announce A, B, and C and whatever effect it has, it has on the border, and so yeah—

AARON REICHLIN-MELNICK:

That's right.

BILL KRISTOL:

So, let's get to the next [inaudible]—

AARON REICHLIN-MELNICK:

And the president's power is the strongest really at the border compared to the inside the country.

AARON REICHLIN-MELNICK:

Yeah. Well, I'm saying is on the border, it doesn't sound like he's going to offer a piece of HR2 in the first day, there's no need... It doesn't sound like there's much need for it.

So let's get to the internal situation, which mass deportations. We saw those signs at the Republican Convention. And I do think politically also, the numbers of people in New York and Boston and so forth who were assembled there, so to speak, and were straining this social services and all that was part of the political effect. So that led to the mass deportations pledge, or at least made it more popular, I guess.

BILL KRISTOL:

So, talk about the undocumented who were here, because that's a big number and different types and different people who've been here different amounts of time. And they range, I guess, from 40 year olds who've been working here for, went to high school, college and have been working here—35 year olds at least, maybe 40 olds—to people who came three months ago and are being put up at a not very pleasant room in a shelter in New York, and I don't know if they're even allowed to work. Anyway, shows I'm ignorant about this. So explain what's the internal situation with undocumented immigrants?

AARON REICHLIN-MELNICK:

Yeah. So right now, estimates are that there are about 13 to 15 million undocumented immigrants in the country. And despite the rhetoric around the undocumented population and the way the Trump campaign talked about it, most of these are people who have been here for a long time. There is a minority that arrived in the last four years. Yes, it is several million people, but the majority of the undocumented population has been here for a long time. According to estimates from the Department of Homeland Security as of 2022, there were 11 million undocumented people in the country. Of that 11 million, 8.6 million had been here before 2009. In fact, according to their estimates here, about 1.46 million undocumented immigrants arrived in the 1980s, 3.36 million in the 1990s, and about 3.86 million during the 2000s. And they are here in large part because of the growth of border security over the last few generations.

In the 20th century, migration across the US-Mexico border was mostly circular. People would come here, work for a little while, and then go home. And then if they wanted to then make

some more cash, they'd earn some money in the US, come back, live with their family, come back to the US, earn a little bit more, come back, go back to Mexico, like that. But that practice of circular migration is gone. That is essentially eliminated because, over the last 30 years, the United States has built up a massive border security infrastructure and legal infrastructure to make those kinds of acts punishable a lot more harshly, and for actually getting across the border, a lot harder to do. In the early 1990s, you could just walk across the border, and you would probably get through. The majority of people crossing made it through on their first attempt. That is not true—

BILL KRISTOL:

These are the people who are dreamers and DACA recipients, and who have been presumably working here or living here and having families here and being undocumented here for decades now at this point, sometimes, or at least quite a long time.

AARON REICHLIN-MELNICK:

Yeah. And that's because when you build walls, you do keep some people out, but you also trap people here. And so that is why the undocumented population grew so dramatically in the 1990s, as border security ramped up, people ended up staying here and in the 2000s. And the undocumented population pretty much grew steadily through the 1980s, 1990s, and then 2000s. Then around 2006, 2007, border numbers started dropping for a couple of different reasons.

First, the labor market cooled off. The Great Recession caused a massive drop in construction and other industries that were often employing undocumented immigrants. And so with far fewer jobs and the economy going downhill, people didn't have as much of a need to come here. It was much harder to make any money here.

And then second, it coincided with a massive growth of border security under the Bush administration. The border patrol doubled in size over the course of a decade, and by 2008, 2009, immigration enforcement was really at the height of its power. And so a lot of people, again, seeing the combination of a massive drop in jobs and a much more difficult process of crossing the border, really stopped coming at the same numbers that we'd seen in the past.

And the undocumented population sort of peaked at around 12 million in 2007, and by around 2015, 2016, had dropped down to about 10.5 million. So there actually was... You hear people saying, "Oh, it's been 11 million for all this time," and the answer is not really. It was kind of like it hit 12 million, and then sort of steadily declined through the 11 millions, dropped below 11 million. And then by around 2017, 2018, really 2018, 2019, actually, started going back up again.

BILL KRISTOL:

So these people have been here a while, they're going to school, working, doing whatever. They're undocumented, but in a sense, not legal obviously, but I mean, they are paying taxes when they... Well, I don't know. That's my question. So—

AARON REICHLIN-MELNICK:

Yeah, a lot of them do pay taxes.

BILL KRISTOL:

And these are the people you call the Dreamers, and these are the people who were invited to apply for DACA. Explain that a little bit, but maybe we should deal with this chunk, and then go to the more recent ones who are being put up in hotels in New York City and so forth.

AARON REICHLIN-MELNICK:

Yeah. And so I think for that population, it is people crossing across the border. It was also a rise in visa overstays. As flights became cheaper and the world became richer, getting to the United States on a visa became easier. And there was a point in the early 2010s when the

number of visa overstays, where visa overstays were a larger contributor to the undocumented population than people crossing the border. That is no longer true, obviously, given what we've seen in the last few years.

But if you look at that population, crucial to understand, a lot of people say things like, "Well, why didn't they just apply for citizenship if they've been here for 30 years? Why haven't they gotten a Green Card?" And the answer is that Congress has very deliberately made that almost impossible. So for the vast majority of the undocumented immigrant population, it doesn't matter how long they've been here, there is no way legally for them to get status without Congress changing the law.

BILL KRISTOL:

Congress doesn't want to reward them for jumping the line, so to speak. At least that's the argument, right? That people should wait to come here legally. That was sort of the—

AARON REICHLIN-MELNICK:

Maybe, but they can't wait legally at this point. That's the whole thing. There is literally no way for them to get a Green Card. And even if they were to go back to their home country, they would be barred from reentering for 10 years and would likely not be eligible for any form of status. Of course, many people think anyone around the world can just apply to live in the United States. That truth couldn't be any further from that. It is virtually impossible for the vast majority of the world to get a visa. Getting a visa, you have to either have to fall within a very limited family-based category. So are you a close nuclear family relative of a US citizen, or you have to have a job offer and usually some form of advanced degree to come here.

So we have a legal immigration system, where if you're a computer programmer, you can get a visa. If you're the world's best electrician or plumber, you cannot, there's no legal visa for trades people, for example, which is actually a big concern for the United States as we have some issues hiring and recruiting for the trades. But that's a whole separate issue.

BILL KRISTOL:

So these people have been working, albeit though they're undocumented, they have been going to school, they have been whatever parts of their communities, and there've been attempts to give them paths to citizenship. That's, in a way, been at the core of some of the immigration legislation that was tried and failed in the 2000s and then in 2013. And so what does Trump propose to do about them?

AARON REICHLIN-MELNICK:

Deport them all. I mean, I think that is very clearly what they've said they want to do. And he's been asked repeatedly about the long-term undocumented population, he said they all have to go.

That said, we have also seen members of his campaign and the incoming administration suggest, "Oh, well, maybe those people don't need to worry as much because we're going to focus on the criminals first." But the reality is, there are substantially fewer criminals among that population than there are otherwise law-abiding people who may be here in violation of immigration law, yes, but are not committing crimes or just going to work, doing their job, coming home, feeding their families, living a pretty normal life without breaking any other criminal laws.

And of course, being undocumented itself is not a crime. It is a civil violation of immigration law, the punishment for which is deportation. You can't be thrown in jail for being undocumented. You are not committing a crime every single day you are living here. You are just here in violation of immigration law, and if caught, can be ordered deported. And Trump says all of them have to go, and that is a big concern, again, because we're talking about 4% of the US population in total. In some states, 1 in every 20 people.

BILL KRISTOL:

And the ones who registered with DACA, they're no better off than the ones who never registered with anyone?

AARON REICHLIN-MELNICK:

Well, they're significantly better off because they have protections from deportations in the ability to work legally. So as of today, there's a little bit more than 530,000 people who still have DACA. No one has been able to apply for new DACA for years, thanks to the first Trump administration. And mostly, at this point, people are aging out of ever having been eligible for DACA in the first place.

BILL KRISTOL:

What does DACA says? Even I don't remember now.

AARON REICHLIN-MELNICK:

So DACA is the Deferred Action for Childhood Arrivals program, and was for any person who entered the United States before June 2007. And so, at this point, there are not very many people who are eligible for DACA, even if applications were to reopen, because anyone who entered after that point is not eligible for the program.

So we are reaching the point where people brought here as children would not have been eligible for DACA at all. And every single year, we estimate at the American Immigration Council, about 100,000 undocumented students graduate from high school and go to college, and in college, they are there, attending classes… And the reality is they probably won't have a work permit. It's not clear what they could do with their degree. Nevertheless, they are actively taking part in higher education, in the hopes that Congress may finally get its act together and do something. And that population continues to go through the education every single year without having any access to a path to permanent legal status.

BILL KRISTOL:

So they're here, and some administrations are, so to speak, nicer to them than Trump threatens to be. I suppose the question is, will Trump find that ultimately in his political interest to kind of go after people who are graduating from high school and applying to college or working in an undocumented way in building trades or hospitality or something like that, or leave that alone and focus more of the ones who have caused more of a ruckus, more politically been the object of a ruckus maybe politically, the last year or two or three, who are the more recent undocumented arrivals?

AARON REICHLIN-MELNICK:

Yes. So ironically, it's actually going to be very hard for them to focus on the more recent arrivals, because the overwhelming majority of the more recent arrivals are already in the process of being ordered potentially deported. There are 3.7 million cases currently pending in immigration court. These are people who already have been arrested, have already been placed into a deportation process, and that is the vast majority of recent arrivals.

Now, it's true that there are some recent arrivals who missed a court hearing and have already been deported and who they could attempt to focus on. But most of the recent arrivals aren't people who are needing to be newly arrested by ICE. The government doesn't have to go after them and find out who they are and put them in a deportation process because they're already in the process. So if they really went to—

BILL KRISTOL:

But it's a slow process, I think, the Trump administration would say, no?

AARON REICHLIN-MELNICK:

Yes, it's a slow process, and there's not that much they can do about that. The single biggest bottleneck in the removal system is the immigration courts right now. As of the end of fiscal year 2024, there were 735 immigration judges total nationwide, with about 5,000 cases on average, divided between each judge. And the cases can take, on average, if people are applying for some form of relief, anywhere from two years to six years, depending on where in the country they are. And there is not that much that the Trump administration can change about that. They cannot suddenly add hundreds of new immigration judges overnight. The hiring process takes a long time, and Congress has never funded the immigration court anywhere near the level that would be necessary to do that.

BILL KRISTOL:

So they can't just sweep down to New York and say, "There are a couple of thousand people shown up in New York in the last couple of years, and we're kicking them out." Would it require a change in the law to do that? I mean, how protected are these people?

AARON REICHLIN-MELNICK:

Well, they're protected in that there is a legal process, and the legal process requires that the government obtain a formal removal order before anyone can be deported. And it's obtaining that formal removal order that is so backlogged right now.

And so people who came into New York and are part of a process and are going through that removal process are effectively safe from Trump right now because they are already in a legal process, and Trump can't speed that up to completely, though last time around, he made a lot of efforts to turn the immigration courts into assembly lines for deportation. And we do expect that this will be a major regulatory agenda. Speed up the timelines for every hearing, limit the number of opportunities people have to find a lawyer, and delay the case so that they can get legal representation, force people to submit applications even more quickly or else see them automatically denied, that's the kind of thing he tried the first time around and will likely attempt to do the second time around. But even that, of course, is going to have its limits, the bigger pool—

BILL KRISTOL:

And he has discretion on that. He doesn't need Congress to change the laws and the processes that much.

AARON REICHLIN-MELNICK:

It depends on what you'd say. So for example, a number of those regulations we argued were violations of the law. The law does allow... The people are required to have their own lawyers. And if the Trump administration puts a regulation in effect that says, "You have two weeks to get a lawyer, if not, we're going to move forward without it," we argued it violated the right to get a lawyer because you have to give people a reasonable time to obtain counsel. So there will be legal challenges over those regulations. And if Congress doesn't pass any changes into law, they will be subject to being tied up in the courts, potentially. That said, there is a population of around 1.5 million people who have already been ordered deported. And if those people are arrested, the timeline between arrest and being put on a plane could be very quick, a matter of days.

The problem is, a lot of these people, ICE does not know where they are. They are people who missed a court hearing at some point in the last decade or two decades and are living in the country, God knows where, that ICE is going to have to go out individually and find every one of those people and pick them up. There is also a smaller version part of that population that is already checking in with ICE, once a month or a couple of few times a year and have been granted some form of administrative stays. The government has said, "Look, we agree it wouldn't be in our best interest to deport you right now, so we're not going to do that." That can be taken away immediately, and they can very rapidly deport people in that circumstance. And they did this during the first term too.

For example, there was a population of several thousand Indonesian Christians who had come to the United States in the 2000s after the earthquake. And for various reasons, there were some agreements between the Bush administration and senators at the time of the States where those people were living not to deport them back to Indonesia as they argued that they were going to be persecuted where they came from in a Muslim-majority part of Indonesia. And ICE said, "Okay, sure, fine, we won't deport you." And they were checking in with ICE every single year for 15 years. And then Trump came into office in 2017 and said, "Deal's over, we're going to kick you out right now," and started deporting some of those people. So, there is a population of people that they can go after much more easily. That said, that's a fairly small, all things considered and is not how they're ever going to get anywhere near 11 million.

BILL KRISTOL:

So, say a word about in practice… two questions, I guess, I have. We read recently about something in California, they went after some farm workers, and it seemed like a bit of a mini-raid there as a test maybe of how this might work. And there were rumors about a symbolic raid very early in, maybe in the first week of the Trump administration, in some place like DC or New York, that's a… blue states or sanctuary city-type situation, so they can make the point. I mean, say a word about that, but also then more broadly, will there be mass deportations? It sounds like it's very hard to actually mass deport lots of people absent radical changes in the law, which would require congressional action or even with maybe changes in the law.

AARON REICHLIN-MELNICK:

Yeah. And this is why I've sort of been talking about a couple of different visions that the Trump campaign and surrogates for the campaign and now incoming officials have talked about, and there's sort of like the Stephen Miller version and the Tom Homan version. Now, both of those men agree on quite a lot when it comes to immigration enforcement, but the way they talked about—

BILL KRISTOL:

Miller will be deputy chief of staff, and Homan will be head of—

AARON REICHLIN-MELNICK:

He's going to be 'border czar,' which is not a real job. It's unclear what that actually means.

BILL KRISTOL:

But they'll both be in the White House doing immigration policy.

AARON REICHLIN-MELNICK:

Yeah, exactly. And Stephen Miller has talked in really apocalyptic terms about these changes here. He's talked about deputizing National Guard troops to round people up, building detention camps in the desert or in various parts of Texas, where they send thousands of people at a time, ramping up deportation flights, and building new staging facilities using military planes, maybe sending Red State National Guard troops into blue states to carry out enforcement operations. And so that looks very different from what the system currently looks like.

And then you have Tom Homan, who's a career immigration enforcer. He started off in his career in immigration enforcement, has been working on that for many, many years, knows the system inside and out. And while he also talks in sometimes bombastic terms about these operations, he's also very careful to talk in terms of what legally they can do. And to emphasize that, he said on *60 Minutes*, "I don't like the term raids. We do targeted operations." And so he has talked about really what ICE does already, like we saw this week in Bakersfield in California, which was actually a border patrol operation.

But that operation, new numbers have come out in the last couple of days. I think that they ended up rounding up 78 people total, 78 arrests. That operation set a ton of fear across that community. It was reported on nationwide and really ended up with fewer than a hundred arrests. And so if enforcement looks more like—

BILL KRISTOL:

And what were they arrested for, overstaying their visas?

AARON REICHLIN-MELNICK:

Unclear from the ways that Border Patrol has talked about it. It seems like it was a targeted operation, but it also seems that they were doing the practice of what's known as collateral arrests at the same time, which is when your targeted operation is, you go to some place, you know where somebody's going to be, or you stake them out, and you grab them when they leave their house or whatever. With collateral arrests, you do that, you stake them out, you grab that person. And then you also ask every person who looks vaguely undocumented, which means every Latino standing around them, and you question them, you ask that person for their papers. And if they're undocumented too, you pick them up also.

And I think we're going to see a lot more arrests like that under the Trump administration. That's what they did the first time around, and it actually leads to more arrests of people with no criminal records. Because even if you're focusing on targeting criminals, if you're also rounding up everyone around that person with a record who just happens to be undocumented, you're going to sweep up a much larger number of people.

But again, we've already seen the incoming administration start to temper expectations. Reporting from over the weekend suggested that the Trump campaign, the transition team, is telling people, "We will not get 11 million in four years. Maybe we'll do one to two million." Now, even that is a pretty high bar to set if you add up every single internal deportation. So the deportation of people picked up by ICE in the interior of the country, not migrants arrested at the border, over the last 15 years, it adds up to about 1.5 million deportations. So they're trying to say that they'll carry out 15 years of deportations in 4 years. I think even that's pretty ambitious. It would take a very significant ramp up of enforcement for them to get anywhere near those numbers.

What may happen, however, is that they start the US on a path to eventually getting to very high numbers again, especially if Congress gives them dozens of billions, if not over like a hundred billion dollars for immigration enforcement, which would be a transformative sum of money and could lead to a massive increase in detention centers, capacity, hiring, and personnel, all of which would take multiple years to implement, but would leave the United States with a significantly beefed up enforcement apparatus, really to a level never before seen in US history.

BILL KRISTOL:

So just to be clear, when they pick up these 78 people who were undocumented, I'm just going to make up these numbers, obviously, you can put them in more context to correct them if they're obviously way off, but I don't know, 10 of them have criminal records, let's just say, have been arrested for crimes in the past in the US or something like that, have shown up in databases and so forth. I mean, I guess, legally, could they say, "You, 10, we're proceeding now to expel you, the other 68, just go back to your jobs," or something like that? I mean, because they've talked some about focusing on criminals, and then the recent legislation that's now—actually this week in the Senate—focus changes the definition of criminal from convicted of a crime to accused of a crime. We can get back to that if you want, but leaving that aside from it, is it possible that they could boast in three months, and truthfully boast, I guess, in three months, that they've expelled X number of criminals or accused criminals?

AARON REICHLIN-MELNICK:

Well, even people who have been accused or convicted of a crime, who are undocumented, they also have to go through the immigration court system. So that depends on their circumstance—

BILL KRISTOL:

You can't kick them out if you find someone who's got a black mark on his record? Yeah.

AARON REICHLIN-MELNICK:

Yeah, unless they have already been ordered deported in the past, and that is actually a fair number of people. There are many people who have been deported at some point in the last 30 years, and then re-entered and are in the country with a prior order of removal on their record. These are the people that can be deported very quickly because all they have to do from an administrative perspective is they do what's known as reinstating the order of removal. That's a process that takes maybe a couple of hours and you can pick somebody up at the border. The border patrol in that circumstance in Bakersfield, if one of those 78 people had prior removal order, they could pick that person… That person may already be deported because the prior removal order can be reinstated so quickly.

BILL KRISTOL:

I mean, to be simple-minded about it, how many of those 78 are likely to be in that kind of situation? We're talking a relatively small percentage.

AARON REICHLIN-MELNICK:

We don't know, but it's probably higher than the average undocumented population because if this was a targeted operation, they picked and chose their targets based on the highest impact. So in these sort of targeted operations, generally they do go after people with criminal records. That is their highest priority. They do go after people with the most serious records first, which is part of the reason why the Laken Riley Act is a concern because you would essentially prioritize people with shoplifting arrests over that. But again, setting that aside, I think that's what this targeted operation would look like. So the majority of people targeted would have criminal records. Many of them will have prior deportation orders. They'll be so-called fugitives, and then will also pick up some people just randomly that happen to be sitting around nearby.

But the process then is for the immigration court process. Actually, yes, a lot of people who get arrested by ICE or border patrol and put into removal proceedings, then eventually just get released. If they have no criminal record, they get released, go back to living their lives and attend court for however long that process is. When the court proceeding is over, if they lose, then they get deported. And if they win then they get to stay. But most of the time people go through this process outside of detention and just going about their lives pretty normally with a sword of Damocles hanging over their head.

BILL KRISTOL:

Based on the Trump administration, if they just get more aggressive on raids or whatever we're supposed to call them, and the targeted actions and if they have the good enough information to know where to target actions and stuff, which maybe they do, I don't know, I mean, what would the plausible number of people… What's a plausible that President Trump could stand up nine months from now and say, we've deported X number of criminals that otherwise were just living in this country disgracefully, taking advantage of us and so forth? Are we talking about tens of thousands of people? Hundreds of thousands of people?

AARON REICHLIN-MELNICK:

Tens of thousands for sure, because even the Biden administration has deported tens of thousands of people with criminal records. The previous administration deported every single year. Now, of course, when we say criminal records, I want to emphasize the number one most

common offense is traffic offenses of a prior record. The second most common is an immigration offense. So there's going to be thousands and thousands of people there whose only prior criminal conviction is a conviction for illegal entry. And these are people then who could be rapidly deported. So if you have an immigration offense on your record, that means you've been deported at least once and you can be deported very quickly. But part of the reason that that is true is because ICE's primary way of finding people is through fingerprint checks run by local law enforcement. ICE generally, and this is the history of immigration enforcement, has not in the last few decades, really since Congress 40 years ago told the agency to focus on people with criminal records, has used law enforcement connections as their main way of identifying new targets.

So the people who are just garden-variety undocumented immigrants who have not ever had any interaction with the criminal justice system, which is the majority of them, those are the people that ICE doesn't necessarily know anything about. And if picked up, those people will have to go through a process, yes, and that process will take a long time. Whereas those with criminal records, they have fewer options for winning their cases. Congress has been very harsh on people with criminal records over the past few decades. That isn't how it used to be. As much as even 30, 40 years ago, even if you had a felony, you could go to an immigration judge and say, Judge, please give me a second chance. I've reformed. That has largely been eliminated. Congress thought judges were being too liberal and giving too many people second chances and basically eliminated most of the paths to staying in the country of anyone with any kind of criminal record.

But on numbers, sorry, really quickly, going back to your question. On numbers. I think one thing to know about the Trump admin is that they will tout whatever numbers they get, even if those numbers are only a 20% increase, they'll talk about how much more it was in the Biden admin. And truthfully, numbers were low under the Biden admin for a couple of reasons. One, COVID heavily disrupted internal enforcement. There were quarantine rules that they had to follow in the first couple of years. And then two, the border heavily diverted ICE resources away from internal enforcement and towards dealing with more recent arrivals. And so as the border gets quieter, those resources can now be re-diverted back to enforcement. And I think we will likely expect to see internal deportations rise significantly as a result of those two factors.

BILL KRISTOL:

It's still a relatively small percentage of the 11 million number that's being thrown around, but—

AARON REICHLIN-MELNICK:

Yeah.

BILL KRISTOL:

So if Homan wins the internal debate in terms of goal setting, so to speak, for the administration, they could say, look, we're doing what we said we would do, which is all these people were just here under Biden and now they're gone. If Miller, in a way, wins the internal debate in terms of at least rhetoric, it'd be very hard for them to ramp up to anything like those levels. Right?

AARON REICHLIN-MELNICK:

Yeah. And to give some sense of the numbers we're talking about, because it's very easy to throw around these numbers and not process how large this is, the highest number of deportations ever carried out by ICE, you know, internal deportations— deportations of people arrested in the interior by ICE was 238,000 in fiscal year 2009, Obama's first year in office. Really at the height of ICE's power.

BILL KRISTOL:

Over a full year.

AARON REICHLIN-MELNICK:

Over a full fiscal year, 238,000 people.

BILL KRISTOL:

20,000 a month. Yeah.

AARON REICHLIN-MELNICK:

Who were arrested. And so about 20,000 a month. To give you some sense of what that looks like, at that rate, the highest rate of internal deportations ever in US history, it would take 46 years to deport 11 million people.

BILL KRISTOL:

And right now under Biden, what will their contrast be with 2024, 2023 to make themselves look much more aggressive?

AARON REICHLIN-MELNICK:

Yeah, much lower. The Biden administration, I think it's around 60,000 right now. And those numbers have been rising every year of the Biden administration's term internal deportations. But again, the border diverted so many resources away from ICE. One good example of this, every one of those migrants who've entered and been put through a process, has to check in with ICE. So ICE has to now descend a lot of officers over to just do check-ins and is now hiring a bunch of staff just to assist with check-ins. So they had a lot of people whose job it was who normally would be going out and picking people up who just had to deal with the fact that there were hundreds of thousands of people who had moved to that area that needed to be processed for check-ins every day. And you had literally ICE at one point told people, "We're so full up in New York, your check-in date is 2031."

And you also had people sleeping on the sidewalk outside of ICE's offices in hopes that they would be able to check in that day. And some people would still at the end of the line make it in and be told by ICE, "Sorry, we've just run out of capacity for the day. You'll have to come back later." And that gives you some sense of how ICE internally was impacted by the situation at the border. This was true under Trump's first term as well, I want to emphasize. In Trump's first term, 2017 to 2018, internal enforcement ramps up significantly, deportations rise. 2018 to 2019, deportations drop. And that's because they too had a border crisis. They too had to divert internal ICE resources away from internal enforcement to the border. And this is the ways in which these two interact with each other.

BILL KRISTOL:

This does get us to funding, I suppose, which I cut you off on before, but it's very important. So it does sound like they're going to need to go to Congress or want to go to Congress and get tens of billions of dollars to just increase funding to do at least, even if they don't go all the way to Steve Miller land, to do what they want to do and say they want to do and presumably do really want to do in terms of both internal action and the border, right?

AARON REICHLIN-MELNICK:

Yeah. And right now, the combined budget of both border patrol and ICE is a bit over $15 billion. And we are hearing numbers thrown around in the reconciliation package of a hundred to $120 billion, which would be really a sea change. It would allow the agency to become quite possibly the largest law enforcement agency in the federal government, larger than the FBI, larger than the CIA, larger than the NSA, really just a staggeringly large law enforcement agency potentially with tens of thousands of agents if they get that kind of funding.

And at that point, it just becomes very hard to predict what this looks like, though of course, just getting the funding is not enough. There is a limit to how many detention beds that are available currently. You'd have to eventually start building new prisons in order to expand capacity. And law enforcement hiring is going to be quite difficult. Law enforcement hiring is difficult right now in pretty much every agency in the country. Local police is having trouble hiring people. The FBI is having trouble hiring people. Everyone's having trouble hiring people for law enforcement jobs. And so even if they fund 10,000, 15,000 new positions, it could take them many years before they actually managed to hire up for all of those positions.

BILL KRISTOL:

Could they try to use the military to shortcut some of this?

AARON REICHLIN-MELNICK:

Well, if Stephen Miller gets his way, maybe. Though it's unclear whether the military would, A, go along with that. There's something called the Posse Comitatus Act that bars the military for being used for domestic law enforcement, though some legal experts suggest that there are ways around that. And then B, the bigger issue is, I think especially when you look at the National Guard, which many of them have proposed…National Guard troops don't want to do this. I think it's pretty easy to say you don't join the National Guard because you want to go around rounding up grandmas.

And that is a major challenge for the United States if they go down that path of trying to co-opt the military for this. National Guard recruiting is already difficult. Military recruiting is down significantly. And I will note, military recruiting is in many ways the highest among immigrant communities. And there are very high numbers of people with Green Cards and others coming from immigrant backgrounds joining the military by comparison to people who've been here for a few generations. So, if they actually start using the military to go into immigrant communities, you could be ordering a National Guard troop to go arrest their own family member. I mean, I don't think that's a particularly likely scenario, but it's the kind of thing that would hurt the US I think a lot more than people are really thinking about.

BILL KRISTOL:

This is so interesting, I'm learning from this the constraints on their ability to do an awful lot very, very fast. They're just a lot of people and limited capacities and laws that are currently in place that maybe they'll try to change, but it's not obvious they can change radically, even constitutional protections at some point. And courts, which I suppose Trump judges can gradually change, but again, most of them are there already.

So, part of me thinks listening to this, well, maybe it's all a huge amount of talk and not that much change. And part of me thinks, well, I don't know. Maybe they think having the border patrol plus ICE be the largest law enforcement agency in the country is appropriate. After all, we've got to defend our sovereignty. And after all, if we could be a little cruder about it, a lot of these people are going to be Trump supporters. And why shouldn't the deep state get rid of other parts of the deep state and beef up this part of the, I don't know, sovereignty state or whatever you want to call it, the anti-illegal immigration state? And I don't know, I mean, have they thought this through, do you think? Or is it just up in the air or what do you think about that?

AARON REICHLIN-MELNICK:

I think as you know, enforcement is hard, and I think the political debate doesn't want to really talk about that. But of course, this is something everybody knows intuitively. It's illegal to deal drugs, and yet there are many drug dealers in the United States. And despite the United States trying many, many, many for many, many years to crack down on the drug trade, we've had limited success. So, there are some things that you can pour money to stop. And yet really, in the long run, struggle to actually carry out and do. It's obviously that's a different scenario, but

that emphasized that simply throwing money at an enforcement problem isn't necessarily going to solve it.

But I do think that they are already internally tempering expectations. Crucially, however, they also operate in a world of propaganda where a lot of these nuances can simply be ignored. And if they can say, “Every year we’re rounding up…”—if they can send a Fox News camera crew to every arrest of an undocumented sex offender, and every time they get that, they’ve got somebody on the ground saying, “Here's President Trump protecting your communities.”

Even if those arrests are the exact same kind of arrests that occurred under the last five administrations, even if they've only managed to ramp up enforcement 20% year over year. Nevertheless, they'll still be able to use that propaganda to say, “We are protecting Americans.” And to emphasize, I think a few other points on here, of course, the vast majority of undocumented immigrants are not criminals. The undocumented population is less likely to commit crimes than the native-born American citizens. Same is true for legal immigrants because people of course, sensibly, do not want to show up on a government radar and generally don't like to stick their heads up. And the undocumented population is really part of every community. And if they actually did manage to round everybody up, it could have really devastating impacts on the United States economy in particular with massive spikes in inflation, a drop overall of the economy.

We estimated if 11 million people are deported, we estimated GDP could drop 4.2 to 6.8%, which is as high or higher than the percentage drop during the Great Recession. And the economic implications could be dramatic. But we are in a world right now, days before Trump takes office where we can predict a number of different scenarios, but we can't say which one of them will come true. We can say it's probably unlikely—almost impossible—that 11 million are deported. But given this new world we are in right now, and with the possibility of this massive influx of funding, saying how much they're going to get and how quickly they can ramp up this enforcement, it's still tricky.

BILL KRISTOL:

I suppose you mentioned earlier the Trump effect in 2017, at the border people just thought, maybe I shouldn't come, I can't get in. I suppose there could be some self-deportation and fear certainly among immigrant communities that can make their lives pretty miserable, honestly, in an unfortunate way for people who've been working hard and kids graduate from high school and suddenly they're worried. But it could also lead some people to go back, I suppose. I guess, how much will things be different 6, 9, 12 months from now? Leaving aside almost the politics for a second now, though that's an important part of what Trump wants to say and boast about. I mean, I suppose there could be some changes in numbers, right?

AARON REICHLIN-MELNICK:

Yeah. And self-deportation is the big question mark. What percent of people do see these mass enforcement operations carried out and the enforcement ramping up and say, "You know what? I don't want to deal with this. I'm just going to go back to my home country."? And I think the answer is not zero. Certainly, we would expect a significant portion of people in the course of a mass deportation campaign to leave voluntarily. And there is the issue of the fact that there's a lot of these people who entered in the '80s and '90s, some of them are getting onto the age of being senior citizens. A lot of them, they've been working hard manual labor jobs their whole lives. They can't get health insurance. It's very hard for them to support themselves. And if they don't have family here in the US, some of them may simply say, you know what? Enough is enough. I've gotten some savings; I'm going to go home.

But it could also go the other way. You also could have these people who say, you know what? I've been here for 30 years. This is my home. I own my house. There's many undocumented homeowners. I've been living here. My family is here, my children are here. Their children may be US citizens, or their spouses may be US citizens. And they may say, look, what's going to happen is I'm going to retreat from public life to the extent I can. And we've seen some interviews of undocumented immigrants suggest that's what they're going to do. One person

said, “After he takes office, I'm going to go to work, go to the grocery store, go home, do nothing else.” And you may see a lot of people essentially retreat into their private lives and stop going, or maybe they'll still go to church on Sunday, but really stop going out in the community out of fear.

And fear itself, as we've seen with these Bakersfield raids where there was a lot of talk of people not showing up to work, farmers not showing up to their jobs, people not going to school, and the actual numbers, if these reporting is right, was only 78 people. That's a significant number of people, maybe for one particular community, but as a scale that they were not rounding up everybody. But nevertheless, the implications of enforcement operations being carried out in the area made everybody retreat home. And fear may have a bigger impact on the US and the way that fear spreads through immigrant communities than the actual enforcement operations themselves.

BILL KRISTOL:

I suppose the business community could then say, wait a second. You're damaging our ability to get the crops picked here because you had this one raid with 78 people, and meanwhile, thousands of people aren't showing up at work or something like that. Right? So that can have—

AARON REICHLIN-MELNICK:

Yeah, absolutely.

BILL KRISTOL:

... its political effect. Just to be clear, US citizens, so you came over when you were 15, you were brought over when you were 12, now you're 35. You have a family, you have kids who were born here. They're not subject to that. They're US citizens. Well, tell me, what's the story with them?

AARON REICHLIN-MELNICK:

Well, of course, Trump is saying he's going to try to strip birthright citizenship from people. That's flagrantly unconstitutional. He can't do that. Obviously—

BILL KRISTOL:

And even he is saying, I think, that he would do it prospectively, presumably, not retroactively. Right?

AARON REICHLIN-MELNICK:

Yeah. Though of course, there's really no legal way that you could make that distinction, say, oh, okay, so the constitution requires you to have birthright citizenship up through January 20, 2025. But after that, no longer it does. So anything that he did there would—

BILL KRISTOL:

Well, an executive order could say that, though.

AARON REICHLIN-MELNICK:

Any executive order would still threaten people. Of course, one of the things we've heard him say, was stop granting passports to people who can't prove that both their parents were US citizens or had legal status when the child was born. Of course, plenty of US citizens need to get a passport who are not being born now. Maybe a 30, 40-year-old who was born to undocumented parents, would that person be denied a passport under this policy? We don't know. And so that… ways in which it could threaten people potentially whose were born decades ago.

And it's of course, just to emphasize, it is a crackpot legal theory pushed by John Eastman, primarily. The disgraced and disbarred John Eastman of the 2020 Big Lie efforts to overturn the election. He is the main legal "scholar," and I put "scholar" in quotes here, who has argued that the president can do this. There is no groundswell of conservative judicial support for this. This is not something the conservative legal movement has ever supported. Even some arch-conservative judges right now put in place by Trump have said in the past that birthright citizenship is obviously the law of the land. And this is not even something that's from the 14th Amendment. We've had birthright citizenship since the founding of the country. It's an ancient English common law practice that has been around for centuries.

BILL KRISTOL:

Do you think he will issue an executive order, which will immediately get enjoined in court, presumably just to say he's done it? Yeah.

AARON REICHLIN-MELNICK:

Pretty much. I think that's the most likely scenario. He issues an order. It's blocked in court within days. No court ever allows it to go into effect. That's the most likely scenario. Not ruling out anything else given what we've seen in the courts in the last few years, but I think that's still the odds-on favorite.

BILL KRISTOL:

And just to think about the campaign, the Haitians in Springfield, Ohio, they have temporary protective status. That's something a lot of people had not heard much about and suddenly became a thing, TPS. Trump could make it harder for some of those people to stay in the country and not extend their status or curtail their status, perhaps. How does that work? Explain maybe for a second. There are quite a few people on temporary protected status in the country.

AARON REICHLIN-MELNICK:

That's right. And I think this is a good point to emphasize that the biggest immediate changes Trump can make on day one or within the first few months is to legal immigration and people who have some form of temporary legal status in the United States. So, for people who have temporary legal status, we estimate there's around 2 million people who currently are in the United States with some form of temporary executive-led legal status. Over a million people with TPS, temporary protected status, half a million people or more with DACA. Sorry, it's probably around 1.2 million people now with TPS, half a million people with DACA and an additional probably 200 to 400,000 people with some form of humanitarian parole. All of those are statuses that can be revoked by the incoming administration. There are different processes that they have to go go through. Parole could theoretically be revoked en masse on day one. DACA, because it's tied up in litigation right now, we cannot rapidly get rid of. There's a whole bunch of legal procedures they'd have to go through, but nevertheless, we expect him to try. And with TPS, the law does provide some minimum time periods before it can be terminated, and it's unclear if he would terminate it for everybody. The single biggest population of people with temporary protective status right now is Venezuelans about 600,000 Venezuelans.

BILL KRISTOL:

Just be clear, these are people for whom there would be a danger of being sent back to their country and that's why they have this temporary status, right?

AARON REICHLIN-MELNICK:

Yeah. So temporary protected status is for people... It's a status that the Department of Homeland Security can grant to any country or even subset of a country where sending those people back would be a problem because of armed conflict, environmental disaster, or other serious issue that would make it dangerous to send them back. It came about because of the Salvadoran Civil War and the death squads there where the United States was deporting people

back to El Salvador and many of those people would be found with a bullet in the head outside the airport 24 hours later in San Salvador. And so Congressman Joe Moakley really pushed hard for this in the 1990s because he thought it was fundamentally wrong for us to be sending people back to a place where they would literally be killed within hours or to a place where just because of the ongoing armed conflict, we were essentially sending people back to their death.

And so right now there, yeah, about 1.2 million people have the status. It is extended every 18 months. Every 18 months DHS has to make a new decision whether to keep extending it or to terminate it. And so most of the designations now are set to expire in 2026, thanks to the Biden administration very recently extending four TPS designations and some are set to expire in 2025. If Trump does what he did in his first term when he tried to terminate TPS, at the moment when they are set to expire, he will announce that there will be no further statuses but gave everybody one final extension of 18 months and said after those 18 months, that's it. So if he does that again, we would see most TPS designations really expiring in 2027 and 2028. With DACA again Joe Moakley

BILL KRISTOL:

Could he cut them off though now? Could he come into office and say, "Biden tried to extend this?"

AARON REICHLIN-MELNICK:

Not immediately.

BILL KRISTOL:

But he can't say, "I revoke Biden's extension and you Haitians in Springfield, Ohio, you've got to go in three months," or something like that?

AARON REICHLIN-MELNICK:

He can terminate them somewhat earlier, but nevertheless he can't do it immediately. So there is a minimum period under the law that allows people to get their affairs in order. And so that is in many ways the population that he can have the biggest impact on. So we could see 2 million people lose their ability to live here legally and to work. That doesn't mean they're going to be deported, however, because when you lose the status, you just kind of become undocumented. So he could render 2 million people fully undocumented as opposed to what they are now, kind of semi-documented. They don't have permanent status, but they do have temporary status. You could just get rid of that and sort of put them in the population of the undocumented and then make efforts to deport them. But they would still too have to go through the immigration court backlogs potentially. And then when it comes to legal immigration, of course he can cut legal immigration much more easily than any of this. It's much easier for the president to stop people from entering the country—

BILL KRISTOL:

Yeah, say a word about that because of course, the famous Muslim ban in the first term was that. It wasn't removing people who were here, or it wasn't stopping people at the border particularly. I mean it was stopping people from certain countries from coming in. I guess he could do a version of that, right?

AARON REICHLIN-MELNICK:

Yeah, and he is almost certain that he is going to do a version of that again, as well as a potential expanded version aiming to sort of reshape who is able to come to the country. Last time he attempted to oppose essentially a wealth test on people who are coming into the country using the Muslim ban authority— that did get temporarily blocked in court. Unclear if he's going to do the exact same thing again this time around. Of course, blocking people from coming here legally is, as a administrative matter, very easy. You send a memo to consulates around the world, and you say, "Do not issue a visa to anyone who falls within category X, Y,

or Z." And the Muslim ban authority, the travel ban authority INA section 212F, says, "Whenever the president determines that any alien or classes of alien... That their entry would be detrimental to the United States, the president may prohibit their entry."

And so that authority can be invoked at the consulates very simply. The president signs an executive order saying, "No one from Afghanistan is allowed to come to the United States on a visa." And voila, all [Afghans] internationally are barred from ever getting a visa. And that is pretty easy to administer from a consular perspective as opposed to enforcement of course, which gets into all of those complex resource questions. With the legal immigration system, you can just cut off entire categories of immigration quite easily. We also expect him to take a hammer to the legal immigration system by imposing dramatic increases in red tape. Some of this was the so-called extreme vetting the first time around where they sort of ran everybody's file and application through multiple additional layers of vetting, which slowed the process down significantly. And others will be through essentially deliberate pitfalls built into the system to make it harder to get some form of status.

And the best example of this is something called the No Blank Spaces policy from the first time. The No Blank Spaces policy was a policy where when you submitted an application for asylum or for what's known as a U visa (it's a visa for people who've been victims of serious crimes in the United States and cooperated with police), what they said is, "If you do not write N/A in every single blank box on the form, including the totally irrelevant blank boxes, we will automatically reject your application and send it back to you and make you refile it." So that would mean, for example, if you had no middle name, your name was John Smith and you didn't write N/A in the middle name column, they would send it back. If you had one child and the physical application form has four blank boxes for you to put your children and you didn't write N/A in the other three boxes, your application would be automatically rejected.

BILL KRISTOL:

Apart from the drama of saying, "No one from Gaza, no one from Afghanistan, no terrorists, no this, no that, no people who are going to be leeches on the system or criminals," so it really could change our legal immigration policy. But in absolute numbers, I mean, how big does that end up being?

AARON REICHLIN-MELNICK:

Yeah. So because of the fact that there are visa backlogs in the millions... Congress hasn't updated the number of people who are eligible for visas since 1990, one month from before the World Wide Web went online. It was the last time we changed our legal immigration allocations. Restrictions on the number of people who come here oftentimes don't change the overall number of people entering on visas because there's so many people that if you block 2 million people from getting the visas, there's enough other people in line behind them to fill up all the slots for any given year. The one area where that's not true is immediate relatives of US citizens, which is an unlimited category. So that's parents of US citizens over the age of 21, children of US citizens, and spouses of US citizens. So there, for example, because there are no backlogs, it's unlimited, uncapped.

If you block anyone from Afghanistan and there were a hundred people who had spouses from Afghanistan and who wanted to come here, you're going to have a net drop of 100 Green Cards that are going to go to those people because there's no one else who can get them. So we do expect to see a significant drop in family-based immigrant visas, especially for immediate relatives of US citizens because that is a category that is impacted heavily by bans.

And we also expect that as the system becomes more expensive and more difficult and more filled with red tape, fewer people will apply for visas or we're going to get a shift in the composition of who comes here. They want richer people. As Trump said, he wants white people from Norway and they're going to be imposing some changes in the system to make it more difficult for people around the rest of the world to get visas, though the overall numbers may not change that much in a lot of categories simply because there are so many people in line

that even if you disqualify half of all people who are currently waiting, it would take years and years before you actually saw a reduction in the numbers.

BILL KRISTOL:

And H-1B finally. Maybe H-1B, H-2B. We've had this little debate with Musk and Bannon and so forth, the intra-Trump-world debate. How do you think that turns out? Do we still have...? Trump still gets his immigrants to be gardeners at Mar-a-Lago on the H-2B visa and Musk still gets people to work at Tesla on H-1B visas?

AARON REICHLIN-MELNICK:

Probably. Last time around the Trump administration didn't really focus hard on cracking down on H-1Bs. They made some proposed changes. The Biden administration has put some changes in effect too. There is bipartisan agreement that the H-1B program needs some changes, though there are obviously strong disagreements about what those actual changes are, but we will likely see some form of regulation aiming to crack down on third-party use of H-1B visas, so people who just are hired as contractors on H-1B visas and then farmed out to various different sites where then they don't have to be paid at the same wages at the places they're working at. We have big consulting companies like Tata Consulting getting some of the highest number of H-1B visas. That is something that I expect them to try to crack down on a little bit. That's another program where there is still strong enough business support for the visa that it will probably remain in effect even if there're some minor changes.

BILL KRISTOL:

I should let you go soon. You've been very generous with your time, and this is such a complicated—but so interesting actually— to get at. So, what do you think...? I guess two questions. What are the ranges of things we could...? Where could we be in, I don't know, six months, where could we be in 18 months perhaps in terms of actual policy and actual effects of policy on the ground? I mean, does America look very different or is a lot of this pretty incremental and pretty...? Might be very terrible for certain people, individuals treated unfairly and I don't mean to minimize all that to 78 people in Bakersfield or whatever.

Or if you want a different point of view, you could say, "Good that we're getting rid of some people," but net-net, does it all look very different? And also the second related question I guess is do you see key inflection points where we'll know who's winning the debates within the administration, how willing Congress is to go along, and is there a moment when you'll be able to say, "I think I know now what the next two or three years look like because these decisions were made on the Hill or in the administration," or I suppose on the courts for that matter?

AARON REICHLIN-MELNICK:

Yeah, so starting with that second one, I think one major inflection point is going to be reconciliation, is how much money does the enforcement apparatus get? And if they get these staggering sums of money, the likes of which have never been spent before in immigration enforcement, that is an inflection point. That is not something where the short-term implications would be significant, but the medium and long-term implications would be dramatic. In the short-term, will the country look different? I think enforcement will be a lot more visible. There will be a lot more situations like with Bakersfield where you see people out in the community and ICE is going and boarding buses, border patrol is boarding buses. They did this in the first Trump term. There was a bit of a scandal where they were just boarding random Greyhounds and Greyhound eventually had to say like, "Hey, please don't do that. You're scaring off our customers."

We're going to see a lot more stuff like that. And so I think there will be a change in the perception of immigration enforcement with especially a lot of conservative media organizations using any raid, anything to sort of say, "The change has happened." And so, I think the message being sent from the White House is that, "A change has happened, we are now back in control." And how much people buy that will really depend on how these are

carried out. A lot of things can go wrong in an enforcement operation. Usually they're pretty nonviolent. Most people do not run from enforcement. Usually there are not a lot of concerns. But if you start ramping up detention, if you reopen family detention, you start sending parents and children to detention centers together and God forbid, a kid dies in a detention center as is a real possibility, it happened in his first term in office, we could see major shifts in the public's view of these.

But if they managed to have some self-discipline, they might be able to win the propaganda war about how they're carrying this out, even if the numbers are not dramatically different. But we are also looking at: Are they going to invoke the Alien Enemies Act? Are they going to deputize the National Guard? How far are they willing to go, on paper or in practice? And we're going to be looking very carefully at those. That said, on week one, expect a lot of executive orders to say, "DHS, start taking steps to move towards this change." And so I don't think other than the changes to legal immigration, cutting off visas to certain countries, which can be done with a stroke of a pen, when it comes to enforcement, I think in the very short term there will not be very many changes other than publicity-related changes.

BILL KRISTOL:

Interesting. And then the reconciliation of the budget stuff is 2, 3, 4 months away presumably. And TPS added some of that... I mean at some point someone's going to look up and say, "I thought these Haitians in Springfield, Ohio was such a crisis and why haven't you done anything if you're on Steve Bannon's side of things?" Maybe you say that to the Trump White House if you want to sort rev up MAGA against them a little bit. And if you're on the other side you say, "Are we really going to move these people out?" Against whom no one in Ohio seems to have any real issues except JD Vance maybe but the governor thinks it's fine and the mayor thinks it's fine. And I guess some of that stuff... So, it does seem like it's more gradual than people have been saying. That is, these different issues will hit the—

AARON REICHLIN-MELNICK:

With the Haitians—

BILL KRISTOL:

The rubber will hit the road at different times in different areas of immigration and different areas of the country and in different circumstances, I suppose.

AARON REICHLIN-MELNICK:

Exactly. And I think if I can leave your audience with one message, it's that this stuff is way more complex than the politicians in DC make it out to be. And when you look at the Haitian population, some Haitians will have humanitarian parole, some will have temporary protected status, some will have Green Cards, some will be asylum applicants who don't have either. And when I was an immigration lawyer, you'd often have someone come in and say, "Hey, my friend went through a situation XYZ and got result A, B, or C. I'm going through situation XYZ. Why are not I getting the same thing as them?" And I would have to tell them, "Everyone's case is different."

Even little random factors in a single given case, what year you entered the country, what month you entered the country, whether you've had one arrest versus no arrest, all of these minor little things can add up to very different results. And we may see that come across by the administration in very confusing ways. And so, to the extent that they try to make this out is one simple thing, "We're just rounding people up who are the bad guys and we're deporting them and we're letting the good guys have a second chance," it's just more complex than that.

BILL KRISTOL:

And I suppose just to conclude on this, those of us who might hope and people from different points of view about actually the numbers we would want to have coming in and how legal immigration should be structured and H-1B and all that sort of stuff, and high-skilled versus

less skilled, and whatever one's thoughts… People's hopes for a more rational, competent, effective immigration policy and less of a totally confusing, as you say, smorgasbord of policies, but also obstacles that almost everyone agrees are foolish or counterproductive or just arbitrary. It sounds like the hope for fixing all that over the next four years is not great, right? I mean, that's what people have tried to do with these comprehensive bills understandably, and it's not going to be any easier when you run into people and they say, "Oh my God..." These are people who are PhD students or whatever and want to stay. I mean, I'm not talking about even... Totally legal and all, and they're spending money and pulling their hair out about how the whole system works. That's going to be the case unfortunately 2, 3, 4 years from now?

AARON REICHLIN-MELNICK:

Yeah, I mean the last time Congress passed any major changes to immigration law was 1996. They've made a few tweaks here and there. They're likely going to make a few tweaks immediately coming up potentially as soon as the next week or two. But nothing major changes to the system. That said, there are two things to flag. First, should DACA go away? You have half a million people who are extraordinarily sympathetic. That may be an inflection point where Congress gets off of its butt and actually decides to do something. Because it will be a moment and will probably be a specific day that it happens. A court order expires at a certain point. There's a day when everybody who's got DACA loses it, or their protections go away. And that could be the impetus to do something.

And then second, if Trump actually does convince people that the border is under control, even if it is maybe somewhat more under control, or maybe it's exactly the same as today, it's just now that he's in charge, he manages to convince people that he's got the job done, then that will take some of the pressure off of those who've repeatedly said, "I won't do anything on legal immigration and the undocumented population until we fix the border." And there is some bipartisan support already right now for some answers.

In the House, and I think soon potentially in the Senate, you have something known as the Dignity Act by Rep Maria Salazar in Florida who's very much a MAGA conservative Cuban, and you have also co-signed with Democrat, Veronica Escobar of El Paso, who's in Beto O'Rourke's old district, both of whom have come together and said, "Look, let's compromise on this. Let's put something in place that would affect the border, provide more resources there, and also give a path—it's a long and expensive path—to the average undocumented immigrant, but it actually lets them go through something, do what so many people say they should do, get their papers in order, which they can't do today."

And that has been endorsed even by the moderate Problem Solvers Caucus. And you have a lot of growing support for bills like that. And so to the extent that there is a coalition out there for some sort of comprehensive immigration reform, again, people are actively working on that. And if pressure at the border does reduce, maybe, maybe you get people having those larger conversations again. But unfortunately, we are not going to fix these problems on a broader basis until we get together and compromise. And that's what I urge members of Congress to do anytime I get their ears.

BILL KRISTOL:

Stranger things can happen, I suppose, than the kind of Nixon going to China thing where Trump decides, three years in that he's solved the border and now he should do a comprehensive immigration reform. And his business friends are telling him, "Look, we can't just kick all these people out." I mean, I suppose it wouldn't be the—

AARON REICHLIN-MELNICK:

Stranger things have happened—

BILL KRISTOL:

…Craziest outcome, but maybe not something to bet on.

AARON REICHLIN-MELNICK:

There was almost a deal for DACA in exchange for $25 billion for the border wall in his first term, and that was torpedoed by Stephen Miller. But does that happen again? we'll have to see.

BILL KRISTOL:

So interesting. Well, this has really been terrific, Aaron. Thank you. It's so complicated. But it's very interesting though to get a sense of the complexity of it, I think, and to see how silly a lot of the debate is, but also to really think about what... There are some big inflection points and choices ahead. And so thank you for helping us understand that.

AARON REICHLIN-MELNICK:

Yeah, thank you again for having me.

BILL KRISTOL:

We'll have to have you back in a few months and we'll see where we are in this very complicated issue, which a lot of people feel very strongly about, and rightly so. This is so central to our national identity, and that leads some of us to have some sets of views and others to have different sets of views, but the issue's not going away, that's for sure. So, Aaron, thank you and thank you all for joining us on the *Conversations*.