Immigration Parole

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Under the Biden Administration, over 1.5 million noncitizens arrived in the United States through an under-studied immigration power known as "parole." On his first day back in office, President Trump signed multiple executive orders targeting these programs, directing termination and describing their recipients as illegal. Since then, the Administration has systematically stripped hundreds of thousands of individuals of parole protections.

These noncitizens now face threats of mass deportation, including the attempted use of expedited processes. Many fled grave harms, and all came via pathways presented to them as lawful. Under our immigration laws, arrival with permission confers significant substantive and procedural protections, which courts and agencies must now ensure.

This article examines the authority, mechanisms, and doctrines underlying immigration parole. Congress enacted modern parole into law 73 years ago, but executive officials have exercised the power for over a century. For decades, presidential Administrations have invoked parole to provide large-scale immigration relief. Beneficiaries have included military service persons, allies at home and abroad, WWII veterans, separated families, victims of disaster, and many others. Far from awarding illegality, parole creates lawful paths for people to follow.

Even under drastically changed policy aims, executive officials must consider the compelling needs and reliance interests of parole recipients. Rather than narrowing or eliminating parole, Congress should preserve the power for future administrations. Most critically, courts must enjoin any attempts to deport millions of parole recipients through expedited processes. Individuals who previously arrived via parole have a right to full immigration court proceedings and remain potentially eligible for multiple forms of relief. Courts must protect the rights of parole recipients and unequivocally reject attempts to illegalize and deport them en masse.

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> "[T]here was no specific authority to release an excluded alien on parole . . . [h]owever, the practice existed, for the need was there."
> Matter of L-Y-Y-, Attorney General, 1960.[1]

> "*Parole* [*speech*] . . . is an individual act. It is wilful [sic] and intellectual."
> Ferdinand de Saussure, *Course in General Linguistics*, 1916[2]

1. L-Y-Y-, 9 I. & N. Dec. 70, 71 (A.G. 1960).

2. FERDINAND DE SAUSSURE, COURSE IN GENERAL LINGUISTICS 14 (Wade Baskin trans., Perry Meisel & Haun Saussy eds., Columbia Univ. Press 2011) (1916).

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INTRODUCTION

For over a century, immigration officials have allowed noncitizens into U.S. territory without formal admission, furthering both governmental aims and individual equities. Former President Biden used this power expansively, allowing over 1.5 million immigrants to come to the United States through individual exercises of "immigration parole." In his first week in office, President Trump directed the termination of President Biden's large-scale parole programs, characterizing its recipients as "illegal aliens" and threatening swift deportation.[3]

But immigration parole recipients did not come to the United States unlawfully. Rather, their arrival pursuant to delineated programs and individualized review fell within the laws of Congress. Like past presidents before him, Biden crafted parole programs with specific eligibility criteria, including nationality, ties to military service, or relationships with U.S.-based family members. Some of these programs permitted persons to come from abroad, while others provided relief from deportation to noncitizens already in the United States. Although novel in certain respects, Biden's parole programs drew upon decades of past precedent as well as statutory authority.

Executive immigration officials have used the power for over a century, terming its exercise "parole" even prior to its authorizing statute. Seventy-three years ago, after hearing testimony on the beneficial uses of this power, Congress formalized parole at 8 U.S.C. § 1182(d)(5). Today's iteration—substantially similar to the 1952 version and also reflective of pre-statutory uses—authorizes immigration officials to allow in noncitizens "on a case-by-case basis for urgent humanitarian reasons or significant public benefit."[4]

Contrary to the current Administration's assertions, broad programs that grant parole to individually scrutinized applicants are neither unlawful nor unprecedented. For decades, successive Presidents have invoked parole to flexibly respond to world events and compelling needs. Parole's beneficiaries have included military service persons, Deferred Action for Childhood Arrivals (DACA) recipients, allies at home and abroad, WWII veterans, separated families, and victims of strife and disasters. Far from mandating speedy deportation of persons granted parole, Congress opened pathways to facilitate regularization of status of hundreds of thousands of parole recipients, allowing them to permanently remain in the United States.

What *is* unprecedented is the mass illegalization and deportation of millions of recent parole recipients, all of whom relied on pathways characterized as lawful at the time, and many of whom would face grave harm in their home countries. Although parole at its outset requires an exercise of executive discretion, its recipients now have significant interests and equities

3. Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8446, § 16(a) (Jan. 20, 2025).
4. 8 U.S.C. § 1182(d)(5).

that courts and policymakers must consider. Many have strong family and community ties to the United States, including U.S. sponsors who volunteered to meet their urgent needs.

Current narratives around parole's illegality are misguided. Noncitizen parole recipients complied with stringent requirements, often spending months in limbo to avoid unlawful entry. Even though the current Administration has declared Biden's parole policies illegal, millions of parole recipients followed the rules in place at the time of their decision to come to the United States. They came with the (correct) understanding that parole pathways are lawful, often with significant involvement by the U.S. government itself through screening interviews, sponsor approval, travel document issuance, or U.S. military evacuation. Critically, our immigration statutes measure lawfulness of arrival *at the time of inspection*, and arrival via parole carries significant procedural and substantive protections as a result.

This Article engages in a close look at immigration parole power at a critical juncture. It calls for a historically rooted understanding of parole's essential role in our immigration system as well as a clear acknowledgment of the compelling needs of parole recipients. Parole's flexibility does not equate to lawlessness; its malleability is a feature, rather than a subversion, of executive immigration authority.

For over a century, parole has allowed our immigration system to work *better*. It has allowed our national government to flexibly respond to global events such as disaster, crisis, and war and to consider humanitarian needs. It has also facilitated essential coordination between executive agencies. The Department of Homeland Security has used parole to further not only key aims of its own agency but also those of the Departments of Defense, State, Health and Human Services, Interior, Justice, and Veterans Affairs. Parole has also allowed executive officials to better achieve the goals of Congress; in the hands of federal judges, it has operationalized Article III equitable powers.

The rigidities of our immigration system make a flexible power like parole essential. Not only does parole achieve just and compelling ends for individuals, it enables our national government to swiftly respond to crisis, war, and upheaval. A Congress that understands this would strengthen or at least preserve immigration parole. Courts, meanwhile, should grasp that parole power is broad and discretionary. This includes adopting a nuanced view of immigration power that preserves space for executive officials—past, present, and future—to allow noncitizens *in*, not only keep them out. Most importantly, courts should acknowledge that parole's recipients are here with both past permission and current rights and equities that cannot be ignored.

In the parts that follow, I seek to deepen our understanding of immigration parole. In Part I, I provide a theoretical and scholarly overview to frame parole power. Next, I examine the evolution of parole and its current contours. Part III explores historical and contemporary uses of parole, situating them contextually. In Part IV, I address targeting and contestation of parole, including by the

executive, the states, and Congress. Part V explores the legal foundations of parole power, analyzing the views of our current Justices and calling for a better doctrinal and historical understanding of parole. In my final Part, I address the protective power of parole grants within our immigration system, including limits on parole terminations and the core procedural and substantive rights that attend arrival via parole.

The end of broad parole programs and the Administration's current stance on parole's "illegality" leave millions of immigrants vulnerable to draconian enforcement. Although the President wields power over parole—and in particular the contours of any new parole programs—parole terminations must adhere to administrative law principles, including careful consideration of reliance interests and harms. Nor does cessation of parole permit expedited processes to be used against parole recipients. Our immigration laws provide those who arrive via parole with significant protections, including access to full immigration courts and potential eligibility for multiple forms of relief. The federal courts must protect the rights of parole recipients and unequivocally reject their deportation en masse.

I. FRAMING PAROLE POWER

In his *Course in General Linguistics*,[5] Ferdinand de Saussure, the founder of the field of modern semiotics, sets forth a theory of structural linguistics. The fundamental distinction between *parole*—translated varyingly as speaking, speech [act], utterance, or performance—and *langue*—language or language system—drives his core insights. Whereas *langue* is a system of rules or conventions, *parole* is speech within that system. *Langue*, in other words, comprises the structure, and *parole* the individual act.[6] *Parole* has no inherent meaning; its signification[7] and value are relational within *langue*. As later scholars would more fully explore,[8] it is all the varied instances of *parole*, layered and compounded, that shape the system of *langue* and enable it to evolve.[9] Theorists in the line of Pierre Bourdieu, Claude Lévi-Strauss, and

5. *See generally* Saussure, *supra* note 2.

6. *See* Barton Beebe, *The Semiotic Analysis of Trademark Law*, 51 UCLA L. REV. 621, 638 (2004) ("*Langue* is structure; *parole* is event.").

7. In Saussure's linguistics, a sign is comprised of a signified, or the mental image of a thing, and a signifier, or the word-sound that refers to it. The relationship between the signifier and the signified is *arbitrary*: There is no inherent connection between the auditory sound of a word and its referent. Meaning derives not from sound or reality, but rather from the historically-contingent emergence and maintenance of a sign within langue. The value of a sign, moreover, can only be understood via difference: the distinctions and relations between signs in a system of langue. *See* SAUSSURE, *supra* note 2, at 120 *(*"[In] language there are only differences.").

8. Saussure distinguished between synchronic and diachronic study of linguistics, with the former evaluating a whole language system in a single timeframe, and the latter evaluating its evolution across time periods. In his structuralist approach, Saussure focused on the former, but those taking up his concepts would explore change over time. *See infra* note 10.

9. *See* Leonard Bloomfield, *Review of de Saussure*, 8 MOD. LANGUAGE J. 317, 317–19 (1922); Jack M. Balkin, *Nested Oppositions*, 99 YALE L.J. 1669, 1700 (1990) ("*[L]angue* is privileged over *parole*, but langue ultimately depends upon *parole*, because *langue* is constituted and shaped by acts of *parole*. Therefore a means

Jacques Lacan would extend Saussure's insights on *parole/langue* (and his other dualities) to the study of sociocultural and interior worlds including, in the case of Bourdieu, to law itself.[10]

Parole, in the more granular and immigration-specific sense, likewise can only be understood contextually, as part of a broader system. Its value emerges from its relation to other aspects of our immigration laws— particularly from its flexibility relative to other parts. Parole, perhaps more than any other immigration provision, has allowed for change over time. And, in the hands of successive Presidents, it has been the most akin to utterance, articulating the values and aims of national governance.

Legal scholars and others examining immigration parole have done so along a few major lines: as a precursor to our modern-day refugee laws, as an exercise of prosecutorial discretion, as a device that reveals the nature of presidential power, and lastly, as a form of constitutional manipulation vis-à-vis territory. I discuss each of the threads briefly below.

In refugee law scholarship, careful explorations of post-1952 parole programs have revealed how they gave rise to our current refugee law regime. Successive presidents since WWII have used parole power expansively to respond to refugee crises and advance foreign policy goals.[11] These have met the urgent humanitarian needs of persons fleeing persecution, as well as expressed the United States' ideological commitments during the Cold War. Deborah Anker, Michael Posner, Gil Loescher, and John Scanlan have examined how Cold-War-driven geographic restrictions and numerical caps rendered mid-twentieth century laws inadequate to address the scope of refugee needs as well as key U.S. foreign policy interests.[12] Professors Anker and Posner recount that as an alternative, Administrations used immigration parole for multiple groups of refugees, but "[t]he friction between the flexibility of this *ad hoc* admission procedure, administered by the executive branch, and the carefully delineated statute, passed by the Congress, was the source of repeated conflict . . . ."[13] These developments, as they traced, "culminat[ed in] . . . the Refugee Act of 1980 . . . , the most comprehensive United States law ever enacted concerning refugee admissions and resettlement."[14]

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of altering *langue* through *parole* must exist . . . ."); *see also* Frank Fagan, *Natural Language Processing for Lawyers and Judges*, 119 MICH. L. REV. 1399, 1410 (2021).

10. *See, e.g.*, Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L.J. 805, 813 (1987); CLAUDE LÉVI-STRAUSS, THE ELEMENTARY STRUCTURES OF KINSHIP 6 (Rodney Needham ed., James Harle Bell & John Richard von Sturmer trans., Beacon Press 1969); JACQUES LACAN, ÉCRITS 9–11 (Bruce Fink trans., W. W. Norton & Co. 2006).

11. *See* Deborah E. Anker & Michael H. Posner, *The Forty Year Crisis: A Legislative History of the Refugee Act of 1980*, 19 S.D. L. REV. 9, 10–11 (1981).

12. *See id.*; GIL LOESCHER & JOHN A. SCANLAN, CALCULATED KINDNESS: REFUGEES AND AMERICA'S HALF-OPEN DOOR, 1945 TO THE PRESENT xiii-xviii (The Free Press 1986).

13. Anker & Posner, *supra* note 11, at 11.

14. *Id.*

David Bier at the Cato Institute and Yael Schacher at Refugees International have both produced excellent contemporary research on parole. Bier provides a comprehensive overview with an exhaustive list of 126 programmatic parole orders,[15] while Schacher offers detailed analysis of parole's historical and humanitarian sweep.[16] An insightful comment by Farooq Chaudhry canvasses historic and contemporary uses of parole and offers suggestions to Congress on protecting group-based parole.[17]

Scholars exploring parole programs have also shed light on its discriminatory applications, including the exclusionary treatment of Haitian refugees beginning under President Reagan, which marked a particularly stark and shameful chapter.[18] Central Americans fleeing right-wing dictatorships also found themselves initially shut out from parole programs.[19] These discriminatory applications of parole have found little recourse in law, and scholars have rightly critiqued this trajectory.[20] Lindsay M. Harris and Yalda Royan have illuminated how this ignoble legacy persists in parole programs today, "situat[ing] the disparate treatment of Afghans and Ukrainians as one of the latest episodes in the long history of racism in the creation, execution, and implementation of immigration policy in the United States."[21]

While keeping these vital critiques and insights in mind, others have also examined the productive and necessary contemporary functions of parole. In her book *Beyond Deportation*, Shoba Sivaprasad Wadhia describes parole as a form of prosecutorial discretion that has targeted key "special groups."[22] She explains, "[a]lthough parole has a statutory basis, the agency's decision to grant parole to groups of people and also to individuals for humanitarian reasons is viewed as prosecutorial discretion."[23] David Martin also describes parole as an

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15. David J. Bier, *126 Parole Orders Over 7 Decades: A Historical Review of Immigration Parole Orders*, CATO INST. (July 17, 2023, at 16:43 ET), https://www.cato.org/blog/126-parole-orders-over-7-decades-historical-review-immigration-parole-orders.

16. Yael Schacher, *Supplementary Protection Pathways to the United States: Lessons From the Past for Today's Humanitarian Parole Policies*, REFUGEES INT'L 18 (Nov. 10, 2022), https://www.refugeesinternational.org/reports/2022/11/7/supplementary-protection-pathways-to-the-united-states-lessons-from-the-past-for-todays-humanitarian-parole-policies.

17. Farooq Chaudhry, *The Past, Present, and Future of Humanitarian Parole*, 2023 U. CHI. LEGAL F. 307 (2024).

18. *See infra* Subpart.IV.C; *see also* J. Michael Cavosie, *Defending the Golden Door: The Persistence of Ad Hoc and Ideological Decision Making in U.S. Refugee Law*, 67 IND. L.J. 411, 431–38 (1992); Mary Jane Lapointe*, Discrimination in Asylum Law: The Implications of* Jean v. Nelson, 62 IND. L.J. 127, 147–48 (1986).

19. *See, e.g.*, Peter Novian, *The Numbers Game: The Politics of U.S. Refugee Policy Toward Central America*, 1 LA RAZA L.J. 168, 174 (1984) ("Haitians and El Salvadorans, fleeing regimes supported by the United States have been denied complete access to this country.").

20. *See, e.g.*, Carrie L. Rosenbaum, (*Un)equal Immigration Protection*, 50 SW. L. REV. 231, 250–53 (2021); Jeffrey C. Gilbert & Steven Kass, Jean v. Nelson*: A Stark Pattern of Discrimination*, 36 U. MIA. L. REV. 1005, 1028–32 (1982).

21. Lindsay M. Harris & Yalda Royan, *Afghan Allies in Limbo: Discrimination in the U.S. Immigration Response*, 61 S.D. L. REV. 863, 865 (2024).

22. SHOBA SIVAPRASAD WADHIA, BEYOND DEPORTATION: THE ROLE OF PROSECUTORIAL DISCRETION IN IMMIGRATION CASES 27–29 (Ediberto Román ed., N.Y. Univ. Press 2015).

23. *Id.* at 30.

essential feature of prosecutorial discretion, recounting a range of "convenient and salutary uses of parole at the ports of entry."[24]

Relatedly, scholars have explored parole's structural role in the federal administrative immigration state, as well as the dialogic interplay of congressional and executive treatment of paroled noncitizens. In *The President and Immigration Law*, Adam Cox and Cristina Rodríguez undertake a sweeping review of history and the present to argue that the President exercises immigration authority as a "co-principal" rather than agent of Congress.[25] Presidential power, they argue, extends beyond taking care to faithfully execute the immigration laws of Congress or merely exercising delegated authority. "[T]he simple principle-agent account of executive enforcement is and has always been a myth. . . . [E]nforcing the law requires making value judgments that often cannot be traced back to legislative instructions."[26] In their view, executive actions throughout the twentieth and twenty-first centuries reveal that the President "stands at [the] center" of immigration policymaking.[27] In particular, Professors Cox and Rodríguez trace the emergence of a "shadow system of immigration law"[28] enabled by two circumstances: (1) Congress's enactment of a byzantine, complex, and detailed code; and (2) the related rise of a deportation state that renders millions of people potentially removable, even as finite resources render perfect enforcement impossible.[29]

Parole features in this story of presidential power. Professors Cox and Rodríguez describe parole as an "interstitial, bureaucratic device[]" that presidents used expansively and creatively to manage an array of migration crises.[30] But far from being minor or unimportant, parole would ultimately be responsible for "changing the face of the country" through large-scale resettlement of Cuban and Vietnamese nationals.[31] As Professors Cox and Rodríguez recount, invocations of parole sometimes clashed with Congressional calls for restraint. Yet Congress would also eventually acquiesce and condone major exercises of parole power by legalizing successive waves of its recipients.[32]

Ultimately, they argue for an expanded rather than curtailed parole provision to empower the President in the international sphere: one that entails not only access to territory but also to durable status. In a small but important section of their book, they discuss parole's domestic possibilities, recounting

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24. David A. Martin, *A Defense of Immigration-Enforcement Discretion: The Legal and Policy Flaws in Kris Kobach's Latest Crusade*, 122 YALE L.J. ONLINE 167, 181 (2012).

25. *See* ADAM B. COX & CRISTINA M. RODRÍGUEZ, THE PRESIDENT AND IMMIGRATION LAW 191–214 (2020).

26. *Id.* at 200.

27. *Id.* at 3.

28. *Id.* at 8.

29. *Id.*

30. *Id.* at 48–49.

31. *Id.* at 48–49, 52.

32. *See infra* Part.II.

how the Obama Administration considered parole as a way to offer protection to DACA recipients, before ultimately opting for deferred action.[33]

In his review of *The President and Immigration Law*, Hiroshi Motomura responds to Cox and Rodríguez's examination of parole power.[34] He praises its consideration of the President's domestic immigration powers, including specifically its exploration of parole as a possible replacement for DACA.[35] He argues for greater emphasis, however, on international aspects of presidential immigration power and urges the authors to think beyond expanded parole and their other concrete suggestions.[36] He contends that presidential immigration power must take on increasingly global dimensions in our future and highlights the open questions that remain on these dimensions.[37]

The flexibility that Professors Motomura, Cox, Rodríguez, Martin, Wadhia, and others describe as enabled (imperfectly) by parole are essential not just for our immigration system, but for presidential power and government bureaucracy as a whole.[38] Yet, it is important to note that immigration prosecutorial discretion[39] and specifically parole power have their skeptics as well. A comment by Marvin Gross in the 1975 *San Diego Law Review*, for example, describes a nineteen-year "[h]istory of [p]arole [m]isuse."[40] More recently, Peter Margulies has concluded that if "[f]ocusing solely on text, the Biden Administration's expanded parole programs do not fit Congress's scheme"[41]—but he advocates for a broader mode of statutory interpretation that he terms the "congruence canon," and offers suggestions on how more tailored parole programs would fit.[42]

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33. COX & RODRÍGUEZ, *supra* note 25, at 181–83.

34. Hiroshi Motomura, *Making Immigration Law*, 134 HARV. L. REV. 2794 (2021).

35. Professor Motomura writes:

> In my view, the Biden Administration could replace DACA with parole because parole can reach similar outcomes by drawing on a different set of historical and legal precedents that may better withstand legal pushback on the ground from field offices and rank-and-file officers in immigration enforcement agencies. The President and Immigration Law enriches understanding of this option.

Id. at 2813.

36. *Id.* at 2824–25.

37. *Id.* at 2821–22.

38. *See, e.g.*, Kate Andrias, *The President's Enforcement Power*, 88 N.Y.U. L. REV. 1031, 1035–36 (2013); Michael Sant'Ambrogio, *The Extra-Legislative Veto*, 102 GEO. L.J. 351, 357 (2014) ("[R]ather than reducing the Executive's enforcement discretion, we should focus on improving its transparency.").

39. *See, e.g.*, Josh Blackman, *The Constitutionality of DAPA Part II: Faithfully Executing the Law*, 19 TEX. REV. L. & POL. 213, 235 (2015); Robert J. Delahunty & John C. Yoo, *Dream On: The Obama Administration's Nonenforcement of Immigration Laws, the DREAM Act, and the Take Care Clause*, 91 TEX. L. REV. 781, 784 (2013) ("The President's claim of prosecutorial discretion in immigration matters threatens to vest the Executive Branch with broad domestic policy authority that the Constitution does not grant it.").

40. Marvin Samuel Gross, *Refugee-Parolee: The Dilemma of the Indochina Refugee*, 13 S.D. L. REV. 175, 179 (1975).

41. Peter Margulies, *Borderline Ambiguity: Major Questions and Immigration Law*, 101 DENV. L. REV. 575, 630 (2024).

42. *Id.* at 578. Professor Margulies argues that the Courts should apply a "congruence canon" that considers "statutory text, structure, history, and implementation" to interpret immigration law, rather than the major

Bijal Shah has also recently explored administrative law constraints on parole program *terminations* in describing what she terms "statute-focused presidential administration."[43] Rather than allowing executive branch officials unfettered discretion to end discretionary immigration programs of prior Administrations—including for parole—she examines how courts may properly require a tempered presidential power guided by statutory aims.[44]

A growing body of legal scholarship has also critiqued parole's constitutional fictions. Scholars, including myself, have examined how parole recipients fall within immigration law's "entry fiction"—a doctrine that considers noncitizens who are physically present in the United States to be "un-entered" and therefore outside the bounds of certain due process protections.[45] We have traced the doctrine's origins in the Chinese Exclusion era—rooted in racist tropes of the time—and its extension during the height of the Cold War to the present day. For three quarters of a century, scholars have criticized the fiction for limiting—oft nonsensically—the rights of noncitizens physically present in the United States.[46] Importantly, however, Congress has chosen to supplement and preserve key rights for these same individuals.[47] And, as I explore below, parole's manipulations of territory have also permitted Administrations to exercise the power in novel and experimental ways. These have often reflected expansive and generous executive uses.

II. THE EVOLUTION OF PAROLE POWER

A. PRE-1952 PAROLE

Congress formally legislated contemporary parole power in the 1952 Immigration and Nationality Act.[48] Yet, even before this statutory authorization, the executive branch exercised a power that it termed "parole."[49] While some

questions or *Chevron* doctrine—both of which already reflect aspects of the congruence canon. *Id.* at 575, 578–79.

43. *See* Bijal Shah, *Statute-Focused Presidential Administration*, 90 GEO. WASH. L. REV. 1165, 1173 (2022).

44. *See id.* at 1226–27.

45. *See, e.g.*, Eunice Lee, *The End of Entry Fiction*, 99 N.C. L. REV. 565, 573 (2021); Geoffrey Heeren, *The Status of Nonstatus*, 64 AM. U. L. REV. 1115, 1136 (2015); Timothy Zick, *Constitutional Displacement*, 86 WASH. U. L. REV. 515, 601 (2009); *see also infra* Subpart.IV.B.

46. *See, e.g.*, Henry M. Hart, Jr., *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362, 1396 (1953) (describing Cold War entry fiction cases as "writ[ing] without authority for the future").

47. *See infra* Part.VI.

48. Congress in 1917 also enacted a "temporary admissions" provision that is sometimes informally referred to as "parole." Immigration and Nationality Act of 1917, Pub. L. No. 64-301, § 39, 39 Stat. 874. In this article, when speaking of statutory parole, I reference only the 1952 statute and its later versions—which specify that "parole" is *not* considered an admission. I thus maintain a clear distinction between admission and parole.

49. *See* S. REP. NO. 82-406, at 2 (1951) (statement of Peyton Ford, Deputy Att'y Gen.) (discussed *infra* note 62–63 and accompanying text).

studies acknowledge this earlier form of executive parole,[50] far less have acknowledged pre-statutory group-based parole programs.[51] I examine both below.

As the Board of Immigration Appeals explained in a 1947 decision predating the parole statute:

> Parole is an administrative device of long standing. It has been employed for more than 25 years in many types of cases. For example, the power to parole has been used to permit inadmissible aliens to adjust their immigration status where they entered without or with improper documents, to defend criminal prosecutions, to testify in criminal cases for the Government, to report for induction into the Armed Forces, to apply for registry and to apply for naturalization. Finally, it has been employed in cases like the instant one, where the inadmissible alien has no right of appeal.[52]

Thus, even before parole's contemporary formal enactment, the executive branch exercised parole for many reasons, including criminal prosecution, witness testimony, military induction, and access to permanent legal status or naturalization. In a 1948 decision, the Board explained that parole operates outside the framework of admission, relaxing otherwise stringent timeframes: "Although [the immigration law] calls for prompt enforcement in exclusion proceedings, the alien is not deemed to be admitted to the United States after inspection, but merely paroled while under exclusion proceedings in connection with his trial in the United States."[53] In 1960, the Board—looking back on pre-statutory uses of parole—additionally expounded:

> Parole—the enlargement of the confinement of an excluded alien—was used in the early 1920's, and probably before. Prior to the Immigration and Nationality Act of 1952 there was no specific authority to release an excluded alien on parole. However, the practice existed, for the need was there, and authority could be found in the fact that the Attorney General had the power of staying the immediate deportation of an excluded alien. A feature of parole was the fact that the actual physical presence of the parolee did not in the eyes of the law put him "in" the United States.[54]

In addition to ad hoc and individual exercises of parole, at least two presidential administrations exercised parole power in programmatic ways. In

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50. *See, e.g.*, Laura Murray-Tjan, *"Conditional Admission" and Other Mysteries: Setting the Record Straight on the "Admission" Status of Refugees and Asylees*, 17 N.Y.U. J. LEGIS. & PUB. POL'Y 37, 46 (2014).

51. *The President and Immigration Law*, ever meticulous, is one exception. On page 44, the authors describe how in 1948, "the INS opened the border for a weekend." COX & RODRÍGUEZ, *supra* note 25, at 44 (citing KITTY CALAVITA, INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S. 30 (Routledge 1992)).

52. R-, 3 I. & N. Dec. 45, 46 (B.I.A. 1947).

53. H- & Y-, 3 I. & N. Dec. 236, 242 n.11 (B.I.A. 1948) (emphasis added); *see also* Letter from George Springsteen, U.S. Dep't of State, to Lt. Gen. Brent Scowcroft, The White House (Apr. 15, 1975) (Addendum on History of Parole Authority Under Immigration Laws) (on file with author) ("Before 1952, parole was utilized as an administrative expedient.").

54. L-Y-Y-, 9 I. & N. Dec. 70, 71 (A.G. 1960).

the first, in 1944, Franklin D. Roosevelt paroled nearly 1,000 Jewish refugees during the Holocaust, bringing them from refugee camps in Italy to the United States. The refugees were resettled initially at Fort Ontario in Oswego, New York. Although a provision for temporary admission existed in the 1917 immigration laws, the exercise of parole power did not proceed through formal immigration processes.[55] Rather, the War Refugee Board, working with the Allied Control Commission, selected refugees from camps in Italy based on criteria specified by the President and refined by the Board.[56] Those favored family groups comprised of women, children and elderly adults who lacked other options for refuge.[57]

In a second programmatic use of parole power, the Truman Administration in 1948 allowed a large number of Mexican laborers into the United States as part of the Bracero Program.[58] The action bypassed normal immigration inspection and admissions processes. Specifically, during one weekend in October 1948, the Administration went so far as to "open the border" to Bracero workers whom U.S. agricultural employers wished to hire. After making partial attempts to return Mexican workers attempting to cross the border that weekend,[59] U.S. Border Patrol on October 18 let in around 4,000 of workers without following the requirements of bilateral agreements with Mexico or normal immigration processes.[60] Instead, Border Patrol agents simply paroled Mexican workers to employers who awaited them.[61]

The Bracero Program and the Fort Ontario refugee camp reflected vastly different priorities and justifications. Both, however, comprised group-based exercises of parole even prior to parole's express statutory authorization. The Fort Ontario refugee program would foreshadow future refugee flows invoking the formal parole power enacted by Congress in 1952—including its template for President-driven allowance of refugees, followed by Congressionally-authorized legalization and endorsement. Later executive uses of the power

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55. The 1917 Immigration Act provided:

> That the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission.

Pub. L. No. 64-301, § 3, 39 Stat. 874.

56. EDWARD B. MARKS, U.S. DEP'T OF THE INTERIOR, TOKEN SHIPMENT: THE STORY OF AMERICA'S WAR REFUGEE SHELTER 9 (U.S. GOVERNMENT PRINTING OFFICE 1946).

57. *Id*.

58. *See* Agreement Between the United States of America and Mexico Respecting the Temporary Migration of Mexican Agricultural Workers, Mex.-U.S., Aug. 4, 1942, 56 Stat. 1759, 1764.

59. Letter from Watson Miller, Commissioner, Immigration and Naturalization Service, to P.A. Cortez, President, League of United Latin American Citizens (Oct. 26, 1948) (on file with author).

60. S. REP. NO. 82-1515, at 575 (1950) ("On October 20, 1948, Mexico declared that the United States had abrogated the agreement of February 21, 1948, on the ground that on October 18, 1948, the United States dropped its immigration bars and permitted the immediate influx of some 4,000 Mexicans, who were arrested by the Immigration and Naturalization Service as illegal entrants and paroled to various employers.").

61. *See id.*

would also reflect some of the concerns leading to the parole of Bracero workers in October 1948, for example, domestic economic factors, border management considerations, and humanitarian needs, as discussed below.

B. POST-1952 PAROLE

Congress formally enacted modern parole power into legislation with the Immigration and Nationality Act of 1952. Early drafts of the provision provided for parole only for urgent medical reasons. However, Congress heard testimony from Truman's Deputy Attorney General Peyton Ford, who described a historical practice of paroling noncitizens "under emergent and humanitarian circumstances."[62] Mr. Ford recommended that Congress expand parole to cover uses "for emergent reasons or for reasons deemed strictly in the public interest."[63] The next version of the parole provision appeared in S. 2055 and followed Mr. Ford's recommendation. It introduced the language eventually enacted into law as follows:

> (5) The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.[64]

In the early years following enactment, Presidents used parole to further the United States' ideological commitments during the Cold War and provide safe haven to those fleeing Communist regimes. President Eisenhower exercised the authority in 1956 on behalf of refugees fleeing the Hungarian revolution in 1956,[65] allowing over 30,000 Hungarian refugees into the United States via parole.[66] President Kennedy paroled 15,000 Chinese refugees from Hong Kong in 1962; President Johnson did the same for Russian Orthodox Old Believers in 1963. In 1971, President Nixon paroled several hundred Soviet Jews from the U.S.S.R.—at Congress's urging—and in 1972, he allowed in 1,000 stateless Ugandan-Asians.[67]

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62. *Revision of Immigration, Naturalization, and Nationality Laws: Joint Hearings on S. 716, H.R. 2379, and H.R. 2816 Before Subcomms. of Comms. on the Judiciary*, 82d Cong. 713 (1951) (statement of Peyton Ford, Deputy Att'y Gen. of the U.S.).

63. *Id.*

64. Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163, 188 (1952).

65. *See* Katherine L. Vaughns, *Taming the Asylum Adjudication Process: An Agenda for the Twenty-First Century*, 30 S.D. L. REV. 1, 15 (1993); Schacher, *supra* note 16, at 5.

66. Bier, *supra* note 15.

67. *Id*.

Nine presidents from Eisenhower to Biden, including four Republican presidents, issued specific orders on parole programs for Cuba.[68] Parole enabled President Johnson's Freedom Flights from 1965-1973, as well as the decades-long Cuban "wet foot-dry foot" policy beginning in the 1990s.[69] That latter program, started under President Clinton, provided parole for Cubans who made their way to U.S. soil, but not those intercepted at sea. These and other programs would allow hundreds of thousands of Cuban nationals in through parole.[70]

Parole from 1975 onward would also resettle hundreds of thousands of Vietnamese, Cambodian, and Laotian refugees following the fall of Saigon, including direct employees of the U.S. government and their families. This represents just a fraction of group-based parole programs from the time period. As David Bier of the Cato Institute has meticulously documented, American Presidents issued over fifty orders in the mid-twentieth century invoking the 1952 version of the parole provision.[71]

In passing the 1980 Refugee Act, Congress amended the statutory parole provision, specifying that refugees should not be paroled unless "compelling reasons in the public interest with respect to that particular alien require."[72] That same Act created both our current asylum and refugee admissions systems; under the latter, the President sets refugee numbers each year following consultation with Congress. In 1996, via the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress amended the parole provision to clarify that parole should be granted "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit."[73] The case-by-case language responded to members of Congress who disapproved of using parole to manage larger flows.[74]

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68. *Id.* (listing ("Programmatic or categorical parole orders under section 212(d)(5) of the Immigration and Nationality Act" by year under the Administrations of Presidents Eisenhower, Kennedy, Johnson, Nixon, Carter, Reagan, Clinton, W. Bush, and Biden).

69. *See* Annasofia A. Roig, *No Way, USA!: The Lack of a Repatriation Agreement with Cuba and Its Effects on U.S. Immigration Policies*, 13 FIU L. REV. 875, 882 (2019).

70. *See id.* at 881, 883–84.

71. Bier, *supra* note 15, at tbl. 1 (listing 126 executive parole orders and corresponding adjustment acts in chronological order).

72. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, 108 (1980).

73. Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009, 3009–689 (1996).

74. The House Judiciary Report explains:

> The text of section [1182](d)(5) is clear that the parole authority was intended to be used on a case-by-case basis to meet specific needs, and not as a supplement to Congressionally-established immigration policy. In recent years, however, parole has been used increasingly to admit entire categories of aliens who do not qualify for admission under any other category in immigration law, with the intent that they will remain permanently in the United States

H.R. Rep. No. 104-469, at 140-41 (1995). An additional amendment prohibited grants of parole to noncitizen crewmembers to work on a ship or aircraft during labor disputes, "unless necessary to protect national security." *See* Pub. L. No. 101-649, § 202, 104 Stat. 4978, 5014 (1990) (codified at 8 U.S.C. § 1184(f)); *see also* 8 U.S.C. § 1182(d)(5)(A) (authorizing parole "except as provided . . . in section 1184(f) of this title.").

Yet, although Congress here and at varying times expressed consternation over large-scale parole uses, it also validated and endorsed resettlement via parole through successive country-based legalization programs as well as by opening up a general pathway for adjustment of status for certain parole recipients. Over the course of several decades, Congress passed laws permitting the adjustment of status to lawful permanent residence of paroled noncitizens from Hungary, Cuba, Vietnam, Cambodia, Laos, Haiti, Hong Kong, Poland, Iraq, and Afghanistan—among others.[75] In 1960, Congress would also more generally ease the pathway of parole recipients to lawful permanent residence by allowing individuals who had been "inspected and admitted *or* paroled" to adjust status from within the United States based on family relationships.[76]

Finally, the 2002 Homeland Security Act abolished the former DOJ Immigration and Naturalization Service and transferred its core functions, including parole, to the newly created Department of Homeland Security.[77] These modifications notwithstanding, the parole provision has remained largely as-is from 1952 to the present day. The current substantive provision reads as follows:

> (5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title [relating to crewmembers], in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.[78]

In January 2025, Congress amended the provision, keeping the substantive language as-is but adding a part (C) which conferred States with standing to challenge parole programs. The provision specified that "attorney general of a State, or other authorized State officer" shall have standing if "the State or its residents experience harm, including financial harm in excess of $100."[79]

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75. *See* Schacher, *supra* note 16, at 5; Bier, *supra* note 15, at tbl. 1.

76. Act of July 14, 1960, Pub. L. No. 86-648, § 10, 74 Stat. 505 (1960) (codified at 8 U.S.C. § 1255(a))(emphasis added).

77. Homeland Security Act of 2002, Pub. L. No. 107-296 116 Stat. 2135 (codified as amended at 6 U.S.C. § 202(4)).

78. 8 U.S.C. § 1182(d)(5)(A). The present statute also limits parole of refugees as follows: "(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 1157 of this title." *Id*. § 1182(d)(5)(B). And, as discussed in Subpart.IV.C below, as of January 2025, a new subsection (C) eases States' litigation against parole programs.

79. *Id.* § 1182(d)(5)(C); *see also* Laken Riley Act, Pub. L. No. 119-1, § 3(d)(2)(C), 139 Stat. 5 (2025) (codified as amended at 8 U.S.C. § 1182(d)(5)(C)).

Contemporary exercises of parole, as described below, invoke the statutory requirements of urgent humanitarian reasons and significant public interest, and also seek to conform to the "case-by-case" language by requiring individual adjudication by an immigration officer. Nevertheless, group-based eligibility criteria for specific parole programs persist. I turn now to explore the contours of parole power and its place in our immigration system.

C. PAROLE CONTOURS, MECHANICS, AND FIGURES TODAY

As an administrative and statutory device, parole is as notable for what it does *not* do as for what it does. An exercise of immigration parole does not confer formal status. In many of its iterations—but not all—it entails protection against deportation and conferral of work authorization.

Parole does not constitute a formal admission and remains available to individuals who may be inadmissible. This matters because in immigration law, admission is a critical "hinge" point that poses significant barriers to approvals and has many downstream impacts. The Immigration and Nationality Act (INA) defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer."[80] In order to be admitted, a noncitizen must be admissible. This requires avoiding numerous statutory bars to admission, which disallow individuals for expansive reasons including: manner of entry into the country, time spent in the United State without status, criminal history, prior or likely reliance on public benefits, and more. Although some inadmissibility bars target those whom Congress deems security or safety risks, their breadth also bars millions of noncitizens in the United States who pose no such risk. Because parole itself is not an admission, *its conferral does not require an admissibility determination*.[81] This is perhaps the single most important aspect of parole's flexibility.

Parole is also not a technical "entry," which under immigration law requires either admission or an unlawful border crossing. As explained below, an "entry" can confer greater recognition of due process rights under immigration and constitutional law doctrine.[82]

Nevertheless, parole is a lawful means of allowance "into" U.S. territory with the government's permission. It operates differently in varied physical and conceptual spaces. Parole conferred at ports of entry physically allows a person into the United States. "Advance parole" approvals provide qualified "permission" to individuals already in the United States who wish to travel abroad.[83] Parole-in-place paroles an individual who is already in the territorial

80. 8 U.S.C. § 1101(a)(13)(A).

81. *See generally* 8 U.S.C. § 1182 (providing that inadmissibility bars include criminal grounds, public health grounds, likelihood of becoming a public charge, national security and terrorism-related grounds, as well as numerous immigration-infraction-related grounds).

82. *See* Z-, 20 I. & N. Dec. 707, 714 (B.I.A. 1993); Patel, 20 I. & N. Dec. 368, 370 (B.I.A. 1991) (holding that technical entry into territory requires either admission or a crossing free from restraint).

83. *See infra* Subpart.III.C.

United States without requiring them to leave and return.[84] Meanwhile, parole is also invoked as statutory authority for certain releases from (Immigration and Customs Enforcement (ICE) or U.S. Border Patrol custody, notably those considered "arriving aliens" who present at a port of entry.[85] Deferred inspection parole permits CBP to parole individuals into the United States while investigating inadmissibility issues further.[86]

Periods of parole last anywhere from thirty days up to three years, and many types of parole grants can be accompanied by work authorization.[87] Key exceptions are parole release from custody, which does not confer eligibility for work authorization, as well as Advance Parole for travel purposes. Although parole itself is not a durable status, Congress has chosen to specifically legislate pathways to durable status for many parole recipients.[88]

1. Parole Standards

Following the structure of the statute, DHS requires parole approvals to fall within either the umbrella of "significant public benefit" or "urgent humanitarian reasons."[89] No federal regulations formalize a general interpretation of these terms—although regulations do, as discussed below, implement specific programs. However, ICE documents describe parole as broadly furthering the objectives of law enforcement, judicial and administrative proceedings (including both party presence and witness testimony), and national intelligence needs.[90] ICE also facilitates participation in UN-hosted events and travel "through the United States en route to legal proceedings in a third country" via parole.[91]

USCIS offers some public guidance on what may constitute an "urgent humanitarian reason[]," mentioning reasons "includ[ing] (but not limited to) critical medical treatment, or the need to visit, assist or support a family member who is at an end-of-life stage of an illness or disease."[92] Its webpage lists organ

84. *See supra* Subpart.III.A.

85. *See infra* Subpart.VI.A.

86. ANDORRA BRUNO, CONG. RSCH. SERV., R46570, IMMIGRATION PAROLE 5 (2020).

87. *Id.* at 10, 14. A recent proposed rule would significantly limit work authorization for parole recipients by requiring individualized economic necessity showings and providing for only one year of validity. 91 Fed. Reg. 34352 (proposed June 5, 2026).

88. *See infra* Subpart.VI.C; *supra* Subpart II.B.

89. 8 U.S.C. § 1182(d)(5)(A).

90. U.S. IMMIGR. AND CUSTOMS ENF'T, DHS/ICE/PIA-049, PRIVACY IMPACT ASSESSMENT FOR THE ICE PAROLE AND LAW ENFORCEMENT PROGRAMS UNIT CASE MANAGEMENT SYSTEMS 2 (Dec. 3, 2018), https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-plepucms-december2018.pdf.

91. *Id.*

92. *Humanitarian or Significant Public Benefit Parole for Aliens Outside the United States*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Dec. 15, 2025), https://www.uscis.gov/humanitarian/humanitarian_parole.

donation, adoption of children, and attendance at funerals as additional possible bases.[93]

At times, USCIS has set up special websites to inform victims of specific disasters and tragedies of their ability to seek parole. When noncitizens have found themselves at the center of national grief and disaster, DHS has responded via parole. These have included informational pages for the victims of the Uvalde, TX mass school shooting in 2022[94] and of Hurricane Harvey in 2017.[95]

2. Parole by the Numbers

The Department of Homeland Security does not currently publish comprehensive statistics that provide a full picture of parole grants. However, the Biden Administration did provide key figures through a detailed report on parole to Congress in 2024, statistical yearbooks, and updated quarterly spreadsheets made available to the public. Those provide a snapshot in time of parole grants in the late Biden Administration, which I lay out below, relying on the aforementioned sources as well as data compiled by the Transactional Records Access Clearinghouse.[96]

Figures from 2024 onward are unfortunately limited, as the Department of Homeland Security under the Trump II Administration stopped making a wide array of immigration data accessible to the public.[97] As recounted below, the Trump II Administration also sharply curtailed parole programs Department-wide.[98] Nevertheless, below I summarize available statistics to provide context for the range and scale of recent parole programs—including those now targeted or terminated under the current Administration.

In FY2023, the Biden Administration granted or approved approximately 1.7 million parole requests, broken down below:

93. *Guidance on Evidence for Certain Types of Humanitarian or Significant Public Benefit Parole Request*s, U.S. CITIZENSHIP & IMMIGR. SERVS. (Oct. 11, 2022), https://www.uscis.gov/humanitarian/humanitarian-parole/guidance-on-evidence-for-certain-types-of-humanitarian-or-significant-public-benefit-parole-requests.

94. *Parole Requests in Response to the Shooting in Uvalde, Texas*, U.S. CITIZENSHIP & IMMIGR. SERVS. (June 8, 2022), https://www.uscis.gov/archive/parole-requests-in-response-to-the-shooting-in-uvalde-texas.

95. *USCIS Alerts Those Affected by Hurricane Harvey to Available Immigration Services*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Aug. 30, 2017), https://www.uscis.gov/archive/uscis-alerts-those-affected-by-hurricane-harvey-to-available-immigration-services.

96. *See* Transactional Recs. Access Clearinghouse, Who Is Being Given Humanitarian Parole To Temporarily Enter the Country: Latest Data (2024), https://tracreports.org/reports/749.

97. *See* Rebecca Santana, As Trump Pushes Deportations, Immigration Data Becomes Harder To Find, Associated Press (Mar. 15, 2026), https://apnews.com/article/trump-immigration-data-numbers-deportations-000a289890193c94474f19b877eb37d1; Trump Administration Stops Publishing Immigration Data as It Ramps Up Deportations, NOTUS (Nov. 3, 2025), https://www.notus.org/immigration/trump-administration-immigration-data-deportations.

98. *See infra* Part.IV.

Table 1. DHS Parole Approvals & Grants in FY 2023 (Non-Custodial)[99]

CBP Port of Entry Parole Grants	
Cuban Family Reunification (CFR)	2,415
Advance Humanitarian (CH)	4,868
Process for Cubans (CHP)	50,236
Significant Public Benefit (CP)	4,171
Advance Parole (DA)	158,437
Parole at a POE (DT)	64,437
Noncitizen issued a Form I-94 + NTA and released	362,255
Process for Haitians (HHP)	85,345
Process for Nicaraguans (NHP)	38,113
Parole for Individuals Abroad (PAR)	1,009
Family Reunification Task Force (PFR)	1,426
Uniting for Ukraine (UHP)	96,260
Process for Venezuelans (VHP)	66,987
All Other Categories	4,389
Total CBP Port of Entry Parole Grants	**940,348**
ICE Parole Approvals (Non-Custodial)	
ICE Enforcement and Removal Operation	5,968
ICE Parole and Law Enforcement Unit	1,743
Total Non-Custodial ICE Parole Approvals	**7,711**
USCIS Parole Approvals	
Advance Parole	326,071
Parole-in-place	10,046
All Other Parole Approvals (e.g., Parole Processes)	438,888
Total USCIS Parole Approvals	**775,005**
Total Parole Approvals or Grants	**1,723,064**

99. U.S. DEP'T OF HOMELAND SEC., PAROLE REQUESTS: FISCAL YEAR 2023, FOURTH QUARTER 6–8 (2024).

Table 2. DHS Parole Grants in FY 2023 (Custodial Releases)[100]

Parole – Release from Custody	
Parole from USBP Custody	304,000
Parole from ICE Custody	85,608
Total Parole Releases from Custody	**389,608**

The numbers, though large, are still dwarfed in comparison to other immigration processes, which cover well over a hundred million people annually.[101] Advance parole—which merely allows someone already here in the United States to leave and come back—comprises a significant portion, at 326,071 approvals. Releases from custody, driven in large part by capacity issues,[102] account for nearly 1/4 of parole grants, or 389,608.

Nevertheless, under the Biden Administration, parole grants at ports of entry increased when compared to the preceding years. As shown below in data made available by the Transactional Records Access Clearinghouse (TRAC), those grants in the first three quarters of 2023 more than doubled to 301,069, compared to 130,016 in all of fiscal year 2022.[103] But, TRAC has also shown that this large jump in absolute numbers does *not* reflect a huge increase in the percentages of noncitizens paroled at ports of entry relative to numbers of inadmissible noncitizens arriving. Rather, in FY2023 (Q1-Q3), CBP paroled only 38% of total inadmissible noncitizens at ports of entry, a modest jump from the 34% in 2022 and less than the 40+% paroled in 2015 and 2016. Even at times in the first Trump Administration, both absolute numbers *and* percentages of inadmissible noncitizens paroled at ports of entry were significant—e.g., 74,481 and 34%, respectively, in 2017.

***Table 3. Inadmissible Noncitizens & Parole Grants by CBP at Ports of Entry* (TRAC Data)**[104]

Fiscal Year	Inadmissible Noncitizens	Number Paroled	Percent Paroled
2012	148,820	27,800	19%
2013	181,144	53,869	30%

100. *Id.* at 6–7.

101. In FY 2023, for example, DHS processed over 132,000,000 admissions —excluding admissions for permanent residence. Off. of Homeland Sec. Stat., *Table 25. Nonimmigrant Admissions by Class of Admission: Fiscal Years 2014 to 2023*, DEPT. OF HOMELAND SEC. (Sep. 16, 2024), https://ohss.dhs.gov/topics/immigration/yearbook/2023/table25 (providing figures for non-immigrant admissions).

102. *See infra* Subpart.III.F.

103. *A Ten-Year Look at Inadmissible Migrants and Paroled Migrants at Ports of Entry*, TRAC IMMIGR. (Jan. 12, 2024), https://tracreports.org/reports/735.

104. *Id.*

2014	195,498	71,340	37%
2015	226,724	91,715	41%
2016	279,905	111,675	40%
2017	222,039	74,481	34%
2018	216,137	41,856	19%
2019	217,857	35,314	16%
2020	131,410	28,076	21%
2021	132,284	29,732	23%
2022	380,652	130,016	34%
2023 (Q1-Q3)	788,953	301,069	38%

Parole granted at ports of entry, moreover, is only one aspect of parole, accounting for less than a quarter of total parole grants and approvals. As reflected in Table 1 above, all three components of DHS (USCIS, ICE, CBP) adjudicate many parole applications under a variety of programs. Data on advance parole—which allows individuals to travel abroad with qualified permission to return—reflect lower numbers of total approvals during the Biden Administration compared to most years of the first Trump Administration:

Table 4. Advance Parole Grants by USCIS[105]

Year	Advance Parole Approvals
2015	300,223
2016	344,769
2017	354,549
2018	318,896
2019	294,260
2020	307,819
2021	275,028
2022	302,360
2023	297,287
2024	465,751
2025	254,885

105. *Immigration and Citizenship Data*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?topic_id%5B%5D=33654&ddt_mon=&ddt_yr=&query=&items_per_page=10 (last visited May 1, 2026).

Focusing solely on total numbers of parole grants at ports of entry fails to provide a complete picture. When taking into account proportions of inadmissible persons paroled, as TRAC has compiled, as well as parole approvals in other parts of DHS, a more nuanced picture emerges of parole under the Biden Administration in comparison to the first Trump Administration.[106] Under the second Trump Administration, however, parole programs came under broad attack, as described more fully in Part IV below.[107]

3. Parole as Intra-agency and Inter-agency Coordination

All three major subparts of the Department of Homeland Security utilize parole, revealing its importance as an immigration agency-wide device. The United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP) all have jurisdiction over parole applications.[108] Per a 2008 Memorandum of Agreement, USCIS adjudicates requests related to "[u]rgent medical, family, and related" needs as well as country-specific parole programs.[109] ICE, meanwhile, has jurisdiction over parole requests of noncitizens "who will participate in administrative, judicial, or legislative proceedings, and/or investigations,"[110] who are already in removal proceedings or have received deferred removal from ICE,[111] or whose presence is desired for intelligence purposes,[112] among others. The Memorandum notes "CBP's inherent authority to issue paroles" and promises that "CBP does and will continue to exercise parole authority for both urgent humanitarian reasons and significant public benefit."[113]

When USCIS approves a parole request for an individual outside the United States, its decision is accompanied by a travel document but is not considered a "grant" of parole.[114] Rather, the travel document allows the individual to present at a port of entry for CBP inspection. At that point, the CBP officer makes the final decision on parole and grants parole.[115]

Parole also entails significant inter-agency coordination. Examples include formal channels between DHS and the Departments of State (DOS) and Defense (DOD). The DOS Foreign Affairs Manual, for example, has an entire section on

106. Publicly available longitudinal data for other parole programs within USCIS preclude other parole-specific tabulations. For many years, USCIS combined statistics on refugee travel document approvals together with parole approvals. Advance parole is an exception to this practice. *See id.*

107. *See* note 94, *supra*; *infra* Part IV.

108. U.S. CITIZENSHIP & IMMIGR. SERVS., U.S. IMMIGR. & CUSTOMS ENF'T & U.S. CUSTOMS & BORDER PROT., MEMORANDUM OF AGREEMENT 2 (Sep. 29, 2008), https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf.

109. *Id.*

110. *See id.*

111. *Id.* at add. 2.

112. *Id.* at 2–3.

113. *Id.* at 3.

114. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 92.

115. *Id.*

"Parolees," which states that "[i]n certain compelling circumstances, U.S. Government agencies, including the [DOS], may submit a request to DHS to parole an individual who is outside the United States."[116] The Manual explains that the USCIS International and Refugee Affairs Division and ICE Parole and Law Enforcement Programs Unit normally "adjudicate U.S. Government agency and [DOS] parole requests for individuals outside the United States" but that "[t]here may be limited instances where the [DOS] will coordinate directly with CBP on a parole request that is so urgent that it cannot wait for processing by USCIS or ICE."[117]

DHS also maintains formal parole channels with DOD. During the Iraq War, for example, Defense Department guidance provided detailed information on coordinating parole with both DHS and DOS.[118] It explained: "DoD uses the DHS [Significant Public Benefit Parole] process principally to provide U.S. forces with a means of rapidly evacuating trusted and highly valued foreign national employees (e.g., translators) when those persons are faced with danger as a consequence of having served the U.S. Government or forces."[119]

In 2006, Congress implemented a Special Immigrant Visa program to provide Iraqi and Afghan translators with access to lawful permanent residence, with eligibility substantially overlapping with described uses of parole.[120] But before there were visas for these critical purposes, executive officials used parole. Parole programs provided a blueprint for later-in-time Congressional action.

III. CONTEXTUALIZING PAROLE POWER: HISTORICAL AND CONTEMPORARY USES

Below, I provide an overview of major contemporary and select historic parole programs and uses. Over one hundred such programs[121] have intersected with the work of numerous federal agencies and impacted the lives of millions.

I do not attempt to describe them all, but rather select key programs, together with an analysis of the functional and structural role these initiatives play both within and outside of the Department of Homeland Security. I have included important and contested recent uses of parole. As demonstrated below, parole furthers broad executive priorities and enables better implementation of the laws of Congress, including in exigent and surprising ways.

116. U.S. DEP'T OF STATE, FOREIGN AFFAIRS MANUAL, § 9 FAM 202.3-3(B)(2) (2025).

117. *Id.*

118. U.S. DEP'T OF DEF., PROGRAMS AND PROCEDURES FOR DOD-SPONSORED PAROLE OF FOREIGN NATIONALS (2007). Professor Margaret Stock provided this document to the American Immigration Lawyers Association.

119. *Id.*

120. National Defense Authorization Act of 2006, Pub. L. No. 109-163, 119 Stat. 3136, 3443–44.

121. *See* Bier, *supra* note 15 and accompanying text.

A. MILITARY PAROLE PROGRAMS

Our current parole programs recognize the special membership status of U.S. military personnel, ameliorating the harshness of immigration law for those willing to make the ultimate sacrifice for our nation. Currently, USCIS administers three major parole programs benefitting current or past service members and their families: parole-in-place for military servicepersons and their family members; the Immigrant Military Members and Veterans Initiative (IMMVI); and the Filipino World War II Veterans Parole Program.

Parole-in-place, first implemented by the Obama Administration in 2013,[122] allows parole for individuals present but not formally admitted to the United States.[123] The parole recipient may be the current or past serviceperson themselves[124] or their "spouse, widow(er), parent, son, or daughter."[125] The USCIS Adjudicator's Field Manual explains that "[g]enerally, USCIS grants parole in place only sparingly." But it goes on to note that the status of being a current or honorably discharged service person or their family member "weighs heavily in favor of parole-in-place. Absent a criminal conviction or other serious adverse factors, parole-in-place would generally be an appropriate exercise of discretion for such an individual."[126] Individuals ineligible for parole due to formal admission are directed instead to apply for deferred action, which follows the same programmatic requirements as parole-in-place.[127]

In the National Defense Authorization Act of 2020, Congress expressed its approval for military-based parole-in-place programs, directing the Administration to continue use of parole-in-place for U.S. military service members and their qualifying family members.[128] Section 1758 of that bill provided:

> (b) Sense of Congress.—It is the sense of Congress that—
>
> (1) parole in place reinforces the objective of military family unity;
>
> (2) except as required in furtherance of the missions of the Armed Forces, disruption to military family unity should be minimized in order to enhance military readiness and allow members of the Armed Forces to focus on the faithful execution of their military missions and objectives,

122. U.S. CITIZENSHIP & IMMIGR. SERVS., POLICY MEMORANDUM, PM-602-0091 (2013).

123. *See* U.S. CITIZENSHIP & IMMIGR. SERVS., ADJUDICATOR'S FIELD MANUAL § 21.1(c)(1) (2021) ("Parole in place may be granted only to individuals who are present without admission and are therefore applicants for admissions."). USCIS is replacing the Adjudicator's Field Manual with a new Policy Manual, but that transition is not yet complete. *See* U.S. CITIZENSHIP & IMMIGR. SERVS., POLICY MANUAL (2025).

124. The service member must be either an active-duty military member, a member of the Select Reserve, or a former member of either the military or Select Reserve who was not dishonorably discharged. *Discretionary Options for Military Members, Enlistees and Their Families*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Aug. 27, 2025), https://www.uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families.

125. *Id.*

126. U.S. CITIZENS & IMMIGR. SERVS., ADJUDICATOR'S FIELD MANUAL, *supra* note 123.

127. *Id.* § 21.1(c)(2)(B).

128. National Defense of Authorization Act, Pub. L. No. 116-92, 133 Stat. 1198, 1860 (2019).

> with peace of mind regarding the well-being of their family members; and
>
> (3) the importance of the parole in place authority of the Secretary of Homeland Security is reaffirmed.[129]

The same Section further provided that in evaluating parole-in-place requests, "the Secretary of Homeland Security shall consider, on a case-by-case basis, whether granting the request would enable military family unity that would constitute a significant public benefit."[130]

Parole via IMMVI—a program announced jointly by the DHS and Veterans Affairs (VA) Secretaries on July 2, 2021—benefits current and past service members and qualifying family members who are currently outside the United States.[131] VA Secretary Denis R. McDonough explained:

> It's our responsibility to serve all Veterans as well as they have served us—no matter who they are, where they are from, or the status of their citizenship. Keeping that promise means ensuring that noncitizen service members, veterans and their families are guaranteed a place in the country they swore an oath—and in many cases fought—to defend.[132]

The qualifying family membership standard is narrower than for Parole-in-place. Parole applicants must be spouses or minor or adult children of current or past service persons.[133] With regard to service persons themselves, IMMVI parole allows deported veterans to return to the United States, both to access VA benefits as well as for more permanent returns.[134] In announcing IMMVI, DHS Secretary Mayorkas stressed DHS's commitment to "bringing back military service members, veterans, and their immediate family members who were unjustly removed."[135]

Finally, an earlier special program announced in 2016 allows parole of family members of Filipino World War II veterans. Over 260,000 Filipinos fought for the United States against Japan during that war,[136] and 57,000 Filipinos in U.S. uniform died.[137] On July 26, 1941, when he nationalized the Commonwealth Army of the Philippines and placed it under the command of General Douglas MacArthur, President Roosevelt announced its service

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129. *Id.* at 1860–61.

130. *Id.* at 1860.

131. U.S. CITIZENS & IMMIGR. SERVS., *supra* note 124.

132. *See* Press Release, U.S. Dep't of Homeland Sec., DHS, VA Announce Initiative to Support Noncitizen Service Members, Veterans, and Immediate Family Members (July 2, 2021), https://www.dhs.gov/news/2021/07/02/dhs-va-announce-initiative-support-noncitizen-service-members-veterans-and-immediate.

133. *Id.*

134. *See Oversight of Immigrant Military Members and Veterans: Hearing Before the Subcomm. on Immigr. & Citizenship of the H. Comm. on the Judiciary*, 117th Cong. 117–72, 1 (2022) (statement of Dr. Jennifer MacDonald, Senior Advisor to Sec. for Health, U.S. Dep't of Veterans Affs.).

135. Press Release, U.S. Dep't of Homeland Sec., *supra* note 137.

136. Filipino World War II Veterans Parole Policy, 81 Fed. Reg. 28097, 28098 (May 9, 2016) (to be codified at 8 C.F.R. pt. 212).

137. Filipino War Veterans of World War II Congressional Gold Medal Act, Pub. L. No. 114-265, § 2(18), 130 Stat. 1376, 1379 (2016) ("Findings.").

members would be entitled to full U.S. veterans benefits.[138] Congress broke that promise. After debating the high costs of providing benefits to Filipino soldiers, Congress passed the Rescission Acts in 1946,[139] which retroactively classified wartime service in the Commonwealth Army as "non-active" and rendered its veterans ineligible for GI Bill benefits.

Congress has never repealed the Rescission Acts, but through the 1990 Immigration Act, signed by President George H.W. Bush, it redressed some of its historic injustices by making Filipino WWII veterans eligible for naturalization.[140] The 1990 Act, however, did not confer citizenship or residency to the veterans' children. Due to visa caps for Filipino nationals, this forced Filipino WWII veterans to make an agonizing choice between accessing U.S. citizenship and leaving their adult children behind in the Philippines. Congress seemed not to consider how elderly veterans in the Philippines might feasibly relocate to the United States—more than 8,000 miles and an ocean away—absent the family support of their loved ones. And, for 34 years, it has failed to fix this hurdle—even as the numbers of Filipino WWII veterans still alive has dwindled to less than 1,000.[141]

The Filipino World War II Veterans Parole Program fills the gap left by Congress. It provides for parole of the adult children and siblings of naturalized Filipino WWII veterans and their spouses. The Federal Register announcement for the program explains that the parole program recognizes "the contributions and sacrifices of Filipino veterans who fought for the United States during World War II."[142]

B. FAMILY UNITY AND REUNIFICATION PAROLE PROGRAMS

In summer 2024, President Biden announced a new program providing relief to undocumented immigrants with U.S. citizen spouses or step-parents. The program, unveiled during the White House's twelve-year anniversary

138. *See id.* § 2(18) ("[T]he military order issued by President Roosevelt on July 26, 1941, stated that Filipinos who served in the Commonwealth Army of the Philippines were entitled to full veterans benefits.").

139. Act of Feb. 12, 1946, Pub. L. No. 79-301, 60 Stat. 6 (codified as amended at 38 U.S.C. § 109); Act of July 5, 1946, Pub. L. No. 79-391, 60 Stat. 221, 221.

140. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 5039–40.

141. *See Filipino Veterans Family Reunification Act of 2023: Introduced by Senator Hirono*, OFF. OF SEN. HIRONO (Explainer), https://www.murkowski.senate.gov/imo/media/doc/One-Pager%20Filipino%20Veterans%20Family%20Reunification%20Act%20of%202023.pdf (last visited May 10, 2026); *966 Filipino WW2 Veterans Still Alive*, J. NEWS ONLINE (Apr. 8, 2024), https://journalnews.com.ph/966-filipino-ww2-veterans-still-alive (last visited July 10, 2026).

142. Filipino World War II Veterans Parole Policy, 81 Fed. Reg. 28097, 28098 (May 9, 2016) (to be codified at 8 C.F.R. pt. 212). As of the present writing, per the USCIS website, military parole programs remain available under the terms as described above. *See Discretionary Options for Military Members, Enlistees and Their Families*, U.S. CITIZENSHIP & IMMIGR. SERVS. (May 27, 2024), https://www.uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families; *Filipino World War II Veterans Parole Program*, U.S. CITIZENSHIP & IMMIGR. SERVS. (June 27, 2025), https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-aliens-outside-the-united-states/filipino-world-war-ii-veterans-parole-program.

celebration[143] of the Deferred Action for Childhood Arrivals (DACA)[144] policy, would have granted work authorization and protection from deportation to half a million noncitizens.[145]

Had it been implemented, the new policy—termed the Process to Promote the Unity and Stability of Families, or Family Unity Parole[146]—was poised to become the largest-scale executive action allowing undocumented immigrants to remain in the United States since DACA. It would have eased recipients' paths to permanent residency and eventual citizenship, which Congress already provides for most immigrants who marry U.S. citizens.[147] But the program was challenged in litigation brought by a coalition of states led by Texas, and a Texas federal judge promptly enjoined it. The program thus never went into effect, as President Trump directed its termination in his first day back in office.[148]

To qualify for consideration under the Program terms, individuals had to be legally married to a U.S. citizen as of June 17, 2024; continuously present in the United States for least ten years as of the same date; and be present in the United States without formal immigration admission or prior parole.[149] The Program also provided separate eligibility for immigrant children of U.S. citizen step-parents.[150] Individuals with certain criminal histories and those who posed a national security or public safety threat were ineligible.[151]

Family Unity Parole was modeled after the military parole-in-place program, described above. The parole of an individual, already present in the U.S., allows the individual to obtain a green card *without departing the country* through a process called adjustment of status. Absent parole (or admission), noncitizens must typically leave the United States for consular processing of their green cards abroad. For many, however, departure itself would trigger years-long ineligibility for that green card.[152] Military parole-in-place offers

143. THE BIDEN WHITE HOUSE, *President Biden and the First Lady Host an Event Marking the 12th Anniversary of DACA*, at 13:03–10, (YouTube, June 18, 2024), https://www.youtube.com/watch?v=-mUCKDvxL7w.

144. *Deferred Action for Childhood Arrivals (DACA)*, USA.GOV (Oct. 24, 2024), https://www.usa.gov/daca.

145. *Fact Sheet: DHS Announces New Process to Promote the Unity and Stability of Families*, DEP'T OF HOMELAND SEC. (Jan. 20, 2025), https://www.dhs.gov/archive/news/2024/06/17/fact-sheet-dhs-announces-new-process-promote-unity-and-stability-families.

146. *Keeping Families Together*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 24, 2025), https://www.uscis.gov/keepingfamiliestogether.

147. *See Green Card for Immediate Relatives of U.S. Citizen*, U.S. CITIZENSHIP & IMMIGR. SERVS. (July 8, 2025), https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-immediate-relatives-of-us-citizen.

148. *See* Exec. Order No. 14,159, 90 Fed. Reg. 8443 (Jan. 20, 2025); *see also* discussion *infra* Subpart.IV.A.

149. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 146.

150. *Id.*

151. *Id.*

152. *See* 8 U.S.C. § 1182(a)(9)(B); *see also Unlawful Presence and Inadmissibility*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 25, 2025), https://www.uscis.gov/laws-and-policy/other-resources/unlawful-presence-and-inadmissibility. The unlawful presence bar makes individuals ineligible to receive a green card—for years—if they voluntarily leave the United States after spending short amounts of time there without status. More precisely, over 180 days but less than one year of unlawful presence, followed by a departure, triggers a three-year bar**.** 8 U.S.C. § 1182(a)(9)(B)(i)(I). One year or more of unlawful presence, followed by a departure, triggers a 10-year bar. *Id.* § 1182(a)(9)(B)(i)(II). In other words, these immigrants face a harsh Catch-22. Stay, and they

service members and their loved ones a way out of this Catch-22. Biden's Family Unity program sought to provide the same path forward for hundreds of thousands of undocumented immigrants with U.S. citizen spouses and step-parents. But, as mentioned, the Program's operation was halted first by States' litigation and subsequently by the change in presidential administration.

More targeted parole programs facilitating family reunification based on more established pathways, however, did achieve implementation. In 2023, the Biden Administration announced Family Reunification Parole programs for nationals of Colombia, El Salvador, Guatemala, Ecuador, and Honduras. These programs were modeled on earlier parole policies for Cuban nationals, started under Bush II and subsequently continued, as well as for Haitian nationals (started under Obama).[153] Family Reunification Parole allowed close family members of U.S. citizens and lawful permanent residents to wait in the United States for an immigrant visa (i.e., green card) to become available, rather having to wait abroad. Specifically, once beneficiaries have an approved Form I-130—which establishes a family relationship to a U.S. citizen or lawful permanent resident that qualifies them for an eventual green card—the U.S. government facilitates a three-year grant of parole into the United States.[154] The program significantly furthers family unity because wait times and caps force many individuals to wait for years or even decades for green cards to become available, even after establishing a qualifying family relationship.[155] But in December 2025, the Trump II Administration formally terminated Family Reunification Parole.[156] Litigation challenging that termination, described in more detail below, remains ongoing.[157]

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can't make their green card interview, which must take place at a U.S. embassy abroad. Leave, and they become ineligible for a green card through the very fact of their departure. The military parole-in-place program offers U.S. Armed Forces members and their loved ones a way out of this Catch-22. Biden's family reunification parole-in-place program sought to provide the same path forward for hundreds of thousands of undocumented immigrants.

153. Implementation of a Family Reunification Parole Process for Colombians, 88 Fed. Reg. 43,591 (July 10, 2023); Implementation of a Family Reunification Parole Process for Salvadorans, 88 Fed. Reg. 43,611 (July 10, 2023); Implementation of a Family Reunification Parole Process for Guatemalans, 88 Fed. Reg. 43,581 (July 10, 2023); Implementation of a Family Reunification Parole Process for Hondurans, 88 Fed. Reg. 43,601 (July 10, 2023); Implementation of a Family Reunification Parole Process for Ecuadorians, 88 Fed. Reg. 78,762 (Nov. 16, 2023).

154. *See* Implementation of a Family Reunification Parole Process for Colombians, 88 Fed. Reg. 43,591, 43,591 (July 10, 2023) (describing process in which beneficiaries of an approved Form I-130 may be paroled into the United States to await their immigrant visa).

155. *See* Bureau of Consular Affairs, U.S. Dep't of State, Visa Bulletin for May 2026, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-may-2026.html (publishing "priority date" charts reflecting wait times of years or decades for a family-based immigrant visa to become available in certain categories).

156. Fed. Reg. 58,032, 58,032-33 (Dec. 15, 2025).

157. *See infra* Subpart VI.B.

C. ADVANCE PAROLE FOR TRAVEL

Although parole is often described as a way to manage flows of migration from abroad, major parole programs also impact individuals within the United States. In addition to parole-in-place, described above, Advance Parole[158] for travel purposes confers flexibility, opportunity, and pathways to status for those already present in the United States.[159]

Advance Parole for travel blurs the line between interior and exterior enforcement categories by allowing individuals to apply—as the name suggests—for tentative parole approval in advance of travel outside the United States. Notably, it allows DACA recipients to travel abroad while mitigating—though not eliminating—the risk that they will be barred from return and lose DACA protections.[160] DACA recipients can apply for advance parole for three specified reasons:

- Humanitarian purposes, including travel to obtain medical treatment, attend funeral services for a family member, or visit an ailing relative;
- Educational purposes, such as semester abroad programs and academic research; or
- Employment purposes, including but not limited to overseas assignments, interviews, conferences or training, . . . or meetings with clients overseas.[161]

A number of other categories of individuals with granted and pending status are also eligible for advance parole. These include applicants for asylum and temporary protected status, persons with "T" (trafficking) visa status, persons with pending adjustment of status (green card) applications, and parole grantees (excluding grants for detention release), among others. These applicants need not conform to the three reasons specified for DACA Advance Parole, but they must show an urgent humanitarian need or significant public benefit.[162] Noncitizens in the United States with pending asylum or adjustment applications who wish to travel abroad *must* apply for advance parole—otherwise, pursuant to federal regulations, DHS considers their application abandoned.[163]

158. Although the term "Advance Parole" is sometimes used more generally to refer to a parole approval adjudicated prior to an individual's arrival in the United States, I use the term "Advance Parole" consistent with current form USCIS instructions to noncitizen applicants wishing to apply for travel approval to leave and return to the United States. *See Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 20, 2025), https://www.uscis.gov/sites/default/files/document/forms/i-131.pdf.

159. In addition, "Re-Parole" allows individuals to renew parole status while in the United States.

160. *See* 8 C.F.R. § 236.23(d)(2) (2023).

161. *Consideration of Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Oct. 30, 2025), https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions.

162. U.S. CITIZENSHIP & IMMIGR. SERV., *supra* note 158.

163. 8 C.F.R. § 208.8(a).

As with DACA recipients, approval does not guarantee that an individual will be allowed back into the United States. A CBP officer could still refuse such allowance, particularly if new facts come to light about an individual or their journey abroad.[164] Nevertheless, the approval of advance parole provides some degree of assurance that DHS will permit return to the United States in normal circumstances.[165]

In addition to allowing individuals to leave the United States and return even with tenuous status or a pending application, advance parole has traditionally provided a key avenue for many individuals seeking lawful permanent residence. The Board of Immigration Appeals had previously held that travel on advance parole does *not* constitute a "departure" that triggers certain immigration bars (although a very recent Board decision newly reinterprets "departure" and concludes the opposite).[166] In other words, advance parole previously allowed noncitizens to physically leave the United States for consular processing without "departing" it, collapsing the hard inside/outside boundaries around green card eligibility and creating a route to lawful status for more people.

At the same time, advance parole for compelling travel purposes expands the membership rights of DACA recipients. Through advance parole, DACA recipients can study and obtain degrees abroad, visit ailing family members, access professional opportunities, and more. And, in allowing many other individuals to travel without jeopardizing pending applications or other statuses, advance parole provides real relief to those who would otherwise be trapped in the United States due to bureaucratic delays and byzantine laws. It is one key way that the immigration system has recognized noncitizens as a people embedded in a global social world.

D. PAROLE AND OUR ALLIES

As discussed above, successive Presidents have exercised parole to further foreign policy and military objectives for over seventy years. These have directly benefited the noncitizens from allied nations and those who fought alongside

164. *See Advance Parole*, U.S. CUSTOMS & BORDER PROT. (Mar. 5, 2024), https://www.cbp.gov/travel/us-citizens/advance-parole ("Please note that Advance Parole does not guarantee admission into the United States. Aliens with Advance Parole are still subject to the U.S. Customs and Border Protection inspection process at the port of entry.").

165. *See* G-A-C-, 22 I. & N. Dec. 83, 88 (B.I.A. 1998) ("'Advance parole' is a mechanism by which a district director can, as a humanitarian measure, advise [a non-citizen] who is in this country, but who knows or fears that he will be inadmissible if he leaves and tries to return, that he can leave with assurance that he will be *paroled* back into the United States upon return, under prescribed conditions.").

166. *See* Arrabally and Yerrabelly, 25 I. & N. Dec. 771, 778 (B.I.A. 2012). The relevant bar prohibits admission after accrual of a year of "unlawful presence," disallowing return to the United States for a period of ten years—but an individual must "depart" the United States in order to trigger them. *See* 8 U.S.C. § 1182(a)(9)(B)(i). While this piece was in final press stages, the Board of Immigration Appeals overruled *Arrabally and Yerrabelly* and held that leaving the United States on advance parole now *does* constitute a departure under 8 U.S.C. § 1182(a)(9)(B)(i) and would trigger the bar. Delcarmen-Lara, 29 I&N Dec. 830 (BIA 2026) (applying decision prospectively).

U.S. soldiers in war. Parole has also expressed national opposition to foreign governments, in particular communist regimes; and addressed our defeats in war and occupation. Programs along these lines have almost always been country-based. Two recent programs for Afghan and Ukrainian nationals reflect this legacy. I describe these briefly below.

Following the fall of Kabul in August 2021, the United States airlifted over 124,000 Afghan nationals in the course of seventeen chaotic days.[167] On August 29, in what would eventually be termed Operation Allies Welcome, President Biden directed DHS to lead efforts across the federal government to enable Afghans to safely resettle in the United States.[168] In its FY 2022 report to Congress, DHS reported that it had paroled 70,192 Afghan nationals into the United States from July to November 2021.[169]

Operation Allies Welcome identified numerous groups of individuals as priorities for refugee admissions or as eligible to apply for a special immigrant visa, maintaining separate lists and counts for these categories. The initial parole period was two years.[170] But, as DHS described, "[t]he vast majority of Afghan evacuees who entered the United States were granted humanitarian parole by CBP on a case-by-case basis at a U.S. port of entry."[171]

Afghan humanitarian parole has been plagued by delays and hurdles.[172] DHS declined to waive the $575 application fee for Afghan nationals, notwithstanding the huge sum that posed for many applicants. In the short months following the fall of Kabul, DHS approved nearly all applications for Afghan parole. By July 2022, however, the approval rate plummeted to only 1.04% approvals, and severe backlogs also ensued, with "tens of thousands of Afghan parole applications . . . pending for more than two years" as of January 2024.[173]

Yet, despite these serious current problems, the use of port of entry parole in the immediate aftermath of the fall of Kabul—even for individuals identified as eligible for special immigrant visas or refugee admissions—reveals the necessity of a mechanism like parole. Other immigration processes were simply too slow in a true emergency. In laws passed in 2021 and 2022, Congress

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167. Charles Pope, *One Year Later, Historic Afghan Airlift Inspires Pride and Reflection Across the Air Force*, AIR FORCE (Aug. 30, 2022), https://www.af.mil/News/Article-Display/Article/3144426/one-year-later-historic-afghan-airlift-inspires-pride-and-reflection-across-the.

168. *Operation Allies Welcome*, DEP'T OF HOMELAND SEC. (Jan. 22, 2025), https://www.dhs.gov/allieswelcome.

169. DEP'T OF HOMELAND SEC. OPERATION ALLIES WELCOME AFGHAN EVACUEE REP. 7–8 (2021), https://www.dhs.gov/sites/default/files/2022-03/DMO-OSEM%20-%20Department%20of%20Homeland%20Security%20Operation%20Allies%20Welcome%20Afghan%20Evacuee%20Report.pdf

170. *Id.* at 8.

171. *Id.* at 6.

172. *See* Harris & Royan, *supra* note 21; *see also* discussion *supra* Part.I.

173. Letter from Edward J. Markey, Sen. of Mass., to Alejandro Mayorkas, Sec'y of Homeland Sec. & Ur Jaddou, Dir. of U.S. Citizenship & Immgr. Servs. 2 (Jan. 4, 2024), https://www.markey.senate.gov/imo/media/doc/humanitarian_parole_for_afghans_letter_1424.pdf.

expressed its approval of Afghan parole processes by extending federal resettlement assistance and public benefits to those granted parole.[174]

In contrast to Afghan parole programs, Ukrainian parole processes operated relatively smoothly to provide relief for many individuals. President Biden announced the program, Uniting for Ukraine, on April 21, 2022.[175] The agency waived application fees for Ukrainians and allowed parole sponsorship by individuals. Through that initiative, individuals who wished to welcome Ukrainians into their communities were able to sign up as financial sponsors, including via coordination with church groups, nonprofits, and other civic organizations.[176] The Biden Administration approved 96,260 Ukrainian nationals for parole in FY 2024.[177]

In January 2025, however, President Trump targeted "categorical" parole programs for termination via executive order. As of this writing, DHS ceased accepting new applications under the Uniting for Ukraine parole program, although it continues to accept re-parole applications.[178] The status of Afghan parole remained uncertain for much of 2025. In April 2025, however, DHS clarified that it would continue consider re-parole of Afghan nationals through streamlined processes, allowing individuals already in the United States to extend their periods of parole on a case-by-case basis.[179] In June 2025, a DHS official clarified in the course of litigation, described below, that Ukrainian parole recipients already in the United States could apply for re-parole as well.[180]

E. COUNTRY-BASED PAROLE, CBP ONE, AND THE BORDER

Under the Biden Administration, major parole programs addressed the dual aims of managing flows at U.S. border regions (land and sea) and recognizing humanitarian needs. Nationals of Cuba, Haiti, Nicaragua, and Venezuela (CHNV) and their immediate family members became eligible for country-specific forms of parole.[181] The programs expressly tied eligibility to the aims

174. *See* Pub. L. No. 117-43, § 2502, 135 Stat. 344, 377 (2021) (making federal public benefits available to Afghan nationals granted parole); Pub. L. No. 117-180, div. A, § 149(a), 136 Stat. 2114 (2022) (same).

175. *Uniting for Ukraine*, DEP'T OF HOMELAND SEC. (Mar. 12, 2025), https://www.dhs.gov/ukraine.

176. The Biden Administration also employed its novel parole sponsorship model for CHNV applicants. Although widely praised as innovative, the use of sponsors has also garnered criticism for possible financial fraud concerns, including by the Government Accountability Office. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-26-107433, HUMANITARIAN PAROLE: DHS IDENTIFIED FRAUD RISKS IN PAROLE PROCESSES FOR NONCITIZENS AND SHOULD ASSESS LESSONS LEARNED (2025).

177. *See supra* Table 1.

178. *See infra* Subpart.IV.A; *Re-Parole Process for Certain Ukrainian Citizens and Their Immediate Family Members*, U.S. CITIZENSHIP & IMMIGR. SERVS. (last visited May 2, 2026), https://www.uscis.gov/humanitarian/uniting-for-ukraine/re-parole-process-for-certain-ukrainian-citizens-and-their-immediate-family-members.

179. *Re-Parole Process for Certain Afghan Nationals*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Apr. 23, 2025), https://www.uscis.gov/humanitarian/information-for-afghan-nationals/re-parole-process-for-certain-afghans-nationals.

180. Decl. of Kika Scott, Doe v. Noem, No. 25-CV-10495 (D. Mass. May 28, 2025), Dkt. No. 120-1.

181. *CHNV Program*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Apr. 17, 2025), https://www.uscis.gov/CHNV.

of reducing numbers of individuals at the border, in part by using parole as incentive to pursue lawful migration pathways.

The Biden Administration announced the Venezuelan parole program first in October 2022—at the same time that it expanded the now-lapsed Title 42 program to Venezuelan nationals.[182] The Title 42 policy, first adopted during the Trump Administration in March 2020, invoked federal statutory quarantine authority to "suspend" the "introduction" of asylum seekers at the border on the basis of the COVID-19 pandemic.[183] Under Title 42, DHS swiftly returned asylum seekers at the southern border to Mexico without providing access to normal asylum screening procedures.[184]

Simultaneous expansion of both parole and Title 42 to Venezuelan nationals was an intentional and linked choice. In 2022, Venezuelans arriving at the border had jumped four-fold compared to 2021 due to economic crisis and violence.[185] In its Federal Register notice announcing both programs, DHS explained:

> Implementation of the parole process is conditioned on Mexico continuing to accept the expulsion or removal of Venezuelan nationals seeking to irregularly enter the United States between POEs. As such, this new process will couple a meaningful incentive to seek a lawful, safe and orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly.[186]

Eventually the Biden Administration terminated the Title 42 program, including for Venezuelan nationals. But its approach continued for Venezuelans and was extended to nationals from Cuba, Haiti, and Nicaragua,[187] via a new "Lawful

182. *See* 42 U.S.C. § 265 (2022); *DHS Announces New Migration Enforcement Process for Venezuelans*, U.S. DEP'T OF HOMELAND SEC. (Apr. 10, 2025), https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans.

183. Dep't of Health and Hum. Servs., Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17060, 17061 (Mar. 26, 2020); 42 U.S.C. § 265 (authorizing the CDC to exercise delegated authority from the Surgeon General to invoke quarantines and suspension of entry of persons and goods); *see* 31 Fed. Reg. 8855 (June 25, 1966), 80 Stat. 1610, 1610 (1966).

184. Dep't of Health and Hum. Servs., Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17060, 17061, 17067 (Mar. 26, 2020).

185. *DHS Announces New Migration Enforcement Process for Venezuelans*, DEPT. OF HOMELAND SEC. (Oct. 12, 2022), https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans (announcing that until securing Mexico's agreement to allow Title 42 expulsions for Venezuelan nations into Mexican territory in October 2022, the Biden Administration could not apply Title 42 to Venezuelan nationals because neither Venezuela nor Mexico would accept their return).

186. Dept. of Homeland Sec., Implementation of a Parole Process for Venezuelans, 87 Fed. Reg. 63507, 63508 (Oct. 19, 2022).

187. *See Cuban, Haitian, Nicaraguan, and Venezuelan Nationals Traveling to the United States With Advance Travel Authorization,* U.S. CUSTOMS AND BORDER PROT. (Jan. 5, 2023), https://www.cbp.gov/sites/default/files/assets/documents/2023-Feb/DHS%20Cuba-Haiti-Nicaragua-Venezuela%20Parole%20Process%2020230105.pdf (announcing the Biden Administration's first parole extension to Cuban, Haitian, and Nicaraguan nationals, modeled after the Venezuela program, in January 2023).

Pathways" policy timed with the end of Title 42 on May 13, 2023.[188] The Lawful Pathways policy drastically restricted asylum eligibility for persons arriving at the U.S.-Mexico border, barring individuals who travelled through a third country but did not first apply for asylum in that country.[189] The policy exempted individuals who made an appointment for a port-of-entry interview via CBP One—a phone app that allowed applicants to make port of entry appointments—as well as individuals who obtained advance approval to travel via parole.[190] Although the app was plagued with glitches and limited slots,[191] it nevertheless became a critical pathway for individuals to present themselves for inspection and receive parole – coming into the United States lawfully, and without crossing unlawfully between ports of entry.[192]

Under the terms of the four-nationality Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV) program, individuals are ineligible for parole if they cross into Mexico, Panama, or the United States or are interdicted at sea. They must fund their own plane tickets and identify a financial sponsor in the United States willing to provide for their basic needs. The combined parole programs, moreover, were limited to thirty thousand individuals per month.[193] Individuals also had to show urgent humanitarian reasons in support of their applications.[194]

The CHNV program bore some resemblance to an Obama-era regional parole policy, also implemented to manage border flows. That program, the Central American Minors (CAM) Program, allowed parole of children from El Salvador, Guatemala, and Honduras.[195] President Obama announced the program in 2014 and, after a pause during the Trump years, Biden restarted it in 2021. The Program provided a pathway for children who might otherwise attempt a perilous migration journey alone. Only children with parents or relatives in the United States were eligible, and a parent or qualifying relative

188. 8 C.F.R. § 208.33.

189. 8 C.F.R. § 208.33(a)(1)–(3). More specifically, the regulations create a rebuttable presumption of asylum ineligibility for persons who: (1) do not schedule an appointment via the CBP App; (2) are not denied asylum by another country, if they traveled through a third country to reach the United States; or (3) did not obtain parole approval to travel. The presumption can only be rebutted by showing "exceptionally compelling circumstances" such as an "acute medical emergency," "imminent and extreme threat to life or safety," or being a victim of severe trafficking. *See id.* § 208.33(a)(3). In litigation that remains ongoing, Judge Tigar of the Northern District of California found that the Circumvention of Lawful Pathways rule was both contrary to asylum statutes providing affected individuals a right to apply for asylum as well as arbitrary and capricious agency decisionmaking. *See* E. Bay Sanctuary Covenant v. Trump, 2026 WL 1256873 (N.D. Cal. May 7, 2026).

190. *See* 8 C.F.R. § 208.33(a)(2).

191. *See Glitches with an App Designed to Help Migrants Seek Legal Asylum in the U.S.*, PBS NEWS WEEKEND (Aug. 17, 2024), https://www.pbs.org/newshour/show/glitches-with-an-app-designed-to-help-migrants-seek-legal-asylum-in-the-u-s; Ayalet Parness, *For Asylum Seekers, CBP One App Poses Major Challenges*, HIAS (Nov. 8, 2023), https://hias.org/news/asylum-seekers-cbp-one-app-poses-major-challenges.

192. *See* 8 U.S.C. §§ 1325(a), 1326 (detailing misdemeanor and felony crimes related to unlawful entry).

193. *See CHNV Program*, *supra* note 181.

194. *Id.*

195. *Central American Minors (CAM) Program*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Oct. 11, 2024), https://www.uscis.gov/CAM.

had to initiate the application while their child was still abroad.[196] The Obama Administration, however, did not couple CAM with asylum restrictions.

The CBPOne app, meanwhile, became a de facto border management tool even beyond CHNV arrivals. Under the Biden Administration, individuals beyond the four countries subject to CHNV could make an appointment for port of entry presentation via CBPOne. From the scheduling function's launch in January 2023 through December 2024, nearly one million individuals used the app to schedule port of entry appointments.[197]

As of this writing, and as explained further in the Subpart below, the Trump II Administration terminated CHNV Parole and has placed an administrative hold on the CAM Program.[198] It also shut down the CBPOne app and initiated attempts to mass-terminate the parole grants to individuals who scheduled appointments via CBPOne.[199] As of this writing, litigation challenging mass termination of both CHNV parole and CBPOne app parole remains ongoing.

F. PAROLE RELEASES FROM CUSTODY

Among the most common form of parole grants are certain releases from custody by either U.S. Border Patrol or ICE. These exercises of prosecutorial discretion reflect the Administration's enforcement priorities and are often driven by sheer necessity. Congress has yet to fund the level of facilities necessary to hold all individuals potentially subject to detention under its statutes.[200]

Via § 1182(d)(5), ICE paroles, or releases, individuals whom it holds in custody under 8 U.S.C. § 1225(b) detention authority.[201] That detention statute covers noncitizens undergoing expedited removal proceedings as well as "arriving" noncitizens initially detained for normal removal proceedings. Expedited removal under § 1225(b) happens quickly, mostly within DHS itself with limited procedural protections;[202] "normal" 8 U.S.C. § 1229a proceedings, on the other hand, take place in immigration courts housed within DOJ. Those latter proceedings begin when DHS files a Notice to Appear with the DOJ immigration courts.

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196. *Id.*

197. U.S. Customs & Border Prot., CBP Releases December 2024 Monthly Update (Jan. 14, 2025), https://www.cbp.gov/newsroom/national-media-release/cbp-releases-december-2024-monthly-update (reporting that from January 2023 through December 2024, more than 936,500 individuals scheduled CBP One appointments "to present at ports of entry").

198. *See infra* Subpart.IV.A.

199. *See id.*

200. *See* TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (TRAC), *ICE Contractual Capacity and Number Detained: Overcapacity vs. Overcrowding* (July 8, 2025), https://tracreports.org/reports/762 ("As of April 14, 2025, detention data reveal that ICE's contractual capacity nationally was 62,913.").

201. Confusingly, Congress has termed another form of statutory release from immigration detention as "conditional parole." "Conditional parole" entails release from 8 U.S.C. § 1226(a) discretionary detention and is not an exercise of § 1182(d)(5) authority. *See* 8 U.S.C. § 1226(a)(2)(B).

202. *See* 8 U.S.C. § 1225(b)(1)(A)(i).

Until recently, ICE had authority to place individuals lacking valid entry documents or who have fraudulent documents in § 1225(b)(1) expedited removal if they (1) arrive at ports of entry or by sea or (2) have not been present in the United States for 14 days or more and were encountered within 100 miles of a border.[203] In January 2025, the Trump Administration issued new subregulatory guidance expanding § 1225(b) expedited removal to individuals who lack valid entry documents (or had fraudulent documents) and cannot show they have been present in the United States for two years or more.[204] Asylum seekers who pass a screening interview, however, can move from expedited removal (§ 1225(b) process) to normal immigration court proceedings.[205] Importantly, ICE has discretion to choose *not* to place individuals in expedited removal, even when they are eligible for it.[206]

Release from § 1225(b) ICE detention entails a grant of parole under 8 U.S.C. § 1182(d)(5). DHS specifies that releases must meet the statutory requirements of "urgent humanitarian reasons" or "significant public benefit." Regulations identify serious medical conditions, pregnancy, and participation as a witness in proceedings as reasons for parole release, as well as a catch-all category where "continued detention is not in the public interest."[207] Regulations also generally specify "case-by-case" eligibility for parole release of individuals detained while undergoing expedited removal processes.[208]

U.S. Border Patrol releases people from custody on parole when transfer from CBP custody to ICE detention is not feasible or when individuals are not a priority for such transfer. CBP facilities are notably ill-equipped for longer-term stays, designed only for periods of custody of 72 hours.[209] In May 2023, CBP issued a "Policy on Parole with Conditions in Limited Circumstances" policy.[210] The policy addressed the high levels of encounters of noncitizens at the southern Border and authorized CBP sectors to consider individuals for parole release when the numbers exceeded a specified capacity.[211] (As described below,

203. Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877, 48890 (Aug. 11, 2004).

204. Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025).

205. *See* 8 U.S.C. § 1229a; *Credible Fear Screenings*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Jan. 24, 2025), https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/credible-fear-screenings#:~:text=If%20you%20indicate%20an%20intention,the%20%E2%80%9Cdefensive%E2%80%9D%20asylum%20process.

206. *See* 8 U.S.C. § 1225(b).

207. 8 C.F.R. § 212.5 (2022); 8 C.F.R. § 235.3(c) (2022) (limiting "arriving aliens" to release on parole).

208. *See* 8 C.F.R. § 235.3(b)(2)(iii) (2022). Under a 2009 policy memorandum, DHS has presumed that "arriving" asylum seekers who pass their asylum screening interviews should be candidates for release on parole. U.S. IMMIGR. & CUSTOMS ENF'T, DIRECTIVE 11002.1, PAROLE OF ARRIVING ALIENS FOUND TO HAVE A CREDIBLE FEAR OF PERSECUTION OR TORTURE (Dec. 8, 2009), https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf.

209. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-105321, SOUTHWEST BORDER: CBP OVERSEES SHORT-TERM CUSTODY STANDARDS, BUT BORDER PATROL COULD BETTER MONITOR CARE OF AT RISK INDIVIDUALS 8 (2022); Memorandum from Raul L. Ortiz, Chief, U.S. Border Patrol on Pol'y on Parole With Conditions in Ltd. Circumstances Prior to the Issuance of a Charging Document (Parole with Conditions) 4 (May 10, 2023), https://www.aila.org/aila-files/986EFF72-AC96-483E-9059-273A155C2278/23051200.pdf.

210. *See id*.

211. *Id.* at 2–4.

however, the policy was subject to litigation and ended per a settlement agreement.)

U.S. Border Patrol, like ICE, can exercise prosecutorial discretion with regard to immigration processes. CBP and ICE work jointly to ensure that individuals who receive parole pursuant to the policy receive a Notice to Appear, filed with the immigration court to start § 1229a removal proceedings.[212] Conditions of release typically entail monitoring via a mobile app, which advocates have criticized for intrusiveness.[213]

The second Trump Administration has directed a dramatic expansion of detention space and curtailment of custody releases. January 2025 executive orders directed DHS to use detention "to the fullest extent permitted by law"[214] and to expand immigration detention facilities at Guantanamo.[215] The One Big Beautiful Bill Act passed in summer 2025 included a massive increase in funds to ICE, including over $45 billion for detention expansion—a 308% increase in its detention budget.[216] It also supercharged DHS's overall budget—authorizing $170 billion for enforcement and removal operations, CBP hiring and operations, extension of the border wall, and more.[217]

G. PAROLE AND THE ECONOMY: ENTREPRENEURS AND THE U.S. TERRITORIES

Parole has also allowed concrete and targeted benefits for the U.S. economy, addressing both the national economy as well as specific needs in the U.S. territories. A novel program started under the Obama Administration interprets "significant public benefit" to allow entrepreneurs of startup ventures. In its August 2016 announcement, the Obama Administration touted the program as "an important step in attracting the world's best and brightest entrepreneurs to start the next generation of great companies and create jobs here

212. *Id.* at 6.

213. *Alternatives to Immigration Detention: An Overview*, AM. IMMIGR. COUNCIL (July 11, 2023), https://www.americanimmigrationcouncil.org/research/alternatives-immigration-detention-overview.

214. Exec. Order No. 14,165, 90 Fed. Reg. 8467, 8468 (Jan. 20, 2025) ("The Secretary of Homeland Security shall take all appropriate actions to detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States").

215. Memorandum on Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity, 2025 DAILY COMP. PRES. DOC. 2025-00200 (Jan. 29, 2025).

216. An Act to Provide for Reconciliation Pursuant to Title II of H. Con. Res. 14, Pub. L. No. 119-21, 139 Stat. 357–58 (2025); *What's in the Big Beautiful Bill? Immigration and Border Security Unpacked*, AM. IMMIGR. COUNCIL (July 14, 2025), https://www.americanimmigrationcouncil.org/fact-sheet/big-beautiful-bill-immigration-border-security ("H.R. 1 provides $45 billion for building new immigration detention centers, including family detention facilities. . . . This amount represents a 308 percent increase on an annual basis over ICE's FY 2024 detention budget."); *see also* Camilo Montoya-Galvez, *Trump's "Big, Beautiful Bill" Gives ICE Unprecedented Funds to Ramp Up Mass Deportation Campaign*, CBS NEWS (July 10, 2025, at 16:59 ET), https://www.cbsnews.com/news/ice-funding-big-beautiful-bill-trump-deportations.

217. Montoya-Galvez, *supra* note 216.

in the United States."[218] It noted that "more than 40 percent of Fortune 500 companies were founded by immigrants or the children of immigrants."[219]

The International Entrepreneur Parole Program, formalized at 8 C.F.R. § 212.19, requires applicants to "possess[ ] a substantial ownership interest in a start-up entity and [have] a central and active role in the operations of that entity."[220] Most applicants—unless they can show evidence of likely "rapid growth and job creation"—must also secure significant levels of funding from private investors or governmental contracts.[221] Initial periods of parole may last up to 30 months, with re-parole allowed once for an additional thirty months[222] In addition, a qualifying entrepreneur's spouse and children may also apply for parole.

As of the current writing, International Entrepreneur Parole regulations remain in place and the USCIS website continues to provide information to prospective applicants.[223] However, per the May 2025 attestation of the Acting Deputy of USCIS in the course of litigation, the program is currently paused for review.[224]

A second modern parole program furthered U.S. obligations to its territories, including by addressing the devastating impacts of U.S. multilateral trade agreements and laws of Congress. Parole in the Commonwealth of the Northern Mariana Islands (Commonwealth or CNMI) in Micronesia is one key example.

Until 2009, the Commonwealth controlled and administered its own immigration policy. That changed following Congressional passage of the Consolidated Natural Resources Act of 2008, extending U.S. immigration laws to the Commonwealth.[225] Fully applying the federal Immigration and Nationality Act (INA), however, had immediate adverse impacts on the Commonwealth economy. At the time that Congress chose to extend the INA to CNMI, the Islands were undergoing an economic collapse driven by the elimination of import tariffs pursuant to multilateral treaties. The loss of tariff protections led to a total closure of the garment factories at the center of the

218. *See* Tom Khalil & Doug Rand, *Welcoming International Entrepreneurs: Obama Administration Announces New Steps to Attract the Best and Brightest*, MEDIUM (Aug. 26, 2016), https://medium.com/@ObamaWhiteHouse/welcoming-international-entrepreneurs-d27571475dfd.

219. *Id.*

220. 8 C.F.R. § 212.19(a) (2024).

221. *Id*. § 212.19(b)(2).

222. *Id*. § 212.19(d)(2).

223. *Id*.; *International Entrepreneur Rule*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 25, 2025), https://www.uscis.gov/working-in-the-united-states/international-entrepreneur-rule.

224. Decl. of Kika Scott at 2, Doe v. Noem, No. 25-CV-10495 (D. Mass. June 9, 2025), Dkt. No. 120-1.

225. Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, 122 Stat. 754; *see also* U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-791, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS: MANAGING POTENTIAL ECONOMIC IMPACT OF APPLYING U.S. IMMIGRATION LAW REQUIRES COORDINATED FEDERAL DECISIONS AND ADDITIONAL DATA (2008), https://www.gao.gov/assets/a279324.html.

Commonwealth economy—an economy 5% the size of the smallest U.S. state, with a poverty rate 39% higher than the U.S. national average.[226]

Following the garment factories' collapse, in the Commonwealth's own assessment, "[t]ourism remain[ed] the only industry remaining that is contributing to economic growth, employment, and government revenues."[227] But the tourist economy relied heavily upon Russian and Chinese visitors, who previously could enter without a visa under CNMI's immigration policies. Because Russian and Chinese nationals are not part of the U.S. visa waiver program, application of U.S. immigration law to the Commonwealth required those tourists to suddenly obtain a visa to travel there. This shunted those tourists to other locations, such as Hawai'i and the U.S. mainland.

The Obama Administration responded with a set of discretionary parole policies in 2009, allowing Russian and Chinese nationals to enter visa-free for up to 45 days under certain conditions.[228] A report jointly authored by CNMI Governor Ralph Torres and Department of Interior Assistant Secretary Douglas Domenech concluded that "the existence of parole allow[ed the Commonwealth] to effectively compete for the tourism" of Chinese nationals central to its economic survival.[229] The Commonwealth estimated that Chinese visitors' expenditures in the Islands "amounted to $183,736,155 and directly provided $31,497,372 in government revenue—or 12.2% of the government's budgetary resources."[230] The parole program smoothed the Commonwealth's transition to U.S. immigration law requirements and processes, ameliorating the negative impacts of that transition.

H. ADMINISTRATIVE PAROLE FIXES

Here, I briefly describe discrete parole programs and uses that I term "administrative parole fixes." Although not exhaustive, these exemplify parole power's capacity to address unintended consequences or impediments in immigration law. Some historic and contemporary examples include use of parole to ameliorate wait times and visa caps—including for individuals needed for the national defense industry,[231] children with relative petitions who "aged

226. SPECIAL REPRESENTATIVES OF THE U.S. & THE COMMONWEALTH OF THE N. MAR. I., REPORT TO THE PRESIDENT ON 902 CONSULTATIONS RELATED TO THE DHS DISCRETIONARY PAROLE PROGRAM 6 (May 15, 2019), https://www.doi.gov/sites/doi.gov/files/uploads/final_902_report.pdf.

227. *Id.*

228. *Id.* at 5.

229. *Id.* at 7.

230. *Id.*

231. James L. Hennessy, Raymond F. Farrell, Edwin B. Howard, Edward A. Loughran, Frank H. Partridge, Leland W. Williams & L. Paul Winings, *Principles of Immigration Law*, 7 I & N REP. 1, 33 (1958) ("[B]eneficiaries of approved first preference petitions abroad who are chargeable to oversubscribed quotas and who will come to work in defense industries may be paroled into the United States.").

out" of statutory eligibility due to wait times or processing times,[232] and persons granted U-visas for whom an immigrant visa is not yet available.

The agency has also used parole to fix its own blunders, both mundane and more concerning. In 1989, INS official Delia Combs provided one example to Congress follows:

> An alien who has an immigrant visa interview in the country of last residence and has left the United States for his or her interview and the Department of State erred in the scheduling of the appointment. For example, the spouse of a lawful permanent resident is scheduled for her immigrant visa interview, but an immigrant visa number will not be available to her for over 3 years. The alien has two small children at home in the United States, and would never have left the States, but did so in order to "legalize her stay." The error was beyond her control, and her two United States children need to be cared for. The only avenue to enter the United States legally is through the parole process.[233]

As she describes, parole was necessary to correct an inadvertent administrative mistake that would otherwise have dire consequences.

Another "parole fix" is current government policy for noncitizens who are deported with pending petitions for review in the federal circuit courts, and who ultimately prevail in their cases. I use the term "fix" here in two senses. First, parole helps provide redress to individual noncitizens who show reversible error in their removal cases, i.e., whose underlying removal orders were faulty. Second, the "fix" allowed the Office of the Solicitor General to address an embarrassing incident in its recent history: a misrepresentation made to the Supreme Court in *Nken v. Holder*.

As Nancy Morawetz recounts in her incisive retelling, the Office made an inaccurate factual statement its briefing in that case.[234] Specifically, the Solicitor General described to the Court an agency policy of parole-returns for noncitizens who win their circuit court cases as follows:

> By policy and practice, the government accords aliens who were removed pending judicial review but then prevailed before the courts effective relief by, *inter alia*, facilitating the aliens' return to the United States by parole under 8 U.S.C. 1182(d)(5) if necessary, and according them the status they had at the time of removal.[235]

The Supreme Court relied on this statement in its decision in favor of the government, which addressed the standards for federal Court of Appeals' stays

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232. *See Orderly Departure Program and U.S. Policy Regarding Vietnamese Boat People: Hearing Before the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary*, 101st Cong. 77 (1989) (statement of Delia Combs, Assistant Comm'r for Refugees, Asylees, and Parole).

233. *Id.*; *see also* Bier, *supra* note 15 (discussing Combs statement).

234. Nancy Morawetz, *Convenient Facts:* Nken v. Holder*, the Solicitor General, and the Presentation of Internal Government Facts*, 88 N.Y.U. L. REV. 1600, 1619 (2013). Professor Morawetz also supervised the FOIA litigation described below.

235. Brief for the Respondent at 44, Nken v. Holder, 556 U.S. 418 (2009).

of removal of noncitizens. It did so, moreover, in a way sharply limiting for noncitizens. The Court concluded that deportation in and of itself could not constitute irreparable harm favoring a stay largely because—in the Court's understanding—a noncitizen could easily come back after winning their case pursuant to government parole policy. The Court cited the above Solicitor General's description for this understanding.[236]

But in fact, no such policy existed. The Solicitor General based his statement on email exchanges with government attorneys who in fact conveyed an *absence* of established procedures for parole returns—only ad hoc permissions.[237] Only after non-profit groups won a court order mandating release of those emails through the Freedom of Information Act (FOIA)—which the government vigorously contested—did the Solicitor General file a retraction with the Supreme Court.[238] In a letter to the Clerk dated April 24, 2012, the Office admitted that "the statement that relief was accorded '[b]y policy and practice' suggested a more formal and structured process than existed at the time. The government should have provided a more complete and precise explanation."[239] But in that same letter, the Solicitor General was able to point to a new ICE Directive 11061.1, issued two months prior, establishing parole procedures for deported noncitizens who prevailed in the federal courts of appeals.[240]

The Supreme Court has retained its citation and reasoning based on misrepresented information, keeping the language in *Nken* as-is. Perhaps it did so because the government was able to "fix" its prior misrepresentation through a new policy establishing a channel for returns. Parole, of course, made a quick fix[241] possible. Notably, following the promulgation of ICE Directive 11061.1,

236. Nken v. Holder, 556 U.S. 418 (2009) ("Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal. *See* Brief for Respondent 44.").

237. *See* Morawetz, *supra* note 234, at 1620-22.

238. *See id.* at 1639-40.

239. Letter from Michael R. Dreeban, Deputy Solic. Gen., to Hon. William K. Suter, Clerk, U.S. Sup. Ct. (Apr. 24, 2012), https://www.justsecurity.org/wp-content/uploads/2018/05/SG_Letter-nken-v-holder.pdf.

240. *Id.*; ICE Directive 11061.1 § 3.1, Facilitating the Return to the United States of Certain Lawfully Removed Aliens (U.S. Dep't of Homeland Sec. 2012) ("To engage in activities which allow a lawfully removed alien to travel to the United States (such as by issuing a Boarding Letter to permit commercial air travel) and, if warranted, parole the alien into the United States upon his or her arrival at a U.S. port of entry."). Some deported noncitizens under the policy would not require parole, if, for example, the federal Court of Appeals restored their lawful permanent resident status. *See id.* § 3.3.

241. ICE issued its Directive 11061.1 three years after the *Nken* decision—so not "quick" in that sense. However, the Directive issued seventeen days after the government lost its opposition to the Plaintiffs' motion seeking the relevant emails in the FOIA case. Nat'l Immigr. Project of the Nat'l Laws. Guild v. U.S. Dep't of Homeland Sec., 842 F. Supp. 2d 720, 730 (S.D.N.Y. 2012) *(*ordering release of emails forming basis of Nken statement)*; see also* Morawetz, *supra* note 234, at 1640 ("[I]t was only after the OSG lost its bid in federal district court to keep the agency communications secret that the OSG began any investigation into the accuracy of its statements in *Nken*.").

federal courts of appeal have ordered the government to use its parole powers to return deported noncitizens who prevailed in petitions for review.[242]

I. PAROLE REMEDIES

Parole has also provided broader remedies for noncitizens harmed by unlawful governmental conduct, both through negotiated settlements and via direct court orders. The recent family separation litigation as well as older cases reflect this.

On the former, parole emerged as key redress for separated families: a goal of not only plaintiff class members in litigation, but also of the Biden Administration. On February, 2, 2021, President Biden established the Interagency Task Force on the Reunification of Families through Executive Order 14011, directing mitigation of the harms of the Trump Administration's Zero Tolerance policy.[243] Under that policy, the Trump Administration separated over 4,000 children who arrived in the United States with their parents,[244] forcibly removing the children and sending them to the custody of the Office of Refugee Resettlement within the Department of Health and Human Services. Their parents, meanwhile, were detained in ICE facilities and/or referred for prosecution for illegal entry. The widely condemned policy gave rise to national protests and caused immense suffering and harm to children and their families.[245] The Trump Administration ended it after the American Civil Liberties Union successfully secured a preliminary injunction against it on behalf of a nationwide class in *Ms. L. v. ICE*.[246]

President Biden's executive order directed the Task Force to explore options around parole in addition to the issuance of visas.[247] Its members included heads and high-level officials across multiple agencies, including DHS, DOJ, and HHS.[248] The Task Force began its work in coordination with *Ms. L.*

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242. Nunez-Vasquez v. Barr, 965 F.3d 272, 286 (4th Cir. 2020) ("[W]e direct the Government to facilitate Nunez-Vasquez's return for the purpose of participating in further proceedings in accordance with Directive 11061.1."); Orabi v. Att'y Gen., 738 F.3d 535, 543 (3d Cir. 2014) ("The judgment of the BIA will therefore be reversed, with instructions that the Government, pursuant to its August 12, 2013 letter, be directed to return Orabi to the United States in accordance with the ICE regulations cited [ICE Policy, § 11061.1(2)].").

243. Exec. Order No. 14,011, 86 Fed. Reg. 8273 (Feb. 5, 2021); Jeff Sessions, U.S. Att'y. Gen., Remarks at U.S.-Mexico Border Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018) (transcript available at https://www.justice.gov/archives/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions).

244. *See* U.S. DEP'T OF HOMELAND SEC., INTERIM PROGRESS REPORT: INTERAGENCY TASK FORCE ON THE REUNIFICATION OF FAMILIES 7 (2023), https://www.dhs.gov/sites/default/files/2023-12/2023_1215_sec_frtf-interim-progress-report-final-november-2023.pdf (identifying 4,227 separated children).

245. *See, e.g.*, Stephen Lee, *Family Separation as Slow Death*, 119 COLUM. L. REV. 2319, 2367 (2019).

246. 310 F. Supp. 3d 1133, 1136 (S.D. Cal. 2018), *modified*, 330 F.R.D. 284 (S.D. Cal. 2019). The district court issued a nationwide preliminary injunction after finding the plaintiffs likely to succeed on the merits of their substantive due process claims. *Id.* at 1145–46.

247. Establishment of Interagency Task Force on the Reunification of Families, 86 Fed. Reg. 8273, 8273–74 (Feb. 5, 2021).

248. *See Family Reunification Task Force*, DEP'T OF HOMELAND SEC., https://www.dhs.gov/family-reunification-task-force (last visited May 10, 2026) (Task Force Leadership and Staff).

Plaintiffs' counsel at ACLU.[249] At the start, the Task Force *itself* "accept[ed] humanitarian parole requests for an initial group of individuals"; among this early group, "five of the children reunified through the Task Force's parole process."[250] The Task Force acknowledged that "the approach is novel" but grounded its parole authority as follows:

> [We are] leveraging DHS' authority under Section 212(d)(5)(A) of the Immigration and Nationality Act (INA) to temporarily allow certain parents and additional family members to enter the United States to facilitate reunification with their children and to receive behavioral health and trauma recovery services[251]

Of note, the Task Force did not handle any other type of immigration adjudication—despite drawing its mandate from Executive Order 14011, which also directed consideration of available visas in addition to parole. Here, parole thus stands out as a particularly flexible remedial device. After handling an initial batch of applications, however, the Task Force recommended that USCIS take over the process.

Parole features centrally in the final *Ms. L* Settlement Agreement.[252] Section 4(C) of the Agreement mandates a process for class members and their qualifying relatives to be considered for thirty-six months of parole and work authorization, with continuing involvement of the Task Force.[253] The settlement specifies that the opportunity to apply for parole "will extend to *Ms. L.* Settlement Class members and Qualifying Additional Family Members who are not currently in the United States, as well as those present in the United States who upon their last entry were not admitted."[254] In other words, the Agreement provides for both parole-in-place as well as parole from abroad.[255] Consistent with statutory language, it stresses that "applications will be adjudicated on a case-by-case basis and approval of the request for parole is not guaranteed based on this Settlement Agreement."[256]

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249. U.S. DEP'T OF HOMELAND SEC., INITIAL PROGRESS REPORT: INTERAGENCY TASK FORCE ON THE REUNIFICATION OF FAMILIES 11–12 (2021), https://www.dhs.gov/sites/default/files/publications/21_0602_s1_family-reunification-task-force-120-day-progress-report.pdf.

250. *Id.* at ii, n.2.

251. *Id.* at 12–13.

252. Settlement Agreement at 14–15, Ms. L. v. U.S. Immigr. & Customs Enf't, No. 18-CV-00428 (S.D. Cal. 2023), Dkt. No. 711-1.

253. *Id.* § IV(C)(1).

254. *Id.* at 14.

255. *See id.* ("Parole for individuals already present in the United States is sometimes referred to as 'parole in place' ('PIP').").

256. *Id.*; *see also id.* ("DHS retains its existing discretion to grant or deny applications for parole, as well as its existing discretion to grant or deny parole at the time of inspection at a port of entry.").

On his first day back in office, President Trump revoked Biden's Executive Order 14011 establishing the Interagency Task Force.[257] The Settlement Agreement, however, remains binding and in effect.

Parole as a class-based remedy, initially granted and later overseen in part by the Task Force, reflects novel use of the authority. But parole as a more direct Article III judicial remedy also has precedent. In earlier stages of the *Ms. L.* litigation, the district court directly ordered the government to allow in individual class members who had been wrongfully deported, which the government achieved through parole.[258] And, in a 1998 decision, *Walters v. Reno*, the Ninth Circuit upheld an injunction ordering the then-Immigration and Naturalization Service to parole deported class members as a remedy for due process violations in document fraud cases.[259] The Ninth Circuit rejected the government's argument that the lower court order violated the parole statute:

> Although the district court's injunction pertains to the entire class, the parole provisions apply only to certain of those members who have already been deported; further, they are to be implemented by the Attorney General on an individual basis. . . . Thus, parole will be ordered by the Attorney General only on a case-by-case basis. Further, we note that parole for the purpose of remedying a constitutional violation clearly works a "significant public benefit."[260]

The Ninth Circuit concluded that the injunction fell within both the language of the statute and the district court's Article III equitable powers. Parole in the hands of the federal courts thus provided an effective remedy for constitutional violations.[261]

Federal courts have also ordered the government to return individual noncitizens removed from the United States without specifying the particular mechanism of parole.[262] In the recent high-profile case of *Noem v. Kilmar Armando Abrego Garcia*, the Supreme Court upheld a district court order directing the "facilitation" of Mr. Abrego Garcia's return from El Salvador. The government had unlawfully deported Mr. Abrego Garcia in violation of a court order prohibiting his return to El Salvador. He was rendered to the custody of the government of El Salvador along with other U.S. deportees and held in the notorious CECOT (Center for Terrorism Confinement) prison.[263]

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257. Exec. Order No. 14,148, 90 Fed. Reg. 8237 (Jan. 28, 2025) (revoking Exec. Order No. 14,011, 86 Fed. Reg. 8273 (Feb. 5, 2021)).

258. L. v. U.S. Immigr. & Customs Enf't, 403 F. Supp. 3d 853, 868 (S.D. Cal. 2019).

259. 145 F.3d 1032, 1050–51 (9th Cir. 1998).

260. *Id.* at 1051. The Ninth Circuit also expressed skepticism that "provisions governing the Attorney General's parole power impose limits on the federal courts' ability to remedy constitutional violations," assuming as much for analysis but stating "we are not at all certain [that] is correct." *Id.*

261. *Id.* at 1050.

262. *See, e.g.*, Nunez-Vasquez v. Barr, 965 F.3d 272, 286 (4th Cir. 2020) ("Here, we are ordering Nunez-Vasquez's return because his presence is 'necessary to effectuate judicial relief." (internal quotations omitted)).; Orabi v. Att'y Gen., 738 F.3d 535, 543 (3d Cir. 2014).

263. *See* Noem v. Abrego Garcia, No. 24A949, slip op. at 1 (Sup. Ct. Apr. 10, 2025).

In a short unanimous per curiam order, the Supreme Court denied the government's emergency request to vacate the district court order. It determined that the lower court had "properly require[d] the Government to 'facilitate' Abrego Garcia's release from custody in El Salvador and to ensure that his case is handled as it would have been had he not been improperly sent to El Salvador."[264] Following the Supreme Court's decision, the government filed criminal charges against Mr. Abrego Garcia for allegedly conspiring to transport undocumented immigrants and brought him back into the United States for the stated purpose of facing those charges (which were later dismissed by the district court).[265] The government used significant benefit parole as the basis for that return.[266]

Throughout 2025, following the Supreme Court order in *Abrego Garcia*, multiple district courts in other cases ordered the government to facilitate return of unlawfully deported noncitizens.[267] The government complied with these court orders by approving and processing parole.[268]

IV. CONTESTING PAROLE: EXECUTIVE ACTION, CONGRESS, AND THE STATES

The conception of parole as an award for "illegality," reflecting an immigration agency failing to fulfil its mandate, is incomplete. Although such views have set the tone of current debates, they miss the full picture.

264. *See id.* at 2.

265. *See id.* Indictment, United States v. Abrego Garcia, No. 3-00115 (M.D. Tenn. May 21, 2025); *Kilmar Abrego Garcia returned to U.S. to face charges from Tennessee traffic stop*, *PBS NewsHour* (June 6, 2025), https://www.pbs.org/newshour/show/kilmar-abrego-garcia-returned-to-u-s-to-face-charges-from-tennessee-traffic-stop; Order, United States v. Abrego Garcia, No. 3-00115 (M.D. Tenn. May 22, 2026) (dismissing indictment as vindictive prosecution).

266. *See* Noem v. Abrego Garcia, No. 25-2780, Order at 5 (D. Md. Dec. 11, 2025) ("When Respondents returned Abrego Garcia, they granted him significant public benefit parole pursuant to 8 C.F.R. § 212.5, which remains valid through June 4, 2026.").

267. For example, in a case challenging third country removals, Judge Brian Murphy of the federal district court of Massachusetts ordered the government to "take all immediate steps, including coordinating with Plaintiff's counsel, to facilitate the return of [individual Plaintiff class member] O.C.G. to the United States" from Guatemala. Memorandum & Order at 13, D.V.D. v. U.S. Dep't of Homeland Sec., No. 25-CV-10676 (D. Mass. May 23, 2025), Dkt. No. 132. Although the Supreme Court stayed a broader order by Judge Murphy granting class-based relief, it did not stay or vacate the individual order relating to O.C.G. *See* U.S. Dep't of Homeland Sec. v. D.V.D., No. 24A1153, slip op. at 1 (Sup. Ct. June 23, 2025) (stay granted). In *J.O.P. v. the U.S. Department of Homeland Security*, a district court ordered facilitation of return of a plaintiff whom the government deported in violation of a prior settlement agreement guaranteeing his ability to apply for asylum. *See* Memorandum Opinion at 14–15, J.O.P. v. U.S. Dep't of Homeland Sec., No. 19-CV-01944 (D. Md. Apr. 23, 2025), Dkt. No. 253 ("[T]his Court will order Defendants to facilitate Cristian's return to the United States . . . . This Court further orders that facilitating Cristian's return includes, but is not limited to, Defendants making a good faith request to the government of El Salvador to release Cristian to U.S. custody."); *see also* IMMIGR. POL'Y TRACKING PROJECT, *Trump Administration Repeatedly Obstructs or Refuses to Comply with Court Orders Facilitating Return of Wrongfully Deported Individuals*, https://immpolicytracking.org/policies/trump-administration-repeatedly-obstructs-or-refuses-to-comply-with-court-orders-facilitating-return-of-wrongfully-deported-individuals.

268. *See, e.g.*, Defendants' Status Report Regarding O.C.G. at 1, D.V.D. v. U.S. Dep't of Homeland Sec., No. 25-10676 (D. Mass. May 28, 2025), Dkt. No. 148.

Immigration parole plays a vital systemic role, touches multiple executive powers and agencies, and intersects with all three branches of government.

Nevertheless, parole is under attack. Below, I outline how executive action under the second Trump Administration, litigation by States, and bills in Congress have sought to challenge and restrict parole, placing its recipients in limbo and risk of peril.

A. PRESIDENT TRUMP'S EXECUTIVE ACTIONS

President Trump has targeted parole recipients, labeling them "illegal aliens" and lawbreakers, and sweeping them into his stated intention to deport millions of immigrants.[269] On his first day in office, he signed ten executive orders related to immigration.[270] These included orders declaring a national emergency at the U.S.-Mexico border and authorizing deployment of military force to the border.[271] Two of the orders target parole explicitly. The first, "Protecting the American People Against Invasion," characterizes individuals granted parole as "illegal aliens" as follows:

> Over the last 4 years, the prior administration invited, administered, and oversaw an unprecedented flood of illegal immigration into the United States. Millions of illegal aliens crossed our borders or were permitted to fly directly into the United States on commercial flights and allowed to settle in American communities, in violation of longstanding Federal laws.[272]

But the contention that individuals are here in violation of "longstanding Federal laws" is incorrect. As parole's long history demonstrates, conferral of parole status is a permissible and lawful exercise of executive authority, underpinned by federal statute.

The second Executive Order,[273] "Securing Our Borders," directs the termination of parole programs:

> (a) Cease using the "CBP One" application as a method of paroling or facilitating the entry of otherwise inadmissible aliens into the United States;
>
> (b) Terminate all categorical parole programs that are contrary to the policies of the United States established in my Executive Orders, including the program known as the "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans.[274]

That same day, DHS Acting Secretary Benjamine Huffman issued a memorandum "authoriz[ing] DHS components to pause, modify, or terminate,

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269. Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8443 § 1 (Jan. 20, 2025).

270. *See 2025 Donald J. Trump Executive Orders*, OFF. OF FED. REG., https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 (last visited May 10, 2026).

271. *See* Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8443 § 1 (Jan. 20, 2025); Proclamation No. 10886, Declaring a National Emergency at the Southern Border of the United States, 90 Fed. Reg. 8327, 8327 (Jan. 20, 2025).

272. Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8443 § 1 (Jan. 20, 2025).

273. Exec. Order No. 14,165, 90 Fed. Reg. 8467, 8468 § 7 (Jan. 20, 2025).

274. *Id.*

effective immediately, any parole program that is inconsistent with the memorandum—subject to certain conditions designed to ensure any such actions are lawful."[275] DHS promptly shut down the CBP One app, canceling all appointments made through the app, including families who had waited weeks or even months for their appointment dates.[276] That same week, the agency informed air carriers that pursuant to executive orders, it had terminated parole programs for Ukrainian, Afghan, Cuban, Haitian, Nicaraguan, and Venezuelan nationals as well as the Family Reunification and Central American Minors programs.[277]

Since early 2025, however, the Administration has since clarified in litigation that some of these programs are merely on an "administrative hold" with regard to initial applications.[278] These include Ukrainian parole, the Central American Minors (CAM) Program, and Entrepreneurs parole. As of this writing, the Administration has issued official Federal Register notices formally terminating Cuban, Haitian, Nicaraguan, and Venezuelan country-based parole and Family Reunification Parole.[279]

The Trump Administration has also ramped up enforcement efforts against parole recipients, attempting to place them in expedited deportation processes and to close their pathways to more permanent relief.[280] Immigrants' rights groups have challenged these actions, in addition to contesting broad parole termination. In Part VI below, which addresses constraints on mass parole terminations and deportations, I discuss those policy and litigation developments. But first, I describe some of the key earlier States' challenges to these same parole programs under the Biden Administration below.

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275. Memorandum from Benjamine C. Huffman, Acting Sec'y, U.S. Dep't of Homeland Sec., on Guidance Regarding How to Exercise Enforcement Discretion 1 (Jan. 23, 2025) (paraphrasing Jan. 20, 2025 order).

276. Press Release, U.S. Customs & Border Prot., CBP Removes Scheduling Functionality in CBP One App (Jan. 21, 2025), https://www.cbp.gov/newsroom/national-media-release/cbp-removes-scheduling-functionality-cbp-one-app; Julie Watson & Megan Janetsky, *Migrants Stranded When Thousands of Appointments to Enter the U.S. Are Canceled as Trump Takes Office*, AP NEWS (Jan. 20, 2025, at 18:24 PT), https://apnews.com/article/trump-immigration-cbp-one-border-app-652854b5f2a4e6ccd6ee2ccc729cbb55.

277. U.S. CUSTOMS & BORDER PROT., UPDATED GUIDANCE: EXECUTIVE ORDER ON SECURING OUR BORDERS (2025).

278. *See* Decl. of Kika Scott, supra note 224, at 2. Specifically, Ms. Scott avers that the following programs are paused with respect to initial parole applications, but not re-parole applications:

- Uniting for Ukraine (U4U)
- Family Reunification Parole (FRP) processes
- Central American Minors (CAM) program
- International Entrepreneur Parole
- Parole of Western Hemisphere nationals interviewed for refugee status in Safe Mobility Offices (WHP).

Id.

279. Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13611 (Mar. 25, 2025); Termination of Family Reunification Parole Processes for Colombians, Cubans, Ecuadorians, Guatemalans, Haitians, Hondurans, and Salvadorans, Fed. Reg. 58,032, 58,032-33 (Dec. 15, 2025).

280. *See* Memorandum from Benjamine C. Huffman, *supra* note 275, at 2.

B. PRIOR STATES' CHALLENGES AGAINST THE BIDEN ADMINISTRATION

Throughout the Biden Administration, States sued to challenge new parole programs with mixed success. In January 2023, twenty-one states led by Texas brought suit against Biden's Cuba, Haiti, Nicaragua and Venezuela parole programs in *Texas v. Department of Homeland Security* (*Texas v. DHS CHNV*).[281] They alleged that the programs exceeded the scope of the parole statute and violated notice-and-comment requirements under the Administrative Procedure Act (APA).[282]

Plaintiff States' arguments centered on the statutory requirement that decisions be made case-by-case. This, the States argued, meant that country-based parole programs violated the statute. The federal government, however, contended—consistent with its long-running position on the matter—that the individualized review of parole applications satisfied the case-by-case requirement, even when that review applied eligibility criteria pursuant to broader programmatic rules or policies.[283] It also argued that the States lacked standing, stressing the discretionary nature of parole.[284]

The Southern District of Texas court held a trial in *Texas v. DHS CHNV* in August 2023, but never reached the executive authority or statutory interpretation questions. Instead, in an order issued on March 8, 2024, the court held that Texas lacked standing to bring the suit.[285] The district court relied on the Supreme Court's 2023 *United States v. Texas* decision,[286] which held that Louisiana and Texas lacked standing to challenge the Biden Administration's immigration prosecutorial discretion guidelines.[287] (Of note, however, and as discussed in Part IV(C) below, Congress's most recent immigration law of

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281. Amended Complaint, Texas v. U.S. Dep't of Homeland Sec., No. 23-CV-00007 (S.D. Tex. Feb. 14, 2023), Dkt. No. 20.

282. *See id.* ¶ 140–41.

283. Defendants' Post-Trial Brief at 41-42, Texas v. U.S. Dep't of Homeland Sec., No. 23-CV-00007 (S.D. Tex. Sep. 29, 2023), Dkt. No. 284 ("Designating, whether by regulation or policy, a class whose members generally would be considered appropriate candidates for parole does not conflict with a 'case-by-case' decision requirement since the adjudicator must individually determine whether the person is a member of the class and whether there are any reasons not to exercise the parole authority in the particular case." (quoting Gen. Counsel of INS, Parole of Individuals from the Former Soviet Union Who Are Denied Refugee Status (June 15, 2001)).

284. Defendants' Post-Trial Brief at 18, Texas v. U.S. Dep't of Homeland Sec., No. 23-CV-00007 (S.D. Tex. Sep. 29, 2023), Dkt. No. 284 (discussing United States v. Texas, 599 U.S. 670, 682 (2023)).

285. Texas v. U.S. Dep't of Homeland Sec., No. 23-CV-00007, 2024 WL 1021068, at *710 (S.D. Tex. Mar. 8, 2024), *reconsideration denied*, 2024 WL 2888758, at *709 (S.D. Tex. May 28, 2024) ("[T]he Court finds that Texas has failed to prove that it suffered an injury-in-fact for purposes of Article III standing."). The government filed an appeal. On June 9, 2025, the Fifth Circuit granted parties' motion to vacate and dismiss the appeal as moot following the Second Trump Administration's termination of CHNV parole programs. Order, Texas v. U.S. Dep't of Homeland Sec., No. 24-40259 (5th Cir. June 9, 2025).

286. The Supreme Court in that case rejected states' challenge to Biden policies on standing grounds, determining that asserted harms from increased expenditures in drivers' licenses, education, healthcare and law enforcement were not cognizable for standing purposes. *Texas*, 599 U.S. at 674.

287. *Id.* at 681; *see also* Memorandum from Alejandro N. Mayorkas, Sec'y of Homeland Sec., to Tae D. Johnson, Acting Dir. of U.S. Immigr. & Customs Enf't, on Guidelines for the Enforcement of Civil Immigration Law (Sep. 30, 2021).

January 2025, the Laken Riley Act, clears standing hurdles to facilitate States' challenges.)

In a second challenge, the State of Florida sued to enjoin U.S. Border Patrol's parole release from custody programs, including the Parole with Conditions policy described above.[288] The Northern District of Florida issued a preliminary injunction enjoining the policy.[289] The district court concluded that the policy likely violated the case-by-case requirement of the statute, including by authorizing parole to address overcrowding and CBP's resource constraints.[290] While Plaintiff's appeal remained pending, the Trump II Administration implemented sweeping restrictions on parole use, and the Eleventh Circuit dismissed the appeal upon stipulation of the parties.[291] In February 2026. DHS and the State of Florida entered into a consent decree significantly limiting CBP's use of parole authority for detention-related reasons. DHS agreed, for a period of 15 years, not to create a "categorical processing pathway for aliens at the border primarily to alleviate concerns over detention capacity or improve the Department of Homeland Security's operational efficiency."[292]

Finally, a coalition of sixteen states led by Texas challenged Biden's Family Unity Parole programs in August 2024.[293] The states secured a final judgment that prevented the program from going into effect.[294] The Eastern District of Texas court concluded that the program exceeded statutory bounds, chiefly by allowing "parole-in-place" for noncitizens already in the United States rather than coming from abroad. The second Trump Administration has not appealed the decision, and the vacatur of Family Unity Parole remains in effect.[295]

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288. *See* Complaint at 21, Florida v. United States, No. 21-CV-1066 (N.D. Fla. Sep. 28, 2021), Dkt. No. 1; Complaint at 5, Florida v. Mayorkas, No. 23-CV-9962 (N.D. Fla. May 10, 2023), Dkt. No. 1; *supra* Subpart.III.F.

289. Florida v. United States, 660 F. Supp. 3d 1239, 1285 (N.D. Fla. 2023) ("The Parole+ATD Policy is VACATED under the APA, and that policy is REMANDED to DHS for further proceedings consistent with this Opinion and Order.").

290. *Id.* at 1279 ("The process set forth in the July Memo violates the case-by-case requirement because although the memo pays lip service to assessments of individual aliens, it is largely focused on DHS's *operational circumstances* rather than an individual alien's circumstances."). The district court also found plaintiffs likely to show a statutory violation because the challenged policy did not contemplate a return to ICE detention of paroled noncitizens and because noncitizens did not have a pending immigration court "case" before their release. *Id.* at 1212.

291. Order of the Court at 3, Florida v. U.S. Dep't of Homeland Sec., No. 23-CV-11528 (11th Cir. Sep. 3, 2025), Dkt. No. 114-1.

292. Consent Decree at 7, Florida v. Mayorkas, No. 23-09962 (N.D. Fla. Feb. 4, 2026).

293. Complaint at 3–4, Texas v. U.S. Dep't of Homeland Sec., No. 24-CV-00306 (E.D. Tex. Aug. 23, 2024), Dkt. No. 1.

294. Memorandum of Decision at 72–74, Texas v. U.S. Dep't of Homeland Sec., No. 24-CV-00306 (E.D. Tex. Nov. 7, 2024), Dkt. No. 120.

295. Judgement at 2, Texas v. U.S. Dep't of Homeland Sec., No. 24-40512 (5th Cir. Nov. 10, 2024), Dkt. No. 126.

C. RECENT BILLS AND LAWS OF CONGRESS

On the legislative front, parole has significant detractors. In high-profile negotiations in January 2024, House Republicans sought to tie restrictions on parole grants to foreign military aid for Israel and Ukraine.[296] It did so by incorporating language from the Secure the Border Act (H.R. 2), which passed in the House but not the Senate.[297] That bill specified that "urgent humanitarian reasons" "shall be limited" to: medical emergencies; medical treatment unavailable in the home country; organ donation; attendance at the funeral of a close relative or to visit a close relative on their deathbed; adoptee children in need of medical treatment; and return after temporary travel abroad by lawful applicants for adjustment of status.[298] Significant public benefit parole, meanwhile, is limited to assistance in or presence in furtherance of a law enforcement matter.[299] The proposed amendment would define "case-by-case basis" to mean:

> [T]he facts in each individual case are considered and parole is not granted based on membership in a defined class of aliens to be granted parole. The fact that aliens are considered for or granted parole one-by-one and not as a group is not sufficient to establish that the parole decision is made on a "case-by-case basis."[300]

The bill also formalized parole for certain Cuban nationals eligible for an immigrant visa (but for wait times), as well as the spouses and children of members of the U.S. Armed Forces.[301] However, the terms of military parole in H.R. 2 were far less generous than current DHS/VA programs. Moreover, the bill left out parole of veterans themselves—even those who have been deported erroneously. Finally, the bill restricted work authorization for individuals granted parole, allowing employment only for the spouses and children of military servicemembers and for Cuban nationals.[302] In 2025, Senator Grassley and others introduced a substantially similar bill in the Senate, the Immigration Parole Reform Act of 2025, which similarly defined a narrow list of "urgent humanitarian reasons" and barred parole grants made "according to eligibility criteria describing an entire class of potential parole recipients."[303]

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296. Rafael Bernal & Al Weaver, *Parole: What to Know About the GOP's Latest Border Sticking Point*, THE HILL (Jan. 24, 2024, at 06:00 ET), https://thehill.com/latino/4425075-parole-gop-border-security-immigration; Maria Sacchetti, *Explaining Immigration Parole, One Sticking Point in Ukraine Aid-Border Deal*, WASH. POST (Jan. 25, 2024), https://www.washingtonpost.com/immigration/2024/01/25/immigration-parole-border-deal-ukraine-aid.

297. Secure the Border Act, H.R. 2, 118th Cong. § 701 (2023). The substantive language of H.R. 2 now appears in successor vehicle H.R. 9773, Permanent Trump Secure Border Act. H.R. 9773, 119th Cong. tit. VI, §§ 601-02 (2026).

298. *Id.* (proposed § 212(d)(5)(E)).

299. *Id.* (proposed § 212(d)(5)(F)).

300. *Id.* (proposed § 212(d)(5)(G)).

301. *Id.* (proposed § 212(d)(5)(C).

302. S. 1589, 119th Cong. § 2 (2025).

303. SECURE America Act, H.R. 194, 118th Cong. § 6 (2023).

Another proposed bill in the House, the "SECURE America Act," would simply eliminate parole power altogether. It proposes striking the current provision and replacing it with the language, "[n]otwithstanding any other provision of law, the Secretary of Homeland Security may not parole into the United States any alien who has not been granted status under the immigration laws of the United States."[304]

Notably, Congress very recently amended the statutory parole provision at 8 U.S.C. § 1182(d)(5) via passage of the Laken Riley Act, which President Trump signed into law on January 29, 2025.[305] The new law, however, made no substantive changes to parole standards or contours. Under a new provision, rather, Congress eliminated barriers to State standing for suits against parole programs:

> Enforcement by Attorney General of a State—The attorney general of a State, or other authorized State officer, alleging a violation of the limitation under subparagraph (A) that parole solely be granted on a case-by-case basis and solely for urgent humanitarian reasons or a significant public benefit, that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subparagraph to the greatest extent practicable. For purposes of this subparagraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of $100.[306]

This provision will likely accelerate the trend of States' litigation against any future parole programs. Critically, however, the recent law nevertheless allows future administrations to continue to develop and implement parole programs in line with historic precedent.

The One Big Beautiful Bill Act (OBBBA), signed into law on July 4, 2025, imposes drastically increased fees for parole applications, but leaves parole's substantive contours as-is. The new statutory minimum fee of $1,000 for individuals granted parole—imposed upon approval, on top of the required filing fee—poses a significant hurdle for individuals.[307] The bill provides, however, that the fee may be waived case-by-case for parole based on medical emergency, a death in the family, parole for law enforcement reasons, and other specified reasons.[308] And, as previously noted, OBBBA also supercharges DHS's

304. SECURE America Act, H.R. 194, 118th Cong. § 6 (2023).
305. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
306. *Id.* § 3(d)(2), codified at 8 U.S.C. § 1182(d)(5)(C).
307. Pub. L. No. 119-21, Title X § 100004(c), 139 Stat. 368 (2025).
308. *Id.* § 100004(b), 139 Stat. at 367–68.

enforcement budget, providing over $170 billion for the agency across detention, removal, border, and other operations.[309]

V. PAROLE'S LEGAL FOUNDATIONS

A broad view of parole finds support in legal doctrine. Here, I explore the legal frameworks underpinning parole power. I also analyze the views of the current Justices on parole and executive immigration authority. Lastly, I show how a nuanced, historically informed understanding of parole in our immigration system further supports expansive use of that power.

A. EXECUTIVE AUTHORITY AND IMMIGRATION

Parole power operationalizes core justifications of federal immigration power under both modern and foundational cases. At the time of the nation's founding and for a century thereafter, the states rather than the federal government played the primary role in regulating immigration.[310] That would change in the late nineteenth century following the passage of the federal Chinese exclusion laws, banning the entry of Chinese nationals in contravention of U.S.-China treaty agreements.[311] In foundational cases of that era, namely *Chae Chan Ping* and *Fong Yue Ting*, the Court sourced federal immigration power from a Constitution silent on the matter (containing no references to "immigration").[312] These cases and the scope of the federal government's "plenary power" over immigration have been subject to exhaustive scholarly treatment and debate, which I do not repeat here.[313] I note only that the majority rooted federal immigration power in sovereign control over territory, the power to protect against invasion, and—most relevant here—foreign relations powers.[314]

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309. *See generally id.* (Title X) (detailing the newly adapted budget for DHS enforcement); *see also* AM. IMMIGR. COUNCIL, *supra* note 216.

310. Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833, 1834 (1993); Sarah H. Cleveland, *Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power Over Foreign Affairs*, 81 TEX. L. REV. 1, 15, 100–01 (2002). Exceptions are the Alien Friends and Enemies and Sedition Acts, passed in 1798. An Act Concerning Aliens, ch. 58, § 1, 1 Stat. 570 (expired 1800) (authorizing summary expulsion of noncitizens considered to be dangerous); Alien Enemy Act, ch. 66, § 1, 1 Stat. 577 (1798), 50 U.S.C. § 21; Sedition Act, ch. 74, 1 Stat. 596 (expired 1801) (acting in conjunction with An Act Concerning Aliens). The Acts provided that the President could deport "alien friends" dangerous to peace and security as well as noncitizen subjects of enemy nations.

311. Chinese Exclusion Act of 1882, ch. 126, 127, 22 Stat. 58 (repealed 1943).

312. Chae Chan Ping v. United States, 130 U.S. 581, 609 (1889); Fong Yue Ting v. United States, 149 U.S. 698, 732 (1893).

313. Cleveland, *supra* note 317; Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1 (1998); Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545 (1990); Louis Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny*, 100 HARV. L. REV. 853 (1987); Stephen H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, 1984 SUP. CT. REV. 255; Peter H. Schuck, *The Transformation of Immigration Law*, 84 COLUM. L. REV. 1 (1984).

314. *See id.* at 708–10.

The foreign affairs power rationale for executive immigration authority—and growing judicial deference to the exercise of that authority—appears also in the Supreme Court's Cold War era jurisprudence, post-9/11 case law, and Roberts Court opinions. In *United States* ex rel. *Knauff v. Shaughnessy*, a 1950 decision, the Supreme Court determined that Congress permissibly set broad standards for immigration exclusion decisions, leaving significant leeway to executive officials.[315] The Court characterized immigration exclusions as an act of sovereignty that stemmed from both legislative and executive power.[316] In *Jama v. ICE*, the Court in 2005 interpreted deportation statutes to permit executive officials to select Somalia as a country of removal despite the fact that Somalia had no functioning government at the time and could not convey "acceptance" of the petitioner's deportation. The *Jama* Court explained, "[t]o infer an absolute rule of acceptance where Congress has not clearly set it forth would run counter to our customary policy of deference to the President in matters of foreign affairs."[317] More recently, in *Trump v. Hawaii*, the Court found President Trump's travel ban targeting Muslim-majority countries to fall within a broad and permissive reading of delegated authority in 8 U.S.C. §1182(f). That provision allowed for entry bans of foreign nationals upon a presidential finding that such entry "would be detrimental to the interests of the United States."[318] Justice Roberts, writing for the majority, explained: "[W]hen the President adopts a preventive measure in the context of international affairs and national security[,] he is not required to conclusively link all of the pieces in the puzzle before courts grant weight to his empirical conclusions."[319]

Scholars have written serious critiques of the trend of expanding judicial deference to the federal government on immigration matters and the corresponding failure of the Court to protect the rights of noncitizens.[320] I share many of these concerns; nevertheless, the contemporary Court has signaled willingness to provide significant leeway to the executive in operationalizing

315. United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 541–42 (1950) (discussing how petitioner challenged laws and regulations authorizing her exclusion upon a finding by the Attorney General that her admission would be "prejudicial to the public interest").

316. *Id.* at 542.

317. Jama v. Immigr. & Customs Enf't, 543 U.S. 335, 348 (2005). It continued, "[r]emoval decisions, including the selection of a removed alien's destination, may implicate our relations with foreign powers and require consideration of changing political and economic circumstances." *Id.* (internal alteration omitted) (quoting Mathews v. Diaz, 426 U.S. 67, 81 (1976)).

318. 8 U.S.C. § 1182(f).

319. Trump v. Hawaii, 138 S. Ct. 2392, 2409 (2018) (alterations in original) (quoting Holder v. Humanitarian Law Project, 561 U.S. 1 35 (2010)).

320. For example, Adam Cox persuasively argues that "immigration exceptionalism"—namely, the judiciary's extreme deference to the political branches of government and the evacuation of constitutional protections in the realm of immigration—emerged chiefly under the Roberts Court. Adam B. Cox, *The Invention of Immigration Exceptionalism*, 134 YALE L.J. 329 (2024). Professor Cox challenges the conventional understanding that immigration's plenary power doctrine has been an "exceptional" and categorically distinct realm of regulation since the Chinese Exclusion era. *Id.* at 340; *see also* supra note 320 (citing additional scholarly critiques).

exclusions, rooted in national security and foreign affairs justifications.[321] But the allowance of noncitizens *into* U.S. territory is at least arguably as bound up in foreign relations as their disallowance or expulsion. The long history of parole power's exercise demonstrates this clearly.[322] Past presidents have used parole in ways tied directly to sovereign control over territory, wartime interests, and foreign relations matters.[323]

To be sure, when speaking of the power to confer formal admission, entry, or status to an individual, the Court has heavily emphasized the power of *Congress*,[324] or described it as exclusive.[325] But parole is not an admission, an entry, or a formal legal status. It is, rather, a flexible vehicle for executive permission to come into the country and be at liberty, the exercise of which predated its formal statutory authorization. As I have discussed throughout the early Parts of this paper, Presidents have used parole to signal our nation's ideological commitments and advance external policy objectives. Territory as it relates to foreign relations has never been merely about exclusion. Rather, allowing people *in* has enabled the President to act in furtherance of critical commitments.

B. PAROLE POWER AND THE CURRENT COURT

A majority of the current Court has recognized the discretionary nature of parole power and its flexible relation to the immigration statutes. In *Biden v. Texas*, states led by Texas challenged the Biden Administration's termination of the Migrant Protection Protocols (recently revived under President Trump in his second term).[326] The Trump policy—also referred to as the Remain in Mexico program—forces asylum seekers to wait in Mexico pending their U.S. immigration court dates.

The Trump Administration invoked a statutory provision that provided "[i]n the case of an alien . . . who is arriving on land . . . from a foreign territory contiguous to the United States, the [Secretary] *may* return the alien to that

321. *Id.*

322. *See supra* Subparts.II.A–B; *see also* Brief of Former Executive Branch Officials as Amici Curiae in Support of Defendants-Appellees and Affirmance, Texas v. U.S. Department of Homeland Security, No. 24-40160 (5th Cir. Aug. 2, 2024), https://www.theusconstitution.org/wp-content/uploads/2024/08/Texas-v.-DHS-Former-Officials-Brief.pdf.

323. *See id.*

324. For example, in *Galvan v. Press*, the Court rejected Petitioner's challenge to deportation grounds based on Communist party membership, stating that "formulation of these policies" that "pertain[] to the entry of aliens and their right to remain here" are "entrusted exclusively to Congress." 347 U.S. 522, 531 (1954). This language was dicta, however, *Galvan* involved a challenge to deportation grounds rather than entry categories. *Id.* at 525. As discussed in Subpart.V.B below, Justice Alito has relied upon *Galvan* to support his view of a narrow executive discretion to parole.

325. More recently, in *Department of State v. Munoz*, the Supreme Court emphasized that "Congress's authority to 'formulat[e] . . . policies' concerning the entry of noncitizens 'has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government.'" 144 S. Ct. 1812, 1824–25 (2024) (citations omitted). The Court in *Munoz* went on to hold that the U.S. citizen petitioner lacked a fundamental liberty interest in her noncitizen spouse being admitted to the United States and thus could not assert procedural due process rights regarding his visa denial. *Id.* at 1821.

326. 142 S. Ct. 2528 (2022); Exec. Order No. 14,165, 90 Fed. Reg. 8647, 8468 (Jan. 20, 2025).

territory pending a proceeding [in immigration court]."[327] Although the provision—at 8 U.S.C. § 1225(b)(2)(C)—had been part of the immigration laws for over twenty years since the 1996 passage of IIRIRA, no prior Administration had implemented a policy for its use. On June 1, 2021, the Biden Administration rescinded the Trump I-era Migrant Protection Protocols policy.[328] It issued a second, more detailed recission memorandum on October 29, 2021.[329]

States led by Texas challenged the Biden Administration's termination of the Migrant Protection Protocols. In litigation, the States recognized that the phrase "may return" in § 1225(b)(2)(C) entails discretion. But the States nevertheless argued that the program was mandated by statute. Specifically, they hinged their argument on the detention provision found at 8 U.S.C. § 1225(b)(2)(A), which provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding [in immigration court]." As explained above, DHS invokes *parole authority* to effectuate the release of individuals in § 1225(b)(2)(A) detention and in active immigration court proceedings. The States argued release via parole is prohibited because "shall detain" means *must* detain. In the event of insufficient bedspace to detain all persons subject to § 1225(b)(2)(A) detention—a factual certainty[330]—the States argued that parole release from detention was unlawful, such that the *only* remaining option was § 1225(b)(2)(C) return to Mexico.

Justice Roberts, writing for a majority including Justices Breyer, Kagan, Kavanaugh, and Sotomayor in 2022, rejected the States' argument. Justice Barrett dissented on the grounds of jurisdiction, but expressed her agreement with his merits analysis.[331] Five, and likely six, current Justices thus agree that the term "may return the alien [to contiguous foreign territory]" in § 1225(b)(2)(C) entails *discretionary* use of the Migrant Protection Protocols / Remain in Mexico route. (Justice Jackson arrived on the bench after *Biden v. Texas* and has yet to weigh in on parole authority in any Supreme Court case—but her record would suggest a sixth vote with the majority.)

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327. 8 U.S.C. § 1225(b)(2)(C) (emphasis added).

328. Memorandum from Alejandro N. Mayorkas, Sec'y of Homeland Sec., to Troy A. Miller, Acting Comm'r, U.S. Customs & Border Prot., Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf't, Tracy L. Renaud, Acting Dir., U.S. Citizenship & Immigr. Servs., on Termination of the Migrant Protection Protocols Program (June 1, 2021).

329. Memorandum from Alejandro N. Mayorkas, Sec'y of Homeland Sec., to Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf't, Troy A. Miller, Acting Comm'r, U.S. Customs & Border Prot., Ur M. Jaddou, Dir., U.S. Citizenship & Immigr. Servs., Robert Silvers, Under Sec'y, Off. of Strategy Pol'y & Plans, on Termination of the Migrant Protection Protocols (Oct. 29, 2021).

330. *See Biden*, 142 S. Ct. at 2535 ("DHS has never had 'sufficient detention capacity to maintain in custody every single person described in section 1225.'") (quoting Petition for Writ of Certiorari at 323a, *Biden*, 142 S. Ct. 2528).

331. *Id.* at 2560 (Barrett, J., dissenting) ("I agree with the Court's analysis of the merits—but not with its decision to reach them.").

The Court reached its conclusion after noting that the Migrant Protection Protocols required negotiation with Mexico, highlighting the need for deference to the executive in foreign affairs:

> [T]he foreign affairs consequences of mandating the exercise of contiguous-territory return likewise confirm that the Court of Appeals erred. Article II of the Constitution authorizes the Executive to "engage in direct diplomacy with foreign heads of state and their ministers." Accordingly, the Court has taken care to avoid "the danger of unwarranted judicial interference in the conduct of foreign policy," and declined to "run interference in the delicate field of international relations" without "the affirmative intention of the Congress clearly expressed." That is no less true in the context of immigration law, where "the dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation's foreign policy."[332]

In rejecting the states' argument on § 1225(b)(2)(C), Justice Roberts expressly left open the question of whether the statute permitted § 1182(d)(5) parole release of individuals from § 1225(b)(2)(A) detention pending their immigration court proceedings.[333] He noted, however, that a third option was also available: parole at a port of entry even *absent* detention and placement of an individual in immigration court proceedings. As he observed, "the availability of [this] option additionally makes clear that the Court of Appeals erred in holding that the INA *required* the Government to continue implementing MPP."[334] Justice Roberts further observed that "[e]very administration, including the Trump and Biden administrations, has utilized this authority to some extent."[335] But he stressed that judicial review would be available to ensure "reasonable and reasonably explained" exercise of discretion under the Administrative Procedure Act (APA), citing *Motor Vehicle Manufacturers Association v. State Farm*, and described the statutory text as "not unbounded."[336]

Justice Kavanaugh's separate concurrence addresses parole release power even more directly, emphasizing that "every Administration beginning in the late 1990s has relied heavily on the parole option, including the administrations of Presidents Clinton, Bush, Obama, Trump, and Biden."[337] In contrast to the majority, he would simply hold that release from § 1225(b)(2)(A) detention via parole is permissible:

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332. *Id.* at 2543 (citation modified) (first quoting Zivotofsky v. Kerry, 576 U.S. 1, 14 (2015); then quoting Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108, 115–16 (2013); and then quoting Arizona v. United States, 567 U.S. 387, 397 (2012)).

333. *Biden*, 142 S. Ct. at 2544 ("[W]e need not and do not resolve the parties' arguments regarding whether section 1225(b)(2)(A) must be read in light of traditional principles of law enforcement discretion, and whether the Government is lawfully exercising its parole authorities pursuant to sections 1182(d)(5) and 1226(a).").

334. *Id.* (emphasis added).

335. *Id.* at 2543.

336. *Id.*

337. *Id.* at 2548 (Kavanaugh, J., concurring) (citing Transcript of Oral Argument at 4, 49–54, *Biden*, 142 S. Ct. 2528).

> In general, when there is insufficient detention capacity, both the parole option and the return-to-Mexico option are legally permissible options under the immigration statutes. As the recent history illustrates, every President since the late 1990s has employed the parole option, and President Trump also employed the return-to-Mexico option for a relatively small group of noncitizens. Because the immigration statutes afford substantial discretion to the Executive, different Presidents may exercise that discretion differently. That is Administrative Law 101.[338]

On the scope of the parole statute as well as § 1225(b)(2)(C), Justice Kavanaugh stressed breadth and deference to the executive: "[n]othing in the relevant immigration statutes at issue here suggests that Congress wanted the Federal Judiciary to improperly second-guess the President's Article II judgment with respect to American foreign policy and foreign relations."[339] Moreover, while he agreed with the majority's statement regarding review under the Administrative Procedure Act, he contended that "a court applying *State Farm* must be deferential to the President's Article II foreign-policy judgment."[340]

Justices Alito penned a dissent in *Biden v. Texas*, joined by Justices Thomas and Gorsuch, taking a much narrower view of parole power. He accepted the States' statutory arguments, including the view that release from §1225(b)(2)(A) detention via parole is unlawful. The dissenters concluded that the "shall detain" language in § 1225(b)(2)(A) prohibits release via parole; and that the Administration's use of parole likely violates the "case-by-case" decision-making constraint contained within § 1182(d)(5) itself. In their view, "the number of aliens paroled each month under that provision—more than 27,000 in April of this year—gives rise to a strong inference that the Government is not really making these decisions on a case-by-case basis."[341]

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338. *Id.* (Kavanaugh, J., concurring) (citing Motor Vehicle Mfrs. Assn. of U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 59 (1983) (Rehnquist, J., concurring in part and dissenting in part)).

339. *Id.* at 2549 (Kavanaugh, J., concurring) (first citing Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635–37 (1952) (Jackson, J., concurring); and then citing Dames & Moore v. Regan, 453 U.S. 654, 678–79, 686–88 (1981)).

340. *Biden*, 142 S. Ct. at 2549 (Kavanaugh, J., concurring). Notably, he would echo these themes of deference to the executive with regard to more general domestic immigration enforcement the following term, as well. His majority opinion in *United States v. Texas*, rejecting states' challenges to the Biden Administration's domestic immigration prosecutorial discretion policies on standing grounds, echoes these themes. 143 S. Ct. 1964, 1974–75 (2023). In explaining why the States have no cognizable standing interest in compelling the federal government to initiate immigration prosecutions, he emphasized the "Executive's Article II authority to enforce federal law and the deeply rooted history of enforcement discretion in American law." *Id.* at 1974.

341. *Biden*, 142 S. Ct. at 2554 (Alito, J., dissenting). Justice Alito also rejected a foreign-policy grounding for more permissive executive interpretation of parole power, relying on a statement in *Galvan v. Press* that "[p]olicies pertaining to the entry of aliens are entrusted *exclusively* to Congress." *Id.* at 2557 (quoting Galvan v. Press, 347 U.S. 522, 531 (1954)). Parole, however, is *not* an entry, and there is little question that a reference to policies "pertaining to entry" mentioned in *Galvan*—a case challenging Communist grounds of *deportation* in 1954—is dicta. Immigration law in that era maintained bright lines between exclusion prior to entry and expulsion after it, setting up separate procedures for each. *See supra* note 324 and accompanying text (discussing 1950s era decision distinguishing exclusion and deportation).

Justice Alito's dissent reflects that three current members of the Court view executive authority for parole custody release in narrow and limited terms. But his more cramped reading garnered only two additional votes, and a majority seems poised or at least open to broader interpretations.

To date, no Justice has yet suggested that exercises of parole power trigger major questions concerns. Justices Thomas, Gorsuch, and Alito have expressed such concerns with regard to DACA.[342] But parole programs differ significantly from DACA in being rooted in a concrete statutory provision with a long history of programmatic uses, including broad uses that both pre- and post-dated statutory amendments.

The Trump Administration, following Justice Alito, has construed parole narrowly, declaring the policies of the Biden Administration to be illegal and ultra vires.[343] But as I discuss in Subpart C below, historical parole practice, doctrinal justifications, statutory standards, and Congressional acquiescence support a more expansive view of parole.[344]

C. TOWARD A BETTER DOCTRINAL, HISTORICAL, AND PRACTICAL UNDERSTANDING OF PAROLE

Both policymakers and jurists considering parole should take a more holistic and expansive look. For over a century, parole has played a vital functional as well as structural role in our immigration system, as I have tried to lay out above. For over seven decades, successive Administrations have invoked statutory parole authority expansively, including in programmatic uses. And for three decades, they have done so under the present-day substantive language of 8 U.S.C. § 1182(d)(5).

The current Justices, when discussing parole—in both recognition and critique—seem at times to miss the forest for the trees. When next presented with an opportunity to interpret parole power, they should do so with an understanding of its historical and contextual role. Parole power, as I describe in the Parts above, fulfills essential functions and needs in our immigration system

342. *See* Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1925 (2020) (Thomas, J., dissenting) ("[DACA] would also conflict with the major questions doctrine.").

343. *See supra* Subpart.IV.A.

344. Moreover, given the recent demise of *Chevron* deference in *Loper Bright v. Raimondo*, federal courts may now turn a more skeptical eye to executive agency interpretations of § 1182(d)(5), including the constrained version espoused by the current Administration. *See* 144 S. Ct. 2244, 2273 (2024) ("*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires."). Although the government has argued that immigration statutes require *Chevron*-like deference by federal courts due to a grant of interpretive authority to the Attorney General, Professor Nancy Morawetz has persuasively argued that Congress intended for that statute to resolve *intra*-executive branch disputes over interpretive authority—specifically between the Departments of Justice and State—rather than *inter*-branch allocations between Congress, the courts, and the executive. Nancy Morawetz, *Immigration Law After* Loper Bright, 99 N.Y.U. L. REV. ONLINE 282, 282 (2024); 8 U.S.C. § 1103(a) (charging Secretary of Homeland Security with enforcement and administration of immigration and naturalization laws with the proviso "[t]hat[] determination and ruling by the Attorney General with respect to all questions of law shall be controlling").

and beyond. Far from being merely a way for Administrations to allow noncitizens to "circumvent" the law, it plays a vital role in the overall fairness and responsiveness of our immigration system and helps its different parts fit together.

As scholars have observed, parole combines two key features of executive authority. First, parole's uses include forms of prosecutorial discretion that operate in a reality of limited resources. Building on the insights of others, including Professors Wadhia and Martin,[345] I have tried to show this broadly as well as granularly. At the border and in detention facilities, parole allows enforcement officers to direct attention and costs elsewhere—to actual threats and greater priorities. In the hands of USCIS, it has opened professional and educational pathways for DACA recipients and others whom the government has already decided merit non-enforcement or likely/possible status, and it has provided protection for people in some of the most compelling humanitarian and moral circumstances. These have included medical treatment, death and terminal illness, family separation, and even school shootings in addition to more "traditional" humanitarian uses.[346]

Second, as scholars of both presidential power and refugee law history have explored, expansive use of parole can significantly advance the President's foreign affairs powers, including in times of hostility and war as well as humanitarian crisis.[347] As described above, Professors Cox, Rodríguez, and Motomura have urged recognition of the central role and global dimensions of presidential power over immigration through use of parole. Both Congress and the courts must view parole in this light, carefully considering how curtailing the power now would hamstring future Presidents in the conduct of essential duties.

Adding to these insights, I have tried to illuminate several of parole's other dimensions in the Parts above. In my tracing of parole's contours, I have found that parole prevents unjust results from bureaucratic or legal errors (for example, parole "fixes"); furthers economic opportunity and investment (Entrepreneurs Parole, DACA Advance Parole); provides a blueprint for programs for a future Congress (Iraqi and Afghan Special Immigrant Visas); advances military objectives (same); addresses the needs of the U.S. territories (CNMI parole); smooths transitions to new laws of Congress (same); and remedies serious past harms and injustices (family separation, wrongful deportation, non-recognition of Filipino WWII Veterans), among other functions.

As I've demonstrated, parole power fulfils essential functions and needs in our immigration system and beyond. Far from being merely a way for administrations to allow noncitizens to "circumvent" the law, it plays a vital role in the overall fairness and responsiveness of our immigration system and helps

345. *See supra* Part.I (discussing scholarship on prosecutorial discretion and parole).

346. *See generally supra* Part.III (discussing parole's many functions and uses).

347. *See supra* Part.I (discussing scholarship on refugee policy, foreign affairs, and parole).

its different parts fit together. Structurally, parole has improved coordination between DHS and at least six agencies—including the Departments of Defense, State, Interior, Health and Human Services, and Justice, and the Veterans Affairs Bureau—while also at times operationalizing the federal courts' equitable powers and addressing Congress's own blind spots.

Over the past seven decades, parole has achieved all of this through the flexibility of permissive statutory language: broad substantive standards that Congress considered, but declined, to amend in its most recent immigration law of January 2025.[348] By escaping the confines of entry and admission and the bright lines of here/not here, parole—through the design of Congress—avoids visa caps, statutory bars, and other sticking points that affect nearly every other pathway into territory. The terms "urgent humanitarian reasons" and "significant public benefit," meanwhile, have advanced the aims of law enforcement, criminal and civil justice, defense, and diplomacy, as well as the values of compassion, fairness, national honor and duty, and more.

VI. PROTECTING PAROLE RECIPIENTS

The statutory parole provision confers significant discretion to presidential administrations pursuing varied policy priorities, but this authority is not unbounded. While new administrations may create as well as end parole programs, they must do so within the confines of administrative law principles and with sound rationales while respecting the rights of parole recipients. In a new landscape of hostility against parole, courts and policymakers must recognize that immigration laws and legal doctrines protect recipients against punitive and unwarranted action. In this Part, I consider these laws and principles, particularly for individuals whose parole grants influence their decision to come to or remain in the United States.

First, arrival to the United States via parole is *lawful*, accompanied by robust statutory protections despite certain constitutional deficits. Even after a period of parole expires or a parole grant is rescinded, the legality of that initial arrival continues to have operative effect. Second, decisions to end parole programs must be guided by sound legal conclusions and policy rationales. They should not be driven by discriminatory purposes and must consider the significant reliance interests of noncitizens who came to the United States via avenues presented to them as lawful. Lastly, many parole recipients have other pathways to durable status in the United States. They must be provided an opportunity to avail themselves of any forms of relief that Congress has provided to them.

348. *See supra* Subpart.IV.C.

A. PAROLE'S LEGAL EFFECTS: SELECT CONSTITUTIONAL DEFICITS AND ROBUST STATUTORY PROTECTIONS

As explained above, coming to the United States via parole does not constitute a technical entry for immigration law purposes. This arrival without entry offers both protections and disadvantages under current statutory and constitutional frameworks.

First, regarding disadvantages: Legal doctrines have limited the constitutional due process rights of parole recipients with respect to certain immigration processes and decisions. As I have explored these extensively in other works, I only briefly address them here. In particular, the current Court has interpreted a legal doctrine known as entry fiction to narrow or limit the constitutional due process rights of noncitizens who have not effected a technical immigration law entry. Under this doctrine—a territorial fiction that I and others have critiqued—noncitizens are considered "not here" for limited due process purposes absent a formal admission or an unauthorized border crossing.[349] In *DHS v. Thuraissigiam*, the Court in 2020 deepened and extended this doctrine.[350] It determined that individuals who have not formally entered—as well as those who entered very recently and very close to the border (within one day of apprehension and 25 yards of the border, as in the case of Mr. Thuraissigiam)—lacked procedural due process rights with regard to expedited removal decisions.

These doctrines limit Fifth Amendment procedural due process rights for certain parole processes and decisions themselves, particularly for those seeking allowance into the country from without.[351] Other core Fifth Amendment rights, however, such as substantive due process protections for bodily integrity, physical safety, and family unity, as impacted by detention or deportation, remain protected.

Moreover, under our immigration statutes and frameworks, arrival via parole preserves critical process protections for recipients. The statutory protections here are arguably more impactful and important than procedural due process rights under the Constitution. This is because parole recipients should receive process via the normal immigration courts, where Congress has laid out procedures that may well exceed the constitutional floor that federal courts are willing to enforce.

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349. *See generally* Eunice Lee, *The End of Entry Fiction*, 99 N.C. L. REV. 565 (2021); Geoffrey Heeren, *The Status of Nonstatus*, 64 AM. U. L. REV. 1115 (2015); Timothy Zick, *Constitutional Displacement*, 86 WASH. U. L. REV. 515 (2009).

350. 140 S. Ct. 1959, 1963 (2020).

351. Here, I draw a critical distinction between parole-as-permission and parole release from detention. As I and others have argued elsewhere, detention is *different*, as it strikes are the core of what due process protects, namely physical liberty. *See generally* Eunice Lee, *The End of Entry Fiction*, 99 N.C. L. REV. 565 (2021). This Subpart thus discusses parole protections outside of the detention and "advance parole" context—the prevailing use of parole as an allowance or permission into the country.

As an initial matter, our immigration laws consider arrival via parole to be *lawful*. Although such arrival subjects recipients to certain constitutional legal fictions around entry, statutory protections for parole arrivals are robust and continue to have legal effects even after the termination or expiration of a parole grant. Through lawful arrival, parole recipients enjoy significant advantages in eligibility for immigration benefits, including the ability to adjust to permanent resident (green card) status through family-based channels for those with qualifying relationships.[352] Parole arrivals do not trigger bars based on entry without inspection (as they are, of course, inspected), and parole grants can also preserve eligibility for asylum.[353] Congress also treats parole arrivals favorably with regard to unlawful presence bars. Unlawful presence does not accrue during "active" parole, and Congress has specifically provided for tolling of unlawful presence for parole recipients who apply to change or extend status while under parole, even if parole subsequently expires.[354] Moreover, as explained above, individuals do not trigger the bars unless they depart from the United States.

Most importantly, arrival via parole should prevent the federal government from using expedited removal against parole recipients. As described in Part III(F) above, the differences between expedited removal and regular removal proceedings are stark. The latter provides procedural protections in a normal immigration court setting, allowing individuals time to find an attorney and apply for relief. Immigration judges must allow individuals to submit evidence, examine and cross-examine witnesses, and apply for available forms of relief.[355] The immigration judge—a part of DOJ and not a DHS officer—makes determinations on both removability and relief.

Expedited removal, on the other hand, authorizes removal of noncitizens based on a DHS enforcement officer's signature alone (albeit with certain additional process for asylum seekers). This curtailed administrative proceeding allows swift deportations while bypassing the normal immigration courts. The process, not surprisingly, is rife with well-documented due process deficiencies and errors.[356]

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352. 8 U.S.C. § 1255(a) ("The status of an alien who was inspected and admitted or paroled into the United States . . . may be adjusted by the Attorney General . . . to that of an alien lawfully admitted for permanent residence.").

353. *See* 8 U.S.C. § 1182(a)(6)(A)(i) ("An alien present in the United States without being admitted or paroled . . . is inadmissible."). Regarding asylum eligibility, most applicants must apply within one year of arrival to the United States, but the statutory and regulatory framework together recognize an exception for parole recipients who apply after one year. *See* 8 U.S.C. § 1158(a)(2)(B) (one-year deadline); *id*. § 1158(a)(2)(D) (changed or extraordinary circumstances exceptions); 8 C.F.R. § 208.4(a)(5)(iv) (specifying that extraordinary circumstances include that the applicant "was given parole[] until a reasonable period before the filing of the asylum application").

354. *See* 8 U.S.C. § 1182(a)(9)(B)(ii), (iv).

355. *See generally* 8 U.S.C. § 1229a (granting an individual the right to counsel, examine evidence, cross examine witnesses, and maintain a record).

356. *See, e.g.*, HILLEL R. SMITH, CONG. RSCH. SERV., IF11357, EXPEDITED REMOVAL OF ALIENS/AN INTRODUCTION (2022); U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, BARRIERS TO PROTECTION: THE

But the relevant statute provides that expedited removal applies only to a noncitizen "*who* is arriving" or "*who has not been admitted or paroled into* the United States."[357] Notably, the verb tense in the latter phrase refers to absence of past parole—one who "*has not been* admitted or paroled"—rather than ongoing and current parole, for example, "one who has parole." The verb tense in the former phrase—"is arriving"—suggests someone actively in the process of arriving at a port of entry, not someone who has arrived at a port of entry in the past.

The government has convinced some courts (discussed below)[358] that there is some plausible argument that terminating an individual's parole status may render them newly eligible for expedited removal. But in my view, this argument stretches the text. The use of the present perfect tense, "has not been admitted or paroled," makes noncitizens' *past arrival* via parole—not the maintenance of present parole permission–key in making them ineligible for expedited removal.[359]

Notwithstanding the limits of statutory language, both the first and second Trump Administrations sought to drastically expand expedited removal.[360] In January 2025, the Administration broadened expedited removal to include individuals who cannot prove presence in the United States of two years or more.[361] Previously, expedited removal applied only to noncitizens apprehended within 100 miles of a border and within fourteen days of arrival in the United States.[362]

TREATMENT OF ASYLUM SEEKERS IN EXPEDITED REMOVAL 11 (2016), http://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf.

357. 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II) (emphasis added); *see also* § 1225(b)(1) ("Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.").

358. *See infra* Subpart VI.B.

359. The limitation against using expedited removal for individuals who have been paroled appears not only in the operative language, but also the header to expedited removal inspection procedures section. *See* 8 U.S.C. § 1225(b)(1) ("Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.") (header); *id.* § 1225(b)(1)(A)(iii)(II) (emphasis added) ("An alien described in this clause is an alien . . . who has not been admitted or paroled into the United States . . . .").

360. *See, e.g.*, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (Trump II expansion of expedited removal); Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409, 35414 (July 23, 2019) (Trump I expansion of expedited removal). Advocates challenged the expansion during Trump's first term and won a preliminary injunction against its implementation. *See* Make the Rd. N.Y. v. McAleenan, 405 F. Supp. 3d 1, 11 (D.D.C. 2019). Although the D.C. Circuit later reversed the preliminary injunction, it did so shortly before the Biden Administration changed course and rescinded expedited removal expansion. *See* Make the Rd. N.Y. v. Wolf, 962 F.3d 612, 618 (D.C. Cir. 2020); Exec. Order No. 14,010, 86 Fed. Reg. 8267, 8270–71 (Feb. 2, 2021).

361. Designating Aliens for Expedited Removal, 90 Fed. Reg. at 8139 (authorizing expedited removal without geographic restrictions throughout the United States for noncitizens "who have been continuously present in the United States for less than two years" and meet other expedited removal criteria).

362. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877, 48877 (Aug. 11, 2004) ("This notice authorizes the Department of Homeland Security to place in expedited removal proceedings . . . aliens . . . who are encountered by an immigration officer within 100 air miles of the U.S. international land border . . . for the fourteen-day (14 day) period immediately prior to the day of encounter.").

On January 23, 2025, Acting Secretary Huffman issued a memorandum that directed the following enforcement actions affecting individuals granted parole:

> (1) For any alien DHS is aware of who is amenable to expedited removal but to whom expedited removal has not been applied:
>
> > (a) Take all steps necessary to review the alien's case and consider, in exercising your enforcement discretion, whether to apply expedited removal. *This may include steps to terminate any ongoing removal proceeding and/or any active parole status*.
>
> (2) For any alien DHS is aware of who does not meet the conditions described in (1) but has been granted parole under a policy that may be paused, modified, or terminated immediately under the January 20 memorandum:
>
> > (a) Take all steps necessary to review the alien's case and consider, in exercising your enforcement discretion, whether any such alien should be placed in removal proceedings; and
> >
> > (b) Review the alien's parole status to determine, in exercising your enforcement discretion, whether parole remains appropriate in light of any changed legal or factual circumstances.[363]

The direction in paragraph (1) above indicates that DHS considers termination of active parole status as a precursor to expedited removal.

Subsequently, on February 18, 2025, ICE issued an internal directive via email that stated "paroled arriving aliens" could be subjected to expedited removal with "no time limit".[364] Finally, DHS confirmed its intention to subject parole recipients to expedited removal in its March 25, 2025, Federal Register notice terminating the CHNV parole program. That notice terminated the program as a whole immediately while also terminating individual parole grants on April 24, 2025. Among other reasons, DHS stressed that swift termination of CHNV parole would facilitate the use of expedited removal against parole recipients.[365] After observing that expedited removal can only be used against people present in the United States for two years or more, DHS justified its decision not to permit a longer wind-down process for impacted individuals:

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363. Memorandum from Benjamine C. Huffman, Acting Sec'y, U.S. Dep't of Homeland Sec., to Caleb Vitello, Acting Dir., U.S. Immigr. & Customs Enf't, Pete R. Flores, Senior Off. Performing the Duties of the Comm'r, U.S. Customs & Border Prot., Jennifer B. Higgins, Acting Dir., U.S. Citizenship & Immigr. Serv's, on Guidance Regarding How to Exercise Enforcement Discretion (Jan. 23, 2025) (emphasis added).

364 E-mail from U.S. Immigr. & Customs Enf't [sender, recipient, subject, and date not provided] (on file with Reuters), https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf ("There is no time limit on the ability to process such aliens for ER."); *see also* Ted Hesson & Kristina Cooke, *Trump Weighs Revoking Legal Status of Ukrainians as U.S. Steps Up Deportations*, REUTERS (Mar. 6, 2025, at 21:25 ET), https://www.reuters.com/world/us/trump-plans-revoke-legal-status-ukrainians-who-fled-us-sources-say-2025-03-06 (reporting on email); Coal. for Humane Immigrant Rts. v. Noem, No. 25-CV-872, slip op. at 21 n.13 (D.D.C. Aug. 1, 2025) [hereinafter CHIRLA v. Noem] ("Defendants do not dispute the authenticity of this document, and their argument proceeds on the basis that it is authentic.").

365. Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13611–12 (Mar. 25, 2025).

"DHS has a strong interest in preserving the ability to initiate expedited removal proceedings to the maximum extent possible for the appropriate CHNV population to prevent further straining of the over-burdened immigration court system."[366]

Throughout summer 2025, DHS began to ramp up enforcement actions to meet the Administration's stated goal of 3,000 deportations a day.[367] ICE agents conducted large-scale sweeps on streets, workplaces, and immigration courthouses. It arrested individuals showing up for their hearings in compliance with immigration proceedings and detained people at their formerly routine ICE check-ins.[368] Parole recipients were unfortunately among the many noncitizens swept up in these mass enforcement actions, including in immigration court, and subjected to expedited removal.[369]

Plaintiffs including the Coalition for Humane Immigrant Rights (CHIRLA) and impacted individuals brought suit against the new expedited removal policies in D.C. federal district court.[370] They challenged as unlawful the use of expedited removal for parole recipients—including recipients with current parole as well as those who had their parole terminated. On August 1, 2025, D.C. Federal District Court Judge Jia M. Cobb entered a stay against new expedited removal policies and prohibited their use against "individuals who have been, at any time, paroled into the United States at a point of entry."[371]

After carefully parsing the statute, Judge Cobb concluded that the expedited removal statute could not apply to parole recipients. As she properly noted, Congress limited expedited removal to individuals who lack proper entry documents or who falsify or misrepresent their applications for admission.[372] Among those who lack entry document or who have falsified or misrepresented information, Congress further limited the statute to two groups of noncitizens: (1) those "arriving in the United States" and (2) those who "ha[ve] not been

366. *Id.* at 13620.

367. Brittany Gibson & Stef W. Kight, *Scoop: Stephen Miller, Noem Tell ICE to Supercharge Immigrant Arrests*, AXIOS (May 28, 2025), https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller.

368. Suzanne Gamboa, *Immigration Arrests in Courthouses Have Become the New Deportation Tool, Stripping Migrants of a Legal Process*, NBC NEWS (May 30, 2025, at 12:06 PT), https://www.nbcnews.com/news/latino/immigrations-arrests-ice-deportations-courthouse-legalprocess-ice-rcna209671.

369. *See* Plaintiffs' Memorandum of Law in Support of Motion For a Stay at 3–4, CHIRLA v. Noem, 25-CV-872 (D.D.C. June 11, 2025), Dkt. No. 22-1 (citing numerous attorney declarations describing parole recipients swept up in the "nationwide blitz" of arrests, including at immigration courthouses, and subjected to expedited removal processes).

370. Coal. for Humane Immigrant Rts. v. Noem, 805 F.Supp.3d 48 (D.D.C. Aug. 1, 2025) [hereinafter CHIRLA v. Noem]. The case is now CHIRLA v. Mullin, following confirmation of Markwayne Mullin as DHS Secretary. *See* CHIRLA v. Mullin, No. 25-5289 (D.C. Cir.).

371. *Id.* at 105.

372. *Id.* at 61.

admitted or paroled into the United States" and cannot affirmatively show that they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility."[373] Congress chose not to authorize expedited removal for any other groups.

Judge Cobb rejected the government's contention that DHS could permissibly subject parole recipients to expedited removal as "arriving aliens." In DHS's view, parole recipients remain "arriving aliens" for purposes of expedited removal both when their parole status is active and after parole status is terminated.[374] The court, however, determined that the plain text, structure, and history of the provision precluded that interpretation.

Judge Cobb additionally rejected the government's position that parole recipients could be subject to expedited removal after their parole is terminated if they have been present in the United States for less than two years. As she noted, this provision of the statute allows the DHS secretary to designate only a noncitizen:

> . . . *who has not been admitted or paroled* into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.[375]

She concluded that individuals granted parole after inspection at a port of entry—even after their parole expires or terminates—simply do not fall into the category of noncitizens "who have not been admitted or paroled."[376] Judge Cobb further determined that the structure, text, and regulatory and legislative history of the applicable statute failed to support the government's contrary interpretation. (As discussed below, the First Circuit in a separate case accepted the government's arguments as reasonable in considering preliminary injunction factors, but the appellate court's analysis was far less detailed and, in my view, less persuasive.)[377]

373. *See* 8 U.S.C. § 1225(b)(1)(A)(i)–(iii); *see also CHIRLA*, at 61 (quoting the statute).
374. *CHIRLA*, at 90.
375. 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (emphasis added).
376. *CHIRLA*, at 82.
377. *Id.* at 81–94.

After determining that the government's new policies were likely ultra vires, Judge Cobb addressed Plaintiffs' additional contention that the policies were arbitrary and capricious due to lack of reasoned explanation.[378] The court agreed, noting inherent contradictions between the government's January, February, and March 2025 policy statements as well as large gaps in overall reasoning and justification:

> Taking the three Challenged Actions together, DHS's policy appears to be both that it must first terminate a noncitizen's parole before subjecting them to expedited removal, *see* January 23 Huffman Memorandum at 2, and that it can subject even active parolees to expedited removal, *see* February 18 ICE Directive at 1. The agency believes both that it must (and should) subject former parolees to expedited removal within two years of the beginning of their continuous presence, *see* March 25 CHNV Termination Notice at 13619, and that it is under "no time limit," February 18 ICE Directive at 1. Call it Schrödinger's legal justification. But unlike a quantum particle, an agency's legal justification cannot be two opposing things at once. Rather "unacknowledged and unexplained inconsistency," including of the agency's legal conclusions, "is the hallmark of arbitrary and capricious decision-making."[379]

Lastly, the decision found that irreparable harms and balancing of the equities and public interest strongly favored issuance of a stay of the challenged policies. The court noted grave harms that individuals could face from erroneous removals, potential torture or persecution in their home countries or third countries, and harms of detention and separation of families.[380] In balancing equities and considering the public interest, it noted that the governmental and public interests in removing noncitizens could be adequately served by the continuing availability of normal immigration court removal proceedings.

Judge Cobb's August 1, 2025 Order granted a nationwide stay of the new expedited removal policies spelled out in DHS's January 23 Memorandum, February 18 Directive, and March 25 Federal Register notice.[381] As this article was in final press stages, the D.C. Circuit vacated Judge Cobb's order on standing and redressability grounds, without deciding the underlying merits

378. *Id.* at 94–99.
379. *Id.* at 97–98 (quoting Bauer v. DeVos, 325 F. Supp. 3d 74, 109 (D.D.C. 2018)).
380. *Id.* at 99–101.
381. *Id.* at 105.

issues.[382] Both lower court litigation in that case as well as other challenges to expedited removal expansion continues.[383]

In separate litigation, other plaintiffs have challenged the broad terminations of country-based parole. I describe these suits, and their legal implications, below.

B. CONSTRAINTS ON PAROLE TERMINATIONS

In explaining the termination or pause of broad parole programs, the second Trump Administration has labeled the Biden-era programs unlawful and branded recipients "illegal aliens."[384] These declarations contrast with the broad permissibility of parole as well the detailed reasons given by the Biden Administration for why those programs met the criteria of "significant public benefit" or "urgent humanitarian reason."

Although the President has broad discretion in designing parole programs, the programs themselves, as well as their termination, must be reasoned. In *Department of Homeland Security v. Regents of the University of California*, the Supreme Court confirmed that the Administrative Procedures Act constrains programmatic immigration decisions.[385] In that case, plaintiffs challenged the recission of DACA by the first Trump Administration. Justice Roberts, writing

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382. *Coal. for Humane Immigrant Rts. v. Mullin*, No. 25-5289, 2026 WL 2317908, at *6 (D.C. Cir. Aug. 11, 2026). The D.C. Circuit did not reach the merits or decide the scope of expedited removal, but its analysis on redressability noted the government's view that individuals paroled may be subject to expedited removal as "arriving aliens" under 8 C.F.R. § 1.2. That regulation defines the term as follows:

> Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.

Order, Coal. for Humane Immigrant Rts. v. Noem, No. 25-5289 (D.C. Cir. Sep. 12, 2025). The regulatory definition, however, poses tensions with the statute. As explained in Part VI(A) above, the expedited removal statute limits application to an individual who "*is* arriving" or who "*has not been* admitted or paroled." 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (emphasis added). The view that previously paroled individuals are forever subject to expedited removal as "arriving aliens" does not reflect the verb tenses used in the statute, and would also seem to render § 1225(b)(1)(A)(iii)'s statutory language on an individual who "has not been . . . paroled" and its two year temporal limit incongruous. C*f* Mullin v. Al Otro Lado, 146 S. Ct. 2079 (2026) (holding that a noncitizen "arrives in" the United States for purposes of asylum processing statutes only after crossing into the United States); *id*. at 2093 ("The expedited removal process created by IIRIRA begins when an alien 'arrives in the United States' and is inspected".). The Court in *Mullin v. Al Otro Lado* upheld DHS's "metering policy"—which prevented asylum seekers in Mexico from approaching a port of entry to apply for asylum—after interpreting the statutory phrase "arrives in" narrowly and in accordance with plain and ordinary meaning. *Id*. The CHIRLA litigation remains ongoing before the district court, with plaintiffs challenging the government's attempt to apply expedited removal to parole recipients under each of the government's theories of statutory applicability.

383. *See, e.g.*, Make the Rd. N.Y. v. Noem, No. 25-00190 (JMC), 2025 WL 2494908 (D.D.C. Aug. 29, 2025).

384. Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8443 (Jan. 29, 2025) ("Millions of illegal aliens crossed our borders or were permitted to fly directly into the United States on commercial flights and allowed to settle in American communities, in violation of longstanding Federal laws.").

385. 140 S. Ct. 1891, 1905 (2020).

for the majority, held that then-Acting DHS Secretary Elaine Duke's recission of DACA was arbitrary and capricious in violation the APA, and in particular its requirement that agencies engage in "reasoned decisionmaking" per *State Farm*.[386] The Court identified two fatal flaws, both relevant when considering the future of parole programs. First, the Court determined that the Acting Secretary improperly relied on the legal conclusion of then-Attorney General Jeff Sessions that DACA's programmatic benefits—including work authorization—were unlawful. The Court held that resting on Sessions' legal conclusion on DACA benefits was insufficient to underpin termination of the entire program, because that conclusion failed to address or even consider the main feature of DACA: forbearance from deportation.

Second, and also critically, the Court determined the former Acting Secretary's termination failed to consider the reliance interests of hundreds of thousands of DACA recipients, including many who had been enrolled in the program for years. These interests were significant, as the Court explained:

> [S]ince 2012, DACA recipients have "enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children, all in reliance" on the DACA program. The consequences of the rescission, respondents emphasize, would "radiate outward" to DACA recipients' families, including their 200,000 U.S.-citizen children, to the schools where DACA recipients study and teach, and to the employers who have invested time and money in training them.[387]

The majority acknowledged that these interests need not be dispositive, "[b]ut because DHS was 'not writing on a blank slate,' it *was* required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns."[388]

Finally, the Court held that plaintiff's equal protection claim failed to meet the requisite pleading standards in alleging racial animus. In so doing, however, it did not reach the merits of the equal protection claim or foreclose the possibility of future equal protection challenges based on a different set of allegations.

The *Regents* decision provides crucial guideposts for parole terminations given the interests of recipients. Although terminations are within the discretion of the executive, they must nevertheless be well-reasoned. This precludes reliance on conclusory or incorrect claims of illegality. Terminations must also consider the reliance interests of recipients, many of whom upended their lives to come to the United States via pathways presented to them as lawful. Finally, terminations must not be based on discriminatory purposes. Although *Regents*

386. *Id.* at 1905 ("[The APA] requires agencies to engage in 'reasoned decisionmaking,' . . . and directs that agency actions be 'set aside' if they are 'arbitrary' or 'capricious.'") (first quoting Michigan v. EPA, 576 U.S. 743, 750 (2015); and then quoting 5 U.S.C. § 706(2)(A)).

387. *Id.* at 1914 (quoting Brief for Respondent at 4. *Regents*, 140 S. Ct. 1891 (No. 18–587)).

388. *Id.* at 1915 (quoting *id.* at 1934 n.14 (Thomas, J., concurring in part and dissenting in part)) (emphasis in original).

closed to door to the equal protection claim before it on pleading sufficiency grounds, it decidedly left open the possibility of future equal protection claims challenging immigration program terminations with different allegations and a distinct record.

Using *Regents* as a blueprint, in *S.A. v. Trump*, plaintiffs successfully sued to prevent termination of the Central American Minors program by the first Trump Administration for individuals who had received conditional approvals.[389] In a 2018 decision, the court found that DHS had acted arbitrarily and capriciously when it "did not adequately take into account and address the participants' serious reliance interest" and it "mass-rescinded the conditional parole program approvals of CAM Parole Program participants."[390] Of note, the first Trump Administration chose not to rescind parole for individuals already in the United States.[391] But the court found that this limitation was not enough to defeat the full scope of plaintiffs' reliance-interest-based arguments. Rather, the court determined that individuals granted conditional approvals had already paid fees, undergone medical examinations, and made travel arrangements to come to the United States—and that the government acted arbitrarily and capriciously in mass-rescinding those approvals without considering such reliance. The court thus enjoined the first Trump Administration's termination of the Central American Minors parole program termination with regard to conditionally approved beneficiaries.[392]

CHNV Parole, Family Reunification Parole, and CBP One Parole

The second Trump Administration has pursued increasingly aggressive agency action against parole recipients. As described above, President Trump targeted parole programs via executive action in his first week in office. His Administration immediately followed with broad holds and announced terminations of parole programs in January 2025. It also announced actions to strip existing parole recipients of work authorization. Mirroring arguments in *Regents* and *S.A.*, litigants achieved success in challenging these actions in federal district courts—although Court of Appeals decisions have reversed some of their gains.

In its March Federal Register termination notice, DHS explained that the CHNV program ran counter to the Trump Administration's America First and border security policies.[393] It cited "domestic effects of illegal immigration" as

389. 363 F. Supp. 3d 1048, 1096 (N.D. Cal. 2018); *see also* Shah, *supra* note 43, at 1257–58 ("[T]he district court's final decision ordered the State Department to process the visas reserved for members of the class of plaintiffs.").

390. *S.A.*, 363 F. Supp. 3d at 1090.

391. *Id.* ("The government next argues that it took reliance interests into account because it did not rescind parole for beneficiaries who had arrived in the United States.").

392. *See id.*

393. Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13611 (Mar. 25, 2025).

well foreign policy rationales.[394] Its foreign policy justifications, however, largely centered on domestic immigration enforcement itself. As DHS has explained, "the current Administration has focused its foreign policy attention on other measures to deter and prevent the entry of illegal aliens into the United States and obtain complete operational control of our borders."[395] The Notice also stated that the programs no longer served urgent humanitarian reasons, without specifically addressing any of the detailed country-specific humanitarian concerns previously provided for the program's creation.[396]

The notice recognized potential reliance interests, such as the fact that: "[p]arolees will have departed their native country; traveled to the United States; obtained housing, employment authorization, and means of transportation; and perhaps commenced the process of building connections to the community where they reside."[397] But these, the Department concluded, "do not outweigh the U.S. government's strong interest in promptly removing parolees when the basis for the underlying program no longer exists."[398]

In Spring 2025, immigrants' rights groups representing Cuban, Haitian, Venezuelan, and Nicaraguan nationals brought a class action lawsuit, *Svitlana Doe v. Noem*, challenging the broad and immediate termination of CHNV parole.[399] Plaintiffs contended that the early immediate termination of CHNV was arbitrary and capricious agency action, as well as a violation of the parole statute itself. Judge Talwani of the District of Massachusetts found Plaintiffs likely to succeed on the merits in both arguments. She certified a class comprised of CHNV parole recipients in the United States and issued a preliminary injunction enjoining categorical early termination of parole for class members.[400]

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394. *Id.* at 13612, 13614–16.

395. *Id.* at 13616.

396. *Id.* at 13612; *compare id.* at 13620 ("[T]he Secretary has concluded that neither urgent humanitarian reasons nor significant public benefit warrants the continued presence of aliens paroled under the CHNV programs and the purposes of such parole therefore have been served."), *with* Implementation of a Parole Process for Venezuelans, 87 Fed. Reg. 63507, 63515 (Oct. 19, 2022) ("[T]emporary parole . . . will address the urgent humanitarian reasons faced by so many Venezuelans subject to the repressive regime of Nicolás Maduro.") *and* Implementation of a Parole Process for Cubans, 88 Fed. Reg. 1266, 1275 (Jan. 9, 2023) ("[T]emporary parole . . . will address the urgent humanitarian needs of Cuban nationals who have fled crippling economic conditions and social unrest in Cuba.") *and* Implementation of a Parole Process for Haitians, 88 Fed. Reg. 1243, 1251 (Jan. 9, 2023) ("[T]emporary parole . . . will address . . . escalating gang violence, the aftermaths of an earthquake, and a cholera outbreak."); Implementation of a Parole Process for Nicaraguans, 88 Fed. Reg. 1255, 1262 (Jan. 9, 2023) ("The Government of Nicaragua continues to repress and punish all forms of dissent and public criticism of the regime.").

397. Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13619 (Mar. 25, 2025).

398. *Id.*

399. Doe v. Noem, 778 F. Supp. 3d 311, 319 (D. Mass. 2025).

400. Specifically, the court recognized a class of:

> All individuals who have received a grant of parole that is subject to the Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (Mar. 25, 2025), rescinding individual grants of parole on a categorical and *en masse* basis, except: (1) those individuals who voluntarily left, and remain outside, the United States prior to the issuance of that

Specifically, the district court determined that the categorical termination was likely arbitrary and capricious due to three errors. First, DHS relied on a legally erroneous view that it could subject class members to expedited removal upon termination of parole. But, as the district court (correctly) determined, the expedited removal statute does not apply to individuals who arrived and were permitted into the United States via parole.[401] Second, DHS did not adequately explain why the program no longer served urgent humanitarian reasons, in particular by failing to address the detailed country-specific humanitarian needs of class members identified by DHS in the creation of the CHNV program.[402] Third, the court found that the Department had likely failed to adequately consider the weighty reliance interests of parole recipients.[403]

The district court also found Plaintiffs likely to succeed in their contention that categorical termination of parole violated the parole statute itself by failing to conform to the case-by-case decision requirement. The court rejected the government's contention that the statutory requirement of a case-by-case decision applied only to parole grants or approvals. It reasoned that "Section 1182(d)(5)(A) refers in singular, rather than plural, to grants of parole . . . . [and] seems to contemplate termination of parole on an individual, rather than categorical, basis."[404]

Judge Talwani's April 15, 2025 order enjoined the government from categorically terminating the parole grants of class members and prohibited DHS from sending termination notices to class members through their USCIS accounts.[405] The government swiftly sought an emergency stay from the First Circuit, which denied the stay after determining the government had neither made a "strong showing" on the merits nor "shown that the balance of harms and the public interest weigh so heavily in [the DHS Secretary's] favor as to warrant a stay."[406] In a one paragraph order that failed to provide any reasoning, the Supreme Court granted the government's emergency application for a stay.[407] Justice Jackson, joined by Justice Sotomayor, issued a strongly worded

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Notice; and (2) those individuals who choose to opt out of the class in order to seek relief in separate litigation.

Id. at 334–35.

401. *See id.* at 336–37 ("Plaintiffs are likely to prevail on this argument because they are not subject to expedited removal even if they have been here less than two years.").

402. *See id.* at 338 ("The [Federal Register Notice] also gave no rationale for its conclusion that such humanitarian concerns no longer justified the existing parole programs and offered no reasons for categorically revoking parole despite the humanitarian concerns previously articulated by DHS.").

403. *See id.* ("Given the significant reliance interests at stake—which the FRN recognized as aliens departing their native countries, incurring expenses traveling to the United States, obtaining housing and means of transport, and building connections in their communities—DHS was required to give a justification for terminating existing grants of parole within 30 days instead of on the original termination dates.").

404. *Id.* at 339.

405. *Id.* at 341–32.

406. Doe v. Noem, No. 25-CV-1384, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025).

407. Noem v. Doe, 145 S. Ct. 1524, 1524 (2025). Its full decision reads as follows:

dissent criticizing the majority for failing in its duty to apply and consider the core stay factors. In contravention of those factors, Justice Jackson contended, the Court "require[d] next to nothing from the Government with respect to irreparable harm" and "undervalue[d] the devastating consequences of allowing the Government to precipitously upend the lives and livelihoods of nearly half a million noncitizens while their legal claims are pending."[408]

The government subsequently resumed sending termination notices to class members, revoking work authorization and encouraging them to "self-deport."[409] In late 2025, the First Circuit reached a decision on the pending appeal of the preliminary injunction against the termination of CHNV parole and vacated the district court decision.[410] The First Circuit found, contrary to the district court's conclusion, that Plaintiffs had *not* made a "strong showing" on likelihood of success on the merits. In particular, the First Circuit disagreed with the lower courts' analysis limiting categorical parole terminations. In addition, the court of appeals determined that the agency's explanations for the change in policy were likely adequate, not arbitrary and capricious, and that the statute allowed for broad and non-individualized terminations.[411] Notably, the First Circuit also determined that both Plaintiffs and the governments had reasonable arguments regarding use of expedited removal for individuals after terminating their parole, such that the district court's conclusion that the government's interpretation rested on "clear legal error" was incorrect.[412] The circuit court accordingly vacated the preliminary order.

In January 2026, in the same *Svitlana Doe v. Noem* case, plaintiffs succeeded in securing separate preliminary relief enjoining termination of the Family Reunification Parole (FRP) program.[413] In seeking relief, plaintiffs contended, and the district court agreed, that the Family Reunification Parole Program was materially different from the CHNV parole and that the agency failed to adequately consider reliance interests of FRP parole recipients. FRP recipients, in particular, all have approved family petitions (I-130s) that qualify them for eventual lawful permanent resident status based on family

> The application for stay presented to Justice JACKSON and by her referred to the Court is granted. The April 15, 2025 order entered by the United States District Court for the District of Massachusetts, case No. 1:25–cv–10495, is stayed pending the disposition of the appeal in the United States Court of Appeals for the First Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

Id.

408. Noem v. Doe, 145 S. Ct. 1524, 1525 (2025) (Jackson, J., dissenting).

409. Press Release, U.S. Dep't of Homeland Sec., DHS Issues Notices of Termination for the CHNV Parole Program; Encourages Parolees to Self-Deport (June 12, 2025), https://www.dhs.gov/news/2025/06/12/dhs-issues-notices-termination-chnv-parole-program-encourages-parolees-self-deport.

410. Doe v. Noem, 152 F.4th 272 (1st Cir. 2025).

411. *Id*. at 285–87.

412. *Id.* at 288 (1st Cir. 2025) ("Both readings are plausible.").

413. Svitlana Doe v. Noem, 817 F. Supp. 3d 27, 46 (D. Mass. 2026).

relationships.[414] Although approved I-130 beneficiaries are subject to wait times due to visa caps and backlogs, the approved I-130 petition signals that these beneficiaries will ultimately be granted an immigrant visa, or green card, based on their family relationship once wait times conclude, as long as no bars are triggered in the meantime.[415] The FRP program allows these beneficiaries to come to the United States while waiting for the backlog to clear after their I-130 is approved. Judge Talwani enjoined termination after determining that the government failed to provide adequate reasons for termination. She explained that the agency gave similar reasons for FRP termination as for CHNV termination, but failed to consider the entirely different structure of the FRP program –which is centered around facilitating established pathways to permanent residence created by Congress – from the CHNV program.[416]

Finally, in March 2026 in a separate case, *Sileiri Doe v. Mullin*, plaintiffs achieved a win setting aside mass termination of parole for recipients who had made port-of-entry appointments via the former CBPOne app.[417] In spring 2026, DHS began sending out boilerplate "Notice of Termination of Parole" emails to such individuals, informing them of termination of parole without explanation and instructing them to leave the United States.[418] Plaintiffs filed a class action lawsuit challenging these mass terminations in the District of Massachusetts. In a March 31, 2026 decision, Judge Burroughs certified a class of parole recipients who had made appointments for port of entry interviews via CBPOne and who received boilerplate termination emails lacking individualized explanation.[419] After concluding that DHS's mass emails failed to meet statutory and regulatory

414. *See id.* at 46–47; Implementation of a Family Reunification Parole Process for Colombians, 88 Fed. Reg. 43,591 (July 10, 2023) (requiring an approved Form I-130); 8 U.S.C. § 1154(b) (providing for approval of relative petition upon determination of a qualifying family relationship).

415. *See* Svitlana Doe v. Noem, 817 F. Supp. 3d at 37.

416. *Id*. at 46–47.

417. Sileiri Doe v. U.S. Dep't of Homeland Sec., No. 25-12245, 2026 WL 880442 (D. Mass. Mar. 31, 2026); *see also* Yael Schacher, *Let Them Stay Update #10*, REFUGEES INT'L (May 18, 2026), https://www.refugeesinternational.org/perspectives-and-commentaries/let-them-stay-update-10.

418. As the district court recounts, a typical termination email sent to CBPOne app users read as follows:

> Notice of Termination of Parole
>
> It is time for you to leave the United States.
>
> You are currently here because the Department of Homeland Security (DHS) paroled you into the United [States] for a limited parole period. Pursuant to 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e), DHS is now exercising its discretion to terminate your parole. Unless it expires sooner, your parole will terminate 7 days from the date of this notice.

Sileiri Doe, 2026 WL 880442, at *2 (citing Dkt No. 1).

419. Specifically, the court certified a class of:

> All individuals who (i) scheduled their appointments for entry to the United States using the CBP One app; (ii) were paroled into the United States between May 16, 2023 and January 19, 2025; (iii) had their parole terminated in April 2025 pursuant to an email substantially similar to the one reproduced at paragraph 38 of the Complaint without any further explanation; and (iv) remain in the United States.

Id. at *5.

provisions requiring *some* reasoning for parole terminations, Judge Burroughs set aside those terminations.[420]

As of this writing, major litigation against parole termination remains ongoing, and the ultimate status of parole programs and their recipients continues to be uncertain. Allowing parole recipients to pursue other pathways for durable relief in the meantime, however, is critical. Many parole recipients do have a clear and direct pathway to an immigrant visa – including all FRP program grantees, by the terms and design of that program. Even for those who do not, Congress has made various forms of relief potentially available. Below, I consider these possible pathways, keeping in mind that, as discussed in Subpart A above, parole recipients should not be subjected to expedited removal and should have full opportunity to explore these forms of relief either in immigration court or with USCIS.

C. POSSIBLE PATHWAYS TO RELIEF FOR PAROLE RECIPIENTS

Federal law provides significant potential protections to parole recipients facing deportation. The humanitarian pathways to status created by Congress, in particular, may provide relief to many individuals. Foremost among these are asylum and withholding of removal under our domestic refugee laws.

Those laws protect against deportation of noncitizens who would face persecution on account of "race, religion, nationality, membership in a particular social group, or political opinion" in their country of origin or return.[421] Individuals not in removal proceedings may apply for asylum before the USCIS. Those who are in removal proceedings have an opportunity to apply for asylum in immigration court.[422] If granted, asylum status offers a pathway to permanent residence and eventually citizenship for the applicant, as well their spouse and children. Typically, individuals must apply for asylum within one year of arriving to the United States, but the statute allows exceptions in the case of extraordinary circumstances (which may include mental health conditions related to trauma) or changed circumstances.[423]

Even if the one-year deadline or other statutory bars preclude asylum, individuals are nevertheless entitled to refugee protections if they can show likelihood of persecution on account of the aforementioned protected grounds.[424] An immigration judge must grant mandatory, non-discretionary withholding of removal for such applicant. This lesser form of relief does not offer a pathway to citizenship or derivative status to spouses or children.

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420. *See id.* at *11 ("[T]he regulations require parole terminations to be supported by some record of a decision by an authorized official that the purposes of parole have been served.").

421. 8 U.S.C. § 1101(a)(42)(A).

422. *See* 8 C.F.R. § 208.2(a)–(b).

423. *See* 8 U.S.C. § 1158(a)(2)(B), (D).

424. *See* 8 U.S.C. § 1231(b)(3)(A) ("[T]he Attorney General may not remove an alien to a country if . . . the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.").

Nevertheless, it is a crucial limit on deportation of individuals to countries where they will face persecution.

Convention Against Torture (CAT) relief is another key form of humanitarian relief that protects against return to a country where an individual will likely face torture. CAT relief, unlike asylum and refugee withholding, does not require the applicant to show harm due to a specified protected ground.[425] CAT relief is also unique under immigration laws in being a form of protection with no statutory bars whatsoever.

Temporary protected status (TPS) has also been a key avenue for individuals from certain countries.[426] TPS protects against return to conditions of disaster or civil strife in a given country following the DHS Secretary's designation of that country for protection.[427] As with parole programs, however, the Trump Administration has broadly targeted TPS programs for termination, including for nationals of Afghanistan, Cameroon, Haiti, Nepal, Syria, Venezuela, and Yemen, and others.[428] Throughout 2025 and 2026, litigants achieved major lower court wins that prevented many TPS terminations from taking effect,[429] but in June 2026, the government achieved a major win before the Supreme Court. In *Mullin v. Doe*, the Supreme Court held the TPS statute, 8 U.S.C. § 1254a(b)(5)(A), bars judicial review of non-constitutional claims challenging TPS terminations altogether.[430] Justice Alito, writing for the majority, also found plaintiffs from Haiti unlikely to succeed in their constitutional equal protection claim for purposes of interim relief, despite acknowledging "heated language . . . couched in terms that would have scandalized the public just a short time ago."[431] Justice Kagan, joined by Justices Sotomayor and Jackson, dissented forcefully on both the majority's broad

425. 8 C.F.R. § 208.16(c)(2).

426. *See* 8 U.S.C. § 1254a(b)(1).

427. Although the statute limits designations to eighteen months at a time, it authorizes re-designation of countries with no numerical limit. Prior Administrations have extended certain TPS designations for eighteen months at a time numerous times, spanning years or even decades. *See, e.g.*, Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14214, 14214 (Mar. 9, 2001); Extension of the Designation of El Salvador for Temporary Protected Status, 90 Fed. Reg. 5953, 5955 (Jan. 17, 2025).

428. *See*, *e.g.*, Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 9040, 9041 (Feb. 5, 2025); Termination of the Designation of Afghanistan for Temporary Protected Status, 90 Fed. Reg. 20309, 20309 (May 13, 2025); Termination of the Designation of Cameroon for Temporary Protected Status, 90 Fed. Reg. 23697, 23697 (June 4, 2025); Termination of the Designation of Nepal for Temporary Protected Status, 90 Fed. Reg. 24151, 24151 (June 6, 2025); Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 28760, 28760 (July 1, 2025).

429. *See, e.g.*, Nat'l TPS All. v. Noem, 773 F. Supp. 3d 807 (N.D. Cal. 2025) (Venezuela); Miot v. Trump, 818 F. Supp. 3d 126, 186 (D.D.C. 2026) (Haiti); Doe v. Noem, 822 F. Supp. 3d 893, 901 (N.D. Ill. 2026) (Burma); Afr. Communities Together v. Noem, 828 F. Supp. 3d 235 (D. Mass. 2026) (Ethiopia).

430. Mullin v. Doe, 146 S. Ct. 2121, 2133 (2026) ("We first consider respondents' non-constitutional claims and conclude that we are barred from reviewing them.").

431. *Id*. at 2139.

reading of TPS jurisdiction-stripping statutes and the equal protection analysis.[432]

The *Mullin v. Doe* majority reversed lower court decisions setting aside termination of TPS for nationals of Syria and Haiti in the consolidated cases before it. Its holding on the statutory jurisdictional bar, of course, prevents future district courts from broadly considering non-constitutional challenges to TPS terminations and paves the way for the Trump II Administration to continue ending TPS programs. Because the Supreme Court's decision in *Mullin v. Doe* centered on a jurisdiction-stripping statute specific to TPS, however, it does not have direct implications for ongoing challenges to parole terminations.

For individuals with family ties, adjustment of status is a possibility as well. As explained above, Congress has chosen to ease the pathway of parole recipients to a green card, i.e., lawful permanent residence, by allowing them to adjust status without departing the United States. Parole recipients must establish green card eligibility, however, through a limited set of close relationships with a U.S. citizen or lawful permanent resident for the family-based route.[433] Family Reunification Parole program recipients all have such a pathway available to them, as the program itself conditioned eligibility on an approved relative petition. Many other parole recipients may also have close family ties or possible employer support that could lead to permanent residence. For Cubans nationals, the Cuban Adjustment Act eases the pathway to a green card by allowing parole recipients to adjustment status after one year of physical presence in the United States, even without a qualifying family relationship or employment category.[434]

The above forms of relief have strict eligibility criteria and may leave many parole recipients uncovered. But recipients may also find other available avenues based on their individual circumstances, for example U-visas for victims of certain crimes or student visas for recipients accepted into university or graduate programs. Individuals with parole must be given an opportunity to explore and apply for all possible avenues for relief.

CONCLUSION: THE POWER AND PROTECTION OF PAROLE

A clear, nuanced, and historically accurate understanding of parole carries critical implications for our current moment as well as the future of our immigration system. For the present moment, courts, policymakers, and the public must reject broad attempts to illegalize parole recipients and subject them

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432. *See id*. at 2144–51 (Kagan, J., dissenting); *id*. at 2150 ("[H]ere, the President's own statements show that race did enter in—that, within what was surely a multi-cause decision, it was *a* motivating factor.").

433. *See* 8 U.S.C. § 1153(a). Although backlogs in visa availability remain a perennial issue for many immigrant visa types due to numerical caps, there are no caps for immediate relatives of U.S. citizens, which include the children, spouses, and parents of a U.S. citizen (for the parental relationship, the U.S. citizen child must be over 21). *See* 8 U.S.C. § 1151(b)(2)(A)(i).

434. *See* Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (codified as amended at 8 U.S.C. § 1255).

to curtailed deportation processes. As explained throughout earlier Parts of this article, large-scale parole programs with programmatic eligibility criteria have existed for decades, crafted and extended by both Democratic and Republican administrations. Although the current Administration disagrees with its predecessor's uses, this does not render those programs illegal nor transform their recipients into unlawful entrants. That view misunderstands the broad scope and historical sweep of parole authority.

Terminations of parole programs must adhere to the rule of law, conforming to administrative law doctrines and considering the compelling equities and reliance interests of parole recipients. Importantly, even if the swift termination of existing programs is deemed lawful under administrative and constitutional law frameworks, the transformation of millions of individuals into immediate deportation targets should be rejected.

Our immigration statutes confer persons arriving via parole with significant procedural and substantive protections. Even if assuming (wrongly) that past parole programs were illegal, recipients' prior arrivals via inspection and parole, with documents valid at the time, remain lawful. Statutory language throughout the INA is clear that lawfulness hinges on inspection and permission *at the time of arrival*. Arrival with permission, moreover, continues to have operative effect even after a period of parole expires. Chief among the protections conferred by Congress is a prohibition against using expedited removal against parole recipients—disallowed by plain textual limits, as explained above. Congress has also preserved and eased critical pathways to more permanent status explicitly for persons arriving via parole. These include humanitarian protections as well as avenues to lawful permanent residence.

Notwithstanding the current Administration's rejection of past policy choices, courts must reject punitive measures against parole recipients. They must ensure that any attempts at deportation go through the normal immigration courts, where noncitizens have robust procedural protections and the opportunity to apply for multiple forms of relief. The agency should also continue to accept applications to change status filed by individuals not in removal proceedings.

Looking to the longer-term future: courts, policymakers, and Congress would do well to better understand and preserve broad parole power. In the early Parts of this paper, I have tried to show that relevant legal doctrines, historical practice, and statutory language support expansive parole. For over a century, parole has proven essential to our immigration system and to the executive branch as a whole. Uses of parole—including group-based programs in addition to individual administrative uses—pre-dated Congressional authorization of "parole." Since the power's express formalization via statute in 1952, successive Congresses have, at times, found fault with uses of parole but nevertheless chosen to retain it. This speaks to parole power's clear necessity. Even in its most recent immigration law, the Laken Riley Act of January 2025, which included significant provisions affecting immigration detention and other areas

of immigration enforcement, Congress rejected substantive amendments to parole standards. Although it eased the path for States' litigation against parole programs, Congress left the operative statutory language on parole as-is.

The complexity of our immigration system and the impossibility of knowing the future underscore the need for parole. Our immigration laws impact so many people and intersect with so many powers and priorities, in such shifting and unpredictable ways, that the system simply cannot function without something like parole. Parole has enabled presidents to advance foreign policy goals, strengthen our economy and national defense, meet obligations to the U.S. territories, rectify serious or inadvertent mistakes, improve our criminal justice system, and extend humanitarian protections to deserving individuals—and more. Its uses have addressed aims both sweeping and mundane, but in every exercise, parole has improved lives in concrete ways. It would be shortsighted for Congress or the courts today to curtail a power that has proven so essential to so many presidents, and so many people.