

The Immigration Parole Reform Act of 2022

Background: Establishment, Abuse, and Reform of Immigration Parole Authority

The immigration parole authority was initially codified by Congress in the Immigration and Nationality Act (INA) of 1952. It allowed the Attorney General to temporarily parole aliens into the United States “for emergent reasons or for reasons deemed strictly in the public interest.”

Subsequent to the enactment of the parole provision in 1952, the Executive Branch used parole on a multiple occasions to allow large groups of thousands of aliens to enter the United States. As a result, in the Refugee Act of 1980, Congress amended the law to state that the Attorney General could not parole an alien who was a refugee into the United States unless there existed “compelling reasons in the public interest with respect to that particular alien” that required the alien to be paroled rather than be admitted as a refugee.

After the enactment of the Refugee Act of 1980, the Executive Branch still continued to utilize the parole statute to allow large numbers of aliens into the United States for an extended – or even indefinite – period of time and bypass normal immigration channels.

As a result, in 1996, Congress once again amended the parole statute as part of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), and this version of the parole statute remains the law today. Found in Section 212(d)(5) of the INA, it gives the Attorney General (now the Secretary of Homeland Security) the power to temporarily parole aliens into the United States “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”

During debate and consideration of IIRIRA, it was made clear that Congress intended the parole authority to be used only on a case-by-case basis for very specific reasons and that the parole authority should not be used as a way to circumvent established immigration policy enacted into law by Congress.

Unfortunately, in the years since IIRIRA was enacted into law, the Executive Branch has continued to abuse the parole statute to allow large groups of aliens into the United States via the creation of parole programs that apply to entire categories or groups of aliens and are designed to circumvent Congressionally-established immigration pathways for aliens to come to the United States. Some of these parole programs were created after Congress repeatedly rejected or failed to consider/enact legislative proposals that would have created an immigration pathway for the relevant population.

DHS has circumvented the “case-by-case” requirement of the parole statute by arguing that if each member of the group covered by the categorical parole program is inspected and paroled on an individual basis, then the statutory requirement of parole being used on a “case-by-case” basis is satisfied.

This type of abuse of the parole statute has been particularly prevalent in the Obama and Biden Administrations, which created a number of categorical programs, including:

- Parole for Filipino Caregivers of Elderly Family Members (2015)
- Parole for Entrepreneurs (2015)
- Parole for Central American Minors (2014 – Obama; 2021 – Biden)
- Haitian Family Reunification Parole Program (2014)
- Afghan Evacuee Parole Program (2021)
- Uniting for Ukraine Parole Program (2022)
- Parole Program for Venezuelan Nationals (2022)

The Biden Administration has also abused the parole power while engaging in mass catch-and-release of illegal immigrants at the southern border in violation of the law. It has done so via programs such as “parole + Alternatives to Detention (ATD),” in which illegal immigrants are paroled by the Biden Administration – ostensibly for “urgent humanitarian” reasons or reasons of “significant public benefit” – and then released into the interior of the United States without a proper charging document or immigration court date.

When she was running for President in 2019, Vice President Harris also advocated the use of the parole authority to legalize millions of illegal immigrants already living in the United States via a concept known as “parole in place.”

The Immigration Parole Reform Act of 2022: Restoring Integrity to Immigration Parole

The Immigration Parole Reform Act of 2022 proposes a number of reforms in order to restore the integrity of immigration parole and ensure that the Executive Branch complies with long-standing congressional intent. These include:

- Amending the parole statute to clearly state that parole may not be granted to aliens “according to eligibility criteria describing an entire class of potential parole recipients”
- Amending the parole statute to clearly state that parole may only be granted to aliens who are not present in the United States, with some very narrow exceptions
- Clearly defining what qualifies as an “urgent humanitarian reason” or a “significant public benefit” for purposes of granting parole
- Clarifying what qualifies as “case-by-case” consideration for purposes of granting parole
- Clarifying that parole cannot be used as a way to adjust to lawful permanent resident status or to obtain any other immigration benefit unless the alien has an underlying immigration status that allows for adjustment of status or other immigration benefit eligibility
- Clarifying that granting parole to an alien after departure from the United States shall not be regarded as an admission of the alien to the United States
- Limiting the time period of parole to the shorter of: (a) a period of sufficient length to accomplish the activity for which the alien was paroled or (b) 1 year
- Allowing only one extension of the initial grant of parole for the shorter of: (a) the period of time necessary to accomplish the activity for which the alien was paroled or (b) 1 year