

Hearing on “Abuses of U.S. Immigration Policies and Resulting Impacts on Americans”

Before the Task Force on Defending Constitutional Rights and Exposing Institutional
Abuses

Of the U.S. House of Representatives, Committee on Oversight and Government Reform

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Statement of Mark Krikorian

Thank you Mr. Chairman and members of the Task Force for the opportunity to speak to you today.

Abuse of our immigration system is widespread. Criticism often focuses on fraud, and there is certainly plenty of that. There has been recent coverage of fraud in [VAWA self-petitions](#), staged crimes to qualify for a [U visa](#), [OPT worksites](#) with no workers, and “industrialized” [H-1B fraud](#). That’s the tip of the iceberg.

There are steps Congress can take to help fight fraud, but when something this valuable is on offer – residence in the United States – there will always be some who seek to break the rules to get it.

More concerning, and more amenable to congressional action, are instances when the executive branch itself is engaging in abuse of the immigration system.

I would like to discuss two immigration programs duly enacted by Congress but that have been abused consistently by presidents of both parties, though in both cases the Biden administration dialed that abuse up to 11. But even before the Biden administration, presidents have demonstrated, over a period of decades, that they simply cannot be trusted to exercise discretion responsibly in immigration matters. Only congressional action can prevent a recurrence of these abuses.

The two programs are immigration parole and Temporary Protected Status (TPS).

Parole was envisioned as a narrow authority immigration officers could use in exceptional cases, but it has subsequently been abused by serial administrations to let into the country any inadmissible aliens they want, in any number, for any reason, outside the limits set by Congress.

TPS was intended, as the name suggests, to be a temporary expedient for illegal aliens stranded here when a natural or man-made disaster strikes back home. The abuse comes in

the form of profligate grants of TPS, and most importantly in the routine renewal of TPS grants for years, even decades, making a mockery of the “T” in TPS.

Presidents have used parole to allow foreigners who have no right to be here to enter and remain indefinitely, and TPS to let people already here illegally to stay and work. Together these programs are the two main pillars of a shadow immigration system operated across administrations to circumvent immigration limits established by Congress.

Immigration Parole

Congress created parole in the 1952 immigration law to enable the attorney general (now the DHS secretary) to allow individual inadmissible aliens to enter the country without being formally admitted, in narrow and exceptional cases. The law then said such grants of parole were only “for emergent reasons or for reasons deemed strictly in the public interest”. This was understood to mean parole should be used only for medical emergencies and when an inadmissible alien needs to appear in court.

Within a few years, President Eisenhower used this new power to unilaterally open the nation’s doors to more than 30,000 Hungarians who had fled the Red Army crackdown in response to their country’s 1956 revolution. There was no need for what was clearly an inappropriate use of parole, since the people in question were in Austria and Yugoslavia and could wait until Congress passed legislation to enable their admission to the United States. In the event, Congress did pass a law in 1958 allowing the refugees whom the president had “temporarily” (and arguably illegally) let in to adjust to permanent resident status.

This “categorical parole” – applying the limited concept of parole to whole classes of people rather than individuals – was used again after the communist takeovers of Cuba and then Indochina. These further examples of what might politely be called “executive overreach” were later cleaned up by legislation turning the parolees into regular immigrants. But they also led to Congress finally passing the 1980 Refugee Act to impose some structure on the process of resettling refugees. The law would, in the words of [Sen. Edward Kennedy](#), one of its sponsors, “bring the admission of refugees under greater Congressional and statutory control and eliminate the need to use the parole authority.”

In fact, the 1980 act explicitly [restricted parole](#), specifying that, “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”.

Before the ink was dry on the act, President Carter ignored its restrictions and paroled in more than 100,000 Cubans from the Mariel Boatlift, as well as approximately 25,000 Haitians.

Frustrated at the executive branch's continued rogue use of parole, Congress in 1996 tried to limit it further with adjectives and adverbs, allowing for the use of parole "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit".

It didn't work.

Even after Congress created the refugee program to admit people whom presidents might otherwise have paroled in, whole new categorical parole programs were concocted. There's "family reunification parole" that lets people from Cuba, Haiti, and several other countries who are on a waiting list for legal immigration simply skip the line and await their green cards in the United States, circumventing numerical caps set by Congress.

The Central American Minors (CAM) parole program allowed legal residents to have their children paroled in, regardless of numerical caps or refugee eligibility. There's "parole in place" to retroactively parole-in certain illegal aliens already in the country, and "international entrepreneur parole" to circumvent the statutory requirements on the existing investor visa programs.

But these abuses pale in the light of the misconduct of the Biden administration. President Biden's DHS, led by Secretary Alejandro Mayorkas, paroled in [nearly 3 "million inadmissible aliens](#), more than all prior grants of parole combined.

This abuse was so egregious that it became one of the grounds of Mayorkas's [impeachment](#), which charged that he "paroled aliens *en masse* in order to release them from mandatory detention" and that he "created, re-opened, or expanded a series of categorical parole programs never authorized by Congress...which enabled hundreds of thousands of inadmissible aliens to enter the United States in violation of the laws enacted by Congress."

Adding more adjectives to the parole statute won't prevent these abuses from happening again.

Temporary Protected Status

Presidents have abused parole to let in foreigners who have no right to enter (and give them work permits). Temporary Protected Status has been abused to allow foreigners who have already entered illegally, or overstayed visas, to remain (and get work permits).

Congress created [Temporary Protected Status](#) in 1990 to empower the executive branch to allow illegal aliens (and those on temporary visas) from a particular country remain in the

United States for a period of from 6 to 18 months “due to conditions in the country that temporarily prevent the country’s nationals from returning safely”. Those conditions may include civil conflict, natural disaster, epidemic, or other “extraordinary and temporary conditions”. In addition to avoiding deportation, recipients of TPS can obtain work permits.

TPS was intended to create an orderly, lawful structure to replace a different three-letter program called Extended Voluntary Departure, or EVD, which was concocted out of whole cloth by the executive branch.

As my colleague [George Fishman](#) has pointed out, supporters of TPS in Congress assured their colleagues that a grant of TPS would not result in the permanent presence of its beneficiaries. Rep. Joe Moakley, one of the bill’s sponsors, said “I have heard it said that if we enact this bill, the people covered will stay here forever. ... I believe a substantial majority will return voluntarily and this bill provides a mechanism to ensure this result.”

As is so depressingly familiar in immigration policy, these assurances proved false.

The first country granted TPS was [El Salvador](#) – indeed Congress itself granted TPS for 18 months to Salvadoran illegals in the 1990 law. By the time it expired in mid-1992, the civil war in their country had ended, so they all went home.

Just kidding.

Instead, the Bush administration simply reverted to the old ad hoc system and granted the estimated 150,000 Salvadoran TPS illegal aliens an arrangement equivalent to EVD and TPS but with different initials – Deferred Enforced Departure, or DED. When the first grant of DED expired, President Clinton extended it.

Then in early 2001, El Salvador experienced a serious earthquake, leading to another grant of TPS for its illegal aliens here, whether the beneficiaries were earlier recipients of TPS/DED or those who’d infiltrated the country since then.

The first Trump administration announced that it would not renew Salvadoran TPS, but that move was tied up in litigation and rescinded by the Biden administration. President Biden extended TPS for an estimated 170,000 Salvadoran illegal aliens days before leaving office.

This story of Salvadoran illegal aliens enjoying a three-decade “temporary” reprieve from deportation (with a bonus of work permits and Social Security numbers) is the template for TPS. One might even say that there’s nothing as permanent as temporary status.

A few other examples:

- Some 10,000 Liberian illegal aliens were granted TPS in 1991 due to civil war and have bounced between TPS and DED to this day.

- More than 50,000 Honduran and Nicaraguan illegal aliens who received TPS because of a 1998 hurricane are still here, the Trump administration's termination of their TPS grant still being litigated.
- Haitian illegal aliens were granted TPS because of a 2010 earthquake, and it was routinely renewed. President Trump's attempts in both terms to simply not renew Haitian TPS have been stymied by the courts, and President Biden not only renewed TPS for those who had it but reopened it for new Haitian illegals, so that more than 300,000 received TPS.
- On the last day of his first term, President Trump granted DED to Venezuelan illegals, which was subsequently replaced (and expanded) with TPS by President Biden, so that more than 600,000 have TPS now. (For most recipients it is scheduled to expire in October, though whether that actually happens remains to be seen.)

USCIS currently lists 12 countries whose illegal aliens have TPS, with their total number estimated by the Congressional Research Service at about 1.3 million.

As you can see, abuse of TPS spans administrations and political parties, and is baked into the system. For instance, If TPS is justified because nationals of a country can't safely be returned, why does it continue when we deport other, non-TPS-holders, to that very country? Since 2001, we have deported around 350,000 people to El Salvador – twice the number of Salvadoran illegal aliens who have TPS. El Salvador currently has a [crime rate](#) lower than that of the United States. If the country is safe enough to send the 350,000 back, why not those with TPS?

Solutions

What should Congress do? Clearly, adding more adjectives will not prevent future abuses. While re-starting mass parole at the border might be complicated by certain provisions of the Laken Riley Act, there's nothing to stop a future administration from simply granting TPS to, say, every illegal alien from Mexico – providing them work permits and Social Security numbers, and creating facts on the ground that would be difficult for a subsequent administration to unwind.

If that sounds outlandish, imagine how outlandish the Biden administration's border policies would have sounded in, say, 2020.

Nor is the impact of past abuses small; people with parole and TPS currently make up perhaps 25 or 30 percent of the total illegal population.

Presidents of both parties, over a period of decades, have shown that they cannot be trusted to exercise discretion responsibly in immigration matters. Under the Constitution, Congress

has plenary power over immigration, and it is urgent that Congress rein in the executive branch.

There have been legislative proposals to reform TPS by, for instance, requiring a vote of Congress for any grants or renewals, so that the “temporary” status doesn’t run indefinitely on autopilot.

But there is actually no need for TPS at all. ICE can always choose to delay deportations to a country for, say, 90 days if, for instance, the airport is closed because of an earthquake. The real goal of TPS has always been to provide work permits and Social Security numbers to illegal aliens, to help them put down roots and make it politically (and apparently judicially) harder for them ever to be deported.

TPS should simply be repealed.

Parole, however, is prudent in certain instances. Any large system needs a little wiggle room in its application. But proposals that would try to specify in ever-more granular detail the legitimate reasons for parole are likely to get bogged down in Clintonian hairsplitting over the meaning of “medical emergency” and “close family member”.

Instead, Congress should simply impose a hard, non-waivable, non-“pierceable” annual numerical cap on executive branch grants of parole.

But these changes – the repeal of TPS and capping grants of parole – will prove of limited benefit unless accompanied by another measure: a ban on work authorization for any alien whose statutory status doesn’t expressly provide for it. Without that, presidents would simply revert to mass granting of EVD or DED or some newly devised three-letter program unmoored from the law to allow illegal aliens remain here and work.

And work permits for parolees, even if their number is restricted by statute, make no sense – if you’re coming for surgery or to testify in court, what would you need a work permit for?

These changes wouldn’t address other systemic immigration abuses; asylum, for instance, needs to be dramatically restricted or [abolished altogether](#). But the changes to TPS and parole I have outlined would go a long way toward limiting immigration freelancing by future presidents and help preserve Congress’s authority over this key area of policy that affects so many aspects of our national life.

Thank you for allowing me to appear, and I look forward to your questions.

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