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"Safe, Orderly, and Humane" Migration:
An Evaluation of the Biden Administration's Use of Humanitarian Parole As an Immigration Tool

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“SAFE, ORDERLY, AND HUMANE” MIGRATION

AN EVALUATION OF THE BIDEN ADMINISTRATION’S USE OF HUMANITARIAN PAROLE AS AN IMMIGRATION TOOL

ABSTRACT

One prominent immigration strategy employed by the Biden administration is a tool called “humanitarian parole,” which has been controversial due to its perceived illegality. However, my thesis aims to move beyond these legal critiques and answer the question: are Biden’s parole policies effective, according to the goals of the administration? Through an analysis of CBP data, I conclude that parole fulfills two stated goals, of deterring illegal entry and re-directing migrants to internal POE. However, interview data illuminates that parole was implemented in such a way that humanitarian relief was unevenly distributed. Lastly, I caution the Biden administration against an understanding of parole as an alternative to asylum or refugee resettlement, given parole’s revocability. While parole can be a useful immigration strategy, future administrations should take care to implement it evenly and in combination with other tools whenever possible.

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I. INTRODUCTION

When surveyed, 53 percent of Americans agree that there is an invasion at the Southern border.[1] Texas governor Greg Abbott reinforced this perception when he formally declared an invasion to activate National Guard troops to repel Southern Border arrivals.[2] Similarly, Senator Roger Marshall of Kansas recently proposed a bill in Congress to designate the Southern Border crisis as a federal emergency.[3] But at what point does the arrival of those seeking humanitarian protections— which the Refugee Act of 1980 acknowledges as a permissible and historically-rooted feature of the country's immigration policy— constitute an "invasion" of our borders?[4] It may be pointless to ask this question when much of the US has already made up its mind on the matter.

When the perception of a land-based invasion is coupled with Biden's already-low approval ratings, it is understandable that the President's administration would feel enormous pressure to manage this crisis.[5] One of the foremost tools that the Biden administration has employed in its immigration strategy is a discretionary provision known as humanitarian parole. Humanitarian parole confers an authority upon the Secretary of the Department of Homeland Security (DHS) to allow the case-by-case entry of individuals into the US temporarily. To utilize this parole authority, the DHS Secretary must demonstrate that allowing the individual into the US would serve "urgent humanitarian reasons" and achieve "significant public benefit."[6]

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[1] Rose, "A majority of Americans see an 'invasion' at the southern border"

[2] Herron, "Gov. Greg Abbott doubles down on declaring 'invasion'"

[3] Doornbos, "Sen. Roger Marshall pitching resolution declaring US southern border 'invasion'"

[4] Refugee Act of 1980, PL 96-212, 94 Stat. 102 (1980)

[5] Reuters, "54% of Americans disapprove of the president"

[6] INA 8 CFR § 212.5

Humanitarian parole, as a legal strategy for admitting immigrants, is not unique to the Biden administration. Since 1952, when humanitarian parole was authorized by Congress, at least 126 parole programs have been implemented by various executive administrations.[7] Some of the most notable uses of parole include the admission of almost 300,000 Cubans under the Johnson administration as well as the parole of 135,000 Vietnamese and Cambodians in 1975 by the Ford administration.[8] It is notable, however, that the Biden administration is the first presidency to utilize parole at high levels since the refugee and asylum systems were created in 1980.[9] Furthermore, the Biden administration has departed from the norm via the sheer number and variety of the parole programs that he has piloted. Biden is responsible for 23 out of 126 parole programs, including: parole for unaccompanied Central American minors, online parole applications for Ukrainians, and parole for Afghanis at US embassies.

Biden's variety in parole usage is unprecedented but not necessarily in violation of its statutory constraints. Compared to other humanitarian pathways, parole is broadly written, which allows the executive branch significant discretion in determining the nature of a parole program, the regions it applies to, and how the program itself operates. This thesis will focus on parole programs that enable migrants to apply from abroad. This is in contrast to what is known as "port parole," which is the granting of parole to individuals upon their arrival at a POE. The Biden administration has used both kinds of parole, the largest example of the latter being the

[7] Bier, "126 Parole Orders Over 7 Decades"

[8] Ibid.

[9] The one exception to this statement is the parole of Cubans, which persisted at high levels despite the availability of a refugee and asylum system post-1980.

discretionary admission of potential asylum-seekers at the border through the CBP (Customs and Border Patrol) One app.[10]

Whether Biden does have the legal capacity to use parole as a tool for widespread refugee admissions is not a foregone conclusion. Much of the current scholarly debate over parole focuses on the legalities of humanitarian parole; both critics and advocates of Biden's remote parole policies hone in on the tool's scope and intended use.

My thesis, however, goes beyond questions of legality in order to answer whether Biden's parole programs are effective. The standard of efficacy that I utilize is that which the Biden administration itself has put forward in its Federal Registry memos for each parole program. Specifically, I analyze: 1) whether remote parole has succeeded in deterring illegal entry 2) whether remote parole incentivizes entrants to come through internal Ports of Entry (POE) instead of land POE 3) whether parole is "safe and humane" and 4) whether parole provides a meaningful legal alternative to other humanitarian pathways. In my thesis, I answer the following question: is remote parole an effective immigration tool according to these metrics?

To answer my overarching question, I utilize a combination of sources. First, I look at publicly available CBP data to analyze how effective the programs "Processes for Cuba, Haiti, Nicaragua, and Venezuela" (CHNV) and "United For Ukraine" (U4U) have been in deterring illegal migration. Second, I utilize data from TRAC Syracuse to evaluate the administration's claim about redirecting legal entry. Lastly, I present interview findings from immigration

10 The primary reason why my thesis focuses on remote parole and not port parole is because the two types of programs have different goals, according to the Biden administration. Given that I analyze parole based on the goals which the Biden administration has set out, analyzing port parole would require a separate analysis. In order to limit the scope of my thesis, I therefore look only at "remote-application" parole programs.

stakeholders as well as available historical and legal sources to evaluate the programs' safety, humanity, and meaningfulness as a legal alternative.

Using a synthesis of qualitative and quantitative data, I propose that Biden's administration is correct: within the current immigration system, remote parole is a useful strategy to deter illegal entry and re-direct migrants away from the SWB. However, I criticize the Biden administration's implementation of remote parole due to its slow adjudication and unequal application. Furthermore, although remote parole is an innovative way to provide humanitarian protection to more individuals, it should neither be thought of as an alternative to asylum nor relied on by the executive branch as a permanent solution. This is primarily due to one important feature of parole: the revocable nature of the tool and its resulting lack of due process protections.

II. BACKGROUND

i. What is Humanitarian Parole?

In 1952, the Immigration and Nationality Act (INA)— the current framework for the US immigration system— was passed. Among its provisions, the INA allows for entry into and temporary residence within the US through a tool called humanitarian parole.[11] The language of the INA at the time of its passing specified that the executive branch could grant parole into the US on a case-by-case basis for "emergent" or "public interest" reasons, although it was later changed to the "urgent humanitarian need" or "significant public benefit" standard.[12]

[11] Bier, "127 Parole orders over 7 decades"

[12] Ibid.

Humanitarian parole can most accurately be described as an authority: it gives the executive branch the power to admit[13] individuals who satisfy certain criteria into the US temporarily. This power is based upon statutory provision 212(d)(a) of the INA, which allows for the DHS Secretary to parole in individuals for reasons of "urgent humanitarian need" or "significant public benefit." Following the creation of this parole authority, it became common for the executive branch to create parole "programs" that express the executive's intent to admit certain national or religious groups under the parole authority granted by the INA.[14]

All executive uses of parole must satisfy the three statutory criteria set out in INA 212(d)(a). First, they must justify themselves according to the standard of "urgent humanitarian need" and "significant public benefit." Second, they must only allow for temporary entry into the United States and not permanent residence. Third, once the purpose of parole has been served, "according to the opinion of the [DHS] Secretary," the parolee must be returned to the custody from which they were paroled.[15] The third requirement does not necessarily mean that parolees must be sent back to their country of origin; parolees are permitted to apply for other immigration statuses without leaving the US. Instead, the third requirement means that parolees formally return to the DHS' custody after the expiration of their parole. This criterion is related to the technical definition of "admission" as is discussed in footnote 8. The practical impact of

[13] It is not technically correct to use the verb "admit" to describe the permitted entrance of parolees, per a legal fiction set out by the Supreme Court in Leng May Ma v. Barber (357 U.S. 185 (1958)). This is because "admission" carries specific legal connotations within immigration law; if the US formally admits a person they are afforded certain immigration protections, including the right to a hearing before removal from the US. INA 212(d)(a) specifically sets out that parolees are not considered admitted persons in this sense. However, "admit" is the easiest way within colloquial English to refer to the act of permitting entrance. Thus, in this proposal, I use admission in the colloquial sense and not in the precise manner of conferring immigration benefits.

[14] Bier, "127 Parole orders over 7 decades"

[15] Immigration and Nationality Act (INA) , 8 CFR § 212.5

this requirement is that those who enter the country under parole are not entitled to a deportation hearing.

By convention, parole initiatives tend to grant temporary residence for periods of one or two years.[16] Additionally, parole programs often confer the ability to apply for work permits immediately upon arrival.[17] Aside from these two common themes, parole programs can look very different from one another, particularly in terms of application method and program requirements.[18]

ii. A History of Humanitarian Parole

Before the 1980 Refugee Act, there was no formalized process specifically designed for the admission of refugees under US law, underscoring the importance of humanitarian parole in early immigration law. Instead, humanitarian immigrants were admitted under the existing quota system.[19] The now-defunct quota system dictated the number of immigrants who could be admitted into the US each year.[20] These quotas were established by Congress at the beginning of the year and would determine the number of immigrants who were allowed entry per country or

[16] Bier, "127 Parole orders over 7 decades"

[17] Scacher, "Supplementary Protection Pathways to the United States"

[18] Muzaffar and Bolter, "Welcoming Afghans and Ukrainians to the United States"

[19] USCIS, "Refugee Timeline"

[20] Although generally set to expire at the end of the year, there were some special quotas that lasted for a longer period of time. Outside of the regular quota numbers, Congress sometimes passed acts in order to establish additional spots for specially-selected groups. These quotas could expire once the quota had been filled. This was the case for the 1953 Refugee Relief Act, for example. Source: ibid.

geographical region. Thus, under the quota system, refugees were fighting for limited spots— and competing with economic migrants from their region.[21]

The 1952 INA did not do away with the quota system.[22] As a result, presidential administrations who desired to address certain humanitarian crises via the admission of refugees had limited options:refugees could be admitted under the existing quota numbers, the president could implore Congress to pass a refugee quota act, or— under the new parole authority introduced in the INA— the executive branch could temporarily admit individuals. Given that parole had no numerical cap, presidential administrations increasingly began to lean on parole as a means to supplement or circumvent the quota limits.

An illustrative example of this came in 1956 when Eisenhower admitted 30,000 Hungarians fleeing the Hungarian Revolution. Eisenhower had first admitted 6,130 Hungarians via quota spots remaining in the Refugee Relief Act.[23] However, once those spots had been filled, Eisenhower turned to the executive branch's newly minted parole authority to continue to admit Hungarians. This was the first instance of any executive branch using parole authority, and it set the tone for what the tool would come to be used for— as a workaround strategy to circumvent the inherent limits of the quota framework. Eisenhower continued to lean on this parole strategy, admitting over 10,000 Cuban parolees throughout his time in office. Future

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[21] This was no longer true following 1948, which was the first instance of a dedicated quota for refugees. The 1948 Displaced Persons Act allocated special spots for those who had become refugees under the Second World War. Between 1948 and 1980, then, Congress occasionally passed acts which granted additional quota spots to refugees displaced by particular conflicts. For example, in 1953, Congress passed the Refugee Relief Act, which allotted 200,000 spots to escapees from communist countries. However, in years when Congress was not driven by policy interests to pass refugee quota acts, or for those refugees who did not fall under specific refugee quota acts, refugees' applications for entry would still fall under the regular quota system. Until 1980, that is, when the refugee system and asylum system were both legally formalized. Source: ibid.

[22] Ibid.

[23] Ibid.

administrations then took Eisenhower's strategy and expanded upon it. The Kennedy administration, in particular, paroled in 100,000 Cubans by the end of 1965.[24]

After witnessing the capacity in which executive branches had begun to use parole authority, Congress amended the INA in 1965 to create a category called "conditional entry." Conditional entry, as explained by Congressional records at the time, was intended to serve the role that humanitarian parole had been playing — providing for the admission of large groups of refugees who did not otherwise have a feasible pathway to the US.[25]

The restrictions on conditional entry proved so significant that they discouraged future executive branches from becoming reliant on it the way they had been relying on parole. For example, the executive branch could only use conditional entry for refugees from the Western Hemisphere.[26] [27] Another important distinction between the two categories is that conditional entry had a numerical limit, unlike parole.

Conditional entry's practical limitations prompted executive branches to continue using parole as a supplement to the quota system, largely ignoring the newly introduced option of conditional entry. Thus, Congress' attempt to discourage ad hoc parole usage was unsuccessful. In fact, following the introduction of conditional entry in 1965, there was a sharp uptick in parole usage. Most notably, nearly 280,000 Cubans were paroled into the US between 1965 and 1972.[28]

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[24] Ibid.

[25] Bruno, "Immigration Parole"

[26] Schacher, "Supplementary Protection Pathways to the United States"

[27] The hemispheric restrictions as well as some other limitations to conditional entry were done away with in 1976 and 1978, respectively. However, given the severely limited nature of conditional entry in its initial rollout, it was never utilized as an executive tool at same level as parole.

[28] Bier, "127 Parole orders over 7 decades"

Another large-scale use of parole was the admission of 300,000 Vietnamese and Cambodian refugees between 1975 and 1980.[29] [30]

The wide-scale use of humanitarian parole to admit refugees in the 70s was followed by another legislative effort to limit— or at least regulate— the trend. In 1980, Congress passed the Refugee Act, which codified a refugee admissions process that was separate from the admission of other types of immigrants.[31] The Refugee Act also formalized the admission of asylees into the United States.[32] The new combination of a formal refugee admissions process and an asylum system precluded many of the previous uses of parole. Furthermore, parole was explicitly denoted by the Refugee Act as a supplement to the refugee process to be used only when necessary; the text of the act directs the DHS Secretary to not parole refugees unless there are "compelling reasons in the public interest" to use parole rather than the new refugee process.

As a consequence of the Refugee Act's restructuring of humanitarian admissions, parole's use as an immigration tool for refugee resettlement has declined significantly post-1980.[33] [34] Even when executive branches did utilize parole following 1980, the numbers of those paroled were significantly smaller than in the past. The airlift of approximately 7,000 Iraqi Kurds starting in 1996 was one of the numerically significant uses of parole post-1980, compared to over

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[29] Ibid.

[30] "USCIS, "Refugee Timeline"

[31] Refugee Act of 1980, PL 96-212, 94 Stat. 102 (1980).

[32] Refugees and asylees are more similar than they are different in US law. Both refugees and asylees are those who have an established fear or future persecution or a history of past persecution based on one of five protected classes: race/ethnicity, nationality, religion, political origin, and particular social group. Both categories also contain similar "bars" to obtaining protected status, including involvement in a terrorist group as well as certain crimes. The main difference between refugees and asylees is that asylees are present on the border of the US or at a Port of Entry (POE), whereas refugees are applying for status from abroad. This distinction places someone in one category or the other— this is significant because the two categories have different application processes, yield different benefits, and function in different ways. The difference between the two processes, and what distinguishes both from parole, will be addressed later in this paper. Source: 8 USC §1101(42)

[33] Galli and Fee, "Refugees Welcome? Historicizing U.S. Resettlement and Asylum Policy"

[34] Bier, "126 Parole Orders over 7 Decades"

300,000 Southeast Asian parolees admitted from 1975 to 1980 alone.[35] The one major exception to this general trend is the parole of Cubans, which continued in the hundreds of thousands until 2003.[36]

The last major change to INA 212(d)(a) came in the form of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). IIRIRA changed the standard of admission for parolees from reasons that were "emergent" or in the "public interest" to reasons of "urgent humanitarian need" or "significant public benefit."[37] The addition of the terms "urgent" and "significant" places an extra burden of proof on the executive branch, as they must demonstrate not only that the public would benefit from parole but that this benefit is particularly time-sensitive and compelling.

iii. Biden's Use of Parole

The Biden administration's immigration policy is notable for having revived widespread usage of humanitarian parole after forty years of more moderate utilization. From 2012-2020, for example, an average of 67,000 parole statuses were granted each year.[38] In contrast, Biden's administration reportedly granted a million parole statuses between January 2021 and January 2024— an average of 330,000 parole grants each year.[39] Parole usage at this scale has not occurred since the creation of the resettlement and asylum processes in the 1980 Refugee Act.

The Biden administration is also unique in having a wide variety of different parole programs. Historically, it was common for an administration to have four or five parole programs

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[35] Ibid.

[36] Ibid.

[37] Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Division C of Pub. L. No. 104-208, 110 Stat. 3009-546

[38] TRAC Syracuse, "A Ten-Year Look at Inadmissible Migrants and Paroled Migrants"

[39] Montoya-Galvez, "Biden administration has admitted more than 1 million migrants into U.S"

over the course of one term.[40] The Biden administration, on the other hand, created 23 parole programs between 2021 and early 2024.[41] The current executive branch has also admitted over 400,000 individuals under the general 212(d)(a) parole authority.

Biden's parole usage falls into three main categories: 1) family reunification parole programs 2) region-specific parole programs and 3) port parole at the Southern border. The first and second categories are versions of what I have termed "remote parole" programs and are what I will be focusing on in this thesis. Remote parole programs are adjudicated while the person remains away from the US and its borders. For example, many remote parole programs offer online applications, with the parolee only arriving at a US POE after their petition has been approved.

Of remote parole programs, the least numerically significant are family reunification programs. Only 3,600 migrants were admitted under such programs between Biden's taking office and December 2023.[42] A family reunification parole program aims to enable the parole of those with citizen or LPR relatives who would not otherwise be eligible for family visas.[43]

The second type of remote parole program under the Biden administration is region-specific parole programs, such as CHNV. These programs, although founded under the general parole authority, declare Biden's intent to admit humanitarian migrants from a certain country. Beyond CHNV, other countries that have been granted region-specific parole throughout Biden's

[40] Bier, "126 Parole Orders over 7 Decades"

[41] Ibid.

[42] Montoya-Galvez, "Biden administration has admitted more than 1 million migrants into U.S

[43] Ibid.

tenure include Ukraine and Afghanistan.[44] Approximately 613,000 migrants were admitted through region-specific parole programs between January 2021 and December 2023.[45]

The last category of parole usage is "port parole," or parole which is granted while the migrant is in the US or at a US POE.[46] The Biden administration has largely facilitated port parole at the Southern border through an app called CBP One. Through CBP One, migrants of any country can schedule an appointment at a POE and potentially be granted parole status.[47] According to official DHS guidance, these parolees are meant to undergo an initial screening for asylum eligibility— a "credible fear interview"— before being paroled into the US, though in reality, such an interview does not always take place.[48] Additionally, due to an injunction against this policy in a Florida federal district court, these parolees are supposed to be issued an immigration court date immediately upon their entry into the US.[49] Around 459,118 persons were paroled in through this CBP One-parole between 2021 and January 2024.[50]

Biden has also granted port parole to some specific regional groups. For example, Afghanis who were evacuated by air to the US before the fall of Kabul and who did not have a valid Visa were given parole upon arrival in the US.[51] An initial wave of Ukrainian arrivals was also given port parole at the U.S.-Mexico border before U4U was implemented.[52]

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[44] Ibid.

[45] Montoya-Galvez, "Biden administration has admitted more than 1 million migrants into U.S"

[46] DHS, "Fact Sheet: CBP One Facilitated Over 170,000 Appointments in Six Months"

[47] Ibid.

[48] HILSC, "The New Asylum Rule— CBP One"

[49] Ibid.

[50] CBP One, "CBP Releases January 2024 Monthly Update"

[51] Harris, "Afghan Allies in Limbo: Discrimination in the U.S. Immigration Response"

[52] Ibid.

I will not be focusing on port parole for the purposes of my thesis. The goals of such port parole programs, as declared by the Biden administration, are distinct from the goals of remote parole. However, port parole will factor into my quantitative analysis of remote parole, as it is difficult to disentangle the overlapping effects of both programs.

III. LITERATURE REVIEW: Parole's Legal Uses

Considering the many historical revisions to parole authority— some of which addressed questions of limiting the executive's parole discretion— it is worthwhile to consider what humanitarian parole can be legally used for. A scholarly debate[53] has developed in immigration literature around precisely this question.

In the debate over what parole authority is meant to be used for, there are two general schools of thought. First, more progressive immigration scholars, pro-immigration advocates, and the current federal government tend to argue that parole can permissibly be used for widespread refugee admissions. Second, more conservative immigration scholars and some Republican-leaning states and courts argue that parole can only be used for individual, case-by-case purposes, such as the paradigmatic example of a foreigner who requires emergency medical treatment. The latter camp of thinkers perceive programs such as CHNV to be an overreach of executive power and thus not legally permissible.

Looking first at the arguments for widespread humanitarian parole admissions, there is ample historical basis for thinking that parole can be used in this broad capacity. As noted by Bolter and Chisti and as presented in Section II) ii), parole has been used since 1952 to facilitate

[53] A clarification, here, as to how I'm using the term scholarly debate: only limited research exists around the subject of humanitarian parole. A few short academic papers look at either the Ukrainian parole program, Afghani parole, or both. A few longer articles look more generally at humanitarian parole, but these are not research papers in the strict sense. For the purposes of examining the scholarly debate, I am therefore including a wide range of sources under the definition of a scholarly contribution, including court cases, government whitepages, and immigration legal blogs.

the admission of refugees.[54] Although parole was used less frequently following 1980, most executive branches have utilized the tool in some capacity.[55] Furthermore, as noted by Yael Schacher, both parties have advocated for and utilized parole as a refugee admissions tool.[56] It was not until the Obama administration that partisan backlash to parole as a broad power emerged.[57] This historical context is relevant for two reasons: first, it shows long-standing support for interpreting parole as a tool for general humanitarian relief, which can inform current understandings of its legality.

Second, an understanding of parole as a broad tool persisted for decades, and Congress did not outright eliminate this executive discretion. As argued by Solicitor General Prelogar in the oral arguments of *Biden v. Texas,* Congress has known that the executive branch was exercising parole widely and "has never disapproved it."[58] In addition to this tacit approval Congress has rejected proposals to limit parole to individual, one-off circumstances on several occasions. As noted by both Tom Jawetz and Schacher, when the IIRIRA was amended in 1996, both the House and the Senate stripped restrictive language out of the parole amendment.[59] This language would have statutorily limited parole to a much narrower range of uses; the deletion of the passage can be seen as evidence that Congress approves of a widely construed parole tool.

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[54] Chisti and Bolter, "Welcoming Afghans and Ukrainians to the United States"

[55] Bier, "126 Parole Orders over 7 Decades"

[56] Schacher, "Supplementary Protection Pathways to the United States"

[57] Ibid.

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[59] Ibid.

Lastly, Congress has relied on parole to supplement its refugee resettlement initiatives. For example, within the Fair Share Act of 1960, Congress encouraged the executive to parole an unlimited number of "refugee-escapees" to supplement refugee resettlement post-WWII.[60] Congress has also passed numerous adjustment acts, which allow parolees to apply for permanent residency. These acts are typically passed after a large parole population has entered the country, to facilitate that population becoming better integrated into the US.[61] Doing so amounts to Congress' acknowledgment and facilitation of parole as a tool for massive resettlement efforts.

In the other school of thought are individuals who think parole should be limited to individual and isolated cases. Two major methods of analysis support this conclusion. The first involves looking at Congressional Records and Judiciary Committee Reports, some of which communicate Congress' intent to have parole power remain limited. When parole was first codified in 1952, the House Judiciary Committee noted that parole should be used "where extenuating circumstances clearly require such action."[62] Two examples of "emergency cases" that might require parole were listed by the Committee: a migrant needing emergency medical attention in the US or a non-citizen being asked to serve as a witness to a prosecution.[63] Those examples offered by the Committee were clearly exceptional, as pointed out by George Fishman; Fishman uses this quote as evidence that Congress originally intended for a narrow use of parole.

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[60] *Daniel Benitez v. John Mata*. 2004. No. 03-7434. Supreme Court of the United States, Brief of Amici Curiae, February 25, 2004. https://www.aclu.org/sites/default/files/field_document/fiac.pdf

[61] Bier, "What Is the Legal Authority for Biden's Parole Programs?"

[62] Fishman, "The Pernicious Perversion of Parole"

[63] Ibid.

However, Fishman also argues that Congress did not stop there in expressing their intentions for parole— they attempted, on multiple occasions, to reassert their original vision. One example of this Congressional reassertion came in 1965 when the Immigration Act incorporated conditional entry into the INA. The Senate Judiciary Committee for this bill noted that the original purpose of parole was for "emergent, individual, and isolated situations, such as the case of an alien who requires immediate medical attention."[64] Fishman, as well as Cox and Rodriguez, also cite the language of 1980 and 1996 Judiciary Committee reports, which echo similar sentiments. [65] [66] [67]

This interpretation of the limiting intent of Congressional Records was part of the rationale behind the lawsuit *Texas v. DHS.* Texas, in addition to other conservative states, sued the DHS for the CHNV program. Among other legal arguments including the DHS' failure to adhere to notice and comment requirements, the plaintiff brief cites the 1996 Congressional Record. As Fishman, Cox, and Rodriguez noted, this Committee Report should be taken as evidence that Congress intends for parole to be used narrowly.

The second argument in favor of a narrow interpretation of parole is that Congress possesses plenary power over immigration. Andrew Arthur cites Congress' long-standing "almost complete authority" to decide who may enter the US as evidence that parole is being used too broadly.[68] An interpretation of parole that gave the executive branch wide power over admissions would flout this understanding of Congress' authority. Arthur further cites the 1972

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[64] Ibid.

[65] Ibid.

[66] Cox and Rodriguez, "The President and Immigration Law Redux"

[67] It is worth noting that Jawetz and Bier both contest at least the 1996 citation, due to its accompanying an act which was subsequently rejected by Congress.

[68] Arthur, "So Many Errors in CBS News' Report on Illegal Biden Parole Programs"

Supreme Court opinion *Kleindienst v. Mandel,* which reaffirms Congress' ability to make rules for the admission of aliens.

As the available literature shows, the question of what parole can legally be used for is not a settled matter. Congress has, at different points in time, appeared to disavow and then condone parole as a broad tool. Almost all available research on parole centers on this question by trying to make sense of the contours of Congressional opinion. Despite the inconclusive nature of this debate, it is still well-established by opinion articles and court opinions.

On the other hand, literature examining whether or not Biden's parole policies are smart or useful is scant. In this thesis, I therefore attempt to go beyond an analysis of whether or not Biden's remote parole policies are legal under INA 212(d)(a) and address the question of whether or not the policies are effective.

IV. EVALUATING REMOTE PAROLE ACCORDING TO BIDEN'S METRICS

i. Biden's Objectives with Parole

To answer any question about the parole policies' efficacy, it is crucial to determine a consistent metric of what it means for a humanitarian immigration policy to "work." For the purposes of my thesis, I will analyze the goals which the Biden administration itself has publicly articulated. Taking the administration's goals for parole at face value, that is, how have the current remote parole programs fulfilled or not fulfilled those objectives?

Cues about the Biden administration's goals can be taken from the DHS' announcement of remote parole programs in the Federal Registry. In these memorandums, the Biden administration defends their parole programs to the interested public— including reporters, politicians, and immigration advocates. Even if the Biden administration does have ulterior

motives in deploying its parole programs, it must have some degree of investment in the goals that it has articulated on the world stage. Thus, the Federal Registry memos are valuable tools in understanding which metrics should be used to evaluate Biden's parole programs.

The Federal Registry memos which announce CHNV and U4U set out the main goals which the Biden administration is working towards via its remote parole programs. Those four goals are as follows: 1) disincentivizing illegal entry 2) redirecting migrants to internal POE 3) facilitating "safe" and "humane" migration and 4) providing a meaningful alternative to other pathways.

Looking first at disincentivizing illegal entry, the summary of the Parole Process for Venezuelans, notes the record numbers of Venezuelan nationals entering the US between POEs. This "dramatic increase" of irregular crossings is stated by the Biden administration to be a matter of immediate concern. This concern is present not only in the memo for Venezuelan parole but all of CHNV. The use of parole is "intended to serve as a deterrent" to irregular migration. Thus, the first concrete goal of Biden's parole programs is to deter unauthorized entry into the US.[69]

The DHS also notes throughout the memos that its proposed alternative to unauthorized migration is "safe, orderly, and humane." Orderly is the easiest of the three descriptors to define. Implementation memos for CHNV and U4U frame orderly migration in contrast to "spontaneous arrivals at the SWB." Thus, the goal of "orderly" migration as defined by the Biden administration can be understood as discouraging land-based travel to the SWB in favor of flights to internal POE.

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[69] Federal Register, "Implementation of a Parole Process for Venezuelans"

"Safe" and "humane" are slightly more difficult to define according to the DHS' materials. One thing that is noted to compromise "migrant safety," however, is the physical risks associated with the journey to the SWB. The "death, illness, and exploitation" that migrants experience on the way to the SWB is said to be a result of illegal smuggling operations prioritizing profit over migrants' safety.[70] Thus, a "safe and humane" migration strategy is one that reduces death, ailment, and other known costs of migration.

The final asserted goal of Biden's parole policies, according to DHS memos as well as his public rhetoric, is to provide a "meaningful alternative" to unauthorized, land-based migration. The Biden administration argues that in their current dysfunctional state, existing immigration pathways are not sufficient to deter unauthorized migration. The administration aspires towards "wider reform" of the immigration system; in the meantime, Biden aims to disincentivize unauthorized entry by providing a comparable pathway to the US. The fourth goal is therefore for parole to act as a useful "stopgap" solution— or supply an alternative means for migration— until existing methods can be legislatively reformed.

To differentiate the goals of a "safe" and "humane" immigration program from the goal of providing "meaningful alternatives" to other humanitarian pathways, I will be looking at "safe and humane" in terms of implementation of parole, whereas the "meaningful alternative" section will deal with the statutory features of the tool. This is an arbitrary distinction; an immigration program surely cannot be "safe" and "humane" if the utilized tools do not offer statutory protections, and parole is not truly a "meaningful alternative" to other humanitarian pathways if

[70] Ibid.

it is implemented in a way which disadvantages those who need it most. Nevertheless, I draw this distinction for ease of analysis.

ii. Methodology

Given that Biden makes a combination of quantitative and qualitative claims, my thesis will use both kinds of data to evaluate the administration's stated metrics for parole. The first section looks at CBP (Customs and Border Patrol) Nationwide Encounter data to evaluate a correlation between parole programs and the goal of deterring illegal entry.[71] The CBP website makes this data publicly available; it details each encounter that CBP has with border-crossers. This data is further subdivided into a few different categories, the most important of which is a distinction between "inadmissibles," "apprehensions," and "expulsions." Expulsions are those migrants processed under Title 42 and expelled without consideration of their eligibility for entry — this group is largely not relevant to my thesis. Apprehensions are migrants caught crossing into the US between POEs. Inadmissibles are persons seeking entry into the US who do not have Visa papers. I will elaborate further on apprehensions and inadmissables later in the paper; but in short, apprehension data is relevant to Section IV) iii) whereas inadmissible data is relevant to Section IV) iv).

In order to have a wider period of data to analyze, I combined multiple CBP datasets available online using R. I then plotted apprehensions over time for the relevant nationality groups— Cubans, Haitians, Nicaraguans, Venezuelans, Ukrainians, and all CHNVU countries together. CHNVU groups are shown next to a non-CHNVU apprehension graph, for comparison. These graphs will be presented and analyzed in Section IV) iii).

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[71] CBP, "Nationwide Encounters"

For Section IV) iv), I use data obtained from TRAC Syracuse. A dashboard for this data can be found online, but I obtained the raw data through their TRAC fellows program. [72] [73] This data is very similar to the CBP nationwide encounter data, noting each apprehension and inadmissible encounter by CBP. However, this data is distinct in that it separates inadmissibles into sub-categories. This is necessary for my analysis in Section IV) iv) of whether remote parole successfully incentivizes migration to internal POE instead of land POE. The category of "inadmissibles" includes a wide variety of migrants and travelers to the US, so the TRAC dataset enables me to exclude those not relevant to my analysis. I discuss this problem further in IV) iv).

After excluding inadmissibles who are not relevant to my analysis, I subsetted the data by relevant nationality groups. I then graphed entries at Internal POE against entries at the SWB for each ethnicity group. SWB POE are those located on the U.S.-Mexico land border, including El Paso, Laredo, San Diego, Tucson, and the Rio Grande Valley. All other POEs are termed "Internal POE."

The second two sections, which evaluate the claims that parole is 1) "safe and humane" and 2) "a meaningful alternative" to other legal and unauthorized migration, use a combination of the following: interview data, historical investigation, and statutory analysis. I conducted four interviews with stakeholders in the sphere of immigration law. The category of "stakeholders" includes attorneys, researchers, and historians focused on immigration. These interviews were semi-structured; the list of prepared questions will be attached as Appendix I. However, I was open to the conversation moving in a different direction and asked unplanned follow-up questions as needed. On a technical level, these interviews were recorded on my phone and then

[72] TRAC, "Stopping "Inadmissibles" at U.S. Ports of Entry"

[73] TRAC, "TRAC Fellows Program"

transcribed via Otter.ai. All interview subjects will be kept anonymous and identified only with their city or region of work and their type of involvement in immigration law. For example, one interview subject will be known as a "Chicago attorney."

To gather interview subjects, I reached out to existing connections within the immigration law and policy space. I also emailed writers of notable articles on humanitarian parole. My small sample size and non-rigorous sampling method were due to two major factors. First, there are a limited number of individuals and researchers familiar with humanitarian parole, so a robust qualitative analysis was not possible for my topic. Second, as an undergraduate with a limited time frame, my ability to acquire such interviews was limited.

However, the interview data does offer a perspective that supplements my legal and historical analysis. The stakeholders were able to offer insights on the more obscure aspects of parole; as a tool defined primarily by executive action, the nuances of it are difficult for the public to ascertain. The claims of interviewees were then supplemented or affirmed by existing qualitative research on parole, historical documents, and legal documents including judicial decisions and amicus briefs.

iii. Deterrence of Illegal Crossings

To measure whether remote parole programs have successfully deterred illegal crossings, one must look at the number of migrants "apprehended" by CBP. "Apprehension," as defined within the CBP data, is when a migrant is encountered crossing illegally between ports of entry. "Apprehended" migrants are those who have been caught trying to cross the border without identifying themselves to the proper authorities.[74] As a preliminary clarification, apprehension is

[74] Rosenblum and Hipsman, "Border Metrics"

an imperfect measure of the number of migrants crossing the border, as numbers may vary with other factors, such as CBP's efforts to catch these unauthorized migrants.[75] However, apprehension numbers are currently the best available metric by which to understand the number of migrants attempting to enter the US illegally.[76] Furthermore, for the purpose of this analysis, total apprehension numbers can be compared to apprehension levels for migrants from CHNV countries. If total apprehension increased but CHNV apprehension decreased, it could be said that there is a correlation between the availability of CHNV and the decreased likelihood that a migrant will cross illegally.

To understand the effects of remote parole on illegal deterrence, it is easiest to focus on CHNV and U4U as opposed to Afghani parole and family reunification for two reasons. First, CHNV and U4U were better publicized than Afghani parole and most family reunification programs. Migrants' knowledge of parole availability is relevant to their cost-benefit analysis of whether to risk illegal crossing. If migrants do not know that they can apply for a remote parole program, they may determine it is worthwhile to travel to Mexico by land and then cross unauthorized into the US. Second, family reunification programs are much smaller than CHNV and U4U, making it difficult to see clear numerical trends. Thus, even though my thesis is concerned with all remote parole programs, I will be looking at the impacts of CHNV and U4U in both this section and Section IV.[77]

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[75] Ibid.

[76] Ibid.

[77] It is also relevant that non-CHNV and U4U nationals are eligible for CBP-One parole at the border. By undergoing an analysis which only compares CHNV countries to non-CHNV countries, some of the variation based on the availability of CBP One parole should be reduced. It is relevant to note that it is impossible to eliminate any potential change caused by the availability of CBP One, however, which is an unfortunate statistical consequence of Biden choosing to implement CHNV and CBP One parole at the same time.

This analysis builds on the work done by David Bier[78] and Alex Nowrasteh[79] by including an additional six months of data. I also compared CHNV and non-CHNV apprehensions to isolate CHNV-specific trends as opposed to general trends in apprehension numbers due to differences in CBP enforcement efforts and seasonal changes.[80] Note that all descriptions of correlations are not confirmed by statistical tests but by the result of qualitative observation and visual inspection.

Figure 1

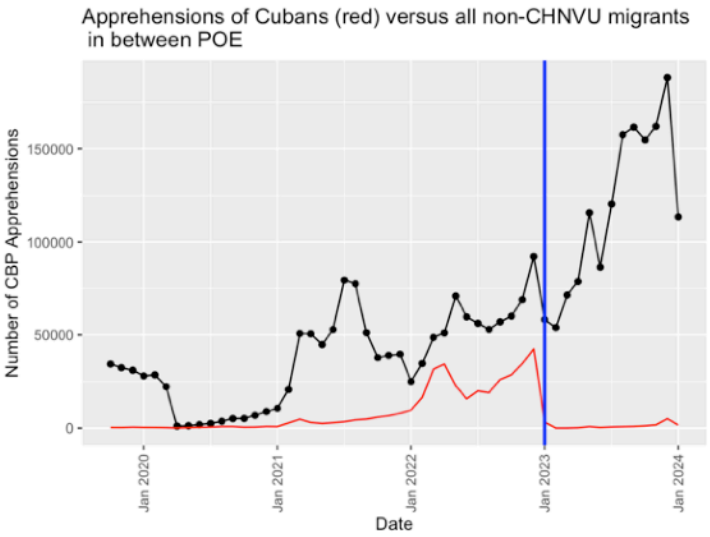
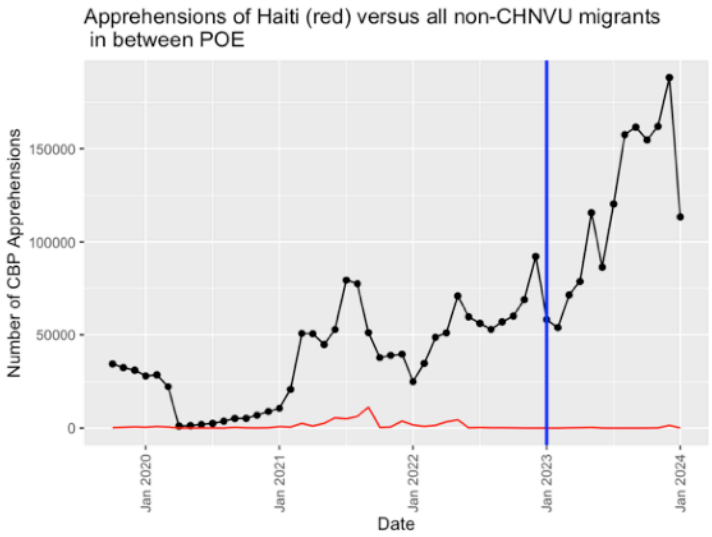


Figure 2



[78] Bier, "Parole Sponsorship Is a Revolution in Immigration Policy"

[79] Nowrasteh, "Biden's Border Immigration Policy Is Still Reducing Border Crossings"

[80] Strickler and Kaplan, "Total Border apprehensions declined in January"

Figure 3

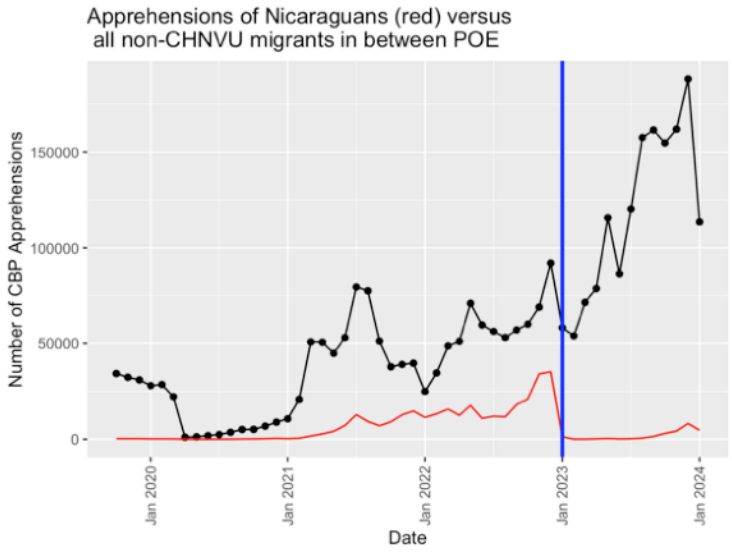


Figure 4

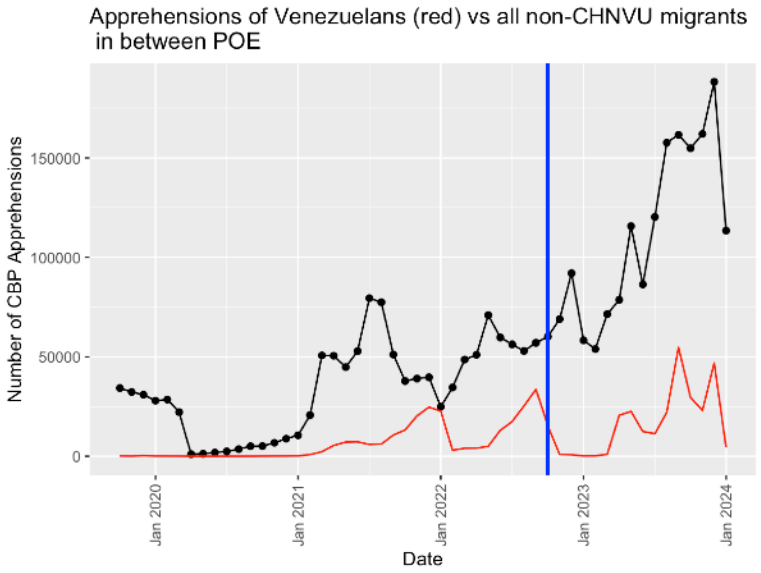


Figure 5

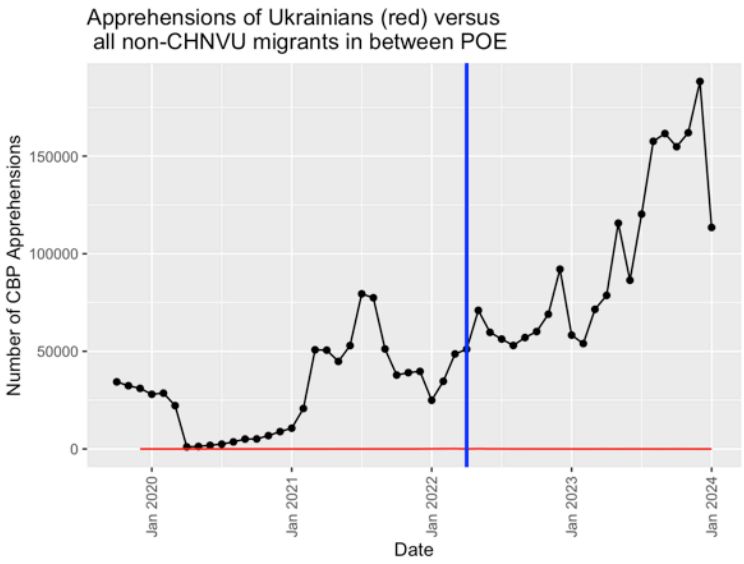
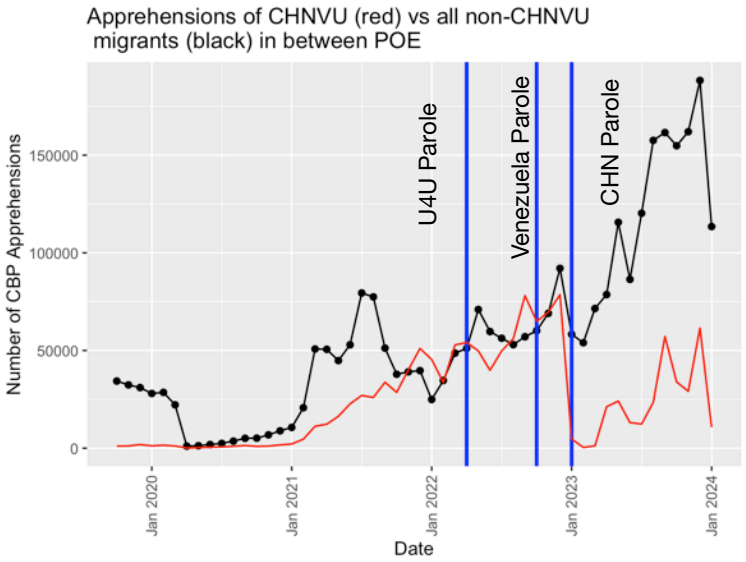


Figure 6



Source: CBP Nationwide Encounters by Area of Responsibility, FY 2020-2024 dataset. The blue line for each CHNVU graph denotes when remote parole became available. The black line always represents all non-CHNVU apprehensions, whereas the red line represents a CHNVU country or the summation of all CHNVU entries (Figure 6). For Figure 6, the parole program which each blue line refers to is noted.

Following the implementation of the CHNV program, apprehensions of migrants from CHNV countries by CBP grew at a slower rate than apprehensions of migrants from all other countries, despite monthly fluctuations (Figure 6). Isolating rates of apprehension by nationality, some CHNV groups are more strongly correlated with decreasing apprehension rates. Cubans

and Haitians, for example, have largely stopped crossing between ports of entry without authorization (Figures 1-2). Venezuelans follow similar patterns of illegal crossing compared to total apprehension patterns but were largely not crossing illegally between November 2022 and March of 2023 following the implementation of their parole program (Figure 4). This finding aligns with Bier's speculation— that backlogs in the parole process might be reversing earlier progress made in deterring unauthorized migration.[81] That is, as the line for parole approval lengthens, Venezuelans may increasingly resort to illegal border crossings. Qualitative interview-based evidence supports this conclusion.[82]

The trend of Venezuelan apprehensions compared to CHN apprehensions is demonstrative of a correlation between parole and lower rates of illegal crossing. Parole for Venezuelans was announced in October 2022, a few months earlier than parole for CHN in January 2023. If parole were associated with a lower rate of illegal crossing, one would expect that Venezuelan apprehensions would decline or stagnate earlier than apprehension for CHN, which is indeed observed in the data (Figure 4).

In conclusion, it does appear that there is a connection between parole programs and a reduced likelihood of illegal SWB crossings. However, it is difficult to separate the effects of CBP One port parole from the effects of CHNV and U4U, as they were implemented closely in time. Examining Venezuelan apprehension rates in particular may serve as evidence that remote parole alone is correlated with lower rates of illegal crossings. Despite visual inspection supporting this hypothesis, it is difficult to support a conclusion about the individual effects of

[81] Bier, "Parole Sponsorship Is a Revolution in Immigration Policy"

[82] Padgett, "The impact of Biden's popular humanitarian parole for migrants"

CHNV, as other factors could have caused a decrease in Venezuelan apprehension rates in the fall of 2022.

Biden's goals of preventing illegal crossings into the US and encouraging travel to internal POEs reinforce each other. By redirecting migrants away from the southern border, Biden also decreases illegal border crossings. Because Biden implemented port parole options for Ukraine, Cuba, Haiti, and Nicaragua at the same time as remote parole programs, one cannot tell if the drop in unauthorized crossings stems from remote parole programs or port paroles.

Analyzing Biden's second goal— about incentivizing crossings through internal POE— can help disaggregate the impacts of port parole and remote parole. If illegal apprehensions are declining but internal POE attempts are stagnant, this could serve as evidence that remote parole programs are not a possible cause of the decline in apprehensions.

iv. Orderly Processing

The second goal that the Biden administration has pursued through remote parole programs is the "orderly" processing of migrants. As discussed in Section I, the Biden administration defines "orderly" processing as the entry of migrants through internal POE as opposed to spontaneous arrivals at the SWB.[83] To estimate whether the availability of parole increases scheduled internal arrivals, we can examine the proportion of CHNV arrivals at internal ports versus the SWB before and after the passing of parole. This analysis helps to distinguish the effects of port parole from the effects of region-specific programs; if there was a large decrease in unauthorized crossings but a small increase in internal POE arrivals, this decline in unauthorized crossings could be said to correlate with port parole usage.

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[83] Di Martino, "Biden's Immigration Parole Programs Are Working"

For this section, I will be using TRAC Syracuse's "Stopping 'Inadmissibles' at U.S. Ports of Entry" dataset. "Inadmissibles" are individuals who have requested entry to the United States but do not have valid Visa documents— some of these individuals are ultimately denied entry, but over half are not.[84] [85] Inadmissibles who are permitted to enter the US are those who have a statutory exception to the Visa requirement. Possible statutory exceptions include asylum claims, proof of serving as a ship crew member, special Visa waivers, and parole.[86] Thus, "inadmissible" as used in CBP data is an incredibly broad term.

"Inadmissible" is not differentiated into these sub-categories within the publicly available CBP data. That I am using data that distinguishes between different types of inadmissibles makes my project meaningfully different than previous quantitative research, which relied only on the CBP Nationwide Encounter dataset to approximate the number of parolees.[87] [88] Furthermore, no other author has looked at the proportion of CHNV migrants coming in through internal POEs.

As mentioned in Section II, one cannot untangle the effects of CHNV parole and CBP One port parole, since Biden made these programs available for Cuba, Haiti, and Nicaragua in the same month, preventing estimation of a causal or correlational effect of either program in isolation. For this section, therefore, the correlation that can be examined is the following: when

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[84] TRAC, "New Data Sheds Light on What Happens to People Found Inadmissible at U.S. Ports of Entry"

[85] Confusingly, "inadmissible" also has another meaning under Title 8, which the the portion of the U.S. code which dictates the processing of people at and between POE. "Inadmissible" under Title 8 ordinarily refers to individuals who satisfy "ineligibility" grounds under Title 8 and are therefore statutorily prohibited from entry into the U.S., regardless of whether or not they hold a Visa. On the other hand "inadmissible" individuals within the CBP data may be found "legally" inadmissible and therefore denied entry. However, they may also be allowed to enter the country— via parole, an asylum claim, or via the issuance of a Notice to Appear document (which requires the person to come to a later Immigration court date but nevertheless permits them entry to the U.S.). One last technicality— parolees are not technically "admitted" to the U.S. as per the decision in *Leng May Ma v. Barber* (see footnote 11). Consequently, parolees may be persons who are legally inadmissible, or they may not be— this does not affect whether a person may be granted parole status. Nevertheless, all parolees fall under "inadmissible" within CBP's public datasets.

[86] TRAC, "A Ten-Year Look at Inadmissible Migrants and Paroled Migrants at Ports of Entry"

[87] Bier, "Parole Sponsorship Is a Revolution in Immigration Policy"

[88] Di Martino, "Biden's Immigration Parole Programs Are Working"

both a remote parole program (CBP One) and a port parole program (CHNV) are available at the SWB, is there a high proportion of migrants choosing remote over port parole?

To answer this question, it is necessary to look both at parolees and those who could feasibly apply for parole. Not every SWB crosser eligible for remote parole will be admitted to the US with parole; instead, they might qualify for asylum or be given a Notice To Appear (NTA) document. The Biden administration appears to be using these tools somewhat interchangeably at the SWB.[89] Thus, the relevant population for this analysis is those who qualify for parole and either applied for remote parole or traveled to the SWB. This excludes the following categories of inadmissibles: crew members on ships; LPRs, citizens or those with other permanent statuses; visitors such as students; and re-entry attempts. Re-entry attempts are excluded because these individuals are not eligible for parole.[90]

For each CHNV country and Ukraine, I compared the number of nationals requesting entry at the SWB versus at internal POEs. In doing so, I hoped to answer whether SWB crossings decreased and internal POE crossings increased following the implementation of remote parole programs.

Figure 1

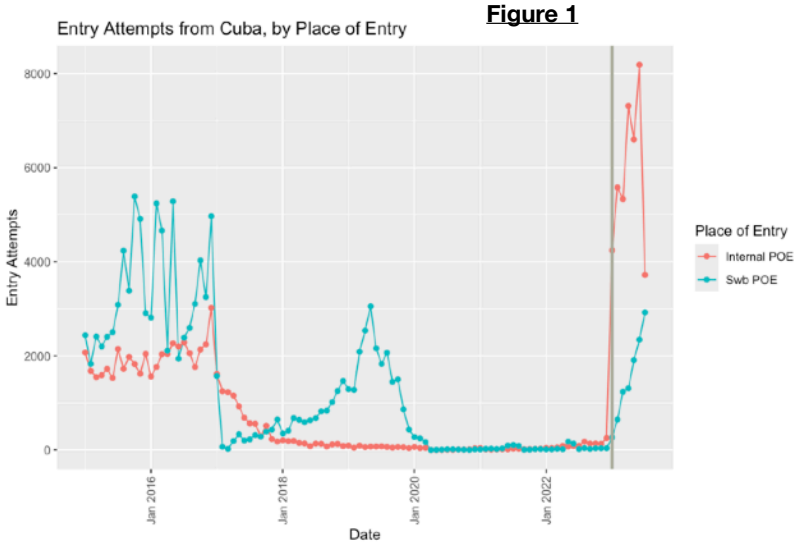
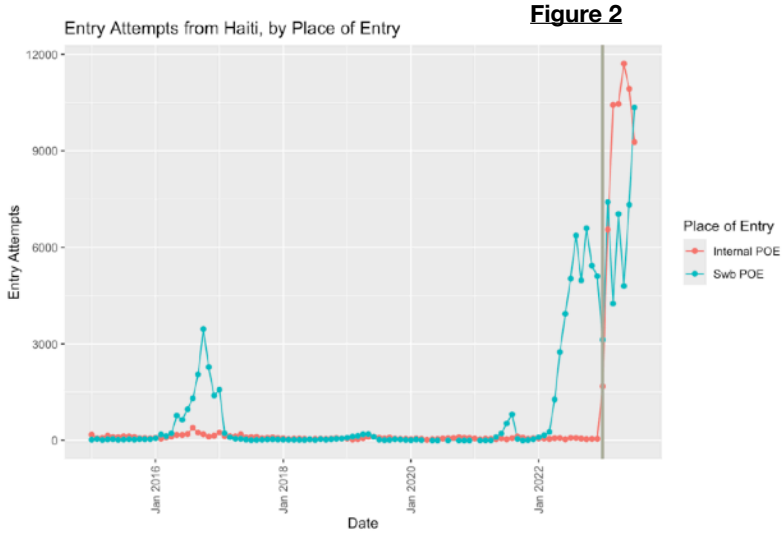


Figure 2



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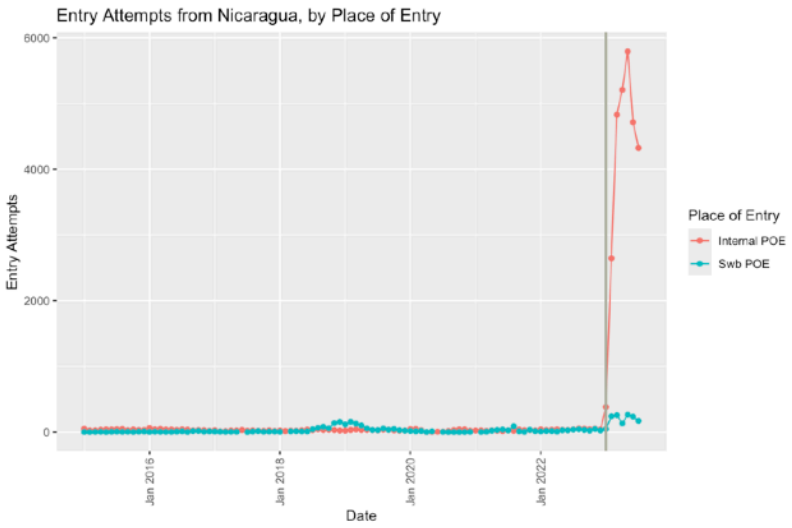

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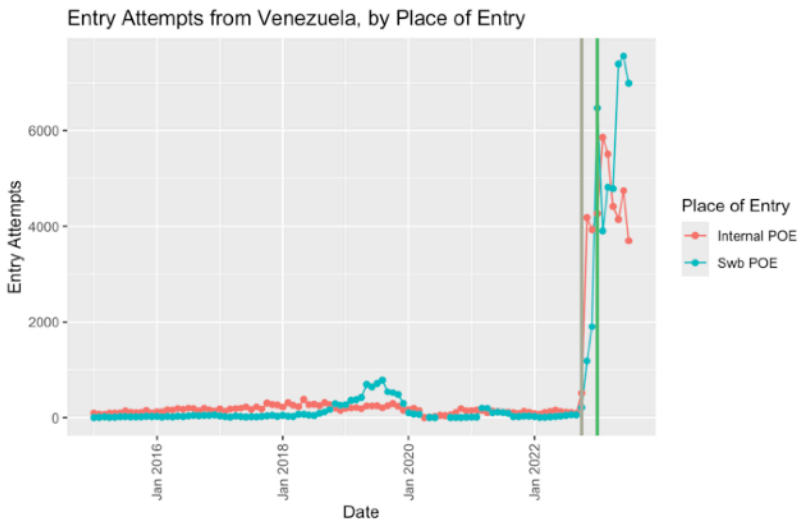

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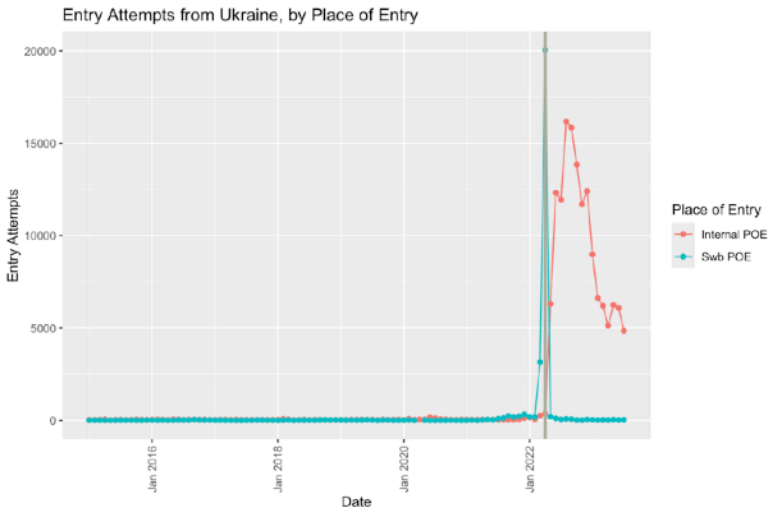
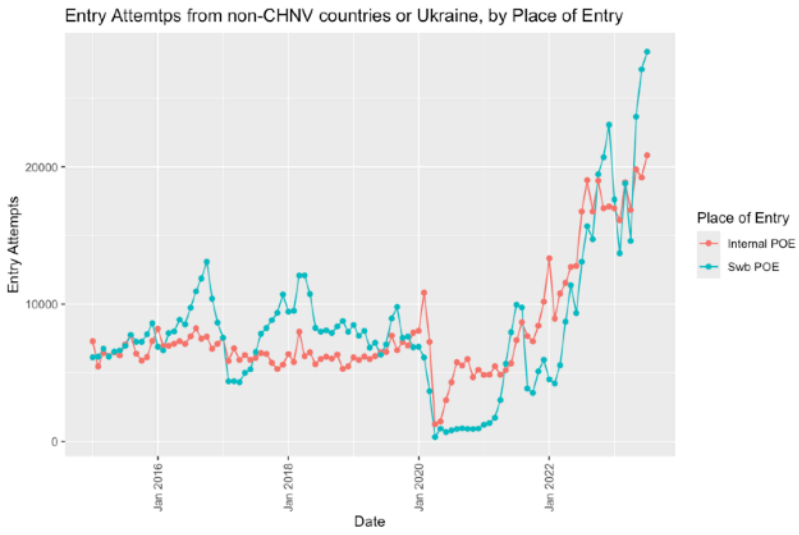


Figure 6



Source: TRAC inadmissibles data set. The grey line denotes when remote parole became available for each country. For Venezuela, the green line indicates when port parole became available, for all other countries, it is identical to the grey line (or, in the case of Ukraine, no port parole program was officially available). Blue represents entry attempts through the SWB, whereas orange represents Internal POE attempts. Note: the reason why the y axis represents “entry attempts” rather than “potential parolees” or “migrants” is because the dataset does not have exactly one entry per migrant. Instead, family units are sometimes recorded together. TRAC estimates that the count of individual migrants is approximately 10% higher than entry attempts.

Following the implementation of region-specific remote-application parole, internal POE levels dramatically increased for Cuba, Haiti, Nicaragua, and Venezuela (Figures 1, 2, 3, 4). For Venezuela, this was in October of 2022, and for the other three countries, this was in January of

2023. Since 47.9 percent of internal POE entry attempts— excluding those with permanent status, pre-approved visitor status, and re-entry attempts— are parolees, there are few ways for non-visitors or permanent residents to enter the US at an internal port besides via parole. Thus, the number of CHNV migrants coming in through internal POE before CHNV implementation was small,[91] and the sharp increase in internal POE attempts can be closely associated with the implementation of the program.

For all four countries, internal POE entry attempts surpassed entry attempts at the Southern Border after the implementation of CHNV, supporting Biden's assertion that CHNV not only increased entries at non-SWB POE but that individuals are incentivized to enter at an internal POE over the SWB. For non-CHNV-and-Ukraine countries, Southern Border arrivals for first-time entrants with no legal status still exceed internal POE arrivals by a large margin (Figure 6). These contrasting findings appear to serve as correlative evidence that Biden was correct— the availability of remote parole programs may encourage migrants to enter through internal POE.

There are two caveats to this conclusion that Biden's second goal was achieved, however. First, for all four CHNV countries, the difference between internal POE entry attempts and SWB entry attempts was smaller in January 2024 than it was in the month following the implementation of remote parole. This trend is not unique to my analysis; Bier 2023 also notes a decrease in the proportion of entry attempts at an internal POE versus all POEs and theorizes that

[91] The exception to this, as can be seen above, is Cuba. Cuba has had some kind of parole program in place nearly continuously since 1959, so the option for parole has typically existed for Cubans. This explains the high rate of Cuban internal entry before 2023, along with some tourists, LPRs, and citizens. Haiti also had some degree of internal POE entry attempts pre-CHNV, which can be attributed to the availability of Haitian family reunification parole post-2014. Source: Bier, "126 Parole Orders over 7 Decades"

this downturn was due to a backlog in parole processing.[92] As mentioned in Section III, anecdotal evidence supports the idea that Venezuelans are turning away from CHNV and taking their chances at the SWB as the waiting time for parole adjudication increases. Thus, CHNV may be correlated with a higher rate of internal entry only when applications are processed at a sufficiently fast pace.

The second caveat to the success of Biden's second goal is that SWB crossings are still increasing for every examined country except for Ukraine and Nicaragua. For example, SWB crossings for Venezuelans have been increasing more or less steadily since the end of 2022 (Figure 4). This trend could be attributed to a couple of factors. First, the end of Title 42 midway through 2023 resulted in more migrants processed at the border under admissibility criteria, in contrast to Title 42 processing which turned most migrants away without consideration of admissibility. Second, geopolitical events such as the worsening of the economic state of Venezuela may have contributed to increasing migration attempts. Third, the availability of port parole such as CBP One correlates with an increase in entry attempts at the SWB, as there was an immediate spike in SWB attempts following the introduction of CBP One parole in January 2023.

There appears to be an inverse relationship between the increase in SWB attempts and internal POE attempts. This suggests that the Biden administration is correct in their assumption that increased availability of remote parole "diverts" some migrants who might have otherwise gone to the border to enter via internal POE. However, when both programs are in place,

[92] Bier, "Parole Sponsorship Is a Revolution in Immigration Policy"

attempts at internal POE increase initially and then decline— potentially as a result of increasing backlog.

Biden's claim that parole increases "orderly" migration by incentivizing internal POE admission appears partially true. Remote parole programs are associated with a higher proportion of migrants traveling to and entering from internal POE, potentially redirecting some individuals who would have otherwise gone to the SWB. Nevertheless, implementation issues including significant processing delays may impede program effectiveness in diverting migrant flows.

v. Safe and Humane

Safety and humaneness, as defined by the rhetoric within the Federal Registry Memos and Biden's speeches, have to do with the reduction of the human costs associated with migration. A program that made migration to the US less difficult, painful, or dangerous for migrants could be considered a safe and humane one. In this Section, I also choose to focus on the implementation of Biden's remote parole programs, rather than the intrinsic features of the tool.

A. The Positives

To start with the potential humanitarian benefits from Biden's use of parole: disincentivizing of illegal crossings and land travel to the United States, if successful, does prevent migrants from taking unsafe journeys to enter the U.S. Generally, the Biden administration's assertions that land travel to the US and unauthorized crossing of the US-Mexico border are dangerous is correct— in isolation.[93] [94] If the Biden administration can provide an alternative to crossing into Mexico and the US on foot, this would serve the benefit of

[93] Amnesty Int., "Most Dangerous Journey: What Central American Migrants Face When They Try to Cross the Border"

[94] Mixed Migration Centre, "Safety risks and dangerous locations reported by refugees and migrants in Mexico"

reducing migrant death and suffering. Correlative data, as presented in Section IV) iii), does indicate that parole decreases unauthorized into the US. Furthermore, Section IV) iv) provides correlative evidence that remote parole programs incentivize migrants to enter through internal POE. Decreasing the harms associated with the journeys to Mexico as well as across the US-Mexico border is undeniably a worthwhile humanitarian goal.

However, a few aspects of the design and implementation of Biden's parole policies inhibit its potential humanitarian progress. First, parole has been hindered by severe backlogs in processing, which force individuals to either wait in perilous situations in their country of origin or resort to land crossings. Second, the requirements that the Biden administration has put in place for region-specific parole programs, including passports and a financial sponsor, inhibit access to parole, particularly for those most in need. Third, access to parole has varied by program and ethnicity.

B. Waiting Lines

Several of Biden's parole programs have suffered from extremely long processing times, which handicaps the ability of these programs to offer a safe and humane alternative to migrants.

As previously discussed in Section IV) iii), CHNV declined in efficacy as an alternative to unauthorized crossing as the processing times have become longer. Anecdotal evidence shows that Venezuelan migrants, in particular, have turned back to land travel as it became untenable to wait in Venezuela for the duration of the processing period.[95] Correlative evidence from IV) iv) also indicates that as wait times grew longer for CHNV, several nationality groups began entering through the SWB at higher rates than through internal POE. This indicates that CHNV's

[95] Padgett, "The impact of Biden's popular humanitarian parole for migrants"

wait times have directly interfered with its ability to offer a "safe" and "humane" alternative to land crossing. If migrants are not able to access the program due to high wait times, it cannot function as a viable alternative alternative pathway.

It is worthwhile to note that CHNV caps its monthly approvals at 30,000 for Cuban, Haitian, Nicaraguan, and Venezuelan parolees combined. This is a decision by the Biden administration to "[allow] for a steady pace of operations and arrivals of individuals seeking parole."[96] Many civil society organizations have asked that the Biden administration increase this cap— however, looking at the processing times for other parole programs, it is unclear if a limitation or increase in the formal cap would drastically increase the speed of adjudication.

In terms of remote parole programs, the problem of long waiting times is not unique to CHNV. Research on the Afghani parole program indicates that the office that processes humanitarian parole applications was severely understaffed, at least as of November 2021. The complaint in *Roe v Mayorkas,* a lawsuit that detailed the slow processing of Afghani parole applications, cited that the branch of USCIS which processed parole applications only had 14 staff members.[97] While it does not appear that this branch processes all parole applications[98]— and though the size of the office has likely increased since 2021— the initial low processing capacity no doubt stymied the ability of USCIS to quickly adjudicate parole. If a sufficient initial backlog formed, it may have been difficult for USCIS to catch up, even with the addition of more employees.

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[96] USCIS, "Frequently Asked Questions About the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans"

[97] *Roe v Mayorkas*, Complaint

[98] USCIS, "Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States"

Research on both Afghani parole and Central American Minor parole (CAM), a family reunification parole program for individuals from Central America, has reported long wait times for parole adjudication. Parolees from Afghanistan can be divided into two categories— first, those who received "port parole" due to their evacuation on U.S. military vehicles before the fall of Kabul, and second, parole for Afghanis left behind after the U.S. military pulled out.[99] [100] While the first group immediately received parole as a condition of successfully evacuating and being flown to the U.S., the latter group had to attempt to apply for parole from abroad. An estimated 46,000 Afghanis filed for parole from abroad, with the average wait time for the processing of these applications ranging from 7-9 months, as per the government's response to the *Roe v Mayorkas* lawsuit.

Qualitative interview data on CAM reveals that the processing time for the program could exceed 6 months.[101] CAM is not processed by the same branch of USCIS as most other humanitarian parole programs; instead, parole applications for the program are processed by refugee officers at USCIS.[102] CAM is also significantly smaller than programs such as CHNV. Nevertheless, parole processing continues to happen slowly under CAM. This suggests that the lag in processing is not only due to organizational capacity but perhaps also USCIS' low prioritization of urgent parole adjudication.

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[99] Harris, "Afghan Allies in Limbo: Discrimination in the U.S. Immigration Response"

[100] "Port parole" is the name used to explain parole which is given to refugees upon their arrival to the U.S. at ports of entry, as opposed to parole which is applied for in advance of travel. This still falls under "Afghani parole" in the Biden's administration official counts, which is why I describe it as such. Biden's parole-granting through CBP One at the border would also be considered a kind of "port parole," although it has not usually been described as such. This is not an ahistorical usage of parole; some Vietnamese refugees were also given "port parole" following the fall of Vietnam. Source: Ibid.

[101] Schacher, "Mixed Blessing: Guatemalan Experiences under the New Central American Minors Program"

[102] Ibid.

Interestingly, the one parole program that has not had notably slow processing is U4U. This has been reported on by several researchers; particularly, Chishti, Bolter, and Harris. All of these researchers have contrasted the rapid adjudication of Ukrainian parole with the slow approval and processing of Afghani parole. Processing for the 66,000 Afghani parole applicants who did not obtain a spot on emergency airlifts completely stalled following the August 2021 fall of Kabul. Internal USCIS documents obtained by the American Immigration Council reflect that at least two months of the 7-9 month average delay cited in *Roe v Mayorkas* was due to the executive agency "putting a hold" on all processing of Afghani parole applications.[103] The agency also acted with an extreme lack of urgency on an internal level, which was evidenced by its decision to stop expediting Afghani parole applications after the U.S. military pulled out.[104] The result of these agency decisions was that by March of 2022– over 6 months after the fall of Kabul— only 2,633 parole applications had even been adjudicated.[105]

In comparison, the adjudication of Ukrainian parole applications was performed at a staggering pace. In the first two months of the implementation of U4U, 6,500 Ukrainians had already arrived in the U.S. under the program. This is nearly three times the number of Afghani parolees whose cases were processed in the seven months following the fall of Kabul.

The huge discrepancy in processing times between Ukrainians and Afghani parole applicants is evidence of the second major problem behind Biden's implementation of parole—

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[103] American Immigration Council, "Agency Failures Make Obtaining Humanitarian Parole Almost Impossible for Afghans"

[104] Ibid.

[105] This is not to mention the extremely high denial rate of Afghani parole applicants. Of those 2,633, 2,251 applications were denied. This is an abnormally high rate of denial compared to U4U. As Harris states: "[USCIS] granted 30 times more approvals in less than 3 months than granted to Afghans over a period of 10 months."

the safety and humanity provided by these alternative methods of entry are available on an inequitable basis.

C. Parole for Whom?

Biden's remote parole programs are first inequitable in terms of the distinctions between their requirements. As was stated above, the most obvious disparity exists between U4U and Afghani parole. The two programs varied significantly, not only in processing times and approval rates but also in the logistics of the application. As a reminder— parole, as a tool, has very few statutory criteria. The specifics of the application process, for instance, are left up entirely to the executive branch. Thus, the Biden administration chose to make access to parole much easier for Ukrainians than Afghanis: Afghanis had to pay a $575 application fee, whereas Ukrainians did not; Ukrainians could apply completely online, whereas Afghanis had to attend an in-person interview at a U.S. Embassy; Ukrainians had to provide less evidence than Afghanis.[106] In making the humanitarian benefits associated with parole easier to access for Ukrainians, the Biden administration blunted the potential impact of the program on the "safety" and "humanity" of the general migrant population.

To provide a nuanced perspective, it is worthwhile to point out that Afghani parole largely came before U4U. As pointed out by a D.C. Policy Analyst whom I interviewed, this could explain some of the discretion in the program requirements and adjudication time.[107] However, given the small amount of time between the two programs as well as their overlap, not all of the differences in processing time can be explained by the benefit of hindsight.

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[106] Harris, "Afghan Allies in Limbo: Discrimination in the U.S. Immigration Response"

[107] Interview with a D.C. Policy Analyst, March 28, 2024.

Furthermore, the government could have revised the requirements of Afghani parole had they determined later that they were too stringent.

This problem of disparate access to humanitarian parole is not unique to the Biden administration. In fact, the application of parole to groups that the U.S. has a particular political incentive to help— and not other refugee groups— is a historical feature of the tool. As noted by Bath in his article "Is Humanitarian Parole really Humanitarian?," Cubans have historically been disproportionately advantaged by parole, likely due to the US' motivation in destabilizing and humiliating the communist country.[108]

Haiti is a country that is relatively analogous to Cuba in terms of proximity to and relationship with the US but has historically been left out of parole opportunities. Approximately 54,000 Haitians had been paroled into the country prior to CHNV, in comparison to over 400,000 Cubans.[109] As mentioned by a D.C. historian whom I interviewed, civil society members and immigration advocates had to fight to have Haiti included in CHNV.[110] This inequality between which countries and regions are granted specific parole programs is a historically rooted problem that persists in the Biden administration's use of remote parole.

The final issue with equity in Biden's remote parole programs comes from the requirements for a passport and a financial sponsor. U4U, Afghani parole, and CHNV all require applicants to apply with a passport and a financial sponsor who vouches to economically support the parolees upon arrival. Family reunification parole programs such as CAM, on the other hand,

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[108] Bath, "Is Humanitarian Parole really Humanitarian?: Bias in U.S. Immigration Policy"

[109] Bier, "126 Parole Orders over 7 Decades: A Historical Review of Immigration Parole Orders"

[110] Interview with a D.C. Historian, February 13, 2024.

require just a passport. As noted by the same D.C. historian, those who can apply for such remote parole programs are not "people who are not the most vulnerable, but somewhere in between."

Passports, in themselves, pose a barrier to application. Those who do not already have passports will have to pay to get them produced, which disadvantages especially those fleeing economic hardships, such as Venezuelans.[111] Furthermore, those who have already left their country of origin due to substantial fear or imminent danger are likely to also not have a passport; the Observatory of Social Investigations found that only one percent of Venezuelans who left the country between June and August of 2022 held a passport.[112] Thus, the passport requirement which each of Biden's remote parole programs carries disadvantages not just the poorest refugees, but also those in the most danger— who may have already left the country without taking identity documents.

At least at the beginning of its implementation, the requirements of CHNV also disadvantaged those who were the most desperate to evacuate by punishing refugees who had already illegally crossed into Panama or Mexico. Many Venezuelans were notably left in "legal limbo" following the announcement of CHNV, which was coupled with the news that the U.S.-Mexico border would stop accepting border entrants who violated this rule.[113] Notably, those who recently entered Panama or Mexico without authorization were also prohibited from applying for CHNV, rendering those who had just left Venezuela unable for any US humanitarian relief. It is unclear if this rule is still being enforced with regard to either CHNV or border entry.

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[111] Reuters, "Explainer: Why Venezuela's refugee exodus to the U.S. has been accelerating"

[112] Ibid.

[113] Pazmiño, "Biden's new border policy throws Venezuelan migrants into limbo"

Another limiting criterion of Biden's region-specific remote parole programs is that they require a financial sponsor to apply in tandem with the parolee. This requirement advantages those who are privileged enough to have international connections. It also disadvantages certain countries, such as Venezuela— which, as the D.C. historian noted, has a much shallower diaspora in the U.S. than the other CHNV countries.

Although it is no doubt necessary for parole applications to have some requirements, it is worth being critical about which requirements are being used, and the impact that those have on the most vulnerable in a migrant population. The D.C. Policy Analyst pointed out that there may be legitimate policy tradeoffs associated with the requirements of having a passport requirement or financial sponsor. For example, these criteria may shield CHNV from criticisms of jeopardizing national security or further stretching the welfare system. To successfully operate a parole program may require certain restrictions that deprive parts of the population of access. However, this is a strong reason not to restrict asylum for countries granted parole, as the Biden administration has done with CHNV countries.[114] To both impose passport-and-sponsor requirements for parole and limit asylum will likely entail a lack of humanitarian relief for the most disadvantaged among an imperiled population.

Furthermore, there is no legitimate policy reason to create such different requirements for each remote parole program— beyond preferences about who "deserves" to enter the country. Lastly, when creating region-specific remote parole programs, the Biden administration should be mindful that it isn't worsening existing historical inequity in terms of access to humanitarian relief.

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[114] American Immigration Council, "The Biden Administration's Humanitarian Parole Program for Cubans, Haitians, Nicaraguans, and Venezuelans"

vi. A Meaningful Legal Alternative

One of the four goals that the Biden administration cited in its propagation of remote parole programs was its desire to provide a "meaningful alternative" to unauthorized migration. This goal in the context of the current humanitarian pathways to the U.S. not proving sufficient to deter unauthorized migration. The Biden administration also implies that a comparable alternative to asylum and refugee resettlement would successfully deter unauthorized migration.

A. Why An Alternative is Necessary

The Biden administration is certainly correct that the current humanitarian pathways to the US are not sufficient to meet demand. The number of asylum applications has long outstripped the ability of USCIS and EOIR to adjudicate these cases, and this problem is only growing.[115] Refugee resettlement numbers in the US are infamously low, especially in the last ten years, and the number of refugees that the US accepts is declining over time.[116] The declining efficacy and generosity of asylum and refugee resettlement persists despite the growing global need.

The Biden administration is not blind to the issues in the design of the US immigration system. In a speech by President Biden on his immigration plan, he acknowledged that the US framework for immigration has been "broken" for a long time, and asked Congress to consider his plan for comprehensive reform.[117] This plan includes expansions of the processing capacity for asylum, among other things. In the meantime, however, the President announced his

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[115] TRAC, "A Sober Assessment of the Growing U.S. Asylum Backlog"

[116] Samuel, "How the US is failing refugees, in one chart"

[117] White House, "Remarks by President Biden on Border Security and Enforcement"

intentions to act where he has the capacity to do so, in providing an alternative path for those seeking humanitarian protection.[118]

So is parole a comparable and meaningful alternative to asylum and refugee resettlement? As compared to asylum and refugee resettlement, parole has the advantage of being both faster in emergency scenarios and having wider statutory criteria. Thus, parole can apply quickly to many individuals in humanitarian peril in a way which asylum and refugee resettlement or not. However, unlike asylum and refugee resettlement, parole is a temporary status and does not offer many legal protections against deportation.

B. Access and Speed

Two advantages that parole has over asylum and refugee resettlement are: 1) its broad statutory scope and 2) its ability to quickly process large populations of refugees in time-sensitive emergencies.

As a tool, parole has the capacity to encompass more individuals than asylum or refugee resettlement would be able to. The US definition of asylees and refugees is circumscribed by the United Nations definition. In the US, both asylees and refugees are persons who can demonstrate "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion."[119] The difference between asylees and refugees is that refugees are applying for relief from abroad, whereas asylees are applying in the US or at a POE. [120] Two major groups left out of this definition are persons experiencing generalized

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[118] Ibid.

[119] Galli and Fee, "Refugees Welcome? Historicizing the Context of Reception in US Resettlement and Asylum Policy."

[120] Ibid.

violence, such as gang violence or political instability, as well as those who have become vulnerable due to climate crises and natural disasters.

Notably, many of those who have been paroled into the US via Biden's remote programs would not necessarily have been able to qualify as refugees or asylees. Many Ukrainians paroled in through U4U, for example, were fleeing generalized violence and war and therefore do not have a strong asylum case under current US law.[121] Venezuelans are another major group that has been granted parole and does not necessarily fit within the asylum definition; while some Venezuelans are fleeing targeted human rights violations, others cite food insecurity and the collapse of public services.[122] Although these persons are no doubt in need of humanitarian assistance, this assistance may not be forthcoming under the current narrow definition of asylum in US law.

Parole, on the other hand, only requires the executive branch to demonstrate that granting parole to an individual has "significant public benefit" and serves an "urgent humanitarian need." Although the executive must still fulfill criteria in granting parole, this standard includes many more people than asylum and refugee law. Under parole, the executive can grant temporary protection to those who might not otherwise be able to receive humanitarian assistance.

Biden's use of parole to admit people who could not or would not be able to have humanitarian protection as refugees is similar to the use of the tool before the passing of the Refugee Act in 1980. As the D.C. historian noted, for refugees from the former Soviet Union and Vietnam, parole was used alongside refugee resettlement "as a way of basically allowing more

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[121] Frelick, "Ukrainians Are Refugees, but Our Laws Don't Consider Them Such"

[122] WOLA, "Venezuelans Eligible for TPS are Fleeing Authoritarian Regime and Humanitarian Crisis"

people to come to the United States."[123] Biden's administration follows this example by using parole to not only supplement the admission of potential asylees but also to offer some humanitarian relief to those who might not qualify for other pathways.

An additional benefit of parole is that it can handle emergency humanitarian situations more deftly and quickly than asylum or refugee processing. Of course, port parole is a useful tool to use in combination with an emergency evacuation— this was demonstrated when all Afghani evacuees who were not Visa holders were simply granted parole status upon arrival to eliminate processing time upfront.[124] However, remote parole can also be used as a substitute for refugee resettlement to quickly grant people the legal status they may need to evacuate. As mentioned by Schacher, during the Iraq war, there was an explicit recognition by the Bush administration that refugee resettlement and Visa programs were time-consuming and not well-suited to time-sensitive humanitarian events.[125] Instead, the Bush administration turned to parole and consequently was able to grant legal status to Iraqi nationals who had worked with the US army, allowing them to enter the US in as little as two days.[126]

Thus, parole has two inherent advantages over asylum and refugee resettlement: its flexible application criteria and its speed. Interestingly, the Biden administration has taken advantage of the former more so than the latter. It is undeniable that CHNV, U4U, and Afghani parole grant humanitarian protections to some individuals who would not be able to utilize humanitarian pathways. However, as discussed in Section VB), the executive branch's remote parole programs have been plagued by long processing times. This suggests that the Biden

[123] Interview with a D.C. Historian, February 13, 2024.

[124] Harris,, "Afghan Allies in Limbo: Discrimination in the U.S. Immigration Response"

[125] Schacher, "Supplementary Protection Pathways to the United States"

[126] ibid.

administration needs to dedicate more resources to parole processing to truly take advantage of the tool's capacity for speed in emergencies.

C. Parole's Transitory Nature, and What Comes Next

The major disadvantage of parole over asylum and refugee resettlement is that it is both temporary and revocable. These two statutory features are interrelated but distinct. Parole is temporary in that it is a "temporary" immigration status. Typically, parole is granted for one or two years, after which time parolees must: 1) apply for re-parole, if available; 2) apply for a permanent pathway such as asylum or a family Visa; 3) apply for Congressional relief, such as an adjustment act; 4) apply for a different temporary option, such as TPS; or 5), have their status expire, and continue to reside unlawfully under the fear of deportation.

The second inherent problem with parole is that it is revocable, given it is an executive authority. Upon the change of administration, the next President has the full legal capacity to discontinue parole programs, even for those individuals who expect to have additional time on their status.

Looking first at the temporary nature of parole, the Biden administration has not made clear what they intend for parolees to do after their parole expires. Memorandums announcing the launch of CHNV did state that within the two-year period, parolees can "seek humanitarian relief or other immigration benefits for which they may be eligible." Those who do not seek these benefits or who are not eligible "will generally be placed in removal proceedings after the period of parole expires."[127]

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[127] Federal Registry, "Implementation of a Parole Process for Venezuelans"

For Afghani parolees, an option to "renew" their parole status— which is also known as re-parole— has been offered by the Biden administration.[128] However, this is only a temporary solution for those parolees who do not have a permanent pathway. In the case of Afghani parolees, for instance, it pushed back the problem of permanent status for another two years— but for parolees that do not qualify for asylum or other existing pathways, it does not offer a long-term solution.

As was analyzed in the previous section, not all parolees will qualify under the US' current definition of an asylee. Venezuelans and Ukrainians, in particular, are more likely to have fled generalized violence than other paroled groups and therefore have weaker asylum cases. Other permanent paths such as family visas are also unlikely to apply to parolees, especially Venezuelans, given their shallow diaspora in the United States. Thus, an additional option is needed to provide sufficient permanent protection to parolees.

Non-governmental advocates for CHNV, such as immigration policy researchers, have suggested that the long-term problem of parolees will be solved by Congressional legislation that extends permanent status to past parolees. This kind of transformation of temporary parole status into permanent residence via Congressional mandate is referred to as an "adjustment act." The executive branch has relied on adjustment acts to accommodate the expiration of parole status several times in the past, most notably in response to the parole of large numbers of Cubans and Vietnamese people.[129] [130] However, as noted by the D.C. Historian: "The executive branch is

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[128] Montoya-Galvez, "Biden administration to let Afghan evacuees renew temporary legal status amid inaction in Congress"

[129] Bath, "Is Humanitarian Parole really Humanitarian?"

[130] Chisti and Bolter, "Welcoming Afghans and Ukrainians to the United States"

using parole more, but the executive branch used to be able to expect that Congress would adjust those people. Now, they're not doing that."[131]

Furthermore, records indicate that an Afghani Adjustment Act, a Venezuelan Adjustment Act, and a Ukrainian Adjustment Act have all been introduced into Congress, but none seems to have any forward momentum.[132] As pointed out by the D.C. Policy Analyst, an adjustment act may become a "possibility at the right time."[133] In the future, one or more members of Congress may be able to mobilize the political will to grant parolees the ability to regularize their status. At this point, however, it seems fair to say that the Biden administration should not count on the possibility.

This leaves two options remaining for parolees who do not qualify for an existing permanent pathway such as asylum. The first option is Temporary Protected Status, or TPS. It is important to note that almost all countries with a regional parole program are also designated for TPS. While TPS is a temporary status in name, TPS has historically been granted to countries for decades at a time.[134] Therefore, the problem with TPS is not necessarily that it is a short-term fix; it can provide legal protection from deportation as well as legal access to work permits for former parolees in the foreseeable future.[135] However, TPS is still not an ideal permanent solution to the question of what pathways can legally accommodate parolees long-term; TPS, like parole, is an executive action, and can therefore be repealed by a new presidential administration. I will discuss the problem of revocability in one moment.

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[131] Interview with a D.C. Historian, February 13, 2024.

[132] Schacher, "Supplementary Protection Pathways to the United States"

[133] Interview with a D.C. Policy Analyst and Writer, March 28, 2024.

[134] Access Washington, "Economic Benefits of Temporary Protected Status"

[135] Ibid.

The final option for current parolees is to let their legal status expire and continue to live in the US without formal legal status. Although parolees formally return to DHS custody following the expiration of their parole,[136] it is not clear how the Biden administration would successfully carry out the deportation of parolees who overstay their status. The plaintiffs' complaint in Texas v DHS notes that the Biden administration has noted its current difficulty with removing those without lawful status.[137] The federal registry memo announcing the implementation of CHNV does state that the administration hopes that the US will be in a better position to conduct successful removal proceedings by the time parole expires for current grantees.[138] Nevertheless, relying on the federal government's inability to enforce deportations against former parolees leaves said parolees in an insecure and stressful position. By all metrics, this should not be the solution to remedy the problem of how parolees should be legally protected long-term.

An option that I did not discuss is that parolees may choose to return home rather than stay in the US. As pointed out by the D.C. Policy Analyst, some parolees do currently intend to return home, particularly those from Venezuela and Ukraine.[139] Given the current geopolitical situation in both Ukraine and Venezuela, however, it may reasonably take longer than one parole term for the country to be safe to return to. Therefore, the above problems still apply.

The second major problem with parole is that it is politically contingent. For example, the Trump administration terminated the first iteration of CAM— which was pioneered by the

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[136] By this, I mean that parolees "legally" return to the status of non-admitted immigrants after their parole expires. Their legal status following the expiration of parole is as if they are waiting at the border for admission. This has implications for the immigration protections they are entitled to, which I will discuss on the next page.

[137] Texas v DHS

[138] Federal Registry, "Implementation of a Parole Process for Venezuelans"

[139] Interview with a D.C. Policy Analyst and Writer, March 28, 2024.

Obama administration— in 2017. Although the Trump administration did not terminate the status of parolees currently in the US, the administration revoked 3,000 conditionally approved parole statuses.[140] Further, Trump has already vowed, if elected, to terminate Biden's parole programs and roll back TPS status.[141] If Trump both terminates parole and TPS, those parolees who do not qualify for permanent pathways have no choice but to remain in the US unauthorized or return to their country of origin.

Compounding this problem of revocability is the fact that parolees are not considered "admitted" under immigration law, which was set out in *Leng May Ma. v Barber*.[142] Given that parolees are not formally admitted, they fall into a different legal category than other types of immigration status; parolees are not entitled to "deportation" procedures but instead "exclusion" procedures. Parolees are also legally considered "arriving aliens." There are several consequences stemming from this technical difference, the most significant of which is that parolees are subject to expedited removal.[143] This is a type of truncated removal process that often happens in as little as one day and involves no appearance before an immigration court.[144]

Parolees who do not possess a permanent status by the time the Biden administration goes out of office could be subject to removal from the country for a variety of reasons. Particularly if Trump is elected in 2024, it seems likely that he will attempt to terminate both TPS and parole. This leaves all parolees who do not have a credible asylum claim vulnerable to exclusion from the country, and potentially even expedited removal.

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[140] *SA v Trump,* Plaintiff Complaint

[141] Hesson, "How would Trump crack down on immigration in a second term?"

[142] Leng May Ma v. Barber (357 U.S. 185 (1958))

[143] Justia, "Expedited Removal of Foreign Nationals Under Deportation Law"

[144] National Immigration Forum, "Expanded Expedited Removal: What It Means and What to Do"

Unlike other humanitarian pathways, parole is vulnerable to both expiration over time and termination by a malignant administration. Furthermore, unlike asylees and refugees— and even asylum applicants who entered with inspection[145]— parolees are not entitled to the same legal guarantees following efforts to remove them from the country, including a deportation hearing.

D. Better in Tandem

Given these major shortcomings of parole, every person I interviewed agreed that it should not be thought of as an alternative to parole. As the D.C. historian noted "I don't think parole should be used as an alternative to asylum. It doesn't lead to a permanent path, right? It's a temporary pathway. So it should never be seen as an alternative to asylum. Certainly, parole serves an important life-saving humanitarian function, but it's not a replacement, or it should not be seen as a replacement for full status."[146]

Parole is best used to supplement asylum and refugee admissions, and not to replace them. The executive branch should never think of parole as a legal alternative to asylum and refugee resettlement, given parole's insecure and temporary nature. Based on the legal protection it offers, if the executive branch had to prioritize only one pathway, a Chicago attorney vocalized that it should be asylum.[147]

Thankfully, the executive branch does not only have one option. For categories of persons who cannot qualify for refugee and asylee status, parole is a good alternative to offer humanitarian relief. Furthermore, parole works well as a tool to facilitate the rapid entry of

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[145] Persons who have crossed the U.S.-Mexico border between ports of entry have not "submitted themselves to inspection" and are also not considered to be admitted persons.

[146] Interview with a D.C. Historian, February 13, 2024.

[147] Interview with a Chicago Attorney, December 6, 2023.

persons into the US during emergencies. It is useful to use the three tools in tandem, as long as the presidential administration is cognizant that they accomplish different goals and can serve different purposes. However, if the US is paroling in hundreds of thousands of individuals who may not all qualify for asylum, it should have a permanent pathway to residence in mind for these persons. At the very least, parolees should be offered the option of a secure temporary status. To do otherwise is irresponsible, and certainly not a "safe" and "humane" immigration policy.

V. CONCLUSION

i. Looking Forward

As I was writing this thesis, news emerged that Republicans were blocking a vote on the Biden administration's border-reform-and-Ukraine-aid package bill due to one key provision—Republicans wanted a concession limiting the executive's parole power.[148] Republicans proposed various versions of what this limitation would look like, including limiting "broad" parole programs, capping the number of parolees per year, or removing the executive's ability to use port parole.[149] However, it seems like a relative consensus existed across the Republican party that parole needed to be limited.

This limitation has not, as of yet, come to fruition. House Republicans voted down a version of the border security bill in early February, and an alternative version has not yet been suggested, with or without parole limitations.[150] However, the fact that a limitation of parole is on Republicans' agenda does not bode well for the future of the tool, especially if there is a

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[148] Hackman, "What Is Humanitarian Parole? How an Obscure Biden Immigration Policy Became So Controversial"

[149] Ibid.

[150] Raju, "Johnson gives House GOP's Ukraine backers room to craft plan as pressure builds for floor vote"

Republican administration elected in 2024. Combine that fact with potential president Trump's vow to cut current parole programs, and the future of parole as an immigration strategy does not look bright. Rather than only conclude my thesis with policy recommendations, I thought it appropriate to include a call to action: parole should remain in place, unrestricted.

Although the Biden administration's remote parole programs have been by no means perfect, statistical evidence indicates that they are correlated with decreased unauthorized immigration and increased travel to internal POE. Provided that these humanitarian benefits can be efficiently and equitably provided to the migrant population, this is unquestionably a positive effect. Parole, used in combination with asylum and refugee resettlement, has the potential to provide wide-reaching humanitarian relief. Parole, unlike other humanitarian tools, provides the ability to quickly act to save lives in an emergency. Furthermore, parole applies to individuals who need humanitarian aid and who might not be able to access other pathways, including those fleeing from war and sustained general violence.

Parole is an invaluable tool for the executive to wield in an immigration strategy. And that is especially true now— although parole should never be seen as an alternative to asylum and refugee resettlement, the Biden administration was unfortunately correct that, at the moment, it may be the best available tool. The executive branch should not concede the ability to act to fulfill the humanitarian obligations that the US claims to hold.

ii. Policy Recommendations

If parole is kept in place, there are changes that future administrations should make to the model Biden's administration has established. I suggest four policy recommendations: first, future parole programs should take care to equitably offer humanitarian benefits by having

similar application requirements. Second, asylum should not be made inaccessible even when parole programs are available, as the two tools target different populations. Third, parole should not be framed as an "alternative to asylum"— this framework of understanding obscures the advantages and disadvantages of both tools. Lastly, the next administration to utilize parole should aim to pass an adjustment act in order to offer parolees an accessible long-term pathway; in light of the political complications involved with passing an adjustment act, the next best option is to fight to keep TPS in place.

First, to address concerns about equity between different parole programs, future programs should use very similar, if not the same, application requirements. For example, if the application fee for Ukrainians is waived, it should also be waived for other groups that receive parole. Additionally, resources for adjudication of these programs should be allocated based on applicant numbers, to prevent one program from being better-staffed than another.

Secondly, future administrations should refrain from making asylum inaccessible or unavailable due to having the alternative option of parole. As analyzed in Section VI) v) C), parole and asylum do not necessarily target the same populations. Some of the most disadvantaged in a migrant population may not have the option to apply for parole, either because they don't have a sponsor, don't have a passport, or cannot afford to wait in place. Thus, preventing access to asylum for some or all refugees— as the Biden

administration did in the wake of the launch of Venezuelan parole— significantly harms those with urgent humanitarian needs.[151]

My third policy recommendation is to cease the framing of parole as an alternative to asylum. As pointed out in Section VI) vi), parole and asylum have unique advantages — as well as unique limitations. Parole is able to respond quickly and broadly to urgent humanitarian emergencies. However, parole lacks the long-term protections of asylum or even another "admitted" status. Parolees are vulnerable to expedited removal, a truncated process that entitles them to fewer rights than deportation proceedings. For all of these reasons, thinking of parole as a "more flexible" asylum obscures the unique features of the tool, and threatens to create harmful future effects for migrants granted parole status.

My final policy recommendation, and perhaps the most relevant one going forward, is that future pathways for current parolees must be created. If Biden's parole programs are ended by the next administration, which seems possible, the above policy recommendations will not be applicable. What will be necessary is to push for a more permanent status for current parolees at risk of removal.

One possible avenue is an adjustment act for parolees. This solution has a historical basis; previously, the influx of large groups of parolees has been followed by an adjustment act to allow them to regularize their status. While adjustment acts for Venezuelans and Afghanis have not had much luck in Congress, it is not impossible that in the future, a political opportunity could appear. As noted by the D.C. Policy Analyst,

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[151] Pazmiño, Biden's new border policy throws Venezuelan migrants into limbo"

the dedicated efforts of senators from Rhode Island led to an adjustment act for Liberians after decades of campaigning. [152] Thus, the window for this solution has not necessarily passed.

However, if the political will does not exist to pass an adjustment act, an alternative could be fighting to keep TPS in place for nationals of CHNV and Ukraine, among others. Trump's attempts to roll back TPS during his first term were slowed by legal challenges to the action.[153] This tactic paid off, as the legal action continued until Biden was elected— after an unfavorable legal decision, the Biden administration simply reversed the executive action. A similar strategy could maintain a temporary status for parolees throughout an unfriendly presidential term, or until an adjustment act is passed.

As articulated by the D.C. Policy Analyst, the Biden administration has been tactically ignoring the long-term reality of their parole programs.[154] Undoubtedly, they have been able to do a lot of good through this policy, in the form of allowing the US to serve as a safe harbor for those who would have otherwise suffered. However, the window within which advocates for humanitarian relief can ignore the long-term logistical implications of remote parole is quickly elapsing. A long-term solution must be thought of, and quickly, or over a million individuals may become at risk of unceremonious removal.

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[152] Interview with a D.C. Policy Analyst and Writer, March 28, 2024.

[153] Reuters, "How Would Trump Crack Down on Immigration in a Second Term?"

[154] Interview with a D.C. Policy Analyst and Writer, March 28, 2024.

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VII. APPENDIX: INTERVIEW QUESTIONS

77. What is your familiarity with the category of humanitarian parole?

78. When do you think that parole should be used?

    2a) How does the category of parole facilitate the extension of humanitarian protection to more persons?

    2b) How might parole be restrictive in the people that it can apply to?

79. Do you see the availability of parole as a category as an asset to immigration law?

80. Should immigration policy be concerned with the long-term status of the people it admits into the US?

81. Should parole be thought of as an alternative to asylum and refugee resettlement?

82. Have the regulations and guidelines for parole programs been clearly set out by the Biden administration and the DHS?

83. Has the granting of parole seemed fair and equitable?

84. Do you see any of Biden's current parole programs as being particularly well-or-poorly-designed?

85. Do you see any problems with Biden's usage of parole? Either in the number of different programs, the countries it has been extended to, or how the policies have been rolled out.