



In 2024, the Biden Administration announced several executive actions on immigration. This legislative update provides details on these actions.

Parole in Place

On June 18, 2024, the Biden administration announced that they would take steps to allow certain noncitizen spouses and children of U.S. citizens to apply for parole in place. This would allow people to adjust their status from within the United States rather than requiring individuals to leave the country. Individuals who receive parole in place would receive temporary protection from deportation, be eligible to apply for work authorization and could eventually apply for lawful permanent residency.

Who is eligible?

To qualify for this new process, individuals must be married to a U.S. citizen as of June 17, 2024, have originally entered the United States without admission, have lived in the United States for at least ten years as of June 17, 2024 and be able to meet other additional legal requirements. People who are eligible for parole in place can also apply for protections for their noncitizen children under 21.

If they are married to U.S. citizens, why are these individuals not already eligible for a pathway to citizenship?

These individuals do have a pathway to citizenship through marriage to a U.S. citizen. However, because of how they entered the United States and how long they have lived here without status, they are often barred from adjusting status unless they leave the country and separate from their families for 3 to 10 years. Up to this point, the only remedy for spouses of U.S. citizens who entered the U.S. without being inspected and admitted at the border would have to first request a waiver of inadmissibility based on hardship to their U.S. citizen spouse, and if that waiver was approved, travel outside the U.S. for an interview at a U.S. consulate in their country of origin. This was inherently risky, because the spouse could be barred from returning if their application was ultimately denied during the interview abroad.

How many people could this policy impact?

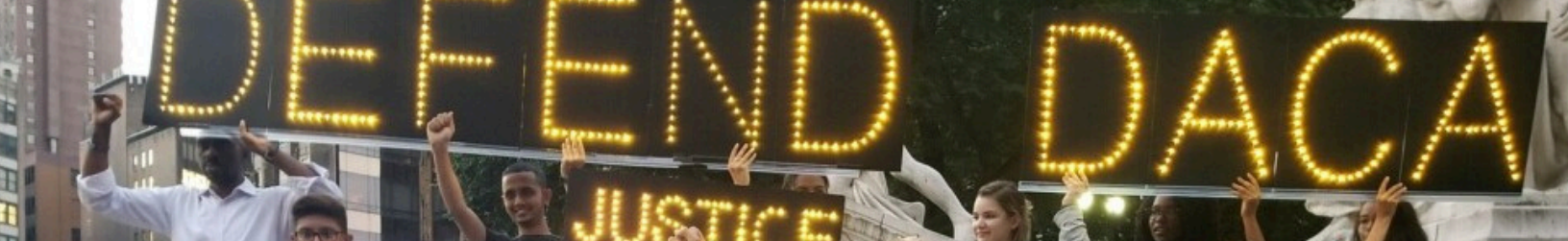
The Department of Homeland Security (DHS) estimates that 500,000 noncitizen spouses of U.S. citizens could be eligible to access this process, and approximately 50,000 noncitizen children of these spouses are estimated to be eligible to seek parole under this process.

What benefits would people receive under this process?

Recipients of parole in place will be protected temporarily from deportation, be able to apply for legal work authorization, and could eventually apply for lawful permanent residency. If enacted, this program could keep more than two million family members together.

When can people apply for this program?

There is nothing to apply for now and applications are not yet being accepted. The program will likely be open by the end of the summer and we will keep you updated. During the summer, individuals who think they will be eligible can begin collecting the documents they may need to apply. It is important to remember, however, that this measure will likely be subject to legal challenge, which may delay its implementation.



212(d)(3) Waivers for Dreamers and DACA Recipients

The Biden administration recently announced that they will streamline the employment-based visa process for DACA recipients, Dreamers and other undocumented individuals who have graduated from an accredited U.S. institution of higher education in the United States.

What are employment-based visas?

There are a number of different temporary employment-based visas, which permit employers to hire foreign nationals for specific jobs for limited periods of time. Some Dreamers may be eligible for employment-based temporary visas due to their educational credentials, but have been limited by the current process to apply for these visas. It would benefit the U.S. economy to have more of these qualified individuals filling critical workforce needs.

Who is eligible?

DACA recipients, Dreamers and other undocumented individuals who have graduated from an accredited U.S. institution of higher education in the United States will be eligible.

Don't DACA recipients already have work authorization? Why would they need a D-3 waiver?

Current DACA recipients do have work authorization, but the DACA program has been challenged in the courts and current DACA recipients could lose their work authorization with little notice. In addition, there are tens of thousands of Dreamers who fit the eligibility requirements for DACA but are unable to apply for the program because it has been frozen by the courts. An employment-based visa is a more stable option, but most DACA recipients and Dreamers who might otherwise be eligible for an employment-based visa are usually required to leave the United States and apply for that visa from a U.S. consulate abroad. However, when they leave the USA, they may trigger an immigration bar and be prevented from re-entering the United States for up to 10 years. The D-3 visa waiver can resolve these issues but it is currently an uncertain and risky path for most Dreamers. Until now, Dreamers applied for the waiver after leaving the U.S., with no assurance that they would be approved or how long it would take. We are still waiting on additional guidance from the Department of State and Department of Homeland Security regarding details; however, streamlining the process and making it more predictable would allow more Dreamers and other undocumented college graduates to participate in the employment-based visa process.

How many people could benefit from this process?

Nearly half of the more than 500,000 DACA recipients have some college education, with many still working to complete their education. Some 40,000 have an associate's degree from a community or technical college. Additionally, an estimated 70,000 have a bachelor's degree, while 17,000 have an advanced degree. There are many more undocumented college students or graduates who could benefit from this process.

What is the actual impact?

It is limited. First, the number of H-1B eligible workers already exceeds the number of visas available annually. Second, and more important, H1-B visas are non-immigrant visas. Workers under H-1B non-immigrant visas are limited to six years in that status. Once it expires, they are supposed to depart the United States. If not, they return to unlawful status. They may face referral to removal proceedings and deportation if they are unable to secure a path to permanent resident status.



Executive Actions on the U.S. Asylum System – “Securing the Border”

In early June, the Biden administration announced executive actions that would bar access to asylum to most people arriving at the southern border when the number of daily migrant encounters reaches a certain level. In addition to this, the administration announced other actions that would make it more difficult for people to obtain other forms of legal protection.

How does this bar on asylum at the southern border work?

This rule results in the rapid return of migrants to Mexico because individuals are unable to seek asylum if there has been a 7-day average of at least 2,500 people crossing the border between ports of entry each day. The bar went into effect immediately in June and could stay in place indefinitely. For the bar to be lifted, there needs to be a week-long average of less than 1,500 encounters between ports of entry. In five of the last six fiscal years, the monthly average of 1,500 has been exceeded in every month, so it is unlikely that this bar will be lifted anytime soon.

When the rule is actively in place, there are very few other opportunities for people to seek lesser protections. Border officials will no longer ask arriving migrants if they are afraid to return to their country. Instead, this rule puts in place a “shout test,” in which people must actively request a fear screening. People who do express fear of returning to their home countries will also face newly heightened standards to access the limited protections available.

Is anyone excluded from this policy?

Yes, there are narrow exceptions, including unaccompanied children, visa holders, some victims of trafficking and people who have been able to make appointments on the CBP One app.

What other actions were announced that make it more difficult to seek protection?

The “Securing the Border” policy is the most recent effort by the Biden administration to limit the number of migrants attempting to enter the U.S. at the southern border.

In May 2024, the Biden administration announced a proposed rule that would give immigration officers the authority to determine whether certain mandatory bars to asylum should be applied to asylum seekers arriving at the U.S. border (“Application of Certain Mandatory Bars in Fear Screenings”). These bars include: whether the applicant engaged in persecution of other people (the “persecutor bar”); whether the applicant has been previously convicted of a particularly serious crime; whether the applicant committed a serious crime outside the United States (whether or not they have been convicted); whether the applicant poses a threat to the national security of the United States; or whether the applicant triggers one of the “terrorism-related grounds of admissibility,” such as providing material support to a terrorist organization. *(continued)*



Additional Actions (continued)

Currently, immigration judges make decisions in removal proceedings about whether an asylum seeker is ineligible for asylum because of a mandatory bar. An asylum seeker can be represented by an attorney in these proceedings, which results in a more meaningful opportunity to overcome an allegation that a mandatory bar disqualifies them from asylum protection. The proposed rule gives this authority to immigration officers at the border, making it much harder for asylum seekers to prove that a mandatory bar does not apply to them. These interviews happen shortly after they arrive in the U.S., when they may not have a full opportunity to present all their evidence and when it is virtually impossible to have access to an attorney to present the case. The rule would also give immigration officers at the border the discretionary authority to decide whether or not to screen for mandatory bars, resulting in unequal justice without access to judicial review for asylum seekers denied protection at U.S. borders.

A year earlier, in May 2023, the Biden administration responded to the end of Title 42 with the “Circumventing Lawful Pathways” rule and policy. Effective as of May 11, 2023, the “Circumventing Lawful Pathways” rule limits eligibility for asylum to those who were given permission to enter the USA, had sought asylum in another country and were denied before arriving at the U.S. border, or who used the CBP One app to make an appointment to present themselves at the U.S. border and ask for asylum protection.

Asylum seekers arriving at, or crossing the U.S. border, who do not take the above steps may be allowed into the USA and referred to immigration court, but they will only be eligible for lesser forms of protection from persecution. In such cases, the immigration judge will order the applicant deported, but instruct DHS not to remove the applicant from the U.S. because the applicant fears persecution back home. In the meantime, an asylum seeker granted one of these lesser forms of protection lives indefinitely in legal limbo in the U.S.

This is a temporary rule, in effect from May 11, 2023 to May 11, 2025, so the next administration will determine what happens after the expiration of the “Circumventing Lawful Pathways” rule.

Please note that this update reflects information available as of July 1, 2024. The situation may have changed since then and please check [neighborslink.org](https://www.neighborslink.org) for updates.

Sources: [FWD.us](https://www.fwd.us), [American Immigration Lawyers Association](https://www.americanimmigrationlawyers.org), [FWD.us](https://www.fwd.us), [American Immigration Council](https://www.americanimmigrationcouncil.org)

The Neighbors Link mission is to strengthen the whole community through the healthy integration of immigrants. Neighbors Link is headquartered in Mount Kisco, has three locations in Westchester County and offers services throughout the Hudson Valley.