

# Supplementary Protection Pathways to the United States: Lessons from the Past for Today's Humanitarian Parole Policies

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*Cover Photo Caption: Afghan parolees, Israr and his wife Sayeda, walk under a U.S. Flag as they head to a dentist appointment in Charlestown, Massachusetts on February 21, 2022. Photo by JOSEPH PREZIOSO/AFP via Getty Images.*

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## Executive Summary

The Biden administration has several tools it can use to respond to growing and evolving forms of forced displacement. If used more equitably and effectively, parole—official permission to enter and remain temporarily in the United States—can provide an additional protection pathway that augments rather than undermines refugee protection and better meets the needs of people granted parole after their arrival.

As a protection pathway, parole has both advantages and disadvantages. On the one hand, parole is adaptable and fast. Neither statute nor regulations limit the “urgent humanitarian reasons” or precisely define the “significant public benefit” for which parole may be granted. To be paroled, people do not need to prove they meet the definition of a refugee (i.e. that they have a well-founded fear of persecution based on their race, religion, nationality, membership in a particular social group, or political opinion) or wait the many months or even years for processing as a refugee or immigrant. On the other hand, parole is an insecure non-status. Unlike refugees, people who are paroled lack a path to permanent residency or re-settlement services and integration support. The ability to access parole depends on available private means. And the post-arrival experience for people paroled depends on Congressional action on their behalf, along with executive branch policies. These measures could include ensuring that parolees can gain authority to work and have access to legal services—or passing legislation providing them a path to permanency.

So far, the Biden administration has used different procedures to implement parole for various groups and for reasons unrelated to the urgency of their protection needs. This is most apparent in its generous and innovative use of parole for Ukrainians—but not for others needing protection. And, rather than use parole as a supplementary legal pathway to the existing ones of refugee resettlement and asylum (both of which the President promised to strengthen), the Biden administration is using parole as a conflicting and inadequate alternative, thus neglecting U.S. obligations under U.S. and international refugee law and shifting the responsibility for refugees to other countries. This is most apparent in the Biden administration’s recent choice to tie a small parole program for Venezuelans to newly subjecting Venezuelans to Title 42—an unjustified COVID-19-related policy that the Trump administration introduced to expel asylum seekers at the border.

As it has in the past, Refugees International urges the Biden administration to [support access to asylum](#), humane reception and due process for asylum seekers, [resettlement of increased numbers of refugees more rapidly](#), and improved application processing (mostly by United States Citizenship and Immigration Services, USCIS) for humanitarian populations. The administration should also urge Congress to pass legislation that will provide more displaced people abroad eligibility for protection in the United States and ensure populations in the United States that need permanent refuge have access to it. However, this report, informed by research trips, discussions with legal experts, and interviews with people seeking protection pathways to the United States, recommends ways the administration should reform its current use of parole. The administration should take inspiration from past uses of parole that supplemented refugee protection, expand innovative approaches to additional populations, and better account for the needs of parolees after arrival.



## Background on Law and Policy

Some scholars emphasize efforts by Congress to limit use of parole by the Executive branch. But there is much more to the history of parole. History reveals parole's adaptability for use for different reasons, and especially as a supplement to refugee protection. It also uncovers productive ways parole could have been but was not used, and disparities in its use for various populations.

The history of parole reveals consistent support for its use for certain groups by Congress and by officials of both parties for most of the past seventy years. As codified in Section 212 (d)(5) of the 1952 Immigration and Nationality Act (INA), parole is official permission to enter and remain temporarily in the United States.<sup>1</sup> By a legal fiction affirmed by the Supreme Court in [1958](#), parolees, though physically present in the United States, are not considered admitted. In 1960, Congress amended the INA to include parolees as eligible for adjustment of status if a Congressionally provided visa was available to them. But Congress provided the following groups of paroled people with pathways to permanent status without offsetting available visas: Hungarians ([1958](#)); Cubans ([1966](#)); "Indochina refugees" from Vietnam, Cambodia, and Laos ([1977](#)); Cubans and Haitians ([1986](#)); people from the Soviet Union and Indochina ([1990](#)); Poles and Hungarians ([1997](#)); Haitians ([1998](#)); Indochinese ([2000](#)); Haitian orphans ([2010](#)). In creating special visas for Iraqis ([2008](#)) and Afghans ([2009](#) and updated afterwards, including in [2021](#)) who worked for the U.S. government, Congress also provided that those paroled into the United States who qualified could adjust to these visas from within the United States.

When parole was the primary pathway used for refugees, the executive branch at times used it to expand or to limit the availability of protection to different populations. The ["Fair Share Law" of 1960](#) mandated that the Attorney General provide to Congress "a detailed statement of facts" about each "refugee-escapee" from Communism paroled into the United States from a country within the mandate of the UN Refugee Agency (UNHCR). But, a year later, the Attorney General paroled into the United States a group of Russian "Old Believers" from Turkey, a country outside the UNHCR's mandate, "pursuant to an urgent request from the Department of State" because, "in addition to the humanitarian factors involved, it was very much in the interest of the United States" to parole them "to counter the intensified Soviet propaganda campaign of 'return to the homeland.'"<sup>2</sup> Limits on the use of parole by the executive branch later in the decade exacerbated racial and religious biases in immigration law and hampered the ability of refugee law to address an important driver of forced displacement. In the [1965 Immigration and Nationality Act](#), Congress created a "conditional entrant" parole pathway to the United States for people from the Middle East and Communist countries and who were victims of natural calamity. But executive branch policies made it rare for people from Asia and the Middle East to be eligible (since processing was done mostly in Western Europe) and impossible for any refugees of [natural calamity](#) to get paroled (since the President never declared a natural calamity).<sup>3</sup>

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1 Section 212 (d)(5) of the INA established that "the Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission."

2 Deputy Associate Commissioner of the Immigration and Naturalization Service to the District Director in Rome, Italy, June 13, 1963, File CO212.28, RG 85, National Archives.

3 The Attorney General refused to parole victims of an earthquake in Italy in 1968 even after the chairman and several members of the House immigration committee explicitly asked for this use of parole. Letter from Emanuel Celler (and Congressmen Rodino, Feighan, Dowdy and Donohue) to Attorney General Ramsey Clark, March 21, 1968, Ibid.

In 1980, the [Refugee Act](#) created a process of consultation between the President and the Congress about the number of refugees from all over the world to be resettled in the United States annually and called for the creation of procedures by the Attorney General whereby people at the border or within the United States, regardless of status, could apply for asylum.<sup>4</sup> After the Refugee Act, parole continued to be used to supplement robust refugee resettlement. In 1985, the Immigration and Naturalization Service (INS) announced that Cambodians in the United States could petition for parole of relatives who the Thai government refused to acknowledge as refugees or allowed to seek resettlement.<sup>5</sup> In 1988, the Attorney General began paroling-in people from [Vietnam](#) and the [Soviet Union](#) who could not meet the refugee definition in the 1980 Act (and so were not eligible for refugee resettlement as were many others from Vietnam and the Soviet Union). Parole of people from Vietnam with family members in the United States continued into the mid-1990s through the [Orderly Departure Program](#), which relied on an exchange of lists of names of eligible migrants between the United States and the Vietnamese authorities. In the 1990s, in part to fulfill a migration agreement with the Cuban government and in addition to doing in-country refugee processing, the United States paroled family members who were part of the same household as Cubans who were issued immigrant visas and Cubans with education, work experience, and distant relatives in the United States (as part of a lottery parole program), as well as Cubans who had left by boat and were being held at Guantanamo by U.S. authorities.

Congress revised the parole provision in the [1996 Illegal Immigration Reform and Immigration Responsibility Act](#), replacing authorization for parole “for emergent reasons or for reasons deemed strictly in the public interest” with “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” The 1996 law also reaffirmed (rather than repealed, as was considered by Congress) the Cuban Adjustment Act of 1966 that provides for the adjustment to permanent resident status of parolees after one year. INS policy in 1999 was to “heavily favor” parole of Cubans because of the significant public benefit and humanitarian reason of “avoidance of detention costs” of those who could not be removed and rather could adjust to permanent status.<sup>6</sup> In 2001, the Bush administration also continued to parole into the United States those from the former Soviet Union who were denied refugee status. This was done on the grounds that, in passing the 1996 law, Congress had not incorporated proposed language prohibiting parole of anyone found ineligible for refugee status and, also, reauthorized the Lautenberg amendment providing for the adjustment of status of those paroled after being denied refugee status. A memo on this policy explained that “designating by policy a class whose members generally would be considered appropriate candidates for parole does not conflict with a ‘case-by-case’ decision requirement, since the adjudicator must individually determine whether a person is a member of the class and whether there are any reasons not to exercise the parole authority in the particular case.”<sup>7</sup>

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4 The Refugee Act included the provision that “the Attorney General may not parole into the United State an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.”

5 Court Robinson and Arthur Wallenstein, “Unfulfilled Hopes: The Humanitarian Parole/Immigrant Visa Program for Border Cambodians” (Issue Brief, US Committee for Refugees, September 1988).

6 Doris Meissner, Memorandum on Eligibility for Permanent Residence Under the Cuban Adjustment Act Despite Having Arrived at a Place Other Than a Designated Port of Entry, April 19, 1999, USCIS Historical Library.

7 Bo Cooper, Legal Opinion: Parole of Individuals From the Former Soviet Union Who Are Denied Refugee Status, June 15, 2001, Ibid.

There was recognition in the late 1990s that parole needed to be used more fairly to protect people of other nationalities. Grover Joseph Rees, top lawyer for the Immigration and Naturalization Service under President George H.W. Bush, told Congress, “when we paroled in 11,000 Haitians into the United States [between 1991 and 1994], I am painfully aware that we also denied the opportunity to many thousands more people to come to the United States.”<sup>8</sup> But the disparity continued: a Government Accountability Office [report](#) on parole between 2001 and 2007 found that Haitians had the lowest approval rate of any nationality.

In the 1990s, INS District Directors overseas (in Bangkok, Rome, Mexico City) and in the United States (for different ports of entry) adjudicated humanitarian parole applications. In 2008, [authority for parole was given to all three branches of the Department of Homeland Security](#) (USCIS, Immigration and Custom Enforcement (ICE), and Customs and Border Protection (CBP)); the memo of agreement between the branches specified the paroles to be handled by USCIS and ICE but not by CBP. Some parolees could be handled by any of the three agencies, and it was unclear which agency would handle parolees who did not fit into any of the listed categories.

New parole programs have been created by both Democratic and Republican administrations in the twenty-first century. In 2007, the Bush administration [began](#) the Cuban Family Reunification Program (CFRP), which permitted USCIS to parole beneficiaries of approved family-based immigrant visa petitions whose visas were not yet available. As the federal register notice about the program said, “granting parole...serves the significant public benefit of enabling the United States to meet its commitments under the Migration Accords [with Cuba] as well as reducing the perceived need for family members left behind in Cuba to make irregular and inherently dangerous attempts to arrive in the United States through unsafe maritime crossings, thereby discouraging alien smuggling as a means to enter the United States.” In the wake of the 2010 earthquake in Haiti, immigration advocates [called](#) for a similar parole program for Haitian families that would also have supported U.S. reconstruction efforts in Haiti. But the Haitian Family Reunification Parole Program was not [established](#) until late 2014 and was more limited than the Cuban program (in that it applied only to those with family-based immigrant visa petitions approved before December 2014 and whose visas would be available within between 18 and 30 months).

In the time between the establishment of the Cuban (2007) and Haitian (2014) family parole programs, U.S. President Barack Obama considered using [parole-in-place](#), but then opted for deferred action for unauthorized immigrants who entered the United States as minors. This provoked a partisan backlash against *all uses* of parole, including for individuals needing urgent medical procedures or to care for a relative.<sup>9</sup> In 2014, the Obama administration created the Central American Minors Program (CAM), which allowed for the resettlement (as refugees) or parole (for those deemed ineligible for refugee status) of at-risk children from El Salvador, Honduras, and Guatemala to parents in the United States, including those with [Temporary Protected Status](#) (which protects people from removal to countries the secretary of Homeland Security determines are unable to accommodate safe returns because of armed conflict, environmental disaster, or other extraordinary conditions). In response, U.S. Senator Jeff Sessions accused the Obama administration of rewarding unauthorized migration.<sup>10</sup> Upon assuming office, U.S. President Donald

8 Testimony of Grover Joseph Rees, Hearing on the Haitian Refugee and Immigrant Fairness Act, Subcommittee on Immigration, Senate Judiciary Committee, Dec. 17, 1997, 34.

9 Hearing on Executive Immigration Enforcement Limitations, Subcommittee on Immigration Policy and Enforcement, House Judiciary Committee, July 26, 2011.

10 Hearing on the Central American Minors Program, Subcommittee on Immigration, Senate Judiciary Committee, April 23, 2015.

Trump [rebuked](#) the use parole as part of an overall attack on immigrants (especially from certain countries), refugees, and asylum seekers. Soon afterwards, he abruptly ended the Central American Minors program, even for those approximately 2,700 children already approved for travel to the United States. Significantly, a federal court ruled the Trump administration had to process the children's cases. It [held](#) the Trump administration's "vague claims about burden generally" insufficient to establish that the balance of harms or the public interest favored its position. Instead, it found that the Trump administration's policy prolonged family separation and endangerment of the children.

## Current Parole Policies

Upon coming to office, President Biden [promised](#) to reverse President Trump's approach to immigration and asylum, especially regarding people coming from Central America and to the U.S. southern border. The President also made a commitment to "redress" policies, including [DHS policies relating to access to humanitarian protection](#), "[that] perpetuate systemic barriers to opportunities and benefits for people of color." So far, the administration mostly has not made good on these promises in its use of parole. The Central American Minors Program is the only Obama-era parole program the Biden administration has so far restarted and expanded. As discussed further below, the administration's other uses of parole have been insufficient, inequitable and even damaging to refugee protection in the United States and around the world.

### The Central American Minors Program

President Biden's February 2 Executive Order on migration and asylum promised to "[tak\[e\] all appropriate actions](#)" to reverse the Trump administration's rescinding of the Central American Minors parole policy. The Biden administration first reopened cases closed by the Trump administration and then opened the program to new applications from a wider pool of parents and legal guardians in the United States (newly including those who applied before May 15, 2021 for asylum or a [U visa](#) for victims of crimes). So far, the Biden administration has handled cases in the program much more slowly than the Obama administration.<sup>11</sup> And some of the problems that existed during the Obama-era program persist. Resettlement agencies in the United States have a backlog of CAM applications from parents, which the agencies are not sufficiently funded to handle. In Central America, qualifying children (who must be under 21 years old and unmarried) and their caregivers have to wait many months and travel from remote areas for interviews and appointments and bring hard-to-get proof of identity and relationships. On a recent trip to Guatemala, a qualifying child told Refugees International of leaving her home near the Honduran border in the middle of the night so that she could make it to a preliminary interview with the International Organization for Migration in Guatemala City the next day. She would have to make the same trip at least two more times in coming weeks—to get a DNA test and to have a refugee interview with a USCIS officer. She, like most children in the CAM program, lacks access to counsel to help prove a complex "particular social group" persecution claim (which the Biden administration has

11 "At the end of Fiscal Year 2016, close to 2,000 cases were being interviewed quarterly and the average CAM case processing time was 331 days from the time an application was filed with the Department of State (DOS) to travel to the United States. In contrast, despite the advantage of not having to stand up a program from scratch and beginning with a pool of already-filed CAM applications, since March 2021, when the Biden administration began Phase 1 of the CAM Program, only a few hundred of the nearly 3,800 families eligible have had their cases completed." ("More than Words: Making Good on the Promise of the Central American Minors Refugee and Parole Program," International Refugee Assistance Project, September 21, 2022, <https://refugeerights.org/wp-content/uploads/2022/09/CAM-Report-FINAL-v3.pdf>)



yet to issue regulations about handling) and does not know how long the processing of her application will take. Getting passports required for all qualifying children in the CAM program can be especially challenging in cases when parents are estranged. Refugees International spoke to a mother in the United States who fled a violent partner in Guatemala that will not give consent to let the child go.

Under CAM, only children who are deemed refugees get government services after arrival and a path to permanency in the United States. Those who do not qualify as refugees are eligible for parole. This can lead to siblings coming to the United States with different statuses and access to services. Under the new program, there is a lack of clarity about how handling of the parent's asylum claim in the United States will affect an outstanding CAM application. Married siblings of qualifying children are eligible to apply for admission through CAM but cannot be included as derivatives on U visa applications of the U.S. parent. Also, only parents and legal guardians can sponsor children to come to the United States through the CAM program, whereas other relatives can sponsor children who come unaccompanied to the border. Thus, children facing immediate threat or abuse may opt to travel to the United States unaccompanied rather than through the CAM process.

Because CAM is designed to be an alternative to irregular migration, children are ineligible for the program if they are not in El Salvador, Guatemala, or Honduras (including if they are in Mexico or the United States.). The United States does not coordinate with, for example, the Guatemalan government to learn if the large number of Guatemalan children deported by Mexico have CAM eligible parents in the United States (which may lead the children to try and remigrate). There is also the matter of a lack of knowledge of the CAM program in Central America and a lack of trust in availability of the CAM program given its start and stop history. A lack of knowledge is especially true for Guatemalan families who may not speak Spanish and also barely benefited from the Obama-era program, which was dominated by Salvadoran parents with Temporary Protected Status. That TPS status is currently at risk of cancelation, however, and many families are unsure what will happen to their applications.

The CAM program has the potential to be a significant refugee pathway, especially for tender age children, and a family unification pathway, especially because it also provides a pathway to the United States for caregivers and siblings of the child. But the Biden administration needs to make the program better known through outreach to partners in the region, ensure the populations it intended to reach remain eligible and can access the program, and devote more resources to interviewing, processing applications, and supporting CAM families in the United States.

## **Title 42 Exemptions and Parole at the Southwest Border**

In March 2020, the Trump administration used the pretext of the COVID-19 pandemic to invoke an obscure public health provision (Title 42) to allow DHS to expel to Mexico or their home countries any person, including asylum seekers, who comes to or crosses a land border without valid travel documents. The Center for Disease Control's [order](#) on Title 42 allowed DHS to make "humanitarian" exemptions to the policy. In the spring of 2021, the Biden administration asked a "consortium" of NGOs to refer vulnerable families to Customs and Border Patrol (CBP) for parole at ports of entry.<sup>12</sup> This process lasted through the end of the summer of 2021 and facilitated the parole of about [13,000](#) people—mostly Central Americans. Thousands of other people from Central America and elsewhere, just as or more vulnerable, were unable to access the exemptions. In desperation, many asylum seekers traveled to insecure parts of the border where they thought

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12 Sometimes those processed for exemptions also received Notices to Appear in immigration court.

they could better access exemptions. There they were subject to kidnapping and attacks as well as fraud and threats. The latter was also true for NGOs who smugglers perceived as a threat to their business.

Once this “consortium” process ended, in fall 2021, advocates at the border filed traditional humanitarian parole requests with CBP on behalf of vulnerable clients, especially those with medical problems or who were in extreme danger in northern Mexico. Applications included a cover letter and a packet of evidence proving the need for parole (and also of ties to and potential sponsors in the United States). Approvals of these were rare but varied tremendously by port of entry (more in El Paso and the Rio Grande Valley, almost none in [Arizona ports](#), select few in Tijuana). At some ports, CBP denied parole requests quickly without explanation. Some were denied because of Title 42, while some that were approved were referred to as Title 42 exemptions. In some ports, CBP ignored or refused to adjudicate humanitarian parole applications that were the “[only lifeline\[s\]](#)” available for vulnerable and at risk individuals given the lack of asylum processing at ports of entry.

Even before Title 42 was in place, CBP officers at different ports of entry handled parole differently, some demanding much more evidence and argument than others. By early 2022, CBP told some advocates to apply for parole through USCIS (which has a fee) rather than CBP (which has no fee). The situation was particularly challenging for Haitian asylum seekers. Fearful of being expelled by plane to Haiti (which was in the midst of a humanitarian and security crisis) if they crossed into the United States without authorization to seek asylum, [Haitians lived in dangerous and deprived limbo](#) on the Mexican side of the border in spring of 2022. On a [trip to Reynosa](#) at that time, Refugees International met dozens of Haitians who were in dire need of medical attention and had relatives in the United States but were unable to access parole.

## Uniting for Ukraine

The contrast to the handling of Ukrainians at the border in spring 2022 was striking. In March, newspapers reported about a Ukrainian mother and children who got turned away by CBP in Tijuana. Shortly thereafter, CBP issued a guidance [memo](#) alerting all port officials to their authority to exempt Ukrainians from Title 42 and provide them with port of entry humanitarian parole. In a matter of weeks, Mexican authorities in Tijuana [set up](#) a shelter especially for Ukrainians and volunteers bussed Ukrainians to the port of entry, where several hundred Ukrainians were [paroled-in by CBP](#) each day at an entrance open to Ukrainians only.

On March 24, President Biden [announced](#) that the United States would provide refuge to up to 100,000 Ukrainians, with a focus on those with family ties in the United States. A month later, DHS [announced](#) it would begin accepting applications for the [United for Ukraine \(U4U\) parole program](#). The entire program is electronic, with no requirement that Ukrainians go to a U.S. consulate for an interview or medical screening. A financial sponsor in the United States (in any lawful status or a parolee) fills out an online USCIS form. USCIS vets the form and contacts the Ukrainian beneficiary, who fills in additional information online, and then gets issued authorization to travel to the United States, to be paroled in for two years upon arrival at a port of entry.

On May 21, 2022, Congress [authorized](#) Ukrainian parolees to receive refugee benefits. A group of Ukrainians are [claiming in court](#) that, in doing so, Congress implied that they should be allowed to work immediately upon arrival, just like refugees in the United States and Ukrainians in the European Union, rather than wait and pay for work authorization. Unlike the special appropriation for Afghan parolees (discussed further below), the Congressional authorization did not include money for USCIS to process Ukrainian asylum applications; the assumption seems to be that

Ukrainians will either return to Ukraine or adjust to a family-based visa—though many sponsors are not close relatives, and many Ukrainians no longer have homes to which to return.

There were some initial snags in implementation of parole for Ukrainians. Ukrainians paroled at the border only got one year parole and had longer waits for work permits. Ukrainians also had some difficulty accessing services (to which they were entitled in particular states) before Congress authorized refugee benefits. At the start of U4U, some exploitative sponsors made it past USCIS's expedited approval process. The private sponsorship model requires that the sponsor do what case managers typically do for refugees in terms of support securing housing, health-care, employment, and other benefits. Refugees International interviews with a half a dozen U4U sponsors indicate that this can be a lot of work and is better handled by several people or community circles. (What is available for Ukrainians right now in the United States is still less generous and more complicated than what Canada offers to Ukrainians.) But, by mid-October 2022, over 106,000 Ukrainians had traveled to the United States through the U4U program and thousands more applications were filed. This number does not include the more than [20,000 Ukrainians](#) processed through ports of entry before the program started or the [1,610](#) who came through U.S. Refugee Admissions Program in FY22.

## Afghans and Humanitarian Parole

The experience of Afghans with humanitarian parole has been much different from Ukrainians, though DHS frequently compares the handling of the two groups. In the summer of 2021, advocates [called on](#) the administration to use bifurcated refugee processing for evacuated Afghans—beginning the processing abroad and finishing it after parole into the United States—as was done for [Kosovars in](#) 1999. But the Biden administration decided to simply parole evacuated Afghans into the United States. Only a few thousand of the more than 85,000 parolees are eligible for special immigrant visas, so the rest have no pathway to permanent status (and must apply for asylum). These Afghans also have no way to help relatives and colleagues left behind to come to the United States through any other means than applications for humanitarian parole, a path DHS promoted as viable in the early weeks after the withdrawal. DHS did not create a parole program for Afghans, despite requests to do so by [over 200 organizations](#). While applying for U4U is free, it costs \$575 to apply for humanitarian parole for individual Afghans and requesting fee waivers can slow down adjudication. The Afghan American community and its supporters have spent [\\$20 million dollars on over 60,000 humanitarian parole applications](#) that have almost all been denied or remain unprocessed.

Afghans in the United States are nowhere closer to being united with their relatives, some of whom have been killed while waiting in Afghanistan. USCIS refused to adjudicate parole applications if the beneficiary is still in Afghanistan. But once out of Afghanistan, many applications were not considered urgent or the harm imminent enough to merit parole. Thousands of Afghans are essentially stranded in Iran and Turkey without any means of support and fearful of deportation back to Afghanistan. Many evacuated Afghan parolees who are trying to get on their feet in the United States are sending money abroad to help these stranded relatives.

Even if USCIS approved humanitarian parole applications of Afghans, the applicants would then need to get an appointment at a consulate or embassy as well as a medical exam. Refugees International spoke to a lawyer in Connecticut who helped clients file applications for Afghans and worked with others on the online U4U system and was struck by the differences. Afghan Americans who served as interpreters were filing for relatives, but these applications were being denied on the grounds the relatives (many of whom supported the U.S. mission in Afghanistan) did not prove they were targeted for harm—something not one Ukrainian lacking any U.S. tie and

living with protected status anywhere in Europe needed to prove to come to the United States through U4U. Ukrainians do not have to go to embassies or consulates and just get a QR code to travel. Why, the lawyer asked, are we not doing this for Afghans? Especially for Shia and Hazara minorities or those who are relatives of U.S. citizens? “There are so many layers of wrong” with how the United States is handling parole applications from Afghans in ways “incompatible with the handling of Ukrainians, where so many right things are being done,” the lawyer told Refugees International. Refugees International recently learned of an SIV applicant who was told by U.S. authorities to return to Afghanistan from Pakistan in order to get a passport for his newborn child if he wanted further processing of his family’s case.

An Afghan American community organizer (whose father won asylum in the United States in the 1980s and whose mother’s family came as refugees in the early 1990s) spent thousands of dollars and many hours to prepare humanitarian parole applications for the large family of her maternal uncle – a Shia Muslim who owned restaurants frequented by foreign military and had been directly threatened by the Taliban. In February 2022, the organizer received notice that the applications were denied on the grounds that they did not prove urgent need now that they were in Turkey. “So many Afghan Americans and evacuated parolees have aunts, uncles, cousins, grandmothers still in Afghanistan. But the humanitarian parole pathway is a dead end for us,” the organizer told Refugees International. She also said that families with financial means were more able to leave Afghanistan, while poorer families were not.

The Biden administration’s response to these disparities and denials has been disappointing. The administration argues that the U.S. government was overwhelmed by Afghan parole applications and now believes at-risk Afghans abroad should come to the United States through the U.S. Refugee Admissions Program, which it has, however, been very slow to use to process Afghans beyond a small pilot program in Doha (that mostly has been processing SIV applicants). Only [1,618](#) Afghans were resettled through USRAP in FY2022. Further, as was true in the wake of the war in Vietnam, refugee resettlement and humanitarian parole can both exist as pathways *serving different populations*. In response to a lawsuit filed by the ACLU of Massachusetts, the administration [insists](#) that Afghans have no grounds to challenge their discretionary parole authority citing a precedent from the 1980s involving Afghan asylum seekers (with no U.S. ties) the INS determined were unworthy of parole because they deliberately “flouted established immigration procedures applicable to refugees seeking admission to the United States.”<sup>13</sup> This is incredibly unfair since many Afghan applicants for humanitarian parole have also been referred (by U.S. government officials or U.S. employers) to the [P1 and P2 programs](#) of the U.S. Refugee Admissions Program, and the United States government has done [nothing to evacuate them](#) and [little to process](#) their cases for refugee resettlement in third countries. Parole should especially be used until the administration can process many more Afghans for refugee resettlement from Pakistan and elsewhere. Refugees International spoke to an Afghan former government official who the State Department referred for the P1 program. After his house was attacked by the Taliban in fall 2021, he escaped to Pakistan and registered there but heard nothing about his case before the Pakistani authorities rejected his application for a visa extension and gave him two weeks to leave the country. He traveled to Turkey, where he could find no work, suffered from hypertension, and had trouble transferring his case for processing. In his own words: “Moving the case from Pakistan to Turkey will negatively affect the whole process, and therefore it would be better to look into the Canadian refugee program to get rid of this miserable situation.”

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13 *Amanullah v. Nelson*, 811 F.2d (1st Cir. 1987)



## Parole Programs for Venezuelans and Lack of Pathways for Haitians

If Afghans have been mostly deprived of access to USRAP and parole, Venezuelans have more recently been mostly deprived of access to asylum and parole. The [parole program](#) for Venezuelans announced on October 12, 2022 allows for the same online application and private sponsorship process as U4U, but it is capped at 24,000. Further, the program is contingent on Venezuelans being newly subject to Title 42; three weeks into its roll out, 6,000 Venezuelan asylum seekers who crossed the U.S. border between ports of entry had been expelled to Mexico to sleep on the street and in overwhelmed shelters. Further, most displaced Venezuelans [currently on the move are shut out](#) of the program because they [lack passports](#). Unlike Ukrainians, who can travel freely across borders in the EU and can apply to U4U from any country, Venezuelans [need visas](#) (out of reach for most) to travel to many countries in Latin America and are precluded from eligibility for the parole program if they cross into Panama or Mexico without authorization after October 19.

But even Venezuelans who made it to Central America and Mexico in time to be eligible for the parole program are being prevented from accessing it. Refugees International spoke to one such Venezuelan family that was detained by the Mexican immigration authorities in Veracruz and harassed and pushed back in Tabasco. In the refugee camp in San Pedro Tapanatepec, Mexican immigration authorities are giving Venezuelans documents for week-long stays only in Oaxaca. In other parts of Mexico, Venezuelans are being given documents that limit their stay and movement and do not permit them to work. Displaced Venezuelans like these—without means and ineligible for or unable to access the parole program—are [stranded](#), exacerbating the existing humanitarian crisis in Mexico, which is promoting [returns to Venezuela](#) that may violate non-refoulement (or return to persecution). Parole to the United States through the program is currently possible only through airports and not through land border ports of entry, though exceptions to Title 42 may be available there to some Venezuelans. But, because of [ongoing litigation](#) about Title 42, exemptions cannot exceed a certain number per month (and has ranged between about 8,000 and 16,000 each month since May 2022). Thousands of Venezuelans have gathered in Ciudad Juarez where, even before Venezuelans were subject to Title 42, the exemptions available each day were only meeting a small percentage of the need.

The Biden administration claims its parole program for Venezuelans is part of an effort to fulfill a commitment under the June 2022 Los Angeles Declaration on Migration and Protection to “expand access to regular pathways for migrants and refugees.” But Title 42 is a betrayal of the commitment made [in the Los Angeles Declaration](#) to “protecting the safety and dignity of all migrants, refugees, asylum seekers... regardless of their migratory status” and “promot[ing] access to protection and complementary pathways for asylum seekers...in accordance with...respect for the principle of non-refoulement.” Capping the parole program at 24,000 slots for the least vulnerable Venezuelans does not “lead by example,” as asserted in the [federal register notice](#) about the program. Rather it dodges the responsibility to protect refugees, especially given the number of Venezuelans hosted in other countries in the hemisphere.

At the Summit of the Americas, the Biden administration also [promised](#) not only increased refugee resettlement from Latin America and the Caribbean but also expansion of the Haitian Family Reunification Parole program. Though the Cuban program restarted in August, the Haitian program has not yet restarted (and certainly has not been expanded). In an October 2022 [update on Summit commitments](#), the Haitian program was not mentioned. The program, which requires that beneficiaries be in Haiti for interviews at the embassy in Port au Prince, is outdated given [Haitian migration patterns over the last decade](#). It is impossible to administer the program as it is currently conceived and unreasonable to ask beneficiaries to return to Haiti to be eligible for it given

violence and deprivation there that the UN High Commissioner for Human Rights has [called](#) “the worst human rights and humanitarian situation in decades.” These are conditions that also make increased availability of safe pathways to the United States for Haitians vitally important. Since June 2022, Haitians have been receiving an increasing number of Title 42 exemptions at land border ports of entry, though the [litigation](#) over the policy may soon cut even this meager lifeline. And the Biden administration [is considering](#) taking Haitians interdicted at sea to third countries or an offshore migrant detention center at the Guantánamo Bay military base in Cuba.

## Lessons from the Past that Should Drive Today’s Policy

Sending interdicted [Haitians to Guantanamo](#) and offering them no pathway to protection in the United States is a policy that the United States has tried in the past. It is a policy that exemplified racially disparate treatment and encouraged other countries to pursue similarly inhumane asylum offshoring policies. As discussed further below, the Biden administration should instead draw upon policies of the past more in line with its commitments to advancing equity and sharing responsibility for protection (rather than simply collaborating on enforcement) with other countries in the hemisphere and around the world.

### Parole for Family Unification

By far, the most consistent use of parole has been for family unification. Visas to immigrate to the United States are mostly accorded to close relatives, but they are limited in number such that U.S. citizens and legal permanent residents must wait years to reunite with sponsored relatives. Many parole programs have allowed relatives to wait for their visas in the United States, i.e., parolees were beneficiaries of non-current immigrant visas. Some parole programs—the program for border Cambodians in the 1980s, the Orderly Departure Program (ODP) in 1989, the program for Cubans in the 1990s, and the expanded Central American Minors program in 2016—paroled in relatives beyond those who would be [entitled to preference visas](#), for example grandparents or nephews and nieces. As one official explained it in 1989, “we are very generous in defining who is within a household.”<sup>14</sup> Today, parole might also be used because of backlogs in the handling of I-730 petitions that allow refugees and asylees to bring over family members in dangerous situations abroad, including those who would not qualify as beneficiaries under the I-730 process.

Relatives of members of the armed forces and veterans have also especially been seen as worthy of parole; this parole was deemed crucial to military preparedness and part of a commitment to support veterans. The Obama administration not only offered [parole in place for relatives of servicemembers](#) but also established a [parole program for relatives of Filipino veterans](#), a program that can be seen as part of an effort to [make up for](#) the poor treatment the United States accorded Filipino veterans after World War II. The Biden administration’s use of parole to [reunify families](#) the Trump administration separated also serves a reparative function. In the wake of the Biden administration’s legal victory against the Remain in Mexico program, which required asylum seekers to wait in Mexico while their claims were adjudicated in U.S. immigration court, it should begin the process of paroling into the United States any parents subject to the policy whose [children are in the United States](#). The Biden administration should similarly develop a plan to use

14 Testimony of Ralph Thomas, June 28 1989, Subcommittee on Immigration, Refugees and International Law, House Judiciary Committee, 69.

parole to reunite families separated by Title 42 since the CDC [determined](#) that “an Order suspending the right to introduce migrants into the United States is no longer necessary.”

## Parole for Those Who Cannot Access or Wait for Processing

In the past, sending countries like Vietnam and USSR and countries of first asylum have been more amenable to emigration of family members than refugees, so family reunification programs were protection pathways without being called that for diplomatic reasons. As applicable to Uyghurs persecuted by China today as “Old Believers” in 1960, parole is an important tool to facilitate bringing to the United States people from sending or host countries that do not recognize them as refugees or facilitate their processing for resettlement through USRAP. It is also crucial that parolees such as these have legal support to apply for asylum once in the United States.

In the wake of the Cold War and with the advent of the wars in Iraq and Afghanistan, parole was used extensively for [Iraqi](#) and Afghan nationals put at risk by their work with U.S. forces. The Department of Homeland Security recognized that existing pathways (refugee resettlement and Special Immigrant Visas) were “time consuming and not designed for emergency evacuation due to imminent threats.” During the George W. Bush administration, Department of Defense parole requests to the Department of Homeland Security were handled extremely quickly so as to ensure pathways to safety within two days. Several hundred Iraqis were able to gain entry into the United States through significant public benefit parole. From 2014 onward, Congress continued to expand the number of SIV visas available and require processing within nine months, but the State Department failed to meet that requirement and to give out available visas. Processing ground to a halt during the Trump administration. The Biden administration has been paroling-in SIV holders and applicants since the withdrawal from Afghanistan and should continue to do so even as it [reforms and speeds up](#) SIV adjudication. There is no reason to process SIV applicants using refugee processing since SIVs can adjust to permanent status after arrival in the United States. Use of refugee processing should be expanded to other vulnerable Afghans that lack paths to permanent status in the United States.

## Parole and Migration Management, Including Asylum Emergencies

There have been efforts in the past to use parole policy to deter irregular migration. But these policies have led to human rights violations (prolonged displacement in terrible camp conditions and forced returns), thus highlighting the need for increased refugee protections. The Orderly Departure Program (ODP) from Vietnam did “in country” processing to prevent movement to third countries. The [policy in 1990](#) was that, if relatives left Vietnam for another country in southeast Asia, they could lose their opportunity to go to the United States. Nonetheless, tens of thousands left Vietnam irregularly for third countries that year. This movement declined significantly only in late 1991 in the wake of 87,000 people emigrating to the United States from Vietnam through the ODP and highly publicized forced returns to Vietnam of those screened out of refugee status in Hong Kong (screening was done by the Hong Kong authorities and the UNHCR). In the mid 1990s, ongoing opposition to forced returns to Vietnam prompted the United States to develop the “Resettlement Opportunities for Vietnamese Returnees” program. When returnees to Vietnam were re-interviewed by INS officers, [95 percent](#) were found eligible for refugee resettlement.

Especially in the mid 1990s, there was general recognition of the need to use parole flexibly for “admission of groups of individuals in sudden asylum emergencies.”<sup>15</sup> Congress considered,

<sup>15</sup> Arthur Helton, “Immigration Parole Power: Toward Flexible Responses to Migration Emergencies,” *Interpreter Releases* (71.47), Dec. 12, 1994.

and *rejected*, explicitly listing in the statute that parole be limited to cases involving medical emergencies, the imminent death of a family member, or for witnesses. Bill Frelick (then of the U.S. Committee for Refugees) testified presciently to Congress in 1995 “there may well be future instances where the circumstances would warrant treating mixed populations of refugees and non-refugees using those mechanisms most appropriate to each petitioner in order to achieve U.S. humanitarian objectives.”<sup>16</sup> A year later, parole was used to facilitate the evacuation of [Kurds to Guam](#), where they were processed for asylum.

## **Parole for the Public Benefit, Broadly Conceived, Including for the Climate Displaced**

Mobility has dramatically increased since the last major revision of the INA, and migration is dominated by mixed flows of people—many of whom need protection but may not qualify as refugees. There is all the more reason, then, for parole to be (as it has been in the past) a supplement to refugee resettlement and asylum that is available to populations for whom refugee protection is beyond reach.

Parole is a tool to be used for urgent humanitarian reasons and significant public benefit. The Biden administration should think creatively about what that means. There is good precedent for this. President Obama’s program for [international entrepreneurs](#) was described as a “[novel use of parole](#)” to benefit the U.S. economy, but, in fact, parole in the 1950s and 1960s was used to facilitate the emigration of skilled workers who would be a benefit to the U.S. economy. In the 1960s, highly skilled refugees were [preferred for parole from Hong Kong](#), and it was INS policy to generally parole in approved beneficiaries of third preference visas—for professionals or people with exceptional ability—requested by the Defense Department.

One creative use of parole could be for people displaced by the impacts of climate change. USCIS has recognized that [people displaced by natural disaster](#) are eligible for parole. In an executive order on [rebuilding programs to resettle refugees](#), President Biden promised to explore “options for protection ... of individuals displaced directly or indirectly from climate change.” In its report on the [impact of climate change on migration](#), the Biden administration notes both the geopolitical imperative to managing the migration of climate displaced people and the limits of available instruments to do so. The latter leads to a vicious cycle. As the report notes: “Inadequate policy frameworks to manage large migration flows may... contribute to xenophobia ... Anti-immigration political actors may... undermine[e] efforts to appropriately respond to acute migration or refugee crises, such as those caused by the Syrian civil war or extreme weather and violence in Central America.” Given the administration’s recognition of the “compelling national interest in strengthening protection for individuals and groups displaced by the impacts of climate change,” it should develop a parole program for climate displaced people, especially those from the Western Hemisphere.

The Biden administration could also work with Congress on legislation that would create humanitarian visas for people displaced by climate change so that parolees could adjust their status. Indeed, a parole program is just one of several pathways the Biden administration should consider for those displaced by climate. As Refugees International has suggested elsewhere, the Biden administration should consider creating [P2 resettlement programs](#) for populations whose persecution is compounded by the impacts of climate. Further, USCIS should develop guidance to help [asylum officers](#) understand how climate change impacts may inform an applicant’s claims under

<sup>16</sup> Hearing on H.R. 1915, Subcommittee on Immigration and Claims, House Judiciary Committee, June 29, 1995, 269.



U.S. law. And Congress should consider passing legislation establishing the standard people could meet to gain admission and protection as climate displaced people.

## Parole in the Courts and Support for Parolees

So long as parole procedures are not egregiously arbitrary and discriminatory, federal courts have been wary of interfering with the executive branch's parole authority, even when it revealed differential treatment by nationality. That the Biden administration may be allowed to choose to parole Cubans but not Haitians<sup>17</sup> does not mean it should, especially if it is truly committed to equity.

Lawsuits against the use of parole authority typically argue that parolees are detrimental to American society, because they compete with American workers or burden local schools and hospitals. In the past, federal courts—like the one that heard the CAM case during the Trump administration—have dismissed these arguments as “diffuse” in that they were not specific to people who entered on parole.<sup>18</sup> The Biden administration should argue for the value of the CAM program in court not only with a defense of its parole authority, but also with an assertion of the [value of](#) family unity, of pathways to safety for endangered children, and of the contributions the qualifying parents make to American society.

Federal support for parolees help them, and the communities where they settle, to thrive. Parolees pay their own travel costs and obtain [affidavits of support from](#) sponsors in the United States before being allowed to enter. But Congress has given some groups—[Cubans and Haitian entrants](#), for example—access to public benefits through the Department of Health and Human Services similar to those accorded to refugees. This is similar to the support Congress more recently has given to Afghans and Ukrainians. In the 1990s, the Department of Justice's Community Relations Service helped arrange sponsorships for Cuban parolees, and especially tried to place Cubans without direct family links in Florida with sponsors in other parts of the country. Such a federal program could have benefitted Venezuelans without family ties who entered the United States earlier this year and were instead sent chaotically to cities around the country both by DHS and by Texas authorities.

Since the 1960s, CBP has been given operations instructions and guidance as to populations to consider for parole.<sup>19</sup> CBP gives parolees form I-94 upon admission, which typically indicates why they were paroled and the length of their parole (which was indefinite for refugee groups in the past and now varies). Since the 1980s, parolees have been eligible for work authorization (EAD), which, however, requires separate application and an application fee. EADs take several months to adjudicate, so the ability to work is effectively limited to those paroled for at least a year. As soon as parole lapses, so does work authorization; parolees need to be re-paroled and renew work authorization lest they lose jobs. Today's Afghan parolees and parolees at the southern border should be given long enough paroles, prompt re-parole, and automatically extended work authorizations to allow them to get and keep employment. USCIS should speed work permit application processing, simplify application forms, waive application fees, and allow automatic extensions to parolee EADs. The Biden administration must also work with Congress to ensure that DHS has the wherewithal to process these applications, that parolees have access to services they need and, if unable to return to their home countries, a pathway to permanent status.

17 *Cuban American Bar Association v. Christopher* (11<sup>th</sup> Circuit, 1995)

18 *Federation of American Immigration Reform v. Reno* (DCDC, 1995, affirmed DCCA 1996)

19 In the 1960s, examples of populations included were “compassionate family cases,” “witnesses,” and “defectors.” (NARA file CO212.28P)

## Conclusion and Additional Recommendations for Reform

As is clear from this survey of past uses of parole, the Biden administration has the ability to use parole more equitably to supplement refugee protection. It should also put policies in place that will better account for the needs of parolees after arrival.

The Biden administration should take all legally permissible steps to restore access to asylum at the U.S.-Mexico border for all asylum seekers and reverse and halt the expansion of Title 42 to new populations. The Biden administration should continue to rebuild the U.S. Refugee Admissions Program and expand capacity for refugee resettlement, including from Latin America for populations such as Venezuelans and Haitians. When the United States cannot use resettlement for displaced populations of concern, including ethnic minorities and especially because sending or host country governments or conditions there preclude referral to or waiting for processing, the United States should make ample use of humanitarian parole. Fees, consular processing, and passports requirements should be adjusted depending on the population. Humanitarian parole should be used to unify families (especially when relatives abroad are in danger, humanitarian need, or displaced), to compensate for USCIS backlogs (so that people at risk can wait out processing delays in United States), and to provide those who have been mistreated in the United States or by U.S. policies a chance to seek relief.

There are also specific reforms the Biden administration should make to its current parole policies and programs.

### Recommendations regarding humanitarian parole at ports of entry:

- CBP should establish a timeline for review of all parole applications at ports of entry, all denials should include an explanation, and an appeal process should be created.
- CBP should issue guidance regarding special populations who should qualify for parole on a case-by-case basis, such as people with evidence establishing eligibility for a U visa or trans asylum seekers at immediate risk.
- Congress should increase funding for the Federal Emergency Management Agency's Emergency Food and Shelter Program (EFSP) to ensure that local governments and non-profit organizations can cover the costs of short-term assistance for migrants released by DHS at the border to pursue asylum and other immigration proceedings in the United States.

### Recommendations regarding parole for Afghans:

- USCIS should create a parole program like U4U for Afghan humanitarian parole applicants not eligible for, or unable to access, USRAP. This should facilitate the travel of Afghans without interviews at consulates. Priority for parole should also be given to Afghans who are beneficiaries of family-based immigration petitions, extended family members separated by the hasty evacuation, as well as to rights defenders, women leaders, and religious minorities, none of whom have been prioritized for resettlement and who are ineligible for SIVs if they were employed through U.S. grants and cooperative agreements. These parolees should be assured legal support to help them apply for asylum.

- Congress must pass the Afghan Adjustment Act, which will provide paroled Afghans a pathway to permanent status.
- DHS must automatically extend or reparole all paroled Afghans and allow for automatic extension of their work authorization to be sure they do not lose their jobs while they adjust to permanent status.

## **Recommendations regarding parole and other policies regarding Haitians:**

- DHS should halt all removals and returns to Haiti given the dire situation on the ground and redesignate Haiti for Temporary Protected Status. Haitians interdicted by the United States should be disembarked in the United States with full access to asylum protection and be permitted to shelter with family and friends while pursuing asylum and immigration proceedings.
- USCIS should expand access to the [Haitian Family Reunification Parole](#) program by significantly advancing or eliminating the December 2014 deadline for approved I-130 petitions and allowing beneficiaries to be eligible for the program if they are living outside of Haiti and if their visa will not be available beyond 42 months. Conditions on the ground make it imperative that people not have to wait for their visas in Haiti or return from outside Haiti to be interviewed. The administration should consider setting up an online platform like U4U to avoid interviews at the embassy in Port au Prince. It could use the platform for a parole program that could allow a broader range of Haitians in the United States (like TPS holders or parolees) to sponsor their relatives for parole.
- Congress should appropriate sufficient funds to allow Haitian parolees access to [services they are entitled to as “entrants.”](#)

## **Recommendations regarding the CAM Program:**

- The Biden administration should increase awareness of the program, funding for agencies working with qualifying parents and guardians and for counsel for child beneficiaries, and transparency about program procedures among eligible families. The administration should encourage Congress to ensure that CAM parolees are eligible for services (especially mental health services) and educational and work training opportunities following their arrival in the United States.
- The Biden administration should facilitate CAM interviews by IOM and USCIS closer to where beneficiaries reside and ensure completion of adjudication in six months to minimize children waiting in danger. To protect applicants in imminent danger or with particularly complex refugee claims, USCIS should authorize case by case immediate parole (without waiting for a refugee interview) into the United States.
- The Biden administration should pilot a program in Guatemala of screening returned children for eligibility for CAM. Guatemalan children repatriated by Mexico who have parents in the United States could be interviewed by USCIS for refugee status or parole. This would be a program akin to the Resettlement Opportunities for Vietnamese Returnees.

## Recommendations regarding the Venezuela parole program:

- The Biden administration should create a reparative parole program for Venezuelans expelled between the sudden announcement of the program (October 12) and the availability of the USCIS parole application portal. Parole should also be available to any Venezuelans [separated from their families](#) through the application of Title 42.
- The Biden administration should remove the 24,000 cap on the program, decouple the program from Mexican acceptance of Venezuelan asylum seekers expelled by the United States, and adjust the program's eligibility so that it is accessible to vulnerable populations, including those Venezuelan migrants currently stuck in northern Central America and Mexico. This should include allowing Venezuelans who lack valid passports for air travel to access the program at land border ports of entry.
- The Biden administration should encourage the government of Mexico to provide temporary resident status for humanitarian reasons (TVRH) with work authorization to all Venezuelans who entered the country before October 19 so that they are able to apply for the parole program.



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## About Refugees International

Refugees International advocates for lifesaving assistance, human rights, and protection for displaced people and promotes solutions to displacement crises around the world. We do not accept any government or UN funding, ensuring the independence and credibility of our work.

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