

United States Senate

COMMITTEES:
COMMERCE, SCIENCE, AND TRANSPORTATION
FINANCE
JUDICIARY
VETERANS' AFFAIRS

June 19, 2024

VIA ELECTRONIC TRANSMISSION

Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

RECEIVED
By ESEC at 12:23 pm, Jun 20, 2024

Dear President Biden:

I write today to express my deep concern regarding the constitutionality of your recently announced plan to grant legal status to hundreds of thousands of illegal immigrants. Specifically, I have seen reports that you are considering implementing a so-called “Parole in Place” policy, which would grant legal status to illegal immigrants whose spouses are United States citizens, so long as they have lived in the country for at least ten years.¹ Your plan would also offer work permits and deportation protections to these immigrants and—just as troubling—would provide a pathway to *permanent legal status and United States citizenship*.² In total, this disastrous proposal could apply to an estimated 550,000 illegal immigrants.

If implemented, this “Parole in Place” policy would be plainly unconstitutional. As you well know, the Constitution vests the executive with the power to *enforce* our immigration laws, not to craft them unilaterally. Specifically, the Constitution states that the President “shall take care that the laws be *faithfully executed*.”³ If you move forward with implementing this disastrous proposal that alters the legal status of hundreds of thousands of migrants without congressional approval, you would be flouting congressional authority in direct contravention of the Constitution’s separation of powers.

Unfortunately, your proposed “Parole in Place” policy is not the first instance of a president abusing his executive authority to advance unpopular and unlawful open border policies. In 2012, President Obama issued the Deferred Action for Childhood Arrivals (DACA) policy—a presidential memorandum permitting certain illegal immigrants physically present in the United States for at least five years to receive deportation protections and work permits.⁴ Rightly so, this flawed proposal was deemed unlawful by a federal district court, a ruling that is currently pending appeal before the Fifth Circuit.⁵ I am certain that your proposed policy would suffer from the same procedural and constitutional flaws and would swiftly be enjoined by a federal court.

¹ Camilo Montoya-Galvez, *Biden Preparing to Offer Legal Status to Undocumented Immigrants Who Have Lived in the U.S. for 10 Years*, CBS NEWS (June 14, 2024, 7:21 PM) <https://www.cbsnews.com/news/biden-plan-undocumented-immigrants-legal-status-10-years-in-u-s-married/>.

² *Id.*

³ U.S. Const. art. II, § 3 (emphasis added).

⁴ Memorandum from Janet Napolitano, Secretary, DHS to David Aguilar, Acting Comm’r, CBP, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” (June 15, 2012).

⁵ *Texas v. United States*, No. 1:18-CV-00068, 2023 LEXIS 162598, (S.D. Tex. Sept. 13, 2023).

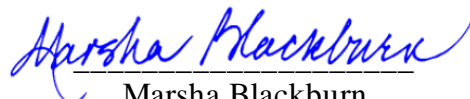
Of course, your “Parole in Place” proposal is also not the first time that your administration has attempted to flout the Constitution’s separation of powers. Your disastrous student loan policy similarly circumvented Congress and ignored judicial decisions from our nation’s highest Court.⁶ Indeed, you went so far as to publicly boast about ignoring the Supreme Court’s decision striking down your student loan scam as unconstitutional.⁷ Put simply, your administration has demonstrated a troubling pattern of unconstitutional action that disregards our principles of separation of powers, and your “Parole in Place” proposal appears to be no different.

In addition to its constitutional flaws, your proposed executive action would entirely fail to address our country’s immigration crisis. Over ten million illegal immigrants have entered our country since you took office, including 362 individuals on the terrorist watchlist; 1.8 million immigrants—so-called known “gotaways”—have evaded border patrol’s detection; and 1.3 million migrants have been encountered at our southern border in this fiscal year alone. But this national security and humanitarian crisis is of your own making. Congress has given you the tools and the resources you need to secure our southern border, and yet you persist in refusing to do so. Instead, you have consistently proposed policies that would exacerbate the immigration crisis that you have created. Your proposed “Parole in Place” policy is only the latest example.

Instead of ignoring our Constitution to achieve your open border policy goals, I urge you to change course and use the tools Congress has given you to secure our southern border, deport those who do not belong in the United States, and address the humanitarian and national security crisis that your reckless immigration policies have created.

Thank you for your attention to this urgent matter.

Sincerely,



Marsha Blackburn
United States Senator

⁶ *President Joe Biden Outlines New Plans to Deliver Student Debt Relief to Over 30 Million Americans Under the Biden-Harris Administration*, White House Statements and Releases, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/08/president-joe-biden-outlines-new-plans-to-deliver-student-debt-relief-to-over-30-million-americans-under-the-biden-harris-administration/>.

⁷ Wall Street Journal Editorial Board, *Biden’s Student Loan Boast: The Supreme Court ‘Didn’t Stop Me,’* Wall St. J. (Feb. 23, 2024), <https://www.wsj.com/articles/joe-biden-student-debt-forgiveness-supreme-court-0c5204fe>.



**U.S. Citizenship
and Immigration
Services**

July 12, 2024

The Honorable Marsha Blackburn
United States Senate
Washington, DC 20515

Dear Senator Blackburn:

Thank you for your June 19, 2024 letter to President Biden. Your letter was referred to the Department of Homeland Security (DHS), and I am responding on behalf of the Department.

In your letter, you express concern about President Biden's June 18, 2024 announcement of the establishment of a new parole process to consider, on a case-by-case basis, parole requests for certain noncitizens spouses of U.S. citizens under DHS's existing parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(5)(A). In order to be considered under this process, noncitizens must – as of June 17, 2024 – have resided in the United States for 10 or more years and be legally married to a U.S. citizen, while passing required security vetting and satisfying all other applicable legal requirements. Additional information on the application process, required fee, and other key information will be detailed in a forthcoming Federal Register Notice.

Under section 212(d)(5)(A) of the INA, the Secretary of Homeland Security can, at his discretion, authorize parole temporarily to noncitizens under such conditions as he may prescribe on a case-by-case basis for urgent humanitarian reasons or significant public benefit. Parole may be granted to noncitizens who are already present in the United States without admission; this is called parole in place. Parole is not an admission of the noncitizen to the United States, and a parolee remains an applicant for admission during the period of parole in the United States. DHS sets the duration of the parole based on the purpose for granting the parole request and may terminate parole in its discretion at any time. DHS is committed to using its existing statutory authorities, including section 212(d)(5)(A) of the INA, to enforce our immigration laws and provide lawful pathways for noncitizens seeking to avail themselves of our immigration system.

In your letter, you also note concerns about migration flows at our southern border. The Biden-Harris Administration has implemented a series of robust measures to discourage irregular migration by restricting asylum eligibility and imposing faster consequences for noncitizens without a lawful basis to remain in the United States. After the bipartisan agreement developed to deliver sweeping reforms and resources to the asylum system and processes at our Southern Border failed to pass, President Biden took action.

On June 4, 2024, President Biden issued the Securing the Border Presidential Proclamation to temporarily suspend and limit the entry of certain noncitizens across the Southern Border which includes the Southwest land and southern coastal borders, with certain exceptions. The Secretary of Homeland Security and the Attorney General also jointly issued the Securing the Border Interim Final Rule (SB IFR) that limits asylum eligibility for noncitizens who enter across the Southern Border during times of high levels of encounters at the Southern Border, are not described in an exception under the Proclamation, and are not excepted from the regulatory limitation on asylum eligibility based on an exceptionally compelling circumstance. The SB IFR also limits credible fear screenings to those who manifest a fear of return, express an intention to apply for asylum or other protection, express a fear of persecution or torture, or express a fear of return to their country of nationality or designated country of removal and heightens the legal standard in screenings for statutory withholding of removal and protection under the Convention Against Torture. Taken together, these measures have significantly increased the speed and scope of consequences for those who cross our borders irregularly or who attempt to present themselves at Ports of Entry without authorization, allowing the Departments to more quickly remove individuals who do not establish a legal basis to remain in the United States.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director