

October 2014

Executive Grants of Temporary Immigration Relief, 1956-Present

Much has been made of President Obama's Deferred Action for Childhood Arrivals (DACA) program, through which he deferred deportation for young adults brought to the U.S. as children. But as immigration legal scholar Hiroshi Motomura has noted, the president has broad executive authority to shape the enforcement and implementation of immigration laws, including exercising prosecutorial discretion to defer deportations and streamline certain adjudications.¹ In fact, a look at the history books reveals that President Obama's action follows a long line of presidents who relied on their executive branch authority to address immigration challenges.

A chart of these decisions [below] makes clear that presidents have ample legal authority—and abundant historical precedent—to exercise their discretion in immigration matters. Since at least 1956, every U.S. president has granted temporary immigration relief to one or more groups in need of assistance. This chart collects 39 examples, which span actions large and small, taken over many years, sometimes by multiple administrations.² Some presidents announced programs while legislation was pending. Other presidents responded to humanitarian crises. Still others made compelling choices to assist individuals in need when the law failed to address their needs or changes in circumstance.

Perhaps the most striking historical parallel to today's immigration challenges is the "Family Fairness" policy implemented by Presidents Ronald Reagan and George Bush, Sr. The story behind the fairness policy begins on November 6, 1986, when President Reagan signed the 1986 Immigration Reform and Control Act (IRCA), which gave up to 3 million unauthorized immigrants a path to legalization if they had been "continuously" present in the U.S. since January 1, 1982. But the new law excluded their spouses and children who didn't qualify and forced them to wait in line, creating "split-eligibility" families, as they were called. The U.S. Catholic bishops and immigration groups criticized President Reagan for separating families.

In 1987, Reagan's Immigration and Naturalization Service (INS) commissioner announced a blanket deferral of deportation (logistically similar to today's DACA program) for children under 18 who were living in a two-parent household with both parents legalizing, or with a single parent who was legalizing. Then, in July 1989, the Senate passed legislation to protect a bigger group—prohibiting deportation of all spouses and children of those who were legalizing under IRCA.

But the legislation stalled in the House, and in 1990 President Bush Sr. administratively implemented the Senate bill's provisions. His INS commissioner, saying "We can enforce the law humanely," expanded the blanket deferral to as many as 1.5 million spouses and children of immigrants who were legalizing, provided they met certain criteria. President Bush thus protected over 40 percent of the then-unauthorized population from deportation. The House then passed legislation, and President Bush signed it later that year.

The Family Fairness program is only one example of the common characteristics of presidential decisions to act on immigration. Several decisions were large-scale actions potentially affecting hundreds of thousands or millions of immigrants. Some presidents focused on the necessity of keeping families together. And other presidents acknowledged the absurdity of trying to deport people for whom major legislation in Congress was pending. Some of these examples include:

- **Large-scale actions:** In addition to Family Fairness, other large-scale actions include paroles of up to 600,000 Cubans in the 1960s and over 300,000 Southeast Asians in the 1970s, President Carter’s suspension of deportations for over 250,000 visa-holders, and President Reagan’s deferral of deportations for up to 200,000 Nicaraguans.
- **Family-based actions:** Other actions to protect families include the suspended deportations of families of visa-holders (Carter), parole of foreign-born orphans (Eisenhower, Obama), deferred action to widows of U.S. citizens and their children (Obama), and parole-in-place to families of military members (Obama).
- **Actions while legislation was pending:** Other actions taken while legislation was pending include parole of Cuban asylum seekers fleeing Castro (Nixon, Kennedy, Johnson), deferred action to battered immigrants whom the Violence Against Women Act (VAWA) would protect (Clinton), parole of orphans (Eisenhower), and DACA (Obama).

Endnotes

¹ Hiroshi Motomura, *The President’s Discretion, Immigration Enforcement, and the Rule of Law* (Washington, DC: American Immigration Council, August 2014), <http://immigrationpolicy.org/perspectives/president%E2%80%99s-discretion-immigration-enforcement-and-rule-law>.

² This data is compiled from Marshall Fitz, *What the President Can Do on Immigration If Congress Fails to Act* (Washington, DC: Center for American Progress, July 2014), <http://www.americanprogress.org/issues/immigration/report/2014/07/01/93042/what-the-president-can-do-on-immigration-if-congress-fails-to-act/>; Andorra Bruno, Todd Garvey, Kate Manuel, and Ruth Ellen Wasem, *Analysis of June 15, 2012 DHS Memorandum, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (Washington, DC: Congressional Research Service, July 13, 2012), <http://edsources.org/wp-content/uploads/Deferred-Action-Congressional-Research-Service-Report.pdf>; Arthur C. Helton, “Immigration Parole Power: Toward Flexible Responses to Migration Emergencies,” *Interpreter Releases* 71, no. 1637 (December 12, 1994); John W. Guendelsberger, “Family Fairness: A Status Report,” *In Defense of the Alien* 15 (1992):45-57, <http://www.jstor.org/stable/23143114>; and other media reports, press releases, and articles, linked to here where publicly available.

Executive Grants of Temporary Immigration Relief, 1956-Present

Year(s)	1956	1956-58	1959-72	1962-65	1975-79
Relief Covered:	923 orphans were paroled into the custody of military families seeking to adopt them, pending Congressional legislation providing them permanent resident status	Parole of Hungarians who escaped after 1956 uprising against Soviets failed	Parole for Cuban asylum seekers fleeing Cuban revolution	Executive parole of Chinese who fled to Hong Kong in early 1962	Executive parole of Indochinese from Vietnam, Cambodia, and Laos, in 10 authorizations or extensions from 1975-79
# Affected:	923	31,915 granted parole.	621,403 received, vast majority granted parole	15,100 paroled	360,000 arrived in US, most under parole authorization
President(s):	Eisenhower	Eisenhower	Eisenhower, Kennedy, Johnson, Nixon	Kennedy, Johnson	Ford, Carter
Other Notes:	<u>Press release</u> , Oct. 26, 1956: “The Secretary of State and the Attorney General have just reported to me that this can be done.”		Legislation was pending during <u>this time</u> (i.e. the Cuban Adjustment Act of 1966). In FY 1972, a total of 17,109 Cuban asylum seekers were paroled into the U.S. via airlift		Some also eligible under conditional entry, but since not enough entries statutorily available, most were paroled. Most of 130,000 refugees who were evacuated during 1975 U.S. withdrawal from Vietnam were paroled

Year(s)	1976	1977	1977-82	1977-1980	1978
Relief Covered:	Extended Voluntary Departure (EVD) for Lebanese	AG temporarily suspended expulsion of “ <i>Silva</i> letterholders,” who were suing because the State Department incorrectly calculated a visa cap, while their litigation and legislation moved forward	Extended Voluntary Departure (EVD) for <u>Ethiopians</u>	Parole for Soviet refugees	Extended Voluntary Departure (EVD) for Ugandans
# Affected:	Unknown (although 14,000 fled Lebanon to US)	Ultimately 250,000 (500,000 including dependents)	15,000+	50,000 + (9,000 in Jan. and Dec. 1977; 12,000 in June 1978; 36,000 in 1979)	Unknown
President(s):	Ford	Carter	Carter, Reagan	Carter	Carter
Other Notes:	Extended Voluntary Departure (EVD) is an administrative process by which designated nationals of a country were protected from deportation and provided work authorization. <i>See</i> 563 F. Supp. 157 (D.D.C. 1983)		Reagan extended this policy in 1982, after Reps. Dixon (D-CA) and Kemp (R-NY) cosponsored resolution	From 1972-on, parole was used frequently for Soviet refugees when not enough conditional entries were statutorily available	



**AMERICAN
IMMIGRATION
COUNCIL**

COMMUNITY EDUCATION CENTER • IMMIGRATION POLICY CENTER • INTERNATIONAL EXCHANGE CENTER • LEGAL ACTION CENTER

Year(s)	1979	1979	1980	1980	1981-1987
Relief Covered:	Extend Voluntary Departure (EVD) for <u>Nicaraguans</u>	Extended Voluntary Departure (EVD) for Iranians	Extended Voluntary Departure (EVD) for Afghans	<u>Parole</u> of Cubans and Haitians during <u>Marief boatlift</u>	Extended Voluntary Departure (EVD) for <u>Poles</u>
# Affected:	3,600	Unknown	Unknown	123,000 paroled in US by 1981	7,000 (as of 1987)
President(s):	Carter	Carter	Carter	Carter	Reagan
Other Notes:		In response to Iranian Revolution against Shah.			In response to Polish Communist government declaring martial law in 1981, after crackdown on Solidarity strikes. Initiated in 1981, extended in 1984 and <u>1987</u>

Year(s)	1987	1987	1989	1989	1990
Relief Covered:	AG Meese directed INS not to deport <u>Nicaraguans</u> and to grant them work authorizations, if they demonstrated a “well-founded fear of persecution,” even if denied asylum	Unauthorized <u>children</u> of some noncitizens who applied to legalize after 1986 immigration reform	<u>Executive directive</u> of deferred action for Chinese nationals following Tiananmen Square	Parole of Soviets and Indochinese, even though denied refugee status	Further <u>executive order</u> formalizing <u>Deferred Enforced Departure (DED)</u> for Chinese nationals following Tiananmen Square
# Affected:	Up to 200,000	More than <u>100,000 families</u>	80,000	2,225 Indochinese in 1989; 5,000 Soviets as of 1989	80,000
President(s):	Reagan	Reagan	Bush Sr.	Bush Sr.	Bush Sr.
Other Notes:	Legislation was <u>pending</u> . Ultimately, the Nicaraguan Adjustment and Central American Relief Act (<u>NACARA</u>) passed	Reagan’s AG Meese also authorized INS to defer deportation proceedings for “compelling or humanitarian factors”	Visa overstays had to report to INS to benefit from deferred action and apply for work authorization. <u>Bush</u> : “I reemphasize my commitment... to never allow any action that would force the return of Chinese students if their lives or liberty are at risk.”		“Deferred Enforced Departure” is a stay of deportation, and often provision of work authorization, within the President’s foreign relations power. Bush’s executive order suspended deportations, provided work authorization for all Chinese nationals in the US as of 6/5/89, and waived a regulation to allow adjustment of status

Year(s)	1990	1991	1992	1994	1997
Relief Covered:	Deferred deportation of <u>unauthorized spouses and children</u> of individuals legalized under 1986 Immigration Reform and Control Act (IRCA)	President <u>directed AG</u> to grant deferred enforced departure (DED) to Persian Gulf evacuees who were airlifted to US after 1990 Kuwait invasion	Bush Administration granted <u>DED</u> to certain <u>El Salvadorans</u> , even though and because their statutory TPS grant expired	Parole of further Cubans into the US.	Deferred Enforced <u>Departure (DED)</u> for <u>Haitians</u> in the US since before 1995
# Affected:	Up to <u>1.5 million</u>	2,227	190,000	~28,000	40,000
President(s):	Bush Sr.	Bush Sr.	Bush Sr., Clinton	Clinton	Clinton
Other Notes:	Bush INS Commissioner issued blanket “Family Fairness” policy, and dropped “compelling or humanitarian factors” requirement in prior executive action. Legislation had passed the Senate, but not the House, providing similar relief	Criteria: Those who had US citizen relatives or harbored US citizens during the invasion. Allowed evacuees to apply for permanent residency. A Kuwaiti doctor said, "I feel the President has finally put a happy ending on this tragic story."	President Clinton subsequently extended the DED grant until Dec. 31, 1994	Included Cubans on the immigrant visa waiting list, unmarried sons and daughters of Cubans issued immigrant visas or granted refugee status, and family members who reside in the same household. Also paroled Cubans detained at Guantanamo and Panama	Legislation was pending to help these Haitians (<u>Haitian Refugee Immigration Fairness Act of 1998</u> allowed these Haitians to obtain green card)

Year(s)	1997	1998	1999	2002	2005
Relief Covered:	Deferred action to noncitizens who might gain relief through <u>Violence Against Women Act (VAWA)</u> , if it passed	Attorney General temporarily <u>suspended deportations</u> to El Salvador, Guatemala, Honduras, and Nicaragua, in response to Hurricane Mitch	<u>Deferred Enforced Departure (DED)</u> for <u>Liberians</u> for 1 year	Executive order of expedited naturalization for <u>green card holders who enlisted in military</u>	Deferred action for <u>foreign academic students</u> who were affected by Hurricane Katrina
# Affected:	Unknown	150,000	10,000	Unknown	Unknown
President(s):	Clinton	Clinton	Clinton	Bush	Bush
Other Notes:	VAWA legislation was pending. Criteria: Battered noncitizens with approved LPR self-petitions, and their derivative children			Order eliminated a three-year wait, let the soldiers seek citizenship immediately and applied to anyone on active duty as of Sept. 11, 2001. Included <u>Lance Cpl. José Gutiérrez</u> , a Guatemalan who received U.S. status through SIJ and died in Iraq	Bush also suspended employer verification rules. Congress was <u>considering legislation</u> at the time

Year(s)	2006	2007	2009	2009	2010
Relief Covered:	Established <u>Cuban Medical Parole Program</u> , to allow Cuban doctors conscripted abroad to apply for parole at US embassies	Deferred Enforced Departure (DED) for Liberians in 2007, whose TPS had statutorily expired	<u>Extended Deferred Enforced Departure (DED)</u> for qualified Liberians	Extended deferred action to <u>widows and widowers of U.S. citizens</u> , and their unmarried children under 21	Parole-in-place to spouses, parents, and children of <u>U.S. citizen military members</u>
# Affected:	<u>1,574</u> , as of Dec. 2010	3,600	Unknown	Unknown	Unknown
President(s):	Bush	Bush	Obama	Obama	Obama
Other Notes:	Program <u>still in place</u>				Granted on case-by-case basis. <u>First grant</u> of parole-in-place was under Bush Administration

Year(s)	2010	2011	2012	2013
Relief Covered:	<u>Parole to Haitian orphans</u> who were in the process of being adopted by U.S. citizens	Extended <u>Liberian DED</u> through March 2013	<u>Deferred action for childhood arrivals</u> (DACA)	Revised parole-in-place policy to spouses, parents, and children of U.S. citizen military members
# Affected:	Unknown	3,600	<u>Up to 1.8 million</u>	Unknown
President(s):	Obama	Obama	Obama	Obama
Other Notes:	Actions followed Haitian earthquake on January 12, 2010		Legislation was pending (i.e. the <u>DREAM Act</u>). Provided for a two-year renewable reprieve from deportation, and work authorization, for those meeting certain criteria. USCIS took significant <u>actions</u> to process applications	<u>Revised policy</u> so that “ordinarily” granted