

August 25, 2021

The Honorable Alejandro N. Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

The Honorable Antony Blinken
Secretary of State
U.S. Department of State
Washington, DC 20520

Dear Secretaries Mayorkas and Blinken:

We write as former senior officials with responsibilities for U.S. refugee and immigration programs at both the federal and state levels.

There is no question that the current situation in Afghanistan demands a significant, substantial, and generous U.S. humanitarian response, including through urgent action to evacuate Afghans who have been associated with the United States presence in Afghanistan as well as Afghans at serious and severe risk due to their participation and leadership in activities that were strongly supported and endorsed by the United States. Such activities have included promoting the rights of women and girls, leadership of civil society organizations and initiatives, involvement in journalism, and engagement in the arts, among others.

Under current exigent circumstances, we believe that the administration should use the broadest array of authorities to secure the rescue of Afghans and to provide resettlement in the United States and other countries, as part of an international responsibility-sharing effort.

In this respect, we want in particular to convey our support for use of the parole authority as one critical tool, especially to supplement authorities of the Refugee Act, which—while crucially important—may prove in some respects to be too limited and cumbersome to address fully the urgent and emergency situation.

As you know, 8 U.S.C. 1182(d)(5)(A), vests in the Secretary of DHS the discretionary authority to grant parole for urgent humanitarian reasons or significant public benefit to applicants for admission temporarily on a case-by-case basis. To be sure, in 8 U.S.C. 1182(d)(5)(B), Congress limited the parole authority by restricting its use with respect to those who are refugees, unless the Secretary determines that “compelling reasons in the public interest with respect to that particular alien require that the alien be paroled . . . rather than be admitted as a refugee.”

The current situation in Afghanistan surely constitutes such a compelling reason, in light of the life-threatening circumstances for would-be applicants and the inability of the U.S. Refugee Admissions program to quickly accommodate the requirements of rescue. Of course, parole is not an end in itself, but would permit further processing through available statutory or administrative mechanisms.

Moreover, whatever the respective requirements and benefits of both case-by-case decision-making and the establishment of regulations authorizing a particular program, it has long been acknowledged and accepted that administrations may identify particular groups of individuals who may be eligible for consideration of parole.

Thus, we believe it important to convey our support for your use of this authority, and our willingness to support you in any way possible in the challenging days, weeks, and months ahead.

Sincerely,

T. Alexander Aleinikoff

Former General Counsel and subsequently Executive Associate Commissioner for Programs, Immigration and Naturalization Service (INS) (1994–1997)

Mette Brogden

Former Wisconsin State Refugee Coordinator (2010–2016)

Bo Cooper

Former General Counsel, INS (1999–2003)

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Former Undersecretary of State for Civilian Security, Democracy, and Human Rights (2009–2013)

Anne C. Richard

Former Assistant Secretary of State for Population, Refugees, and Migration (2012–2017)

Myrta (Chris) Sale

Former Acting Commissioner, INS (1997)

Former Deputy Commissioner, INS (1997–1999)

Paul Wickham Schmidt

Former Chair, Board of Immigration Appeals (1995–2001)

Former Acting General Counsel, INS (1979–1981; 1986–1987)

Eric Schwartz

Former Assistant Secretary of State for Population, Refugees, and Migration (2009–2011)

Former National Security Council Director for Human Rights, Refugees, and Humanitarian Affairs and subsequently Senior Director for Multilateral and Humanitarian Affairs (1993–2001)

Samuel Witten

Former Principal Deputy Assistant Secretary for the Bureau of Population, Refugees, and Migration, U.S. Department of State (2007–2010)

Former Deputy Legal Adviser, U.S. Department of State (2001–2007)