

Josh Riley Is The Primary Legal Defender Of The Biden Administration's Failed Border Policies That Are Allowing Millions To Freely Enter The Country. New Yorkers Are Paying The Price For The Open-Border Policies Of Riley And Biden As Illegal Immigrants Ae Relocated From The City To Upstate New York.

In 2018, Riley Filed an Amicus Brief on Behalf of Joe Biden's Failed Secretary of Homeland Security Alejandro Mayorkas in an Effort to Stop President Trump's Administration from Enforcing the Nation's Immigration Laws:

INTEREST OF *AMICI CURIAE*¹

Amici are former leaders of the U.S. Department of Homeland Security ("DHS") and its component or predecessor agencies. *Amici* had direct involvement in the creation and administration of Deferred Action for Childhood Arrivals ("DACA") specifically and/or responsibility for administering and enforcing our nation's immigrations laws generally.

Jeh C. Johnson served as Secretary of DHS from December 2013 to January 2017, where he was responsible for enforcement and administration of the nation's immigration laws. Previously, Secretary Johnson served as General Counsel of the U.S. Department of Defense (2009–2012), General Counsel of the U.S. Air Force (1998–2001), and as an Assistant U.S. Attorney in the Southern District of New York (1989–1991).

Alejandro Mayorkas served as Deputy Secretary of DHS from December 2013 to October 2016. Prior to that, Deputy Secretary Mayorkas was Director of U.S. Citizenship and Immigration Services ("USCIS") from August 2009 to December 2013; in

¹("Brief of Former Homeland Security and Immigration Officials as Amici Curiae in Support of Respondents," Department of Homeland Security, et al, v. Regents of the University of California, et al, In the Supreme Court of the United States, No. 18-587, 18,588 and 18-589, Filed 10/4/19)

In His Brief on Behalf of Mayorkas, Riley Argued That Granting Work Authorization to Illegal Immigrants (Including DACA Recipients) Was Not Amnesty, But Rather 'Smart Policy' Based on Prosecutorial Discretion:

SUMMARY OF ARGUMENT

DACA is not government benevolence, inaction, or—as some have derisively labeled it—“amnesty.” Rather, as the *amici* can personally attest, DACA is sound, smart policy given the inherent limitations of government resources. It confers no legal status and it serves important government interests (including public safety and national security) by encouraging young people who are the lowest priorities for removal, but who live in the shadows of American life, to come forward, engage in their communities, and contribute to the economy.

Discretionary relief policies have existed within the landscape of executive branch authority for decades and have been used by administrations of both political parties. DACA is thus neither novel nor unprecedented. The authority to adopt DACA and the accompanying authority to issue work authorization both derive from the prosecutorial discretion routinely exercised by the executive branch and from Congress’ broad delegations of authority in the immigration context. Further statutory authority expressly endorsing the manner in which that prosecutorial discretion is exercised is not necessary.

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Riley Argued Presidents Should Exercise ‘Prosecutorial Discretion’ in Deferring Action Against Illegal Immigrants and Authorizing Them the ‘Right to Work’:

Inevitably, then, choices must be made. Priorities for removal must be developed. Prosecutorial discretion must be exercised.

For more than fifty years, presidents and their administrations have done just that: exercising prosecutorial discretion to prioritize enforcement against those individuals who pose threats to public safety or national security, while deferring action against and authorizing the right to work (where economically necessary) for those who do not.

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Riley Argued in Support of Granting ‘Deferred Action, Including Discretionary, Systematic Relief’ to ‘Large Numbers’ of Illegal Immigrants Who Would Be Subject to Removal:

ARGUMENT

I. Deferred Action Is Firmly Rooted in Historical Practice.

Deferred action, including discretionary, systematic relief granted on a case-by-case basis to large numbers of people otherwise removable, has in various forms occupied the landscape of executive au-

thority for decades.¹¹ Federal law long has recognized this reality, codifying and sanctioning deferred action as “an act of administrative convenience to the government which gives some cases lower priority.” 8 C.F.R. § 274a.12(c)(14) (2019); *see also* 6 U.S.C. § 202(5) (2018) (making the Secretary of Homeland Security “responsible” for “establishing national immigration enforcement policies and priorities”).

(“Brief of Former Homeland Security and Immigration Officials as Amici Curiae in Support of Respondents,” Department of Homeland Security, et al, v. Regents of the University of California, et al, In the Supreme Court of the United States, No. 18-587, 18,588 and 18-589, Filed 10/4/19)

Riley Cited Examples of Deferred Action to Support His Argument That the Government Should Rely on Prosecutorial Discretion to Decide Which Immigration Laws to Enforce Including Advocating for ‘Temporarily Suspending Enforcement of Immigration Laws for Particular Groups of Aliens’:

Below are a handful of salient examples, all of which involve executive action that occurred absent, or in excess of, statutory authority granted by Congress.

Ford & Carter Administrations. The Ford and Carter Administrations each granted “Extended Voluntary Departure”¹⁷ to certain classes of immigrants, many of whom came from war-torn or communist countries, including individuals of Lebanese and

Ethiopian descent.¹⁸ Under these deferred action policies, immigration officials “temporarily suspend[ed] enforcement” of the immigration laws for “particular group[s] of aliens.” *Hotel & Rest. Emps. Union, Local 25 v. Smith*, 846 F.2d 1499, 1510 (D.C. Cir. 1988) (en banc) (per curiam) (separate opinion of Mikva, J.).¹⁹

(“Brief of Former Homeland Security and Immigration Officials as Amici Curiae in Support of Respondents,” Department of Homeland Security, et al, v. Regents of the University of California, et al, In the Supreme Court of the United States, No. 18-587, 18,588 and 18-589, Filed 10/4/19)

Riley Supported Taxpayer Funded Benefits for Illegal Immigrants By Arguing in Support of Granting Work Authorization to Illegal Immigrants Already in the United States Claiming It Would Benefit The United States By Allowing Them to Participate in the Social Security:

II. Allowing Deferred Action Recipients to Apply for Work Authorization Is Consistent With Historical Practice and Benefits the United States.

The Executive’s core authority to prioritize the removal of certain individuals above others—whether for public safety, national security, or humanitarian reasons—gives rise to a closely related consideration: how to structure discretionary relief policies to best serve the American economy.

Administration after administration has answered this question by authorizing recipients of deferred action to petition the federal government for work authorization if the recipients can prove economic necessity. That solution is sensible, as it increases social security and tax revenues, boosts our country's GDP, and provides better access to work protections for discretionary relief recipients. See

generally Brief for Professional Economists and Scholars in Related Fields as Amici Curiae in Support of Petitioners, *United States v. Texas*, 136 S. Ct. 2271 (2016) (No. 15-674). It also reduces the likelihood that a recipient of deferred action will become a public charge, thereby furthering the purpose of federal immigration law. Immigration Act of 1990 § 212(a)(4), 8 U.S.C 1182(a)(4) (2018) (aliens are inadmissible if they are likely to become a public charge).

("Brief of Former Homeland Security and Immigration Officials as Amici Curiae in Support of Respondents," Department of Homeland Security, et al, v. Regents of the University of California, et al, In the Supreme Court of the United States, No. 18-587, 18,588 and 18-589, Filed 10/4/19)

Alejandro Mayorkas, Riley's Client Who Created DACA Under Obama, Was Picked to Lead DHS Under Biden Specifically to 'Reverse' Trump's Immigration Policies for the 12 Million People Living Illegally in the United States According to Congressional Democrats and Immigration Advocates. "Rep. Castor welcomed Biden's choice of Cuban-born Alejandro Mayorkas to lead the Department of Homeland Security. Immigration and Customs Enforcement is part of Homeland Security. During an earlier stint with the department, Mayorkas helped create the Deferred Action for Childhood Arrivals program that Trump has sought to eliminate. He "brings a deep understanding to our immigration system and the value of immigrants," Castor said. "I trust that Secretary-designee Mayorkas will work to reverse Trump's harsh policies, modernize America's immigration system, support families, and strengthen our economy." At stake is a fair future for many of the estimated 10 million to 12 million people living in the United States illegally, said Ana Lamb of Tampa, who has worked more than 20 years as an immigrant advocate. "All of these people have contributed to this country for decades," Lamb said. "They are the workforce, they are the essential workers." (Juan Carlos Chavez, "Deputies in Florida help enforce immigration law, but Biden aims to change that The president-elect has accused Trump of immigration policies that emphasize fear and division rather than common-sense solutions," [Tampa Bay Times](#), 1/7/21)

Alejandro Mayorkas' Unlawful Actions as DHS Secretary:

- **Remain in Mexico (Migrant Protection Protocols/MPP):** The Biden administration quickly moved to suspend the Remain in Mexico Program (MPP), a critical tool that substantially reduced the filing of fraudulent asylum claims at the Southwest border following the 2019 crisis. For more than a year, the Biden administration fought numerous legal battles to dismantle the policy, ultimately prevailing at the Supreme Court in June 2022. ("Divided Court Allows Biden to End Trump's 'Remain in Mexico' Asylum Policy," [SCOTUSblog](#), 6/30/22)
- **Border Wall Construction:** Walls work. The border wall system is a critical component in maintaining order and security at the Southwest border. A CBP press release in October 2020 states plainly, "The results speak for themselves: illegal drug, border crossings, and human smuggling activities have decreased in areas where barriers are deployed. ... [T]he border wall is forcing drug smugglers to where we are best prepared to catch them—our ports of entry." ("The Border Wall System Is Deployed, Effective, and Disrupting Criminals and Smugglers," [U.S. Department of Homeland Security](#), 10/29/20)
- **Title 42:** In 2020, the Trump administration responded to the COVID-19 pandemic by invoking the Center for Disease Control and Prevention's (CDC) Title 42 public health authority. Under

Title 42, CBP could process illegal aliens without asylum screening and immediately expel them back to Mexico through the closest port of entry. This was a vital authority, not only allowing Border Patrol agents to rapidly expel those who had no legal claim to enter the U.S., but to protect agents and American citizens throughout the country from the spread of COVID-19. Mayorkas' DHS failed to fully and effectively utilize this authority. In February 2023, for example, just 33 percent (70,470) of those apprehended were expelled under Title 42. The Biden administration ended Title 42 on May 11, 2023.” (“Nationwide Encounters,” [U.S. Customs and Border Protection Newsroom](#), 5/17/23)

- **Ending Abuse of Parole Programs:** In 2017, Pres. Donald Trump signed an executive order ending the abuse of parole, and reiterating that parole was only to be used on a case-by-case basis for humanitarian purposes, in accordance with the law. The Biden administration revoked this order on Feb. 2, 2021. By law, parole should only be offered on a case-by-case basis when there is significant public benefit or urgent humanitarian need to do so, and only for temporary admittance into the country.” (“Border Security and Immigration Enforcement Improvements,” [Executive Office of the President](#), 1/30/17, “Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border,” [The White House](#), 2/2/21)
- **Cracking Down on Sanctuary Cities:** The Trump administration issued an order in 2017 that prohibited federal grant money from being awarded to jurisdictions that refuse to cooperate with Immigration and Customs Enforcement (ICE) to remove criminal aliens, otherwise known as “sanctuary cities.”²⁵ The Biden administration canceled the order on Jan. 20, 2021.” (“Enhancing Public Safety in the Interior of the United States,” [Executive Office of the President](#), 1/30/17, “Executive Order on the Revision of Civil Immigration Enforcement Policies and Priorities,” [The White House](#), 1/20/21)
- **Rolling Back DACA:** The Trump administration attempted to rescind the Deferred Action for Childhood Arrivals (DACA) amnesty program, but was only partially successful, as the courts required the administration to continue processing renewals. The administration did not adjudicate new DACA requests, however. In a Jan. 20, 2021 executive order, Biden ordered DHS to “preserve and fortify” DACA.” (“Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA),” [The White House](#), 1/20/21)