REIMAGINING IMMIGRATION REFORM BEYOND DACA AND CONGRESSIONAL GRIDLOCK: UTILIZING EXECUTIVE DIRECTIVE IN INA 212(D)(3) WAIVERS

*Chaewon "Jessica" Park**

ABSTRACT

The United States immigration system has long been characterized by complexity, political gridlock, and fluctuating policies. In the absence of comprehensive legislative reform, executive actions have become a primary tool for shaping immigration policy. In June 2024, the Biden Administration issued an executive directive titled "Easing the Nonimmigrant Visa Process for U.S. College Graduates" ("Easing Visa Process"), aimed at streamlining the approval of Immigration and Nationality Act (INA) § 212(d)(3) waivers, commonly known as "D-3 waivers," for certain individuals deemed inadmissible due to criminal records or immigration violations. This directive primarily benefits Deferred Action for Childhood Arrivals (DACA) recipients and Dreamers, who, despite earning degrees from U.S. institutions and securing job offers, face significant legal barriers due to inadmissibility. By updating the Foreign Affairs Manual (FAM) to provide clearer guidance on the use of discretionary waivers, the directive aims to facilitate lawful employment pathways for these individuals while operating within established statutory frameworks.

* Jessica Park is the Managing Editor of Volume 78 of the *Rutgers University Law Review* and a 2026 J.D. Candidate at Rutgers Law School–Newark. I express sincere gratitude to my advisor and constitutional law professor, Carlos A. Ball, for his thoughtful guidance and feedback throughout the development of this article. Finally, I dedicate this Note to all the resilient Dreamers who understand this struggle more than anyone else, and to my sister as she embarks on a new chapter in her life.

Unlike previous executive actions such as DACA, which faced immediate legal challenges and prolonged judicial scrutiny, the "Easing Visa Process" directive has thus far evaded significant litigation. This paper argues that its resilience stems from its strategic grounding in pre-existing statutory authority, its limited scope, and its preservation of consular officers' discretionary decision-making. By not imposing binding norms but instead clarifying discretionary factors already embedded within the waiver adjudication process, the directive avoids the pitfalls that have rendered prior executive immigration policies vulnerable to legal invalidation. In an era of heightened judicial skepticism toward agent rulemaking, particularly following the Supreme Court's landmark decision in Loper Bright Enterprises v. Raimondo, which overturned Chevron deference, the directive provides an instructive case study on the legal viability of executive immigration reform.

The Note concludes that the "Easing Visa Process" directive, by strategically preserving discretionary authority and grounding its actions in statutory language, provides a viable model for future administrative efforts to address immigration challenges. It highlights the potential for executive actions to navigate legal vulnerabilities and contribute to meaningful reform, even in the face of a gridlocked Congress. Furthermore, the Note examines the directive's effectiveness through real-world success stories, such as those facilitated by initiatives like Path2Papers, which demonstrate how the streamlined D-3 waiver process has enabled Dreamers to secure work visas and pursue pathways to permanent residency. Ultimately, this Note underscores the importance of executive action in shaping immigration policy when legislative efforts remain stalled, offering a blueprint for future reforms that balance legal soundness with humanitarian goals.

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I. INTRODUCTION

As the world seemed to slowly move on and recuperate from the COVID-19 pandemic, 2024 brought new and renewed challenges. Immigration, above all, is currently one of the most contentious issues in the United States.[1] In recent decades, the U.S. immigration system has faced growing complexity, marked by fluctuating policies,[2] legal

1. *See, e.g.*, THE ASSOCIATED PRESS-NORC CTR. FOR PUB. AFF. RSCH., 2025: THE PUBLIC'S PRIORITIES AND EXPECTATIONS 2 (2025), https://apnorc.org/wp-content/uploads/2025/01/2025-Priorities-Brief_FINAL.pdf [https://perma.cc/MX8Y-NBXC] (showing immigration being among the top five issues Americans want the government to work on, going from 27% in December 2022 to 35% in December 2023, and to 47% in December 2024); Megan Brenan, *Economy, Immigration, Abortion, Democracy Driving Voters*, GALLUP (Nov. 1, 2024), https://news.gallup.com/poll/652970/economy-immigration-abortion-democracy-driving-voters.aspx [https://perma.cc/DHU3-GTKW] (showing immigration as the second most important factor in registered voters' presidential vote in a poll conducted between October 14 to 27, 2024).

2. *See, e.g.*, Theresa Cardinal Brown, *Changing Border Policies and Apprehensions: What's the Relationship?*, BIPARTISAN POL'Y CTR. (Dec. 19, 2023), https://bipartisanpolicy.org/blog/changing-border-policies-and-apprehensions-whats-the-relationship/ [https://perma.cc/ZBH7-MQHF] (noting that the "inconsistent nature of the [immigration] policies in place (in part due to litigation and court decisions) and overlap in implementation timelines make it difficult to clearly understand the effects of individual policies").

challenges,[3] and political gridlock.[4] As legislative efforts to reform immigration law have stalled, administrations from both parties have increasingly turned to executive authority to implement policy changes.[5] The rise of executive actions as a tool for shaping immigration policy underscores the shifting power dynamics between the executive branch and Congress.[6]

In June 2024, the Biden Administration issued an executive directive titled "Easing the Nonimmigrant Visa Process for U.S. College Graduates" ("Easing Visa Process"), a policy designed to streamline approval of the Immigration and Nationality Act (INA) § 212(d)(3) waiver ("D-3 waiver") for certain individuals ineligible to reenter the United States because of inadmissibility grounds, either because of criminal records or history of violating immigration laws.[7] This guidance benefits immigrants who have received higher education in the United States and a job offer, including, but not limited to, Deferred Action for Childhood Arrivals (DACA) recipients and Dreamers who arrived in the United States at a young age with their parents and subsequently became undocumented.[8] Unlike previous executive actions that sparked extensive legal battles, such as DACA,[9] this new directive has, so far, not

3. *See generally Immigrants' Rights: Court Cases,* ACLU, https://www.aclu.org/court-cases?issue=immigrants-rights [https://perma.cc/GVJ2-S67H] (last visited Nov. 6, 2025) (listing cases involving immigrants' rights where ACLU is the party).

4. *See, e.g.*, William A. Galston, *The Collapse of Bipartisan Immigration Reform: A Guide for the Perplexed*, THE BROOKINGS INST. (Feb. 8, 2024), https://www.brookings.edu/articles/the-collapse-of-bipartisan-immigration-reform-a-guide-for-the-perplexed/ [https://perma.cc/A6AW-9H22] ("As partisan polarization deepened over the ensuing decade, the odds of agreement on meaningful immigration reform fell steadily.").

5. *See generally, e.g.*, Proclamation No. 10,141, 86 Fed. Reg. 7005 (Jan. 20, 2021) (proclamation by President Biden reversing President Trump's travel ban); Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017) (executive order by President Trump issuing travel ban, later superseded by Executive Order 13,780); Memorandum from Janet Napolitano, Sec'y of Homeland Sec., Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children to David V. Aguilar, Acting Comm'r, U.S. Customs & Border Prots. et al. (June 15, 2012) (on file with the Rutgers University Law Review) (DHS memorandum establishing the DACA program under the Obama Administration).

6. *See* sources cited *supra* note 5.

7. *FACT SHEET: President Biden Announces New Actions to Keep Families Together*, THE WHITE HOUSE (June 18, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/18/fact-sheet-president-biden-announces-new-actions-to-keep-families-together/ [https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/06/18/fact-sheet-president-biden-announces-new-actions-to-keep-families-together/] [https://perma.cc/E2S3-YJ2A].

8. *See id.*

9. *See Dreamers (DACA), Know Your Rights*, ACLU (Sep. 5, 2025), https://www.aclu.org/know-your-rights/know-your-rights-about-daca

been challenged in the courts, raising important questions about the boundaries of administrative discretion and the role of courts in overseeing immigration policy.

This Note argues that, while minimal in its immediate impact and limited in its effectiveness, the new executive directive streamlining the D-3 waiver process offers a transformative framework for envisioning immigration reform amid congressional gridlock. It begins by providing background on the order's origins and its intended beneficiaries, including DACA recipients and Dreamers.[10] The Note then examines the extent to which the Biden Administration's executive action is authorized by statutory law.[11] It delves into the legal structure governing nonimmigrant visas, with a focus on the D-3 waiver, and discusses how discretionary factors shape immigration policy in the post-*Chevron* era.[12] Finally, it examines the current political landscape and effectiveness of the "Easing Visa Process" directive in the real world, where more than 600,000 individuals without DACA stand to benefit from it,[13] showcasing how administrative actions can work within the bounds of executive authority to address legislative impasses while bringing about meaningful impact to DACA recipients and Dreamers.[14]

II. BACKGROUND ON IMPLEMENTING "EASING THE NONIMMIGRANT VISA PROCESS FOR U.S. COLLEGE GRADUATES"

A. DACA Recipients and Dreamers: The Intended Beneficiaries

Immigration is a complex and nuanced issue that, since the post-9/11 era, has been increasingly framed by the media as a matter of national security, evoking stronger and more visceral public reactions.[15] As a result, congressional efforts toward comprehensive immigration reform have repeatedly failed, notably in 2004, 2006, 2007, and 2013.[16] In light of congressional inaction, President Obama implemented the Deferred Action for Childhood Arrivals (DACA) program through a memorandum

[https://perma.cc/UU3K-VCNT] ("There is ongoing litigation challenging the Deferred Action for Childhood Arrivals (DACA) program.").

10. *See infra* Sections I.A–C.

11. *See infra* Section II.A.

12. *See infra* Section II.B.

13. *See* DAN BERGER ET AL., THE NEW D3 WAIVER PROCESS: A TOOL TO HELP OVER ONE MILLION DREAMERS 12 (2024), https://sites.lawschool.cornell.edu/path2papers/wp-content/uploads/sites/5/2024/09/D3-DACA-BIB-art-v6.pdf [https://perma.cc/862V-HX6Z].

14. *See infra* Sections III.A–B.

15. Maryam T. Stevenson, *Explaining the Comprehensive Immigration Reform Stalemate in Congress*, 73 CATH. U. L. REV. 400, 432 (2024).

16. *Id.* at 405.

issued by Janet Napolitano, the then-Secretary of Homeland Security in 2012, which provided many undocumented youths with protection from deportation and work authorization, thus granting them access to more opportunities.[17] Thirteen years since its inception, DACA recipients now contribute significantly to the U.S. economy as a vital part of the workforce.[18] In 2022 alone, over 482,000 DACA recipients in the workforce earned approximately $27.9 billion and contributed nearly $2.1 billion toward social benefit programs such as Social Security and Medicare.[19]

"Dreamer" is a term coined by the DREAM Act, a piece of legislation that ultimately never passed in Congress.[20] DREAM is a "cleverly constructed acronym" for "Development, Relief and Education for Alien Minors," and the Act was proposed to provide a pathway to citizenship for individuals who were brought to the United States illegally as children.[21] As the legislation's purpose suggests, Dreamers are undocumented immigrants who were brought to the United States as children by their parents or other adults before turning eighteen.[22] Therefore, the term encompasses both DACA recipients and those who are not eligible for DACA because they do not meet the eligibility criteria, such as age or years of U.S. residence.[23]

17. *See* Remarks on Immigration Reform and an Exchange with Reporters, 1 PUB. PAPERS 800, 801 (June 15, 2012).

18. *See* Trinh Q. Truong & Silva Mathema, *DACA Recipients Bolster Social Security and Medicare*, CTR. FOR AM. PROGRESS (Jan. 25, 2024), https://www.americanprogress.org/article/daca-recipients-bolster-social-security-and-medicare/ [https://perma.cc/3K8M-4DXG].

19. *Id.*

20. *Immigration 101: What Is a Dreamer?*, AM.'S VOICE (Mar. 14, 2024), https://americasvoice.org/blog/what-is-a-dreamer/ [https://perma.cc/6H88-XLHD].

21. David Hawkings & Thomas McKinless, *Why Are the Dreamers Called the Dreamers?*, ROLL CALL (June 20, 2018, at 16:08 ET), https://rollcall.com/2018/06/20/why-are-the-dreamers-called-the-dreamers/ [https://perma.cc/U6JP-EHEN].

22. *Id.*

23. To qualify for DACA, a person must: (1) be under thirty-one years old as of June 15, 2012; (2) have arrived in the United States before turning sixteen; (3) have lived in the United States continuously from June 15, 2007, to the date of their DACA application; (4) be physically in the United States on June 15, 2012, and when applying for DACA; (5) have had no lawful immigration status as of June 15, 2012; (6) be currently in school, have graduated or received a high school completion certificate, hold a General Education Development (GED) certificate, or be an honorably discharged veteran of the U.S. Coast Guard or armed forces; and (7) have no felony, significant misdemeanor, or multiple misdemeanor convictions, and not pose a threat to national security or public safety. *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 24, 2025) https://www.uscis.gov/DACA [https://perma.cc/S6M2-T4R8]. For clarity, I differentiated DACA recipients and Dreamers throughout the Note although Dreamers include DACA recipients.

As of 2025, DACA is on the verge of ending permanently.[24] Since a federal district court judge in Texas halted the approval of new first-time DACA requests on July 16, 2021, the United States Citizenship and Immigration Services (USCIS) has only been allowed to process renewal requests for existing recipients.[25] The district court's ruling was appealed to the Fifth Circuit Court of Appeals, which, on October 4, 2022, ruled that the 2012 memorandum[26] creating DACA was unlawful.[27] However, the Fifth Circuit did not immediately terminate DACA and instead remanded the case back to the district court to assess the legality of the new DACA regulation that took effect on October 31, 2022.[28] The Biden Administration's new DACA established a formal regulation for the program, replacing the 2012 memorandum that initially created DACA,[29] but it did not alter the eligibility requirements or affect who can receive DACA under recent court rulings.[30] After the district court once again ruled against the 2022 regulation, the federal government appealed the case to the Fifth Circuit, which heard oral arguments on October 10, 2024.[31] On January 17, 2025, the Fifth Circuit ruled against the 2022 regulation, largely upholding the same argument it laid out in its 2022 ruling.[32] Quoting significantly from its 2022 ruling, the Fifth Circuit ruled that because Congress "chose not to include DACA recipients" in the "'comprehensive federal statutory scheme for regulation of immigration and naturalization[,]' . . . 'Congress's rigorous classification scheme forecloses the contrary scheme in the DACA Memorandum.'"[33] None of the parties to the litigation sought discretionary Supreme Court

24. *Timeline: DACA in the Courts*, NAT'L IMMIGR. L. CTR. (Jan. 17, 2025) https://www.nilc.org/resources/timeline-daca-in-the-courts/ [https://perma.cc/5HYK-8Y5R].

25. *Dreamers (DACA)*, *Know Your Rights*, *supra* note 9. The United States Supreme Court has previously ruled that the rescission of DACA by then-Acting Secretary of the Department of Homeland Security under the first Trump Administration violated the Administrative Procedure Act, but it purposefully did not rule on the legality of DACA. Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 35 (2020). For the purpose of this Note, I limit the scope of background to litigation surrounding legality of DACA.

26. *See* Memorandum from Janet Napolitano, Sec'y of Homeland Sec., *supra* note 5.

27. *See Dreamers (DACA)*, *Know Your Rights*, *supra* note 9.

28. *Id.*

29. *See* 8 C.F.R. § 236.21(d) (2024).

30. Memorandum from the Exec. Off. on Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA), 86 Fed. Reg. 7053 (Jan. 20, 2021).

31. *Timeline: DACA in the Courts*, *supra* note 24; *DACA Court Case Updates*, FWD.US (Jan. 21, 2025), https://www.fwd.us/news/daca-court-case/ [https://perma.cc/XRU2-XVX3].

32. Texas v. United States, 126 F.4th 392, 418 (5th Cir. 2025) ("[T]he [2022 regulation] is materially identical to the 2012 Memorandum. Absent a relevant change in law, [Texas v. United States, 50 F.4th 498 (5th Cir. 2022)] controls, meaning that DACA remains 'manifestly contrary to the [INA].'").

33. *Id.* (quoting *Texas*, 50 F.4th at 521, 526).

review of the latest Fifth Circuit ruling by the extended deadline, which means the Fifth Circuit's ruling of January 17, 2025 is now final.[34] While DACA remains for the time being, the Supreme Court has yet to rule on the legality of DACA.[35] Provided that certiorari is eventually granted, there is a strong possibility the Supreme Court will rule against DACA, given the current makeup of the Supreme Court, where the majority of Justices lean conservative.[36] This could potentially phase out the program entirely.[37] With President Trump back in the Oval Office, DACA could face additional challenges from his administration as well. This is already being displayed by the Trump Administration's aggressive mass deportation effort affecting DACA recipients and the Education Department's investigation into universities that offer aid to DACA students.[38]

Since his 2020 presidential campaign, former President Biden's commitment to immigrants included promises to protect Dreamers and their families.[39] His proposals focused on reinstating DACA, preventing family separation, making Dreamers eligible for federal student aid, and supporting legislation to create a pathway to citizenship for undocumented immigrants who register, pay taxes, and pass a background check.[40] However, given the limitations imposed on executive authority to issue new directives and the ongoing congressional gridlock stalling any form of immigration reform, the Biden Administration was

34. *MALDEF Statement on Deadline to Seek Supreme Court Review of Fifth Circuit DACA Ruling*, MEXICAN AM. LEGAL DEF. & EDUC. FUND (May 20, 2025), https://www.maldef.org/2025/05/maldef-statement-on-deadline-to-seek-supreme-court-review-of-fifth-circuit-daca-ruling/ [https://perma.cc/K8NS-VASH].

35. *See DACA Court Case Updates*, *supra* note 31.

36. *See id.* ("Considering the current makeup of the Court and its previous immigration decisions, there's a good chance the [Supreme Court] Justices could also rule against DACA."); Bernd Debusmann Jr., *How the Supreme Court Became a Political Battlefield*, BBC (July 2, 2024), https://www.bbc.com/news/articles/crg4rz6zedyo [https://perma.cc/D6RK-VRG6] ("Currently, conservatives hold a strong majority with six justices on the bench.").

37. *See DACA Court Case Updates*, *supra* note 31.

38. *See* Nicole Acevedo, *Detentions of DACA Recipients Show They're Not Shielded from Trump's Mass Deportations*, NBC NEWS (July 24, 2025, at 15:08 ET), https://www.nbcnews.com/news/latino/trump-daca-mass-deportations-legal-status-dreamers-immigration-rcna216844 [https://perma.cc/A6HA-FZ6V]; Vimal Patel, *Education Department Will Investigate Scholarships for DACA Students*, N.Y. TIMES (July 23, 2025), https://www.nytimes.com/2025/07/23/us/politics/education-department-will-investigate-scholarships-for-daca-students.html [https://perma.cc/L4NL-L9HJ].

39. *The Biden Plan for Securing Our Values as a Nation of Immigrants*, BIDEN HARRIS, https://joebiden.com/immigration/ [https://web.archive.org/web/20200901020716/https://joebiden.com/immigration/#] (last visited Nov. 6, 2025).

40. *Id.*

relatively passive in advancing more progressive directives to address Dreamers, such as the creation of DACA under the Obama Administration.[41] With growing fears that DACA might end for good, it seemed inevitable that the Biden Administration would need to act to fulfill the promises made during his campaign.[42] The issue was how to do so.

B. June 18, 2024 Presidential Directive on Immigration by the Biden Administration

On June 18, 2024, the White House published a release titled, "FACT SHEET: President Biden Announces New Actions to Keep Families Together," where the Biden Administration announced two actions titled "Keeping American Families Together" and "Easing the Visa Process for U.S. College Graduates, Including Dreamers."[43] In issuing the directive, the Biden Administration emphasized the fact that the legislative inaction was caused by "[c]ongressional Republicans" who "have continued to put partisan politics ahead of national security – twice voting against the toughest and fairest set of reforms in decades."[44] It also juxtaposed congressional inaction to the work that the administration has done to "strengthen [the] lawful immigration system," namely "vigorously defending the DACA . . . policy, . . . extend[ing] Affordable Care Act coverage to DACA recipients and streamlin[ing], expand[ing], and institut[ing] new reunification programs so that families can stay together while they complete the immigration process."[45] And as a way to "bring peace of mind and stability to Americans living in mixed-status families as well as young people educated in this country, including Dreamers," this directive was announced.[46]

"Keeping American Families Together" or "Keeping Families Together" granted the Department of Homeland Security (DHS) the authority to issue discretionary "parole in place" to noncitizen spouses and stepchildren of U.S. citizens, allowing them to apply for adjustment

41. *See* Muzaffar Chishti et al., *Biden's Mixed Immigration Legacy: Border Challenges Overshadowed Modernization Advances*, MIGRATION POL'Y INST. (Dec. 10, 2024), https://www.migrationpolicy.org/article/biden-immigration-legacy [https://perma.cc/GWN3-SZM6].

42. *See id.*

43. *FACT SHEET: President Biden Announces New Action to Keep Families Together*, *supra* note 7.

44. *Id.*

45. *Id.*

46. *Id.*

of status without leaving the United States for consular processing.[47] The "parole in place" provision would have benefitted those who entered the United States without inspection, e.g., crossing the border, enabling them to adjust their status domestically, receive protection from removal for up to three years, and apply for a work permit.[48] Shortly after its inception, however, "Keeping Families Together" was challenged by Texas and fifteen other states, which filed a lawsuit against the federal government in the U.S. District Court for the Eastern District of Texas on August 23, 2024, to claim that the program exceeded the statutorily granted authority of DHS and USCIS to issue parole to certain foreign nationals.[49] On August 26, 2024, the court issued an administrative stay set to expire on September 9, 2024, which was later extended indefinitely on September 11.[50] To comply with the court order, the USCIS continued to accept applications but halted issuing approvals.[51] On November 7, 2024, Judge Barker issued a final judgment vacating "Keeping Families Together," reasoning that the Biden Administration lacked authority to issue such a directive.[52] As evidenced by the swift wave of lawsuits following its enactment, "Keeping Families Together" has faced legal challenges just five months after its announcement.[53]

The second action, "Easing Visa Process," on the other hand, has not been challenged in courts. This action is designated to benefit "DACA recipients and other Dreamers[] who have earned a degree at an accredited U.S. institution of higher education in the United States, and who have received an offer of employment from a U.S. employer in a field related to their degree."[54] The directive aims to streamline the issuance of nonimmigrant visas by clarifying "when consular officers should consider recommending that the [DHS] waive ineligibility for these applicants on an expedited basis, in conjunction with visa applications

47. *Keeping Families Together*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 24, 2025), https://www.uscis.gov/keepingfamiliestogether [https://perma.cc/MLM3-2ZAX].

48. *See id.*; *Where Do We Go from Here? An Update on Keeping Families Together Parole in Place Process*, IMMIGRANT LEGAL RES. CTR. (Nov. 13, 2024), https://www.ilrc.org/resources/latest-on-parole-in-place#item-4273 [https://perma.cc/MWC6-EKF2].

49. *See* Original Complaint at 2–3, State of Texas v. U.S. Dep't of Homeland Sec., No. 24-cv-00306 (E.D. Tex. Aug. 23, 2024).

50. *Where Do We Go from Here? An Update on Keeping Families Together Parole in Place Process*, *supra* note 48.

51. *Id*.

52. *See* State of Texas v. U.S. Dep't of Homeland Sec., 756 F. Supp. 3d 310, 359–361 (E.D. Tex.2024) (an order granting vacatur of "Keeping Families Together").

53. *See Where Do We Go from Here? An Update on Keeping Families Together Parole in Place Process*, *supra* note 48.

54. *FACT SHEET: President Biden Announces New Action to Keep Families Together*, *supra* note 7.

overseas."[55] This clarification came in the form of updates to the Foreign Affairs Manual (FAM), a "single, comprehensive, and authoritative source" for the U.S. Department of State that provides guidance to consular officers on how to carry out their tasks.[56]

In determining whether to exercise their discretion to waive inadmissibility grounds for DACA and Dreamer applicants, the updated FAM instructs the consular officers to consider various factors.[57] Namely, they should consider applicants, who have a degree from a U.S. higher education institution or have credentials to engage in skilled labor in the United States, and are looking to start or continue employment with a U.S. employer in a field related to the education that they attained in the United States, to have a positive effect on public interests of the United States and to expedite the waiver process.[58] In implementing this directive, the Biden Administration emphasized that it is "taking action within its legal authorities."[59] Both the White House and the Department of State focused on the fact that the waiver process has been available under existing law, an attempt to block any room for legal challenges faced by other administrative directives.[60] This appears to be accurate

55. *Easing the Nonimmigrant Visa Process for U.S. College Graduates*, U.S. DEP'T OF STATE: TRAVEL.STATE.GOV (July 15, 2024), https://travel.state.gov/content/travel/en/News/visas-news/easing-the-nonimmigrant-visa-process-for-u-s—college-graduates-.html [https://perma.cc/2ZWM-E373].

56. *Foreign Affairs Manual: PUBLIC*, U.S. DEP'T OF STATE, https://fam.state.gov/ [https://perma.cc/43DV-9RSF] (last visited Nov. 6, 2025).

57. *9 FAM 305.4-3(C), (F)*, *Foreign Affairs Manual*, U.S. DEP'T OF STATE (Sep. 11, 2024), https://fam.state.gov/fam/09FAM/09FAM030504.html [https://perma.cc/GW2G-8UVK]. Although these criteria are not limited solely to DACA recipients and Dreamers, they strongly indicate that the directive was intended to benefit individuals who arrived in the United States as children, grew up in the country, and acquired educational or vocational credentials to join the U.S. workforce—the same population addressed by DACA. *See* Memorandum from Janet Napolitano, Sec'y of Homeland Sec., *supra* note 5.

58. *9 FAM 305.4-3(C), (F)*, *supra* note 57.

59. *Background Press Call by Senior Administration Officials on New Actions to Address Our Broken Immigration System*, THE WHITE HOUSE (June 17, 2024, at 16:35 ET), https://bidenwhitehouse.archives.gov/briefing-room/press-briefings/2024/06/17/background-press-call-by-senior-administration-officials-on-new-actions-to-address-our-broken-immigration-system/ [https://perma.cc/YC4A-2ATF]; *see* discussion *infra* Sections I.C, II.B.2.

60. *See Background Press Call by Senior Administration Officials on New Actions to Address Our Broken Immigration System*, *supra* note 59 ("By clarifying and enhancing . . . the existing process, the Department of State's policy will give U.S. employers increased confidence that they can hire the talent they need and that they will be able to quickly get to work."); *Easing the Nonimmigrant Visa Process for U.S. College Graduates*, *supra* note 55 (emphasizing that the new guidance is "consistent with the waiver process that is already available under existing law to individuals seeking nonimmigrant visas and consistent with Department regulations and policy that describe the types of cases in which consular officers should consider recommending a waiver of ineligibility.").

since, as of 2025, there has not been an immediate legal challenge to the directive, unlike the swift response seen in "Keeping Families Together."[61] This Note proposes that this new directive offers a rudimentary paradigm for reimagining immigration reform in an era of congressional gridlock by strategically preserving and exercising discretionary authority granted by legislation within the waiver process. By analyzing this authority in conjunction with the administrative discretionary authority provided by the Administrative Procedure Act (APA), it is possible to assess the viability of "Easing Visa Process" under judicial scrutiny.

C. The "D-3" Waiver

A foreign national is inadmissible if they were unlawfully present in the United States for an extended period of time and seek admission before the end of a specified period of inadmissibility, which can be three or ten years depending on the length of unlawful presence.[62] Under section 212(d)(3) of the Immigration and Nationality Act (INA), the Attorney General may approve a recommendation by the Secretary of State or by the consular officer to temporarily admit a foreign national with a nonimmigrant visa despite their inadmissibility.[63] Known colloquially as the "D-3" waiver, this case-by-case measure allows DACA recipients and Dreamers to secure an employment-based temporary visa from a U.S. consulate abroad and subsequently enter the United States with valid status and work authorization.[64] Although the waiver has long existed and most D-3 waivers for DACA recipients are ultimately approved, few people pursued this option because the process was lengthy and unpredictable, with "very little written guidance" where the applicants "have to risk leaving the United States to wait abroad for an unknown number of months for their waivers to be adjudicated."[65] The case-by-case character of the adjudication process, which requires inter-agency communication between the Department of State, Customs and Border Protection (CBP), and USCIS has further deterred eligible DACA

61. *See Where Do We Go from Here? An Update on Keeping Families Together Parole in Place Process*, *supra* note 48.

62. Immigration and Nationality Act § 212(a)(9)(B)(i)(I)–(II), 8 U.S.C. § 1182(a)(9)(B)(i)(I)–(II).

63. *Id.* § 1182(d)(3)(A).

64. PRESIDENTS' ALL. ON HIGHER EDUC. & IMMIGR., STREAMLINING DREAMERS' ACCESS TO EMPLOYMENT-BASED VISAS USING D-3 WAIVERS: WHAT YOU NEED TO KNOW 2, https://www.presidentsalliance.org/wp-content/uploads/2024/06/Explainer-on-D3-Waiver-and-Dreamers.pdf [https://perma.cc/GG9H-7EJA] (last visited Nov. 6, 2025).

65. *Id.* at 2.

recipients and Dreamers from pursuing this option.[66] In updating the FAM, the Biden Administration aimed to provide clearer guidance on the D-3 waiver process to encourage more DACA recipients and Dreamers to utilize this option, potentially facilitating future adjustments to their immigration status.[67]

The discretionary authority granted to consular officers, the Secretary of State, and the Attorney General to recommend and approve D-3 waiver cases is largely unquestioned.[68] The FAM explicitly articulates that "[t]he Congress, in enacting INA 212(d)(3)(A), conferred upon the Secretary of State and consular officers the important *discretionary* function of recommending waivers for [nonimmigrant visa] ineligibilities to DHS for approval."[69] In fact, decisions on the waiver applications cannot be made by immigration judges and are not subject to judicial review.[70] More importantly, the FAM emphasizes that under the Constitution, the President holds primary authority and responsibility for formulating and executing foreign policy.[71] The Secretary of State derives his or her authority from the Constitution provisions that vest authority to conduct foreign affairs in the President, and is "the President's principal foreign policy advisor and is responsible for the formulation of foreign policy and the execution of approved policy."[72] The Secretary of State also holds a statutorily mandated authority, requiring the Secretary to "perform such duties . . . respecting foreign affairs as the President . . . shall assign to the Department [of State] and . . . conduct the business of the Department [of State] in such manner as the President shall direct."[73] The FAM further notes that the "directives and guidance for Department of State personnel [are] based

66. *Id.*

67. *See supra* Section I.B.

68. *See, e.g.*, *9 FAM 305.4*, *Foreign Affairs Manual*, U.S. DEP'T OF STATE (Feb. 26, 2025), https://fam.state.gov/fam/09FAM/09FAM030504.html [https://perma.cc/GW2G-8UVK].

69. *Id.* (emphasis added).

70. *See* NAT'L IMMIGR. PROJECT ON THE NAT'L LAWS. GUILD, 1 IMMIGRATION LAW AND DEFENSE § 5:16 (2025) ("[T]he [Illegal Immigration Reform and Immigration Responsibility Act] eliminated judicial review of denials of most categories of waivers."); Khan, 26 I. & N. Dec. 797, 803 (B.I.A. 2016) ("We conclude that the regulations do not give Immigration Judges authority to grant a waiver of inadmissibility under section 212(d)(3)(A)(ii) of the [INA] to a petitioner for U nonimmigrant status who is in the United States."). *See also* 8 C.F.R. § 212.4(a)(1) (2020) ("No appeal by the alien shall lie from an adverse decision made by a Service officer on the recommendation of a consular officer or other State Department official.").

71. *1 FAM 011*, *Foreign Affairs Manual*, U.S. DEP'T OF STATE (Jan. 31, 1995), https://fam.state.gov/FAM/01FAM/01FAM0010.html [https://perma.cc/25W5-HAX7].

72. *1 FAM 012(a)*, *Foreign Affairs Manual*, U.S. DEP'T OF STATE (May 5, 2011), https://fam.state.gov/FAM/01FAM/01FAM0010.html [https://perma.cc/25W5-HAX7].

73. 22 U.S.C. § 2656.

on statutes, regulations, Executive Orders, Presidential directives, and other sources."[74] Foreign affairs and immigration policy determinations made by the executive branch warrant "significant deference."[75] In fact, the FAM "appl[ies] with equal force and effect . . . to all Department of State personnel, including the Secretary of State, Department employees, and political appointees, regardless of an individual's status."[76] Therefore, an update to the FAM by the President is well within the lawful authority conferred upon the executive branch.

III. LEGAL FRAMEWORK AND CHALLENGES OF THE "EASING VISA PROCESS" DIRECTIVE

The crux of legal challenges surrounding previous executive directives, such as DACA, lies in an analysis under the Administrative Procedure Act (APA) by assessing whether (1) the agency's pronouncement of the program follows appropriate procedures required for its type (either a substantive rule or a policy statement); and (2) the program itself is arbitrary and capricious, among other considerations.[77] In the complaint filed with the Texas District Court by the state of Texas and fifteen other states ("Texas"), which argues that the "Keeping Families Together" program exceeded its statutorily granted authority,[78] eight out of ten claims for relief cite the APA as the standard defining the scope and limits of federal authority.[79] Since the "Easing Visa Process" directive comes alongside "Keeping Families Together," it is worthwhile to assess the viability of Texas's claim applied to "Easing Visa Process" through the APA.

A. Classifying "Easing Visa Process" Directive Through the Administrative Procedure Act Procedural Standards

In the course of pronouncement, the APA requires agencies to follow a notice-and-comment procedure for all "proposed rule making,"[80] ensuring that the public has an opportunity to participate in the process and that the agency carefully considers and fully understands the

74. *9 FAM 101.1-1*, U.S. DEP'T OF STATE (Dec. 16, 2021), https://fam.state.gov/FAM/09FAM/09FAM010101.html [https://perma.cc/5VS8-APYH].
75. Mayor of Baltimore v. Trump, 416 F. Supp. 3d 452, 496 (D. Md. 2019).
76. 22 U.S.C. § 2658(a).
77. *See* Texas v. United States, 50 F.4th 498, 521–28 (5th Cir. 2022).
78. *See supra* Section I.B; Original Complaint, *supra* note 49, at 2–3.
79. *See* Original Complaint, *supra* note 49, at 37–51.
80. Administrative Procedure Act § 4(b), 5 U.S.C. § 553(b).

potential impact of the proposed rule on those affected by it.[81] This, in turn, is intended to reduce agency arbitrariness and maximize the soundness of agency action.[82] However, in the case that the agency action consists of "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice," the notice-and-comment procedure is not applicable.[83] In its complaint, Texas argued that "Keeping Families Together" did not qualify for any exceptions, as it "significantly affected rights and obligations"[84] and therefore was required to go through the notice-and-comment process, which it did not.[85] In contrast, "Easing Visa Process" likely falls under the category of "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice," which does not require notice-and-comment procedure.[86] This is because the FAM update did not "'expand[] the footprint of a regulation by imposing new requirements, rather than simply interpreting the legal norms Congress or the agency itself has previously created.'"[87]

Determining whether an agency acts legislatively in its action depends on whether the agency "convert[s] a vague or open-ended statutory term into *binding norms* that substantially influence the legal benefits, disabilities, or interests of parties affected by the rule."[88] For instance, if a rule has a "significant" impact on the stakeholders, then there is a higher likelihood that the rule is legislative in character.[89] A "binding norm" works as "a substantive regulatory change" to the underlying regime.[90] An agency action is far more likely to be considered a "binding norm" if it prescribes a particular outcome rather than providing a range of factors to base a decision.[91] For example, the District

81. *See* Dep't of Lab. v. Kast Metals Corp., 744 F.2d 1145, 1153 n.17 (5th Cir. 1984) (quoting Batterton v. Marshall, 648 F.2d 694, 704 (D.C. Cir. 1980)).

82. Elec. Priv. Info. Ctr. v. Dep't of Homeland Sec., 653 F.3d 1, 5–6 (D.C. Cir. 2011).

83. § 553(b)(A).

84. Original Complaint, *supra* note 49, at 46–47. It is unclear what or whose "rights and obligations" Texas was referring to from the Complaint. *Id.*

85. *Id.*

86. § 553(b)(A).

87. Mayor of Balt. v. Trump, 416 F. Supp. 3d 452, 505 (D. Md. 2019) (alteration in original) (quoting Child.'s Hosp. of the King's Daughters, Inc. v. Azar, 896 F.3d 615, 620 (4th Cir. 2018)).

88. Peter Margulies, *The Boundaries of Executive Discretion: Deferred Action, Unlawful Presence, and Immigration Law*, 64 AM. U. L. REV. 1183, 1229 (2015). (emphasis added); *see also* Texas v. United States, 50 F.4th 498, 522 (5th Cir. 2022) (focusing on the "binding effect" or severe restriction a rule might impose on agency discretion).

89. *See* Texas v. United States, 86 F. Supp. 3d 591, 666 (S.D. Tex. 2015).

90. Elec. Priv. Info. Ctr. v. Dep't of Homeland Sec., 653 F.3d 1, 6–7 (D.C. Cir. 2011).

91. Margulies, *supra* note 88, at 1232 (citing Pros. & Patients for Customized Care v. Shalala, 56 F.3d 592, 596 (5th Cir. 1995)).

Court of Maryland ruled that the FAM change to public charge determination provisions—including receipt of cash and non-cash public assistance by visa applicants and their family members—affected their legal rights as to admissibility to the United States, thereby "effect[ing] substantive changes to the definition of public charge in the INA as interpreted and applied by the State Department."[92] A "binding norm" is particularly impactful to the constituents who would be directly affected by the proposed change, which is presumably why the APA set guardrails such as notice-and-comment.[93] Notably, an agency may not "whistle past [the] factual graveyard" to evade "the established pattern of agency conduct and formalized positions."[94] In ruling DACA unlawful, the Fifth Circuit Court of Appeals attributed DACA's "fixed set of 'criteria [that] should be satisfied before an individual is considered for an exercise of prosecutorial discretion'" as an inadequate exercise of discretion, stating that the DACA memorandum "narrow[ed] and channel[ed]" such discretion.[95] To the Fifth Circuit, "[t]he mere existence of some discretion is not sufficient, although it is necessary for a rule to be classified as a general statement of policy."[96]

The "Easing Visa Process" directive does not attempt to reinterpret a vague statutory term into a "binding norm" through the FAM update,[97] nor does it "narrow[] and channel[]" the agency's discretion.[98] Instead, it simply updates one of several existing factors in the FAM, leaving consular officers with the sound discretion to determine when issuing the D-3 waiver is appropriate.[99] As a result, "Easing Visa Process" does not create any "binding norm" that would substantially affect the stakeholders.[100] This deliberate avoidance of creating "a binding norm" underscores the directive's compliance with APA requirements for non-legislative rules.[101] By preserving the discretionary authority of consular officers and refraining from imposing an "expansive, organized"

92. *Mayor of Balt.*, 416 F. Supp. 3d at 506.

93. *See* HENRY J. FRIENDLY, BENCHMARKS 144 (1967) (stating notice-and-comment procedure is necessary "as an aid to the agency in seeing the ramifications of the problem and arriving at an optimum solution").

94. Am. Wild Horse Pres. Campaign v. Perdue, 873 F.3d 914, 927 (D.C. Cir. 2017).

95. Texas v. United States, 50 F.4th 498, 524 (5th Cir. 2022) (first alteration in original) (quoting Memorandum from Janet Napolitano, Sec'y of Homeland Sec., *supra* note 5).

96. *Id.* (quoting Guardian Fed. Sav. & Loan Ass'n v. Fed. Sav. & Loan Ins. Corp., 589 F.2d 658, 667 (D.C. Cir. 1978)).

97. *See* Margulies, *supra* note 88, at 1229.

98. *Texas*, 50 F.4th at 524 (alteration in original).

99. *See* Pros. & Patients for Customized Care v. Shalala, 56 F.3d 592, 598 (5th Cir. 1995).

100. *See Texas*, 50 F.4th at 523–24.

101. *See id.*

framework,[102] the directive ensures that it operates as an interpretive rule or a general statement of policy.[103] This characterization is significant because it exempts the directive from the procedural requirements of notice-and-comment rulemaking, thereby fortifying its legal defensibility regarding the implementation of the "Easing Visa Process."[104]

B. Preserving Discretionary Authority in the "Easing Visa Process" Directive to Mitigate Legal Vulnerabilities in the Post-Chevron Era

The APA directs that courts must "hold unlawful and set aside" any agency actions that do not comply with the law, exceed statutory authority or limitations, fall short of statutory rights, or are deemed arbitrary, capricious, or otherwise contrary to the Constitution.[105] In addressing the legality of DACA, the U.S. District Court for the Southern District of Texas and the Fifth Circuit Court of Appeals both held that DACA has violated the substantive requirements of the APA by contravening existing immigration statutes and Congress's manifest intent to "'reserve for itself the authority to determine the framework of the nation's immigration system.'"[106] Courts have scrutinized the statutory basis for directives such as DACA and DAPA (Deferred Action for Parents of Americans and Lawful Permanent Residents),[107] particularly given that Congress, through the INA, established legal categories for certain foreign nationals to be lawfully present, granted eligibility for discretionary relief to remain in the United States, defined limited classes of individuals eligible for deferred action, and outlined which foreign nationals are eligible for work authorization.[108] Given such

102. *Id.* at 523.

103. *See* Perez v. Mortgage Bankers Ass'n, 575 U.S. 92, 96 (2015) (explaining that interpretive rules and general statements of policy do not have the force and effect of law).

104. *See id.* (holding that interpretive rules are exempt from APA's notice-and-comment requirements).

105. Administrative Procedure Act § 10, 5 U.S.C. § 706(2)(A)–(C).

106. *Texas*, 50 F.4th at 511 (citing Texas v. United States, 549 F. Supp. 3d 572, 614 (S.D. Tex. 2021)).

107. DAPA is a proposed executive action under the Obama Administration to expand parameters of DACA and to "issu[e] guidance for case-by-case use of deferred action for those adults who have been in [the United States] since January 1, 2010, are the parents of U.S. citizens or lawful permanent residents, and who are otherwise not enforcement priorities." Memorandum from Jeh Charles Johnson, Sec'y of Homeland Sec. on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the U.S. as Children and with Respect to Individuals Who Are the Parents of U.S. Citizens or Permanent Residents to León Rodríguez, Dir., U.S. Citizenship & Immigr. Servs. et al. 2 (Nov. 20, 2014) (on file with the Rutgers University Law Review).

108. *See* Texas v. United States, 809 F.3d 134, 179–81 (5th Cir. 2015).

a "rigorous classification scheme," the Fifth Circuit Court of Appeals reasoned, Congress "determined which aliens can receive [such] benefits, and it did not include DACA recipients among them."[109] In ruling the 2022 DACA rule unlawful, Judge Hanen repeatedly emphasized the role of Congress's action *and* inaction.[110] Judge Hanen opined that Congress's "decision not to enact legislation . . . perhaps with very good reasons" does not confer its legislative power to the executive branch.[111] Professor Peter Margulies advises courts to exercise caution when inferring implicit authority from a broad congressional delegation, particularly if the statute does not explicitly empower an agency to decide matters of significant importance to the overall statutory framework.[112] Such matters may include "policy decision[s] of such economic and political magnitude," where a "common sense" approach is necessary to determine whether Congress intended to delegate that authority to the agency.[113]

Alongside considering congressional intent, courts have applied the two-part *Chevron* framework to determine when deference should be given to an agency's interpretation of a statute.[114] The first step of the *Chevron* framework asked whether "the plain language of the statute" resolves the question at issue.[115] In analyzing whether the DHS deserves deference in its decision to implement DACA, the Fifth Circuit asked "'whether Congress has directly addressed the precise question at

109. *Texas*, 50 F.4th at 526; *see also* Texas v. United States, 126 F.4th 392, 418 (5th Cir. 2025) ("In the INA, Congress enacted a comprehensive federal statutory scheme for regulation of immigration and naturalization and set the terms and conditions of admission to the country. Because it chose not to include DACA recipients in that comprehensive scheme, Congress's rigorous classification scheme forecloses the contrary scheme in the DACA Memorandum." (citation omitted) (internal quotation omitted)). *Contra* Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec. 908 F.3d 476, 509 (9th Cir. 2018) ("[W]e find it improbable that Congress 'considered the . . . possibility' of all other potential uses for deferred action 'and meant to say no' to any other application of that tool by the immigration agency. . . . [I]n passing its seriatim pieces of legislation, instructing that this and that 'narrow class[]' of noncitizens should be eligible for deferred action, Congress meant to say nothing at all about the underlying power of the Executive Branch to grant the same remedy to others." (alteration in original) (citation omitted)), *rev'd in part on other grounds*, 591 U.S. 1 (2020).

110. *See* Texas v. United States, 691 F. Supp. 3d 763, 795 (S.D. Tex. 2023).

111. *Id.*

112. Margulies, *supra* note 88, at 1245.

113. FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000).

114. *See generally* Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984) (case establishing the *Chevron* framework).

115. Katherine Brady, *Who Decides? Overview of* Chevron*,* Brand X *and* Mead *Principles*, IMMIGRANT LEGAL RES. CTR. (May 2, 2011), https://www.ilrc.org/sites/default/files/resources/overview_of_chevron_mead__brand_x.pdf [https://perma.cc/9PZ2-3MWN].

issue.'"[116] The Fifth Circuit determined that Congress has, thereby ruling that DACA failed at step one of the *Chevron* framework.[117] If, in arguendo, the Fifth Circuit had found the statutory language to be ambiguous or had identified a gap for the agency to address, it would then proceed to the second step, evaluating whether the agency's interpretation of the statute is sufficiently reasonable to be considered permissible.[118] However, the Fifth Circuit further ruled that DACA failed at step two of the *Chevron* framework because it was an "unreasonable interpretation of the INA" because the DACA program implicated "question[s] of deep economic and political significance that [are] central to this statutory scheme."[119] By repeatedly framing Congress's inaction on immigration reform over the years as intentional, the Fifth Circuit underscored that there is "no 'clear congressional authorization'" for the authority claimed by the DHS.[120]

If the "Easing Visa Process" directive were challenged in court for its legality, as in the case of DACA, the courts would presumably have applied the *Chevron* framework to determine whether the directive violated the substantive requirements of the APA. This conclusion is reasonable given that the directive explicitly stated its intent to benefit "DACA recipients and other Dreamers,"[121] signaling it was intended to address congressional inaction, just as DACA did.[122] Additionally, the Fifth Circuit has already set a precedent by evaluating DACA's legality under the *Chevron* framework.[123] However, on June 28, 2024, the Supreme Court overturned *Chevron*, effectively ending its four-decade dominance in administrative law and leaving significant uncertainty about the standard of review that courts will apply to agency interpretations of statutes moving forward.[124] Consequently, it is essential to evaluate the viability of the "Easing Visa Process" directive under alternative legal frameworks and principles in the absence of *Chevron* deference.

116. Texas v. United States, 50 F.4th 498, 525 (5th Cir. 2022) (internal quotations and citations omitted) (quoting Mayo Found. For Med. Educ. & Rsch. v. United States, 562 U.S. 44, 52 (2011)).

117. *Id.* at 526.

118. Brady, *supra* note 115.

119. *Texas*, 50 F.4th at 526 (alteration in original) (internal quotations omitted).

120. *Id*. at 526–27 (quoting West Virginia v. EPA, 597 U.S. 697, 731 (2022)).

121. *FACT SHEET: President Biden Announces New Action to Keep Families Together*, *supra* note 7. *See supra* text accompanying note 56.

122. *See* Remarks on Immigration Reform and an Exchange with Reporters, *supra* note 17, at 801.

123. *Texas*, 50 F.4th at 524–28.

124. *See generally* Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) (overturning *Chevron*).

1. Overview of Loper Bright Enterprises

In *Loper Bright Enterprises v. Raimondo*, the Supreme Court case that overturned *Chevron*, Chief Justice Roberts, writing for the majority, opined that *Chevron* is incompatible with the APA.[125] According to the majority, Section 706 of the APA directs the courts to decide "*all* relevant questions of law" while prescribing "no deferential standard for courts to employ in answering those legal questions."[126] In reasoning that the determination of questions of law is an "exclusively a judicial function,"[127] the majority asserted that "Congress surely would have articulated a similarly deferential standard . . . had it intended to depart from the settled pre-APA understanding," but it did not do so when enacting the APA.[128] To the majority, this omission was strikingly intentional, particularly because Section 706(2)(A) of the APA "*does* mandate that judicial review of agency policymaking and factfinding be deferential."[129] This type of reasoning strongly echoes the approach taken by the Fifth Circuit and the District Court of Texas in ruling that Congress neither had intended for nor conferred an authority to DHS to create a program like DACA, as Congress had deliberately identified narrow classes of foreign nationals eligible for deferred action and immigration benefits, while *choosing* not to pass the DREAM Act.[130] On the other hand, the majority criticized *Chevron* as being "'[h]eedless of the original design' of the APA."[131] By "demand[ing] that courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time," the majority contended that *Chevron* represented the "antithesis of the time honored approach that APA prescribes."[132] Furthermore, the Court ruled that statutory ambiguities cannot be presumed to implicitly delegate agencies with the power to interpret the law.[133] Citing agencies' lack of "special competence in resolving statutory ambiguities," the Supreme Court concluded that *Chevron* is fundamentally incompatible with the APA.[134]

125. *Id.* at 396.
126. *Id.* at 392 (emphasis in original) (citing 5 U.S.C. § 706).
127. United States v. Am. Trucking Ass'ns, 310 U.S. 534, 544 (1940).
128. *Loper Bright Enters.*, 603 U.S. at 392.
129. *Id.* (emphasis in original); *see* 5 U.S.C. § 706(2)(A).
130. *See supra* Section II.B.
131. *Loper Bright Enters.*, 603 U.S. at 398 (quoting Perez v. Mortg. Bankers Ass'n, 575 U.S. 92, 109 (2015) (Scalia, J., concurring)).
132. *Id.* at 399 (emphasis in original).
133. *Id.*
134. *Id.* at 373, 400–01.

Although the Supreme Court overturned *Chevron*, it did not establish a definitive standard to replace the doctrine.[135] Instead, the opinion directed courts to "exercise their *independent judgment* in deciding whether an agency has acted within its statutory authority, as the APA requires."[136] The Court further clarified that "courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous."[137] While the Court did not explicitly specify the replacement standard, both petitioners for *Loper Bright Enterprises* "embraced" *Skidmore* deference at oral argument.[138] *Skidmore* deference instructs that an agency interpretation is given a "weight" that "depend[s] upon the thoroughness evident in [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."[139] Some, such as Professor Christopher J. Walker, view that the Court's opinion provides little clarity on what will replace *Chevron*, and instead, decided to embrace *de novo* review where "[c]areful attention to the judgment of the Executive Branch may help inform that inquiry."[140] Nevertheless, the growing consensus of many administrative law scholars seems to be that the Court "preserved some form of *Skidmore* deference."[141] The ambiguity surrounding the replacement for *Chevron* leaves lower courts with considerable discretion in determining how to approach statutory interpretation moving forward. While the decision suggests a shift toward de novo review informed by the agency's reasoning, the potential reliance on *Skidmore* deference offers a flexible framework that emphasizes the persuasiveness of an agency's interpretation rather than binding deference.[142] This evolving landscape will likely have significant

135. *See id.* at 412.

136. *Id.* (emphasis added).

137. *Id.* at 413.

138. Christopher J. Walker, *What Loper Bright Enterprises v. Raimondo Means for the Future of Chevron Deference*, YALE J. ON REGUL.: NOTICE & COMMENT (June 28, 2024), https://www.yalejreg.com/nc/what-loper-bright-enterprises-v-raimondo-means-for-the-future-of-chevron-deference/ [https://perma.cc/6ZH5-6CLG].

139. Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) (alteration in original).

140. Walker, *supra* note 138 (quoting *Loper Bright Enters.*, 603 U.S. at 412–13).

141. *Id.*; Brian Green et al., *Think Immigration:* Chevron *Is Dead! Thoughts on the Immigration Impact of* Loper Bright Enterprises, AM. IMMIGR. LAWS. ASS'N (July 2, 2024), https://www.aila.org/library/think-immigration-chevron-is-dead-thoughts-on-the-immigration-impact-of-loper-bright-enterprises [https://perma.cc/EBQ2-JKPS] ("Now that *Chevron* has been overruled, courts should apply a lower level of deference called *Skidmore* deference.").

142. *See* Green, *supra* note 141.

implications for administrative law and the balance of power between agencies and judiciary.

2. The Impact of *Loper Bright Enterprises* on Immigration Matters and Implications for the Legal Viability of the "Easing Visa Process" Directive

The Supreme Court's overturning of *Chevron* alerted many immigration law practitioners and scholars to its potential implications on adjudications by administrative bodies, such as the Board of Immigration Appeals (BIA) or the pronouncement of administrative directives such as "Easing Visa Process." For one, courts were required under *Chevron* to defer to decisions and regulations made by BIA in areas of statutory interpretation, such as terms of art, including "moral turpitude" in defining a crime of such nature and "exceptional and extremely unusual hardship," in determining cancellation of removal eligibility.[143] Regardless of the presidential administration, the BIA has historically taken a conservative approach to statutory interpretation.[144] This approach often resulted in interpretations that disadvantaged immigrants, such as broadening the grounds for removability and restricting availability to relief.[145] In the post-*Chevron* era, many practitioners anticipate that *Loper Bright Enterprises* will actually help the immigrants as it "leaves room for advocates to challenge agency interpretations not only issued by the BIA but those issued by the U.S. Citizenship and Immigration Services, the Department of State, Customs and Border Protection, and Immigration and Customs Enforcement."[146]

143. *The Supreme Court's Overturning of Chevron Doctrine and Its Effect on Immigration Matters*, CATH. LEGAL IMMIGR. NETWORK, INC. (July 30, 2024), https://www.cliniclegal.org/resources/litigation/supreme-courts-overturning-chevron-doctrine-and-its-effect-immigration-matters [https://perma.cc/HU7T-5DYL].

144. *See id.* ("Given the current conservative bent of the BIA, [many immigration laws] have often been interpreted in ways that were unfavorable to immigrants."); Suchita Mathur, *Immigrants May Benefit While Others Lose Out from the Supreme Court's Decision Overruling Chevron*, AM. IMMIGR. COUNCIL: BLOG (July 11, 2024), https://www.americanimmigrationcouncil.org/blog/immigrants-may-benefit-from-supreme-court-overruling-chevron/ [https://perma.cc/NCX8-QB7S] ("Many advocates would agree that the BIA frequently construes the INA in ways that harm immigrants . . . ."); *Loper Bright Enters.*, 603 U.S. at 440 (Gorsuch, J., concurring) ("So *Chevron* permitted the agency going forward to overrule a judicial decision about the best reading of the law with its own different 'reasonable' one and in that way deny relief to countless future immigrants.").

145. *See* Mathur, *supra* note 144.

146. *The Supreme Court's Overturning of Chevron Doctrine and Its Effect on Immigration Matters*, *supra* note 143. *See also* Green et al., *supra* note 141; Mathur, *supra* note 144.

On the other hand, practitioners predict that *Loper Bright Enterprises* could potentially negatively impact the executive branch's efforts to promulgate policy updates and regulations that assist immigrants. Kelli Stump, president of the American Immigration Lawyers Association, released a statement following the decision that the decision will "severely handicap[] . . . [v]aluable immigration benefits created by regulations . . . if not clearly based on statutory language."[147] In particular, practitioners warn that the end of *Chevron* will make it difficult for programs such as DACA to be sustained in courts.[148]

Overall, *Loper Bright Enterprises* is expected to result in reduced uniformity in immigration law, driven by the discretion of federal judges. Litigants who present claims in federal jurisdictions with judges who are "more receptive to creative arguments and [are] not [] encumbered by the need to defer to conservative agency interpretations" are likely to secure more favorable decisions, while those in less sympathetic jurisdictions may face less advantageous outcomes.[149] While this development may signal positive news for immigrants, its benefits can only be realized through the judicial process. As Justice Jackson noted in her dissent in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, *Loper Bright Enterprises* is likely to trigger a "tsunami of lawsuits against agencies," further exacerbating the strain on already overburdened court dockets.[150]

The legal viability of the "Easing Visa Process" directive must now be assessed in light of *Loper Bright Enterprises*, which fundamentally

147. *AILA President: SCOTUS Overturning "Chevron" Doctrine Will Impact Immigration Cases*, AM. IMMIGR. LAWS. ASS'N (June 28, 2024), https://www.aila.org/library/aila-president-scotus-overturning-chevron-doctrine-will-impact-immigration-cases [https://perma.cc/97WH-4W8Z].

148. *See, e.g.*, Mathur, *supra* note 144 ("The end of *Chevron* could further endanger programs that provide important benefits, like DACA, which has been subject to challenges by anti-immigrant actors arguing that it isn't authorized by federal law."); Green et al., *supra* note 141 ("[F]ormer *Chevron* deference had helped when the immigration agency sought to give employment authorization benefits, such as with the [DACA] program or with F-1 optional practical training."); *see also* George Fishman, *Will the Demise of Chevron Deference Make Our Immigration Crisis Better or Worse?*, CTR. FOR IMMIGR. STUD. (July 1, 2024), https://cis.org/Fishman/Will-Demise-Chevron-Deference-Make-Our-Immigration-Crisis-Better-or-Worse [https://perma.cc/RX9G-KSZ7] ("[T]he demise of *Chevron* deference might make it harder for the administration to sustain in court immigration benefits programs created without a clear statutory foundation and based on tenuous and opportunistic statutory interpretations, such as its abusive use of the parole power to circumvent the [INA].").

149. *The Supreme Court's Overturning of Chevron Doctrine and Its Effect on Immigration Matters*, *supra* note 143. *See also* Green et al., *supra* note 141; Mathur, *supra* note 144.

150. Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys., 603 U.S. 799, 864 (2024) (Jackson, J., dissenting).

altered the judicial review framework for agency actions. Under the *Chevron* doctrine, courts were obligated to defer to an agency's reasonable interpretations of ambiguous statutory provisions.[151] With the overturning of *Chevron*, courts are now required to exercise "independent judgment" in determining whether an agency has acted within its statutory authority.[152]

While it is true that certain immigration-related directives are more prone to being overturned in courts now, "Easing Visa Process" is likely to pass the judicial muster by having its foundation firmly grounded in the statutory language. Congress explicitly codified that the Attorney General, "in [their] discretion, may waive" grounds of inadmissibility "if [they] consider[] it to be in the national interest to do so."[153] Additionally, Congress made it clear that the Attorney General may approve a "recommendation by the Secretary of State or by the consular officer" to grant visas and temporarily admit otherwise inadmissible foreign nationals.[154] Following this explicit instruction from the Congress, the FAM indicates that Congress has conferred "the important discretionary function of recommending waivers."[155] Deferring to Congress's grant of authority, the USCIS emphasizes that the D-3 waiver analysis is "a purely discretionary determination," involving "balancing social and humanitarian considerations against adverse factors."[156] These factors, USCIS instructs, are not exhaustive but rather are "give[n] the appropriate weight to each adverse and favorable factor . . . to determine whether the favorable factors outweigh the unfavorable ones."[157] Indeed, it is possible for new factors to be considered upon decisions from an administrative adjudicative body, such as the BIA.[158] Given that the FAM explicitly includes "statutes, regulations, Executive Orders, [and]

151. *See supra* text accompanying notes 112–18.

152. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024).

153. 8 U.S.C. § 1182(d)(1).

154. § 1182(d)(3)(A).

155. *9 FAM 305.4-3(A)*, *supra* note 68.

156. *Chapter 4 – INA 212(d)(3) Waivers*, *Policy Manual*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Nov. 3, 2025), https://www.uscis.gov/policy-manual/volume-9-part-o-chapter-4 [https://perma.cc/8N46-LUF6].

157. *Chapter 5 – Discretion*, *Policy Manual*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Nov. 3, 2025), https://www.uscis.gov/policy-manual/volume-9-part-a-chapter-5 [https://perma.cc/M4E9-VASU].

158. *See, e.g.*, Hranka, 16 I. & N. Dec. 491, 491 (B.I.A. 1978) ("An application under section 212(d)(3)(B) requires a weighing of at least three factors: (1) the risk of harm to society if the applicant is admitted; (2) the seriousness of the applicant's immigration law, or criminal violation, if any; and (3) the nature of the applicant's reasons for wishing to enter the United States."); *see also Chapter 5 – Discretion*, *supra* note 157, at n.4 ("Discretionary factors may also include emergencies and other unforeseen circumstances.").

Presidential directives" as sources from which the Department of State derives its directives and guidance, adding another factor to help officers determine waiver eligibility is likely within the executive branch's authority.[159] As such, courts are unlikely to question the statutory authority underlying the "Easing Visa Process" directive.

Even in the unlikely event that courts determine the "Easing Visa Process" contains ambiguities warranting judicial scrutiny under *Loper Bright Enterprises*, they are likely to weigh in favor of the directive based on the persuasiveness of its enactment.[160] Courts may still defer to an agency's interpretation if it implicates the agency's substantive expertise and the interpretation is reasonable.[161] This is particularly relevant in immigration matters where agencies like USCIS have specialized knowledge. In *Borushevskyi v. USCIS*, the District Court of District of Columbia deferred to the USCIS's interpretation of regulation regarding the EB-5 immigrant investment visa petition despite its ambiguity because the agency had substantive policy expertise that implicated "'a nuanced understanding of the regulations [it] administer[s].'"[162] Of course, there is always room for federal judges who are willing to take on the "creative arguments" offered by the opponents of "Easing Visa Process" and rule against the directive.[163] However, this will be difficult without first dismantling the firm statutory footing on which "Easing Visa Process" seems to ground itself. Even if ambiguities arise, the directive's alignment with congressional intent and the agency's substantive expertise in immigration policy will likely persuade courts to uphold its validity under the new framework established by *Loper Bright Enterprises.*[164]

159. *9 FAM 101.1-1*, *supra* note 74.

160. *See* Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).

161. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 413 (2024).

162. Borushevskyi v. USCIS, 664 F. Supp. 3d 117, 129 (D.D.C. 2023) (quoting Kisor v. Wilkie, 588 U.S. 558, 578 (2019) (alteration in original).

163. *See The Supreme Court's Overturning of Chevron Doctrine and Its Effect on Immigration Matters*, *supra* note 143.

164. *See Loper Bright Enters.*, 603 U.S. at 412.

IV. THE IMPACT OF "EASING VISA PROCESS" AND ENVISIONING IMMIGRATION REFORM IN THE ERA OF GRIDLOCKED CONGRESS

A. The Unlikely Prospect of Congressional Immigration Reform and the Increasing Role of the Judiciary

As of 2025, Congress has not passed any legislation that substantially overhauls the existing immigration system.[165] However, heightened attention to the immigration issue seems to suggest that the United States is reaching a boiling point for some action. This is highlighted by increased bipartisan support for immigration bills like the Laken Riley Act, named after a Georgia nursing student who was murdered by an undocumented Venezuelan man.[166] The Act requires the federal detention of undocumented immigrants charged with "theft, burglary, assaulting a law enforcement officer, and any crime that causes death or serious bodily injury."[167] As the first bill signed by President Trump during his second administration,[168] its passage showcases "a sharp shift from recent immigration debates on Capitol Hill" with twelve Senate Democrats joining the Republicans to vote for the Act.[169] Nevertheless, the prospects for comprehensive bipartisan immigration reform remain bleak, given the razor-thin Republican majority in the House, which makes it difficult to advance an ambitious immigration agenda, whether it be pro- or anti-immigrant.[170]

As demonstrated by President Trump's assertive use of executive authority during his initial days in office, such as signing a record

165. *See* Aaron Blake, *The Writing Is on the Wall for a Big Immigration Bill*, WASH. POST (Jan. 8, 2025), https://www.washingtonpost.com/politics/2025/01/08/dynamics-trending-toward-immigration-bill/ [https://perma.cc/9MWT-K72N].

166. *President Trump Signs the Laken Riley Act into Law*, U.S. DEP'T OF HOMELAND SEC. (Jan. 30, 2025), https://www.dhs.gov/news/2025/01/29/president-trump-signs-laken-riley-act-law [https://perma.cc/SY4C-JKJB]; Ximena Bustillo & Deirdre Walsh, *Congress Clears GOP-led Immigration Enforcement Bill, with Democrats on Board*, NPR (Jan. 22, 2025, at 18:39 ET), https://www.npr.org/2025/01/22/nx-s1-5253926/congress-laken-riley-act [https://perma.cc/8Z8C-XJGQ].

167. *President Trump Signs the Laken Riley Act into Law*, *supra* note 166.

168. Diana Stancy, *Trump Signs Laken Riley Act into Law as First Legislative Victory in New Administration*, FOX NEWS (Jan. 29, 2025, at 14:46 ET), https://www.foxnews.com/politics/trump-signs-laken-riley-act-law-first-legislative-victory-new-administration [https://perma.cc/EQS6-RHUV].

169. Bustillo & Walsh, *supra* note 166.

170. Xavier Martinez, *A Razor-Thin House Majority Creates Headaches for Republicans*, WALL ST. J. (Dec. 27, 2024, at 05:00 ET), https://www.wsj.com/politics/republican-small-house-majority-problems-2025-04108694 [https://perma.cc/9DPZ-ABME].

number of executive orders,[171] the executive branch has the capacity to enact significant policy changes swiftly.[172] In his initial weeks back in office, President Trump has aggressively utilized executive authority to reshape U.S. immigration policy, such as pausing the resettlement of tens of thousands of vetted refugees—including around 15,000 Afghans—ending humanitarian parole for immigrants from Cuba, Haiti, Venezuela, and Nicaragua, and launching a broad crackdown on unauthorized immigrants, targeting those accused of violent crimes, though government data shows that less than half of the approximately 8,200 immigrants detained during this period had criminal convictions.[173] This is not to say that these bold executive measures remain unchecked. After President Trump issued an executive order ending birthright citizenship for children born to foreign nationals who are either unlawfully or temporarily lawfully present in the United States,[174] federal district court judges swiftly moved to block the measure, with Judge Coughenour of the Western District of Washington calling it a "blatantly unconstitutional order."[175] Subsequently, Judge Boardman of the District of Maryland issued a preliminary injunction, blocking the measure indefinitely.[176] This highlights the role of the judiciary in an era where executive actions on immigration are increasingly bold and expansive, serving as a critical check on the limits of presidential power. Given the conservative bent of the current Supreme Court, the judiciary may also serve as a boost to break past the last remaining hurdle to the executive power—implementing sweeping

171. *See The First 100 Hours: Historic Action to Kick Off America's Golden Age*, THE WHITE HOUSE (Jan. 24, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/the-first-100-hours-historic-action-to-kick-off-americas-golden-age [https://perma.cc/XX3P-FNEJ].

172. Nicholas R. Bednar, *Presidential Control and Administrative Capacity*, 77 STAN. L. REV. 823, 869 (2025).

173. Mica Rosenberg & Perla Trevizo, *Four Years in a Day*, PROPUBLICA (Feb. 7, 2025, at 06:00 ET), https://www.propublica.org/article/donald-trump-immigration-executive-orders [https://perma.cc/QDZ4-ZKAN].

174. *See Protecting the Meaning and Value of American Citizenship*, THE WHITE HOUSE: PRESIDENTIAL ACTIONS (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/ [https://perma.cc/HB6G-FCCA].

175. Mike Baker & Mattathias Schwartz, *Judge Temporarily Blocks Trump's Plan to End Birthright Citizenship*, N.Y. TIMES (Feb. 3, 2025), https://www.nytimes.com/2025/01/23/us/politics/judge-blocks-birthright-citizenship.html [https://perma.cc/K75K-JJF4].

176. Campbell Robertson & Mattathias Schwartz, *Judge Blocks Trump's Birthright Citizenship Order Nationwide*, N.Y. TIMES (Feb. 5, 2025), https://www.nytimes.com/2025/02/05/us/trump-birthright-citizenship.html [https://perma.cc/7UWG-ZNGU].

policies that could fundamentally reshape U.S. society for years to come.[177] As immigration policy continues to oscillate between executive directives and judicial interventions,[178] the courts are poised to play an even more prominent role in shaping the legal landscape, especially in the absence of comprehensive legislative reform.[179]

B. Effectiveness and Impact of the "Easing Visa Process" Directive

Because of the present political landscape, a preexisting executive measure such as "Easing Visa Process" faces an uncertain future, as it may become vulnerable to legal challenges or reversal through subsequent executive actions.[180] Its longevity will likely depend on both the political will of the current administration to support DACA recipients and Dreamers and the judiciary's interpretation of its legal foundations, particularly in the *Loper Bright Enterprises* era, where courts exercise greater scrutiny over agency actions without the deference previously afforded under *Chevron*.[181] Despite its precarity, "Easing Visa Process" is demonstrating its effectiveness through an increase in success stories from Dreamers who have decided to take a daring step toward securing their futures, benefiting from streamlined procedures and reduced bureaucratic hurdles.[182] The most notable

177. *See* Michelle Lapointe, *In Birthright Citizenship Decision, the Supreme Court Expanded Trump's Power*, AM. IMMIGR. COUNCIL (July 1, 2025), https://www.americanimmigrationcouncil.org/blog/in-birthright-citizenship-decision-the-supreme-court-expanded-trumps-power/ [https://perma.cc/W8AM-ELMX]; Mark Sherman, *Supreme Court Gives Greenlight for Trump to Dismantle Education Department, Layoff 1,400 Employees*, PBS NEWS (July 14, 2025, at 17:01 ET), https://www.pbs.org/newshour/politics/supreme-court-gives-greenlight-for-trump-to-dismantle-education-department-layoff-1400-employees [https://perma.cc/YE8C-D9A9].

178. *See* Lea Skene, *Court Throws Out Lawsuit by Trump Administration Against All 15 Maryland Federal Judges*, PBS NEWS (Aug. 26, 2025, at 12:56 ET), https://www.pbs.org/newshour/politics/court-throws-out-lawsuit-by-trump-administration-against-all-15-maryland-federal-judges [https://perma.cc/JS7Y-3PDC] (highlighting a court's dismissal of the second Trump Administration Department of Justice's lawsuit against all Maryland district judges, brought in response to a deportation-blocking habeas-corpus order).

179. *See* Galston, *supra* note 4.

180. *See* Roy Maurer, *Employers Face Looming Immigration Changes Under Trump Administration*, SOC'Y FOR HUM. RES. MGMT. (Jan. 13, 2025), https://www.shrm.org/topics-tools/news/talent-acquisition/employers-face-looming-immigration-changes-under-trump-administr [https://perma.cc/W2Q6-JMNL].

181. *See supra* Section II.B.1.

182. *See* Krsna Avila et al., *Success Stories: How the New D3 Waiver Guidance Is Unlocking Opportunities for Dreamers in the Workforce*, *Path2Papers*, CORNELL L. SCH., https://sites.lawschool.cornell.edu/path2papers/resources/success-stories-how-the-new-d3-waiver-guidance-is-unlocking-opportunities-for-dreamers-in-the-workforce/ [https://perma.cc/76YP-JYV6] (last visited Nov. 7, 2025).

initiative is Path2Papers, a nonprofit project housed at Cornell Law School that helps DACA recipients and Dreamers use the "Easing Visa Process" to obtain work visas and pursue pathways to legal permanent residency.[183] Since its inception, Path2Papers has conducted over six hundred consultations and engaged with numerous employers, facilitating the successful navigation of the D-3 waiver process for DACA recipients.[184] Notably, individuals like Leia and Joel have successfully transitioned from DACA status to obtaining permanent residency through the "Easing Visa Process" directive.[185] Leia, a communications professional, and Joel, a software engineer sponsored by Microsoft, faced reentry bars due to prior unlawful presence.[186] However, the D-3 waiver allowed them to travel abroad for visa processing, return legally, and adjust their status to lawful permanent residents through employer sponsorship.[187] These individual victories demonstrated by Path2Papers not only highlight the directive's immediate impact but also serve as compelling narratives that could bolster public support and potentially influence judicial and political perspectives.[188]

These success stories carry significant weight, as these individuals risk being barred from reentering the United States after traveling to

183. *See* Chris Brouwer, *Groundbreaking Path2Papers Initiative Receives $1.5 Million Grant*, CORNELL L. SCH. (Apr. 22, 2024), https://www.lawschool.cornell.edu/news/groundbreaking-path2papers-initiative-receives-1-5-million-grant/ [https://perma.cc/KLH8-22PW].

184. Avila et al., *supra* note 182.

185. *Success Stories*, *Path2Papers: Leia's Story*, CORNELL L. SCH., https://sites.lawschool.cornell.edu/path2papers/success-stories/leias-story/ [https://perma.cc/D4EB-CB74] (last visited Nov. 7, 2025) [hereinafter *Leia's Story*]; *5 Ways to Support DACA Employees*, FWD.US (May 2, 2025), https://www.fwd.us/news/daca-employees/ [https://perma.cc/4HPM-JD3R] [hereinafter *Joel's Story*].

186. *See Leia's Story, supra* note 185; *Joel's Story, supra* note 185. *See also* PRESIDENTS' ALL. ON HIGHER EDUC. & IMMIGR., *supra* note 64, at 2 (noting that DACA recipients and Dreamers with more than 180 days of unlawful presence or without initial lawful entry may face re-entry bars).

187. *See Leia's Story, supra* note 185; *Joel's Story, supra* note 185; Avila et al., *supra* note 182 (highlighting the re-entry process and employment-based adjustment opportunities under the D-3 waiver).

188. Notably, the Fifth Circuit Court of Appeals—the same court that has repeatedly struck down DACA—acknowledged in its most recent opinion the "immense reliance interests that DACA has created." Texas v. United States, 126 F.4th 392, 422 (5th Cir. 2025). Quoting its previous ruling on DACA back in 2022, it opined that "'DACA has had profound significance to recipients and many others in the [now-twelve] years since its adoption.'" *Id.* (alteration in original) (quoting Texas v. United States, 50 F.4th 498, 531 (5th Cir. 2022)). The court also recognized that the "'uncertainty of final disposition and the inevitable disruption that would arise from a lack of continuity and stability'" justified preserving the stay, allowing existing DACA recipients to continue renewing their status. *Id.* (quoting *Texas*, 50 F.4th at 531).

their birth countries—places many barely remember.[189] Therefore, utilizing the "Easing Visa Process" directive requires meticulous planning to minimize the risk of leaving the client vulnerable. Practitioners at Path2Papers suggest mapping out both short-term and long-term plans, taking into consideration an individual's unique situation.[190] Nevertheless, "Easing Visa Process" is gaining traction among advocacy groups and practitioners as a viable solution to the potential end of DACA during President Trump's second administration.[191] Path2Papers estimates that approximately 60% of DACA recipients who accrued unlawful presence that could trigger either three- or ten-year bans will benefit from the expedited D-3 waiver process.[192] More than 600,000 individuals without DACA stand to benefit from the "Easing Visa Process" directive, as legal screening on the D-3 waiver can help them leverage job offers to utilize their earned degrees.[193]

Path2Papers's leading initiative, "Easing Visa Process," has provided a groundwork for an artfully delicate balance between legal soundness and meaningful impact. Its ingenuity lies in leveraging existing statutory authority to create a directive that operates firmly within the bounds of executive power while producing tangible outcomes for a vulnerable population. By focusing on procedural efficiencies, such as streamlining the D-3 waiver process, it minimizes legal exposure while maximizing benefits for Dreamers.[194] This strategic design allows the directive to withstand heightened judicial scrutiny in the post-*Chevron* era, as it does not overstep into areas traditionally reserved for Congress but instead

189. *See* Avila et al., *supra* note 182 ("Determined to change his fate, [a Dreamer] bravely agreed to be the first undocumented person to travel abroad under the new D3 waiver guidance. Sponsored by both an engineering firm . . . and his university to continue his work in engineering outreach to public school students, he flew for the first time a few weeks ago to a country he did not remember.").

190. *See* BERGER ET AL., *supra* note 13, at 5 ("For those who are undocumented or concerned about the end of DACA, the D3 waiver benefit may be enough for now, even if there is no clear long-term plan. For others, it is possible to map out a longer-term strategy to move to permanent residence.").

191. *See, e.g.*, *Legally Hiring and Retaining DACA Recipients & Dreamers with a D-3 Waiver*, FWD.US (Aug. 13, 2024), https://www.fwd.us/news/d3-employer-guide/ [https://perma.cc/7AHM-DRKQ] (encouraging employers to utilize the D-3 waiver for their DACA workers as DACA "faces significant legal challenges and could end within the next two years"); BERGER ET AL., *supra* note 13, at 2 (encouraging lawyers to consider D-3 waiver as those "who discount the [D-3] process for Dreamers as too uncertain fail to properly weigh the importance of the new [D-3] expedite process as an essential pathway for over 500,000 DACA beneficiaries who may lose their jobs and their protection from removal in the next few years").

192. *See* BERGER ET AL., *supra* note 13, at 3.

193. *See id.* at 12.

194. *See* Avila et al., *supra* note 182.

optimizes agency discretion under current immigration laws.[195] Ultimately, "Easing Visa Process" exemplifies how executive action, when crafted with both legal precision and humanitarian intent, can offer a lifeline to those navigating an uncertain immigration landscape.

V. CONCLUSION

The "Easing Nonimmigrant Visa Process for U.S. College Graduates" directive represents a pivotal shift in U.S. immigration policy, particularly in an era marked by congressional gridlock[196] and the recent judicial recalibration following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*.[197] This directive, by strategically leveraging existing statutory authority,[198] offers a model for how executive actions can effectively navigate the complex interplay between administrative discretion and judicial oversight. Unlike previous executive actions such as DACA, which faced significant legal challenges,[199] the "Easing Visa Process" directive has thus far avoided similar pitfalls by grounding its framework in clear statutory language and preserving the discretionary authority of consular officers.[200]

The directive's focus on streamlining the D-3 waiver process for DACA recipients and Dreamers underscores its humanitarian intent and practical impact. Initiatives like Path2Papers have demonstrated the directive's potential to facilitate pathways to legal permanent residency for individuals who have long contributed to the U.S. economy and society.[201] These success stories not only highlight the directive's immediate benefits but also serve as compelling narratives that could influence public and judicial perspectives.

In the post-*Chevron* era, where courts exercise greater scrutiny over agency actions, the "Easing Visa Process" directive stands as a testament to the power of well-crafted executive action.[202] By aligning with congressional intent and optimizing agency discretion,[203] the directive exemplifies how executive measures can offer a lifeline to vulnerable populations while remaining legally sound. As the United States continues to grapple with immigration challenges, this directive provides

195. *See supra* Section II.B.1–2.
196. *See* text accompanying notes 15–16.
197. *See supra* Section II.B.1.
198. *See supra* Sections I.B, II.B.2.
199. *See supra* text accompanying notes 23–38.
200. *See supra* Section I.B.
201. *See supra* Section III.B.
202. *See supra* Section II.B.
203. *See supra* Sections I.C, II.A.

a blueprint for future reforms that balance legal precision with humanitarian goals, offering hope for meaningful change in a landscape often characterized by uncertainty and division.