



Autocratic Policy Tools and Permissive Outcomes: Governing Venezuelan Displacement in Colombia

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Abstract

This article examines Colombia's response to Venezuelan displacement between 2017 and 2021, focusing on the use of decree-based and administrative instruments to regularize nearly two million displaced Venezuelans and prevent statelessness. Drawing on a qualitative case study combining document analysis and thirty semi-structured interviews, the article analyses three key measures: the *Permiso Especial de Permanencia* (PEP), *Primero la Niñez*, and the *Estatuto Temporal de Protección para Migrantes Venezolanos* (ETPV). This article asks: how are executive policy instruments used to govern large-scale displacement in democratic settings, and what implications do they have for migration outcomes? Building on recent scholarship on *autocratic policy tools* (Natter and Slingenberg Natter K, Slingenberg L (2025) Who rules over migrants? Autocratic tools in migration policies (forthcoming (this special issue))), the article conceptualizes executive instruments as mechanisms that can concentrate decision-making authority within the executive. It shows that these tools enabled rapid and adaptive responses under conditions of urgency and political constraint, while also limiting political contestation and legislative involvement. At the same time, they produced forms of legal inclusion that remain temporary, discretionary, and vulnerable to policy change. The findings reveal a central tension: instruments that concentrate executive authority can expand migrant rights while undermining their durability. More broadly, the article challenges assumptions that executive-driven tools are inherently restrictive, highlighting instead their procedural logic and ambivalent role within democratic migration governance. By analytically distinguishing between policy tools and policy outcomes, the article contributes to debates on migration governance and executive power.

Keywords Autocratic policy tools · Migration governance · Executive decrees · Liminal legality · Colombia

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1 Introduction

This article examines how executive policy instruments are used to govern large-scale forced displacement in democratic settings. In Colombia, between 2017 and 2021, migration policy toward Venezuelan displacement was not primarily shaped through legislative reform, but through an executive-led and ad hoc set of decrees and administrative measures (Besserer-Rayas et al. 2024). These initiatives granted legal status and expanded rights for nearly two million Venezuelans (Colombian Migration Office 2024). Yet this trajectory raises a central puzzle: why were instruments that concentrate decision-making authority within the executive used to produce one of the most permissive migration responses in the region, in terms of the expansion of migrant rights? This article does not assume that executive policymaking is inherently undemocratic but instead examines the conditions under which specific instruments may reconfigure accountability within democratic systems. These instruments are conceptualized here as *autocratic policy tools* (Natter and Slingenberg, in this special issue, forthcoming). This does not imply the presence of an autocratic regime; rather, it captures forms of decision-making that concentrate authority and compress deliberative and participatory processes typically associated with democratic governance.

Existing research on migration governance has extensively documented the tensions that shape policymaking in democratic systems. Governments must balance economic demands, legal obligations, and political pressures linked to security and identity (Hollifield 1992; Freeman 1995; Boswell and Geddes 2011). Moreover, migration has long been treated as a legally and politically exceptional domain. The literature on migration exceptionalism argues that migration law is often considered sufficiently distinct from other areas of the regulatory state—closely tied to sovereignty and border control—that general constitutional constraints may apply only partially (e.g. Rubenstein and Gulasekaram 2016; Macklin 2020). This relative insulation can expand the scope for executive discretion in migration policymaking.

A growing strand of scholarship has begun to address how governments use this discretion in practice by examining the policy instruments deployed to manage migration. These include executive measures such as decrees, directives, and administrative practices that allow governments to act quickly, coordinate across institutions, or avoid political contestation (Guiraudon 2000; Boswell 2007). In parallel, recent work has highlighted more informal or indirect strategies of governance. The notion of *strategic non-regulation* captures the use of ambiguous, ad hoc, or deliberately incomplete policies through which states manage migration without fully formalizing rules or responsibilities (Natter et al. 2023).

Building on these insights, recent contributions conceptualize a subset of these instruments as *autocratic policy tools*, understood as mechanisms that can concentrate decision-making authority within the executive and reshape or compress parliamentary and judicial oversight (Natter and Slingenberg 2025). Crucially, these tools are not inherently autocratic, nor are they confined to authoritarian regimes. Rather, their significance lies in their procedural effects: how they structure decision-making, redistribute authority, and limit or bypass mechanisms of accountability. Recent

empirical work on Spain, for instance, shows how constitutionally sanctioned decree-laws can operate in this way within a consolidated democracy, concentrating law-making authority in the executive while compressing ordinary parliamentary deliberation, yet producing both restrictive and rights-expanding outcomes (Bermejo and Iglesias 2026). Seen from this perspective, migration exceptionalism and *strategic non-regulation* help explain why migration governance is particularly prone to the use of such tools, as executives operate in a domain where legal flexibility and political discretion are both structurally embedded.

This article therefore asks two interrelated questions: (1) Why did the Colombian government rely on decree-based instruments to govern migration over an extended period? (2) What were these instruments used for: restricting or expanding migrant rights? By addressing these questions, the paper seeks to disentangle the relationship between policy tools (process) and policy outcomes (substance). To answer these questions, the article adopts a qualitative case study approach combining document analysis and semi-structured interviews. The empirical material includes presidential decrees, policy documents, and administrative regulations related to Colombia's migration response, complemented by thirty interviews with policymakers, bureaucrats, and practitioners involved in the design and implementation of these measures. The analysis focuses on the mode of policymaking, examining why decree-based instruments were chosen, what forms of authority they concentrated, and how they shaped the political feasibility of migration policies in a context of large-scale displacement. The empirical analysis centers on three key policy instruments: the *Permiso Especial de Permanencia* (PEP), the *Primero la Niñez* policy, and the *Estatuto Temporal de Protección para Migrantes Venezolanos* (ETPV), which together structured some of the most important policies of Colombia's response to Venezuelan displacement.

Situating Colombia within the broader Latin American pattern of presidentialism, this article argues that the case reflects a regional tendency to govern migration through executive-driven instruments. Presidential systems in the region have long concentrated significant policymaking authority in the executive, particularly in areas characterized by urgency and political sensitivity. Migration governance is not an exception (Freier and Castillo 2020). However, Colombia stands out for the way in which these instruments have been used. Whereas other governments in the region—such as Peru, Ecuador or Chile—have relied on similar mechanisms to restrict entry, increase control, or roll back rights, Colombia's executive deployed them to expand legal inclusion and access to rights on an unprecedented scale (Gandini 2022). This contrast underscores that the effects of executive instruments cannot be inferred from their procedural form alone but depend on the political and institutional contexts in which they are deployed.

Existing scholarship on Colombia has examined the effects of regularization policies (e.g. Del Real 2022), Colombia's innovative policies in the areas of nationality, naturalization, and regularization (e.g. Besserer-Rayas et al. 2024), the role of bureaucratic actors and foreign affairs (Fernández-Rodríguez and Celleri 2024; Fernández-Rodríguez 2025), the determinants for Colombia's liberalization of migration policy (Rojas et al. 2025), the discursive construction of generosity (Palma-Gutiérrez 2021). This article shifts the focus to the policy instruments

themselves. Rather than analyzing what policies do, it examines how they are made, and how the choice of executive instruments shapes both their feasibility and their long-term implications.

The article proceeds as follows. Section 2 develops the conceptual framework, clarifying how *autocratic policy tools* can be understood in relation to migration governance and how they can be analytically distinguished from policy outcomes. Section 3 outlines the research design and methodology. Section 4 situates the Colombian case within its political and institutional context. Section 5 analyses the use of decree-based instruments across three key policies, focusing on why these tools were adopted, what forms of authority they concentrated, and how they shaped migration policy outcomes. The final section discusses the broader implications of the findings for understanding the relationship between executive power, policy instruments, and migration governance in democratic settings.

2 Conceptual Framework

The protection of the rights and dignity of people on the move is formally grounded in international and regional legal frameworks, including international refugee law and human rights law, which establish a range of obligations for receiving states. However, the extent to which these rights are recognized and implemented varies significantly across contexts and migrant categories, and legal frameworks in democratic systems can also be restrictive or selectively applied. In practice, migration policies are the result of complex negotiations involving politicians, NGOs, international organizations, legal institutions, the media, academia, people on the move themselves, and host societies. These multi-level interactions shape how migration policy is conceptualized, negotiated, and implemented, reflecting broader tensions between humanitarian commitments, political interests, and institutional capacity (Strik 2019; Scholten and Penninx 2016; Brumat and Vera Espinoza 2023).

Policy tools refer to the institutional and procedural mechanisms through which governments design and implement policies. These can include formal legislation, executive decrees, administrative regulations, and more informal practices. In democratic systems, these instruments differ in terms of the degree of deliberation they require, the actors they involve, and the forms of accountability to which they are subject. Legislative processes typically involve negotiation, debate, and multiple veto points, while executive instruments allow for more centralized and rapid decision-making (Natter and Slingenberg 2025).

Migration governance is particularly prone to the use of executive instruments. The literature on migration exceptionalism suggests that migration law is often treated as a distinct domain, closely linked to state sovereignty and border control, where general constitutional constraints may apply only partially (e.g. Rubenstein and Gulasekaram 2016; Macklin 2020). This relative insulation expands the scope for executive discretion and enables governments to act with greater flexibility than in other policy areas.

Recent scholarship has also highlighted that migration governance often relies on a broader repertoire of instruments that go beyond formal legal frameworks. The

concept of *strategic non-regulation* captures the use of ambiguous, ad hoc, or deliberately incomplete policies through which states manage migration without fully formalizing rules or responsibilities (Natter et al. 2023). These approaches allow governments to maintain flexibility, avoid political contestation, and adapt policies over time, but they may also generate uncertainty for migrant populations.

One of the consequences of such governance strategies is the production of what has been described as *liminal legality*. Migrants may occupy a legal status that is neither fully regular nor entirely irregular, but instead characterized by temporariness, conditionality, and uncertainty (Menjívar 2006; Del Real 2022). This form of legal inclusion provides access to certain rights and protections, while at the same time limiting long-term stability and full incorporation into the legal system. As such, liminal legality highlights how inclusionary policies can coexist with forms of precarity, particularly when they are implemented through temporary or discretionary instruments.

Building on these insights, recent contributions have introduced the concept of *autocratic policy tools* to analyze how certain instruments reshape the distribution of power within policymaking processes (Natter and Slingenberg 2025). *Autocratic policy tools* are defined as instruments that concentrate rule-making authority within the executive and reduce, compress, or circumvent effective parliamentary and judicial oversight. Importantly, these tools are not autocratic by nature, nor are they confined to authoritarian regimes. Rather, whether a policy tool operates in an “autocratic” manner depends on the extent to which it reconfigures mechanisms of accountability and concentrates decision-making authority. Decrees are a standard feature of democratic governance. This article focuses specifically on those instances in which executive instruments concentrate decision-making authority and avoid other mechanisms of accountability.

This perspective requires distinguishing analytically between policy tools and policy outcomes. The use of *autocratic policy tools* does not predetermine whether policies will be restrictive or permissive. While much of the literature has associated executive discretion with restrictive migration control, recent research shows that similar instruments can also be used to expand rights and protection. For instance, studies on Spain demonstrate how executive decree-laws can concentrate policy-making authority while producing both restrictive and inclusionary outcomes within a democratic system (Bermejo and Iglesias 2026). This suggests that the effects of such tools cannot be inferred from their procedural form alone.

A second distinction concerns the relationship between policy tools and political regimes. *Autocratic policy tools* can be used across the democracy–autocracy spectrum. Their presence does not necessarily indicate democratic erosion but rather reflects how governments navigate institutional constraints and political pressures in specific policy domains (Natter and Slingenberg 2025). Migration governance, given its association with sovereignty and its high political salience, provides fertile ground for the deployment of such instruments. Within this framework, decree-based policymaking can be understood as one specific type of policy tool that may, under certain conditions, function as an autocratic policy tool. Presidential decrees and administrative measures allow executives to act quickly, coordinate across agencies, and avoid the delays and uncertainties associated with legislative processes.

Moreover, they can concentrate decision-making authority and reduce opportunities for public deliberation and institutional oversight.

In Colombia, like in other Latin American countries, these dynamics are further shaped by patterns of presidentialism, and, in some cases, what has been described as hyper-presidentialism (Rojas et al. 2025). Political systems in the region have historically granted executives significant law-making authority, including the ability to legislate through decrees under certain conditions. This concentration of power has often been justified in contexts of urgency, crisis, or institutional fragmentation, allowing executives to bypass legislative gridlock and respond rapidly to policy challenges. In the field of migration governance, these institutional features create favorable conditions for the use of executive instruments as primary tools of policymaking.

The Colombian case illustrates how these dynamics unfold in practice. Rather than treating decree-based policymaking as inherently problematic or exceptional (Poveda-Clavijo and Mena 2024), this article examines how such instruments were used over time to govern large-scale displacement. By focusing on the procedural logic of these tools, the analysis seeks to understand why they were adopted, what forms of authority they concentrated, and how they shaped migration policy outcomes. This approach allows for a more nuanced understanding of how executive instruments operate within democratic settings and how they may enable both inclusive and exclusionary forms of migration governance. This article builds on this framework by showing how decree-based instruments can function as *autocratic policy tools* in a democratic setting while producing permissive migration outcomes.

3 Research Design and Methodology

This article adopts a qualitative case study approach to examine how executive policy instruments are used to govern large-scale displacement and how they shape migration policy outcomes. The Colombian case is particularly suitable for this analysis due to the scale of Venezuelan displacement, the sustained use of decree-based policymaking, and the adoption of a permissive (inclusionary) policy approach within a democratic setting.

Colombia represents a critical case for understanding the relationship between policy instruments and migration outcomes. First, it has been the main destination country for forcibly displaced Venezuelans, receiving more than 2.8 million people over a relatively short period (Colombian Migration Office 2024). Second, the policy response was not limited to emergency measures but evolved into a sustained governance strategy over several years. Third, and most importantly, Colombia relied extensively on executive instruments—particularly presidential decrees and administrative measures—to regulate migration, making it an ideal case to study the operation of such tools in practice. The analysis focuses on three key policy instruments: the *Permiso Especial de Permanencia* (PEP), the *Primero la Niñez* policy, and the *Estatuto Temporal de Protección para Migrantes Venezolanos* (ETPV). These cases were selected because they represent different stages and dimensions

of Colombia's migration response, as well as varying degrees of institutionalization, visibility, and political sensitivity.

The empirical analysis is based on a combination of document analysis and semi-structured interviews. The document analysis includes presidential decrees, policy documents, legal regulations, and official reports related to Colombia's migration response between 2017 and 2021. These sources provide insight into the formal design of policies, their legal basis, and their stated objectives. In addition, the study draws on thirty semi-structured interviews conducted between 2021 and 2025 with officials from the Presidency, the Ministry of Foreign Affairs, the Colombian Migration Office, and the Border Management Office, as well as migration lawyers and human rights advocates.¹ Participants were selected through purposive and snow-ball sampling (Bernard 2011), allowing for the inclusion of diverse institutional and expert perspectives. All interviews were conducted in Spanish, transcribed, anonymized, and analyzed using Atlas.ti.

Rather than evaluating the effectiveness of migration policies, the analysis focuses on their mode of production. Specifically, it examines how decree-based instruments functioned as policy tools and how they shaped both the process and outcomes of migration governance. The analysis follows a qualitative *content analysis* approach (Mayring 2016), combining deductive and inductive coding strategies. Initial coding categories were derived from the theoretical framework, including themes such as executive discretion, urgency, and political constraints. At the same time, the analysis remained open to emergent categories identified through the empirical material. These themes were then grouped into broader analytical dimensions to explain how executive instruments were used in practice. Each policy instrument is analyzed along three dimensions: (A) Why decree? The analysis identifies the political, institutional, and temporal factors that led policymakers to rely on executive instruments rather than legislative processes. (B) What power was concentrated? The study examines how these instruments restructured decision-making authority, particularly in relation to parliamentary deliberation and judicial oversight. (C) What were the implications?

The analysis explores how the use of these tools shaped policy outcomes, including both the expansion of rights and the production of temporary or uncertain legal statuses. This approach allows the article to trace the relationship between policy instruments and migration outcomes, while also capturing the role of political constraints, institutional dynamics, and strategic considerations in shaping policymaking.

¹ All participants gave informed consent, and confidentiality was ensured, if requested by the participants. See Annex 1 for a list of anonymized interviewees cited and codes.

4 Context: Venezuelan Displacement and the Colombian State

The arrival of more than 2.8 million Venezuelans in Colombia since 2015 (Colombian Migration Office 2024) constitutes one of the most significant cases of South–South displacement in recent history. This mass movement has been driven by a multidimensional crisis in Venezuela, marked by economic collapse, political repression, and institutional breakdown. Overall, over 7.8 million Venezuelans have left the country (R4V 2024), with nearly 40 percent residing in Colombia, making it the primary destination for Venezuelan migrants worldwide.

At the onset of this large-scale displacement, Colombia was a country with little experience in managing large-scale international forced displacement (Selee and Bolter 2022). Likewise, its laws and immigration regime did not respond to this large-scale arrival. The Colombian government first treated the phenomenon as a “humanitarian/border crisis” (Colombian Ministry of Foreign Affairs 2015) and then began to manage the situation through decrees. Although a state of emergency was never declared, in practice governance was carried out almost exclusively by the executive branch and administrative measures (Pelacani and Moreno 2023). The country lacked a comprehensive immigration law,² and migration management relied heavily on executive authority and administrative regulation (Del Real 2022). Although the 1991 Constitution established broad human rights protections applicable to all individuals regardless of nationality, the operational governance of migration remained largely within the executive branch, particularly the Presidency and the Ministry of Foreign Affairs. The Colombian Migration Office, created in 2011, functioned primarily through presidential decrees and ministerial resolutions rather than through a consolidated legislative framework.

This institutional configuration enabled rapid and flexible policy responses but also concentrated decision-making authority within the executive. In practice, migration governance operated through a combination of discretionary measures and regulatory instruments, with limited direct involvement from Congress. This reliance on executive tools was not the result of a formal state of emergency but rather reflected the existing structure of migration governance in Colombia, where legislative development in this domain has historically been limited.

These dynamics unfolded within a democratic political system characterized by presidentialism. Colombia is generally classified as a democratic regime, albeit with recognized institutional challenges (Economist Intelligence Unit 2025; Nord et al. 2025). As in other Latin American presidential systems, the executive branch holds significant agenda-setting power and can legislate through decrees under specific conditions, subject to judicial review. This institutional arrangement provides executives with considerable flexibility to respond to urgent policy challenges, while still operating within a framework of formal checks and balances.

² Although Colombia enacted a new Migration Law (2136) in 2021, the legislation largely consolidated existing executive decrees related to migration and asylum (not including the policies analyzed in this article), rather than introducing meaningful legal or policy transformations (See Pelacani and Moreno 2023).

The scale and urgency of Venezuelan displacement further reinforced the use of executive instruments. Policymakers faced the need to respond quickly to rapidly evolving conditions, while navigating political sensitivities associated with migration. As a neighboring country with strong historical, economic, and social ties to Venezuela, Colombia also had incentives to adopt a relatively open approach. Migration policy was framed not only as a humanitarian response but also as part of a broader geopolitical strategy, positioning Colombia as a regional leader and a key ally in opposition to the Maduro regime (Palma-Gutiérrez 2021; Fernández-Rodríguez 2025).

Domestic political considerations also shaped the choice of policy instruments. Expanding migration policy through legislative channels would have required broader political negotiation and exposed the issue to public contestation. Executive instruments, by contrast, allowed policymakers to act more rapidly, coordinate across institutions, and limit political friction in a context of growing polarization. Taken together, these institutional and political conditions structured the range of feasible policy responses. The next section examines how these constraints translated into the use of decree-based instruments in practice.

5 Executive Tools and the Production of Liminal Inclusion

Colombia's response to Venezuelan displacement illustrates how executive policy instruments can be used to govern large-scale migration while shaping both inclusion and precarity. Rather than emerging through legislative reform, key migration policies were enacted through presidential decrees and administrative measures. While legislative reform was formally possible, it would have required sustained political negotiation and exposure to public debate in the context of increasing polarization. Executive instruments therefore provided a more viable pathway for policy adoption under these conditions. This section examines how these instruments operated in practice, focusing on three dimensions: why decree-based tools were adopted, what forms of authority they concentrated, and their implications for migration governance.

5.1 Governing Through Urgency: Why Decree-Based Instruments?

The initial response to Venezuelan displacement unfolded under conditions of urgency due to rapid and escalating mobility. Following the closure of the Venezuela–Colombia border in 2015 and the deportation of Colombian nationals, cross-border dynamics intensified, with increasing numbers of Venezuelans entering Colombia in search of food, medicine, and eventually longer-term settlement (Mijares and Rojas Silva 2018; Carvajal 2017). Policymakers faced a fluid and uncertain situation, characterized by limited institutional preparedness and the absence of a comprehensive migration framework. In this context, executive instruments emerged not merely as a convenient option but as a necessary governance tool under conditions of uncertainty. The creation of the *Permiso Especial de*

Permanencia (PEP) in 2017 through Resolution 5797 reflected an incremental and adaptive approach to policymaking, whereby authorities responded step by step to a phenomenon whose scale and permanence were initially underestimated.

Aware of the need to control border crossings while acknowledging the widespread lack of passports among Venezuelans, Colombian authorities sought an alternative. This led to the introduction of PEP by the government of Juan Manuel Santos, a temporary protection mechanism granting Venezuelans access to essential services such as healthcare, education, and formal employment (Besserer-Rayas et al. 2024). Initially launched in 2017 for individuals who had entered the country through regular means, the program gradually expanded through a series of six additional regularization measures by 2021, eventually extending to those who had entered irregularly—most notably through the PEP-RAMV, which alone regularized over 400,000 individuals (Chávez-González et al. 2025). As a former senior official from the Colombian Migration Office (CMO1) explained:

“I always said that if we started requiring passports, they would just slip past us, and we would lose control. It’s better to know who is in our country, to have data, statistics, to be able to plan. But we started seeing the phenomenon grow. It was no longer just the border—it was happening throughout Colombia. We also began noticing people in transit. So, we asked ourselves: what should we do? We realized that many had entered with passports that had already expired, and we knew they were not going to return. So, we said, let’s proceed step by step. That’s how we came up with the [PEP]”.

This argument was shared by several policymakers interviewed and suggests that executive-led policymaking was not primarily driven by a desire to bypass democratic procedures, but by the need to maintain administrative visibility and control in a context in which formal regulatory requirements were impractical. Rather than enforcing strict entry conditions that would have pushed migrants into invisibility, policymakers prioritized registration, monitoring, and gradual regularization. Executive instruments enabled this flexibility by allowing policy adjustments without reopening legislative negotiations at each stage.

The incremental expansion of the PEP—eventually including migrants who had entered irregularly—illustrates how executive tools supported adaptive governance, responding to changing migration patterns over time. However, this flexibility also reflected the absence of a long-term strategy at the outset. As one official noted, the government initially underestimated the permanence of the crisis, assuming that these Venezuelan citizens arrived over the course of two months, but in a few months, they’ll go back (BMO1). This misperception of temporality shaped the initial reliance on short-term instruments. Yet as the crisis became protracted, the limitations of this approach became increasingly evident. By 2021, nearly one million Venezuelans remained in irregular status (Colombian Migration Office 2021), highlighting the structural inadequacy of temporary, fragmented responses.

Several interviewed policymakers also recognized that stricter enforcement measures were neither feasible nor desirable. As one official noted: *“This can’t be controlled, and I think that was understood, at least by the government”* (BMO2). This acknowledgement reflects a broader shift from a control-oriented logic to one

focused on management and accommodation, in which executive instruments enabled pragmatic responses that would have been difficult to codify through formal legislation. This pragmatic approach has been explained by different scholars (e.g. Rojas et al. 2025; Poveda-Clavijo and Mena 2024; Selee and Bolter 2022). Similar dynamics of incremental and executive-led adaptation, driven by conditions of urgency, can also be observed in the development of the ETPV and in the design of *Primero la Niñez*.

5.2 Concentrating Authority: Avoiding Political Contestation

While urgency played a central role, the use of executive instruments was also shaped by political considerations. As migration became more visible, public discourse in Colombia grew increasingly polarized, with rising levels of xenophobia and social tension (DANE 2019; Lebow et al. 2020; Alfonso and Seijas González 2020; Perilla 2020). In this context, legislative engagement on migration policy carried significant political risks. By avoiding parliamentary debate and reducing public visibility, executive instruments limited opportunities for political contestation, minimized delays in policy implementation, and reframed migration policy as a technical issue rather than a partisan one.

The adoption of the ETPV in 2021 by right-wing President Iván Duque through Decree 216 exemplifies this strategy. This policy granted nearly two million Venezuelans a ten-year temporary protection status that enabled access to formal employment, healthcare, education, and financial services. Moreover, it laid the groundwork for a pathway to permanent residency and eventual citizenship (Trompetero and Moreno-Sáchica 2026). The ETPV was widely praised by international bodies (IOM and UNHCR 2021), as an innovative and humanitarian milestone in Latin America. Rather than pursuing legislative reform, the government opted for a decree-based approach, enabling rapid implementation while minimizing political friction. As one official involved in the process explained: “Bringing this to Congress would have exposed the policy to political risks. We did not want to start a political debate which could have brought no solution.” (BMO3)

This argument, shared by several interviewed policymakers and also observed in the case of *Primero la Niñez*, highlights how executive instruments functioned as tools that shifted or contained political contestation, enabling the implementation of inclusive measures while avoiding potentially restrictive or politically driven legislative outcomes. In this sense, the use of decrees was not only about urgency and pragmatism, but also about controlling the arena in which policy decisions were made. Concerns about public backlash further shaped these decisions. As another official noted: “*The whole pandemic exacerbated everything... we didn’t want to be too communicative... because it could generate backlash.*” (P1)

By avoiding public debate, executive instruments allowed the government to implement inclusionary measures—such as access to the health and education systems, and formal labor market—without triggering broader political opposition. At the same time, this concentration of authority did not eliminate all forms of oversight. The Colombian Constitutional Court intervened in several instances to review

and adjust executive measures, particularly when they affected vulnerable populations. For example, in Judgment SU-543 of December (2023), the Court ordered the Ministry of Foreign Affairs and Colombian Migration Office to provisionally suspend Articles 16 and 17 of Decree 216 (2021), which had required asylum seekers to withdraw their refugee applications to access the *Permiso por Protección Temporal* (PPT),³ and had treated the refugee application certificate (SC-2) as incompatible with the PPT. The Court extended the effects of this ruling to other asylum seekers who had fulfilled procedural requirements and belonged to constitutionally protected vulnerable groups, such as children, pregnant women, persons with disabilities, and the elderly. Similarly, in Judgment T-166 of June (2024), the Constitutional Court ordered the extension of the ETPV registration process through Resolution 4713, under “extraordinary circumstances beyond one’s control”, for those who were unable to register during the periods established in Decree 216 (2021) and Resolution 971 (2021). These interventions demonstrate that decree-based policymaking operated within a system of checks and balances, albeit one in which the executive retained primary control over policy design.

These interventions also highlight an important temporal dimension in the relationship between executive and judicial instruments. While Decree 216, which established the PPT, was adopted in March 2021, the first of these key judicial decisions addressing its limitations were issued almost three years later. This temporal gap illustrates that, while democratic oversight mechanisms remain operative, they often function at a slower pace than executive policymaking. Although such timeframes may be institutionally normal, they are highly consequential for displaced persons, whose access to rights and legal certainty depends on timely decisions. Rather than suggesting that executive tools are inherently more inclusive, this dynamic underscores their capacity to respond more rapidly under conditions of institutional pressure, while judicial and legislative processes operate on longer temporal cycles.

5.3 Inclusion with Fragility: Implications of Executive Tools

While executive instruments enabled rapid and expansive forms of inclusion, they also produced forms of legal and institutional fragility. The PEP, for instance, provided access to employment, healthcare, and education, and had measurable positive effects on migrants’ socioeconomic well-being (Ibáñez et al. 2024). However, its temporary nature and reliance on administrative discretion limited its long-term stability (Del Real 2022). The transition to the ETPV represented an effort to address these limitations by consolidating previous measures into a more coherent framework. As one official recalled: “*The special permits were a positive solution during a time of crisis. But over time, they became fragmented and hard to manage. That’s when the decision was made to unify everything under one framework [the ETPV].*” (BMO4) This shift reflects an attempt to move from fragmented, short-term responses toward a more structured form of governance. However, despite its

³ The identity card issued to Venezuelan beneficiaries of the ETPV.

longer duration, the ETPV remained grounded in executive authority, making it inherently dependent on political continuity.

Subsequent policy changes under the left-wing administration of Gustavo Petro (2022–2026) illustrate this vulnerability. Rather than extending the ETPV, which is no longer open for new applications, the government introduced more restrictive and fragmented executive-led alternatives for regularization, such as the Visa V and PEP-Tutor, imposing higher administrative barriers and benefiting fewer individuals. (PROVEA 2025; Trompetero and González 2026). These shifts demonstrate how executive-led inclusion can be reversed or reconfigured without the need for legislative change. A migration lawyer interviewed for this study (ML) emphasized that the ETPV's long-term stability was at risk, noting that the lack of refugee recognition under the Cartagena Declaration rendered protections vulnerable to political shifts. Moreover, although the ETPV includes a pathway to permanent residence, restrictive requirements and limited access to information have made this pathway largely ineffective, with only 0.12% of the nearly two million beneficiaries successfully obtaining this status (Trompetero and Moreno-Sáchica 2026).

The *Primero la Niñez* policy, launched in Colombia in 2019, further illustrates both the strengths and limitations of executive instruments and exemplifies the country's reliance on adhocism to respond to the humanitarian consequences of large-scale Venezuelan displacement. The policy emerged as an urgent solution to the growing risk of statelessness among children born in Colombia to Venezuelan parents, effectively addressing a critical legal gap. Under existing law, these children could neither meet the legal domicile requirement to acquire Colombian nationality by birth nor obtain Venezuelan nationality, as they were unable to fulfill the necessary legal requirements (Orozco-Naranjo and Besserer-Rayas 2024).

In response, the National Civil Registry of Colombia issued Resolution 8470 (2019), a non-legislative, administrative measure that authorized the automatic acquisition of Colombian nationality by birth for children of Venezuelan parents, born in Colombia since January 1, 2015, even without parental proof of legal residence. The resolution was explicitly framed as temporary, exceptional, and humanitarian, grounded in Colombia's international obligations under the Convention on the Rights of the Child, the Convention on the Reduction of Statelessness (Law 12 1991; Law 1588 2012) and the American Convention on Human Rights. While its initial application was time-bound, subsequent resolutions (Resolution 8617 2021; Resolution 9820 2025) extended the policy's scope, both in terms of the documentation accepted and its temporal duration, with coverage now lasting until August 2027. By mid-2023, over 100,000 children had acquired Colombian nationality through *Primero la Niñez* (Ministry of Foreign Affairs 2024). Yet its reliance on administrative measures rather than statutory law meant that its continuation depended on periodic extensions.

Paradoxically, after the first resolution, Law 1997 (2019) was created to prevent Venezuelan children from becoming stateless, but it was not operable because it required regulations that were never implemented. On the contrary, the resolution was already well regulated and was already being implemented systematically throughout the country. This suggests that executive instruments may, in some cases,

enable more immediate and effective implementation than formal legislation. As a former official closely involved in this process (MFA1), explained:

“A clear example of this (contradiction) is Resolution 8470 (2019) and Law 1997 (2019), which both addressed the same issue: children of Venezuelan parents born in Colombia at risk of statelessness. But the law lost its validity since it was never regulated; thus, it ended up being inoperative. Meanwhile, the resolution has been extended multiple times and is still in force. So, the idea that stronger instruments, like laws, are always necessarily, comes into question, because in practice, they sometimes fall short of responding to the circumstances.”

This reflection reveals another tension: although laws carry the formal legitimacy and permanence often associated with strong institutions, they may prove too rigid or the lack of political will to continue its regulation and implementation. In contrast, resolutions like 8470 (though less stable in principle) can be more agile, durable, and responsive. In this case, the administrative route not only outlasted the legislative attempt (Law 1997) but proved to be more immediately implementable under these conditions.

Reliance on executive discretion highlights both the strengths and weaknesses of Colombia's migration governance. *Primero la Niñez* demonstrates rights-based, humanitarian innovation enabled by bureaucratic flexibility, yet it also exposes the fragility of nationality rights when based on temporary, exceptional, and revocable measures. Children at risk of statelessness depend on discretionary extensions rather than constitutional guarantees, leaving protections vulnerable to political shifts.

This observation, together with the policy changes during Petro's administration, underscores a key tension: while executive instruments may be more responsive and adaptable than formal legislation, they lack the stability and predictability of statutory frameworks. These dynamics point to a broader tension between flexibility and the institutionalization of rights at the heart of the rule of law. They also produce what the literature describes as liminal legality (Menjívar 2006; Del Real 2022), whereby migrants are incorporated through temporary and conditional statuses that grant rights without long-term security. This creates practical and institutional challenges, as migrants and frontline actors must continuously adapt to shifting regulatory frameworks. During our fieldwork, these difficulties were evident in the transition from PEP to ETPV, when hospitals initially refused to recognize the new permit (PPT) due to unfamiliarity, despite its broader rights. With the emergence of more fragmented policies such as the Visa V or PEP-Tutor, this liminal legality risks becoming increasingly fragmented, exacerbating institutional uncertainty and potentially revictimizing forcibly displaced Venezuelans.

6 Conclusion

This article has examined how executive policy instruments are used to govern large-scale displacement in democratic settings, focusing on Colombia's response to Venezuelan migration between 2017 and 2021. It began from an empirical puzzle:

why were decree-based and administrative instruments, tools that concentrate decision-making authority within the executive, used to produce one of the most expansive inclusionary migration responses in the region? By analyzing the adoption and evolution of the PEP, the ETPV, and *Primero la Niñez*, the article has shown that the use of executive instruments was not inherently at odds with democratic governance, nor was it exceptional. Rather, these tools became central to migration policymaking because they allowed governments to navigate a specific combination of urgency, institutional constraints, and political risks. Executive instruments enabled policymakers to act quickly, adjust policies incrementally, and avoid legislative processes that could delay or politicize responses in the context of growing polarization.

The findings point to three main contributions. First, executive instruments function as adaptive governance tools, particularly in contexts of large-scale and rapidly evolving displacement. In Colombia, decrees and administrative measures enabled the registration, regularization, and integration of large populations in ways that would have been difficult through slower legislative channels. Second, these instruments reconfigure the distribution of authority within policymaking processes. By centralizing decision-making in the executive, they reduce the role of parliamentary debate and limit the public visibility of migration policy. Third, and most importantly, the Colombian case reveals a tension between inclusion and durability. While executive instruments enabled an unprecedented expansion of migrant rights, they did so through temporary, discretionary, and revisable measures. As a result, inclusion remained contingent on executive priorities and vulnerable to political change, producing forms of legal incorporation best understood as liminal (Menjívar 2006; Del Real 2022).

The results also raise important rule of law concerns. While executive instruments enable rapid responses, their reliance on discretion may undermine legal predictability, stability, and the durability of rights, creating longer-term uncertainties around legal certainty and institutional accountability. This highlights a core tension between flexibility and the institutionalization of rights at the heart of the rule of law.

Taken together, these findings suggest a broader insight: the same policy tools that concentrate authority within the executive can enable expansive inclusion while limiting long-term stability. This underscores that policy instruments do not determine outcomes linearly but interact with political and institutional contexts. The Colombian case shows that autocratic policy tools (understood as instruments that concentrate authority and reshape oversight) can be used in democratic settings to produce permissive outcomes, while also generating new forms of legal and institutional uncertainty.

Future research could examine how similar instruments operate across contexts and under what conditions they produce more durable or fragile forms of inclusion. Comparative work (particularly between cases such as Colombia and Spain) can shed light on how institutional design and political dynamics shape the use and effects of executive tools in migration governance. Such comparisons suggest that similar instruments may lead to divergent outcomes, highlighting the need to analyze policy tools within their specific settings. This article has argued that understanding migration policy requires closer attention not only to what states do, but how they do

it. By focusing on the procedural dimension of policymaking, it highlights the role of policy instruments in shaping the possibilities and limits of inclusion. These findings are likely to travel to other presidential systems facing large-scale displacement, particularly where migration governance is weakly institutionalized.

Annex 1: List of Interviewees cited

Acronym used	Institution	Mode and date of the interview
BMO1	Border Management Office	Online, December 2018
BMO2	Border Management Office	Online, 5 August 2020
BMO3	Border Management Office	Online, 9 September 2022
BMO4	Border Management Office	Online, 11 April 2022
BMO5	Border Management Office	Bogotá, 25 January 2022
CMO1	Colombian Migration Office	Bogotá, 24 March 2022
MFA1	Ministry of Foreign Affairs	Online, 17 July 2025
P1	Presidency	Bogotá, 6 February 2023
ML	Migration Lawyer at Universidad de los Andres	Bogotá, 5 February 2023

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Data Availability The empirical data supporting the findings of this study consist of thirty anonymized qualitative interviews conducted during doctoral fieldwork in Colombia between [2018–2025] by M.G.T.V. Due to ethical and confidentiality considerations, these data are not publicly available and cannot be deposited in a repository. Summarized and anonymized excerpts are included within the article. However, the data are available from the authors upon reasonable request.

Declarations

Conflict of interest The authors declare no competing interests.

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