



# CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

## All About Parole<sup>1</sup>

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### I. Overview of Parole

#### What is parole?

Parole is the discretionary authority granted to the Secretary of Homeland Security (DHS) to allow an individual to enter, return to, or remain in the United States without granting the person formal admission. Parole is typically granted for a temporary, finite period of time noted on the parole document given to the grantee, or “parolee.” Each parole request is considered on a case-by-case basis. Over the history of parole, DHS and its predecessors have paroled various categories of individuals into the United States and focused primarily on those with

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<sup>1</sup> Copyright 2023, The Catholic Legal Immigration Network, Inc. (CLINIC). This practice advisory is intended to assist lawyers and fully accredited representatives. It does not constitute legal advice, nor is it a substitute for independent analysis of the law applicable in the practitioner’s jurisdiction. The authors of this update are Elizabeth Carlson and Joanna Mexicano Furmanska, attorneys with CLINIC’s Training and Technical Assistance program. Additional CLINIC staff and external colleagues contributed their expertise within several specific practice areas; the authors are grateful for their time and feedback.

humanitarian needs, those whose parole would bring significant public benefit to the United States, and those who have an application for adjustment pending.

### **What are the circumstances in which an individual might be granted parole?**

There are a broad variety of circumstances in which an individual might be granted parole; we discuss most of these possible situations in the sections below. Under INA § 212(d)(5), the attorney general is permitted to parole individuals into the United States for “humanitarian reasons” or “significant public benefit.” The various programs of parole have grown out of these general categories, and individuals typically must show either some humanitarian reason or significant public benefit in their request. Applicants might be requesting parole to enter from outside the country, to remain within the United States, or to re-enter the United States after a trip abroad.

### **Who has the authority to grant parole and what is the source of that authority?**

Although the authority to grant parole has long been exercised by the U.S. government, the current provision permitting the attorney general, in his or her discretion, to parole noncitizens into the United States is found at section 212(d)(5)(A) of the Immigration and Nationality Act (INA). That section was enacted with the passage of the Illegal Immigration Reform and Responsibility Act (IIRIRA) of 1996. The statute says:

The Attorney General may... in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

With the passage of the Homeland Security Act in 2002, most immigration functions previously exercised by the Immigration and Naturalization Service were transferred to DHS, including the authority to grant parole. The regulations at 8 CFR § 212.5 implement the statute and permit DHS to issue humanitarian parole. Pursuant to a 2008 Memorandum of Agreement (2008 MOA), which DHS agency adjudicates an application for parole depends on where the applicant is at the time of filing the application and what specific type of parole he or she is seeking.<sup>2</sup> While U.S. Citizenship and Immigration Services (USCIS) and Immigration and Customs

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<sup>2</sup> Memorandum of Agreement Between USCIS, ICE, and CBP for the Purpose of Coordinating the Concurrent Exercise by USCIS, ICE, and CBP, of the Secretary’s Parole Authority Under INA § 212(d)(5)(A) with Respect to Certain Aliens Outside of the United States (2008 MOA), [ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf](https://ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf).

Enforcement (ICE) may grant a parole request prior to an individual presenting himself or herself at the border, Customs and Border Patrol (CBP) makes the final decision of whether to permit the individual's entry. The Department of State (DOS) has no authority to approve or extend any type of parole, despite having the authority to authorize visas to travel to the United States.<sup>3</sup> However, the DOS may submit a request for parole to USCIS where the government has an interest and immediate need to permit an individual to enter.<sup>4</sup>

### **Is parole an admission?**

Under INA § 101(a)(13)(A), an admission is defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” The next subsection of the statute explicitly excludes parole from this definition: “(B) An alien who is paroled under section 1182(d)(5) of this title . . . shall not be considered to have been admitted.” Finally, as is clear from the plain language cited in INA § 212(d)(5)(A) above, parole “shall not be regarded as an admission.” Thus, parole is a way for DHS to permit *physical* entry or presence of an individual without “admitting” them *legally* to the United States under the immigration laws. Because they are not admitted, parolees are generally considered applicants for admission.<sup>5</sup>

### **Are applicants for parole subject to the grounds of inadmissibility?**

Because parole is not an admission, applicants for parole need not show they are admissible to be eligible for parole.<sup>6</sup> Therefore, individuals who have criminal convictions or immigration violations may still be granted parole. Nevertheless, because parole is a discretionary benefit, adjudicators often consider the inadmissibility grounds in deciding whether to grant parole. In addition, at the time an individual granted parole by USCIS presents himself or herself at the border, CBP may conduct its own review of a parolee's history prior to allowing him or her to enter. The factors considered by USCIS are discussed below. Applicants should thus be prepared to argue at every stage why the humanitarian or significant public benefit grounds for parole outweigh any potential negative factors in the discretionary analysis.

Consider this example:

Trisha entered the United States in early 2013 without inspection to live and work. In late 2014, she returned to her home country to care for her ailing father. After he passed, she returned to the United States in April 2016, again without inspection. She exited three months later and has been in her home

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<sup>3</sup> 9 Foreign Affairs Manual (FAM) 202.3-2(A)g.

<sup>4</sup> 9 FAM 202.3-3(B)(2)a-b.

<sup>5</sup> INA § 212(d)(5).

<sup>6</sup> USCIS Policy Manual, Vol. 7, Part B, Ch. 2, § 3 (“A noncitizen is paroled if the following conditions are met: . . . An immigration officer inspected them as an ‘alien’ and permitted them to enter the United States *without determining whether they may be admitted* into the United States.”) (emphasis added).

country since. Trisha now needs urgent medical care to treat a fast-growing cancer in her abdomen. She seeks treatment by a specialist in Los Angeles and has documentation from the specialist that includes details of their initial virtual consultation, her diagnosis, a treatment plan, and a statement as to the prognosis without treatment. She has a sponsor she met through a cancer support community who will give her a place to live and support her during her medical treatment. Although Trisha is inadmissible due to her previous periods of unlawful presence and entry without inspection, she may be paroled in upon demonstrating that the urgency of her medical need outweighs the negative factor of her immigration violations.

### **What factors are considered in deciding parole?**

Whether to grant parole is a matter of discretion; accordingly, adjudicators must consider numerous factors for each request and make each decision on a case-by-case basis. Which factors are relevant to any particular request for parole depends on the type of parole being requested and the individual circumstances in that case. Some common discretionary factors, as cited by USCIS on its website, include:

- Whether the purpose of the parole request may be accomplished within a **specific, temporary period of time**;
- Whether the beneficiary **intends to leave** the United States once his or her parole expires or has the **means to obtain lawful immigration status** during the parole authorization period or any re-parole period that is envisioned (where applicable);
- Whether there is evidence of any **national security concerns, criminal history, fraud, or previous immigration violations**;
- Whether the beneficiary's presence would **benefit or otherwise affect a U.S. citizen or lawful permanent resident** or community in the United States;
- Whether the beneficiary will have **sufficient financial support** while in the United States;
- Evidence of the **beneficiary's character**; and
- Whether there are **other means, other than parole, that are available** to the beneficiary so he or she can travel to and remain in the United States for the stated parole purpose, such as the ability or inability to obtain a visa.<sup>7</sup>

In the example above, because Trisha accrued more than one year of unlawful presence, departed, and re-entered the United States without inspection, she is subject to the permanent bar and is not eligible to seek consent to re-apply for admission as an immigrant until spending ten years outside of the country. She should still apply for a tourist visa and seek an INA §

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<sup>7</sup> [Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States](https://uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states), U.S. Citizenship and Immigration Services, [uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states](https://uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states).

212(d)(3) waiver of inadmissibility, as we discuss further below, but as a practical matter, she is likely to be denied. In that event, she should consider pursuing parole. In her parole application, Trisha's potential negative factors include several immigration violations. On the other hand, Trisha might argue that she needs to enter only for discrete, finite medical treatment that can be accomplished within a specific, limited period of time. She will have sufficient financial support through her cancer support group sponsor. Trisha may also want to provide evidence of her good moral character.

### **How can a grant of parole help a client qualify for adjustment of status?**

Under INA § 245(a), a noncitizen who is admissible and has an immigrant visa immediately available may qualify for adjustment if he or she “was inspected and admitted *or paroled*.” Individuals who enter the United States without inspection are generally not eligible for adjustment under INA § 245(a). Therefore, one of the strongest benefits of parole is the possibility of adjustment where an applicant has an immigrant visa immediately available and is otherwise eligible and admissible. It is this benefit that leads to much of the debate on whether any particular release constitutes parole. Practitioners are encouraged always to examine closely whether their client was ever given parole documents or otherwise been released from immigration custody, and under which provision of the law that release took place. Additionally, this area of law is constantly changing, so practitioners are encouraged to follow the latest updates and push new interpretations of the law.

The best evidence of parole status that an applicant might present in order to satisfy the “paroled” requirement of INA § 245(a) is a Form I-94, Arrival/Departure Record, endorsed with a parole stamp. Other forms of evidence can include a parole stamp on an advance parole document or a parole stamp in a passport. ICE may also issue an Interim Notice Authorizing Parole when releasing an individual from custody. Any of these documents should be submitted with the Form I-485 adjustment application packet to indicate the individual qualifies for adjustment under INA § 245(a). However, as discussed in the next section, where practitioners' clients have at some point been detained and released, they should consider whether the client was released through parole and review evidence related to the client's detention and release. This may include a Form I-213, Record of Deportable/Inadmissible Alien, FBI fingerprint results showing a CBP apprehension and detention, or an Order of Release on Own Recognizance. Again, this area of the law is in flux and practitioners should be sure to brief legal eligibility for adjustment of status for those who do not have clear evidence that they were granted parole under section 212(d)(5).

Practitioners should also keep in mind the regulations at 8 CFR § 212.5(e)(2)(i), which state that the service of an NTA terminates the period of parole. The BIA in *Matter of Arambula-Bravo* found in a concerning decision that the service of the NTA not only terminates the parole, but also that the noncitizen is then returned to the status they were in before being granted parole

and thus are not “inspected and admitted or paroled” for the purposes of 245(a).<sup>8</sup> We have not seen a rash of denials in the wake of this decision from either Immigration Judges or USCIS, but it still may be too early to tell the impact of it longer-term. Practitioners should review *Arambula-Bravo* and be prepared to push back on such possible denials in the future.

**Are conditional parole from custody or release on one’s own recognizance (ROR) the same thing as parole for the purposes of adjustment or employment authorization?**

Where a noncitizen is detained pursuant to INA § 236 pending his or her removal proceedings pursuant to INA § 240 and is not subject to mandatory detention pursuant to INA § 236(c), the Attorney General may release the individual on bond or “conditional parole” under INA § 236(a)(2)(B). Courts have interpreted a release under “conditional parole” under INA § 236(a)(2)(B) as not constituting “parole” for the purposes of adjustment of status or work authorization.<sup>9</sup> ICE typically issues Orders of Release on Own Recognizance for individuals released under this provision.

Despite this provision, however, the authors are aware of practitioners in at least one jurisdiction successfully arguing before an immigration judge that their client’s release from ICE custody, notwithstanding DHS classifying it in writing as a “236(a) release,” constituted parole under INA § 212(d)(5).<sup>10</sup> The immigration judge there determined that the individuals were eligible to apply for adjustment of status pursuant to INA § 245(a), which requires the applicant to be “inspected and admitted or paroled.” The judge also found some Cubans to be eligible to apply for adjustment under the Cuban Adjustment Act, which contains the same eligibility requirement.

In support of their arguments for INA § 212(d)(5) parole in this context, practitioners cited the Supreme Court case *Jennings v. Rodriguez*.<sup>11</sup> The Court in that case noted that U.S. immigration law authorizes agencies to detain certain individuals seeking admission into the country under INA § 235(b) rather than section 236.<sup>12</sup> The Court found that those detained under section 235(b) may only be released through parole under INA § 212(d)(5)(A).<sup>13</sup> Practitioners also cited *Matter of M-S*,<sup>14</sup> in which the BIA relied on *Rodriguez* to find that those noncitizens transferred to full removal proceedings under INA § 240 from expedited removal proceedings following a

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<sup>8</sup> 28 I&N Dec. 388, 397 (BIA 2021).

<sup>9</sup> See also INA § 236(a)(3) (“The Attorney General . . . may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.”).

<sup>10</sup> Interloc. Dec. of the Immig. Judge, Jan. 4, 2021, [lexisnexis.com/legalnewsroom/immigration/b/insidenews/posts/miami-ij-cole-ror-is-parole](https://www.lexisnexis.com/legalnewsroom/immigration/b/insidenews/posts/miami-ij-cole-ror-is-parole).

<sup>11</sup> 138 S. Ct. 830 (2018).

<sup>12</sup> *Id.* at 838.

<sup>13</sup> *Id.* at 844.

<sup>14</sup> 27 I&N Dec. 509 (A.G. 2019).

favorable credible fear interview are detained pursuant to INA § 235(b)(1)(B)(ii) and may only be released under INA § 212(d)(5) parole. Accordingly, the practitioners in these cases argued, because their clients' detention was pursuant to INA § 235(b), their release from detention necessarily involved a parole under INA § 212(d)(5), and they thus qualified to apply for adjustment. Advocates are encouraged in cases where their clients have been released from DHS custody, therefore, to review the circumstances under which their clients were released and, where the facts permit, consider arguing that the client's release was through parole under INA § 212(d)(5).

In an encouraging move, USCIS announced<sup>15</sup> on Feb. 23, 2022, that it would implement a new process for certain Cubans previously denied adjustment under the Cuban Adjustment Act. These Cubans had been denied based solely on a determination that they did not meet their burden of establishing that they had been admitted or paroled. The new process would allow some of them to reopen their cases or reapply for adjustment of status. In its notice, USCIS indicated that this new process is available for certain "arriving alien" natives or citizens of Cuba who were detained by DHS pending INA § 240 proceedings and released prior to the entry of a removal order. The new process would be available to those who applied for and were denied their Form I-485 solely on the basis that they did not establish they had been paroled. Those applicants can follow the process outlined by USCIS in the notice to either re-apply for adjustment or file a motion to reopen on Form I-290B. This notice appears to indicate a welcome shift in USCIS policy, at least in limited CAA cases, towards an acceptance of the *Jennings v. Rodriguez* decision. That decision treated releases of "arriving aliens" from DHS custody under INA § 235 as being a form of parole under INA § 212(d)(5). It must be stressed, however, that the February 2022 alert pertains to a limited set of Cubans designated "arriving aliens" in applying for adjustment under the CAA. Feedback from practitioners in the field suggests that USCIS is unwilling to extend this interpretation to individuals seeking employment authorization pursuant to 8 CFR § 247a.12(c)(11) based on having been paroled in this manner. In addition, USCIS appears unwilling at this time to consider CAA adjustment for those released from DHS custody after having entered without inspection.

### **Can I seek INA § 212(d)(5) parole for my "arriving alien" client seeking asylum?**

With respect to individuals found to be "arriving aliens" seeking asylum, ICE issued a policy directive in 2009 establishing procedures by which the agency issues INA § 212(d)(5) parole on a case-by-case basis (the "Parole Directive").<sup>16</sup> The Parole Directive provides that, absent

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<sup>15</sup> USCIS, "Notice for Certain Natives or Citizens of Cuba Who Are "Arriving Aliens" and Who Were Denied Adjustment of Status Under The Cuban Adjustment Act Based Solely on a Determination That They Had Not Met Their Burden of Establishing That They Had Been Admitted or Paroled," [uscis.gov/sites/default/files/document/notices/USCIS\\_CAA\\_AA\\_485\\_Denied\\_NoParole\\_Process-Feb232022.pdf](https://uscis.gov/sites/default/files/document/notices/USCIS_CAA_AA_485_Denied_NoParole_Process-Feb232022.pdf) (Feb. 23, 2022).

<sup>16</sup> *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture*, U.S. Immigration and Customs Enforcement, 2009, [ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](https://ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf).

“exceptional overriding factors,” an asylum seeker who has established a credible fear of persecution should be granted parole in the “public interest” and released from detention while pursuing his or her asylum claim if the individual: (a) establishes his or her identity to the satisfaction of DHS; and (b) presents neither a flight risk nor danger to the community.<sup>17</sup> ICE officers are directed to provide information regarding parole to asylum seekers, interview them to determine eligibility for parole, and complete a Record of Determination/Parole Determination Worksheet.<sup>18</sup> Evidence one should consider submitting in support of a request for parole includes:

- Letters of support from friends and family in the United States about reliability, likelihood of attending court hearings, and lack of criminal record or behavior;
- Documents showing the asylum seeker’s identity; and
- Documents showing that the asylum seeker has a sponsor in the United States who can support the asylum seeker financially and in the asylum seeker’s immigration case.

DHS and DOJ further formalized this policy in 2022 by issuing, as part of new regulations governing the processing of asylum applicants at the border, a provision regarding certain asylum seekers processed under those regulations and their release on parole. See 8 CFR §§ 235.3(b)(2)(iii) and 235.3(b)(4)(ii) for further information.

## II. Humanitarian Parole

### What is humanitarian parole?

Humanitarian parole is a form of parole that allows individuals outside of the United States to enter the United States for urgent humanitarian reasons, such as to receive medical treatment or for family reunification purposes.

The 2008 MOA between USCIS, ICE, and CBP confirms that “DHS bureaus have generally considered ‘humanitarian’ paroles (HPs) to relate to urgent medical, family, and related needs.”<sup>19</sup> If an applicant is at a port of entry, CBP can grant humanitarian parole. ICE has jurisdiction to consider parole applications by individuals who are currently in removal proceedings or have been previously removed. USCIS considers all other humanitarian parole applications.

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During the Trump administration, grants of parole to asylum seekers were severely curtailed and various lawsuits were filed, leading to injunctions ordering ICE offices to resume consideration of parole requests on an individualized, case-by-case basis. It remains to be seen how the Biden administration will approach this issue or whether it will continue to defend these lawsuits.

<sup>17</sup> *Id.* ¶ 6.2.

<sup>18</sup> *Id.* ¶¶ 8.1-8.2.

<sup>19</sup> 2008 MOA, *supra* note 1.

## Who may request humanitarian parole through USCIS?

According to the USCIS website, “anyone may request parole for him or herself, or on behalf of another individual, by filing Form I-131, Application for Travel Document.”<sup>20</sup> An applicant may submit the application to request parole on behalf of an individual who is outside the United States. It is also possible to submit a self-petition for parole. Nothing requires the applicant to be a resident of the United States or related to the beneficiary.

## What are bases for seeking humanitarian parole?

Common bases for humanitarian parole include:

- **Medical reasons**, including **medical treatment** in the United States. A beneficiary may be granted humanitarian parole in order to serve as an **organ donor** in the United States. A request for humanitarian parole can also be based on the need to **care for a seriously ill or terminally ill family member** in the United States.
- **Family reasons, including reuniting with family for urgent humanitarian reasons, attending a funeral, or settling the affairs of a deceased relative.** USCIS may grant humanitarian parole if the family member outside the United States is particularly vulnerable based on age, disability or living circumstances. USCIS may also consider parole for a same-sex partner or children of a same-sex partner as a family member, particularly if the couple comes from a country where same-sex marriage is not recognized.

## Is it necessary to show a visa denial before applying for humanitarian parole?

In many cases, it is advisable to show attempts made to secure a nonimmigrant or immigrant visa to travel to the United States, particularly when there is a visa category that is appropriate for the applicant’s intended trip to the United States. USCIS will typically require the applicant to document efforts made to obtain a nonimmigrant visa before applying for humanitarian parole.<sup>21</sup> This might include evidence of a denial letter from the Department of DOS or an indication that the Department of State has not agreed to expedite the request for a nonimmigrant visa. If the applicant for parole has immigrant intent (that is, they are coming to the United States with the intention of eventually adjusting status through a relative), that should be explained in the cover letter, as well as why no application for a nonimmigrant visa has been made.

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<sup>20</sup> U.S. Citizenship and Immigration Services, *Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States*, [uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states](https://uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states).

<sup>21</sup> *Id.*

## **Is a sponsor required for a humanitarian parole request?**

Typically, USCIS will require evidence of a sponsor who can provide financial support to the parolee in the United States.<sup>22</sup> Lack of evidence of financial support while in the United States is a strong negative factor that may lead to a denial of parole. The sponsor should typically agree to provide financial support to the beneficiary during the duration of parole, submit Form I-134, Declaration of Financial Support, and document his or her financial resources. While there is no absolute requirement that the sponsor be a U.S. citizen or lawful permanent resident (LPR), USCIS states that an LPR or U.S. citizen “may more readily be able to establish the ability to support the parolee in the United States.”<sup>23</sup> Therefore, identifying a U.S. citizen or LPR sponsor is advisable in most cases.

It is possible in some cases for the sponsor and the applicant for parole to be the same person. Self-petitioners for parole, however, should typically identify a separate financial sponsor.

## **What financial documentation should the sponsor submit with the I-134?**

The sponsor should submit proof of his or her immigration status and evidence of sufficient income and resources, such as pay stubs, a copy of the most recent year of tax returns, or a letter from the sponsor’s employer. The I-134 is generally not considered to be legally enforceable. As such, the government is given broad discretion in determining when to require it and what supporting documents should be included.<sup>24</sup>

## **Is it possible to have multiple sponsors for the I-134?**

The applicant can submit affidavits of support from two sponsors if, standing alone, each affidavit would be found insufficient.

USCIS may also accept proof that a nonprofit organization or medical institution is committed to providing financial support to the parolee for the duration of the person’s stay in the United States. The organizational director may complete the I-134 on behalf of the organization, or provide a letter on behalf of the organization outlining the commitment to providing financial support to the parolee.<sup>25</sup>

## **What is the process for requesting humanitarian parole with USCIS?**

Practitioners are directed to the USCIS website to review the most current guidelines on filing a parole request.<sup>26</sup> At the time of this advisory’s publication, the applicant must file the parole

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Wheeler, C., *Public Charge and Affidavits of Support: A Practitioner’s Guide 2d Ed.*, p. 245 (American Immigration Lawyers Association, 2020).

<sup>25</sup> U.S. Citizenship and Immigration Services, *Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States*, [uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states](https://uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states) (last updated Sept. 9, 2022)

<sup>26</sup> *Id.*

request with the USCIS Dallas Lockbox. The Lockbox then forwards the parole request to USCIS International and Refugee Affairs Division in Washington, DC for review and issuance of a decision. A sample cover letter requesting humanitarian parole is included in an appendix to this practice advisory.

### **How do I file an application for humanitarian parole for an individual with a removal order or in removal proceedings?**

ICE has jurisdiction to adjudicate these requests based on the 2008 MOA between USCIS, CBP, and ICE. However, the instructions on the USCIS website state that the request is initially filed with the USCIS Dallas Lockbox. USCIS then forwards these applications to ICE.

### **Is it possible to expedite an application for humanitarian parole?**

According to USCIS, all humanitarian parole requests are reviewed for urgency upon their arrival. Those seeking expedited consideration of their request should write the word “expedite” in capital letters and black ink in the top right-hand corner of the Form I-131 application. The petitioner should also provide an email address, phone number, and fax number for the petitioner or representative with any expedite request, including a detailed explanation of the reason for the expedite request together with any available supporting documentation.

### **What is the normal processing time for a request for humanitarian parole?**

USCIS indicates on its website that it strives to process humanitarian parole requests, as well as re-parole requests, within three months.<sup>27</sup> However, many parole applications are taking much longer than three months, given the sharp increase in filings of humanitarian parole applications in 2021 and 2022 for Afghan nationals.<sup>28</sup>

### **What if the application for humanitarian parole is denied?**

If denied, USCIS will notify the applicant, intending parolee, and representative of record. There is no appeal of a denied I-131. An applicant may always re-file a request if significant new facts emerge. There is no limitation on the number of parole requests that can be submitted by a particular applicant.

### **What if the application for humanitarian parole is approved?**

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<sup>27</sup> The USCIS case processing tool does not specifically list humanitarian parole applications. However, the USCIS website on Humanitarian and Significant Public Benefit Parole currently indicates a three-month processing timeframe. *Id.*

<sup>28</sup> All USCIS Application and Petition Form Types (Fiscal Year 2022, 3rd Quarter, Apr. 1 - Jun. 30, 2022) [https://www.uscis.gov/sites/default/files/document/data/Quarterly All Forms FY2022 Q3.pdf](https://www.uscis.gov/sites/default/files/document/data/Quarterly%20All%20Forms%20FY2022%20Q3.pdf) (noting that there are more than 45,000 pending humanitarian parole applications for the third quarter in Fiscal Year 2022).

If approved, USCIS notifies the applicant, intending parolee, attorney of record, and the U.S. consulate or embassy closest to the beneficiary's residence so that the beneficiary can obtain the travel document.

### **What is the length of validity of parole?**

Parole may be granted for a temporary time period to accomplish the purpose of parole. USCIS states, as an example, that if parole is authorized to attend a civil court proceeding, parole may be limited to the length of that proceeding. Parole is typically granted for no more than a year.<sup>29</sup>

Special parole programs may authorize the issuance of parole in multi-year increments. For more information on these special programs, see CLINIC's page, "Humanitarian and Country-Specific Parole."<sup>30</sup> If an extension of time is needed, the individual can seek re-parole from within the United States, as described below.

### **What is the process at the U.S. consulate overseas?**

Upon approval of the parole request, the approval notice will provide information about next steps. Typically, the approval notice will advise the applicant about the need to complete Form DS-160 and to appear in person at the nearest U.S. consulate for verification of identity.<sup>31</sup> Any applicant 14 years or older must provide biometrics. Assuming there are no security or criminal concerns, the consulate will issue a travel document for the applicant to travel within 30 days of issuance. At the port of entry, CBP will inspect the applicant and make the ultimate decision whether to parole the individual into the United States. CBP will issue an I-94 documenting the length of the parole period.

### **Can the parolee request a renewal of the humanitarian parole from within the United States?**

While technically parole cannot be "renewed," it is possible to request re-parole from within the United States for those granted humanitarian parole.<sup>32</sup> A person granted parole initially by USCIS should file a new Form I-131 and write "re-parole" across the top of the application. The form must include the fee or Form I-912 request for a fee waiver, and should include materials and evidence to support the request for re-parole. The request should be filed at least 90 days in advance of the expiration of the authorized parole period. As with an initial request for parole to USCIS, this request is submitted to the Dallas Lockbox. Parole granted under certain special parole programs established by the executive branch may require applicants for re-parole to follow specific procedures or submit specific evidence required under those

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<sup>29</sup> *Id.*

<sup>30</sup> [Humanitarian and Country-Specific Parole | Catholic Legal Immigration Network, Inc. \(CLINIC\) \(cliniclegal.org\)](#).

<sup>31</sup> *Id.*; see also Online Nonimmigrant Visa Application, Department of State, [ceac.state.gov/genniv/](https://ceac.state.gov/genniv/) (last visited July 21, 2021).

<sup>32</sup> *Supra* fn. 24.

programs. See Section III below, as well as our page, “Humanitarian and Country-Specific Parole,”<sup>33</sup> for more information.

### **Is it important for the parolee to maintain parole status after entering the United States?**

In order to be eligible for adjustment of status through a family-based preference category, the parolee must have always maintained lawful immigration status. If the parolee has ever let the status lapse, he or she would be barred from filing for adjustment due to INA § 245(c). However, the 245(c) adjustment bar does not apply to certain types of adjustment applicants, including immediate relatives or Cuban Adjustment Act applicants.

A lapse in parole status will make the parolee unable to timely renew employment authorization. The parolee will also begin accruing unlawful presence upon expiration of the parole document.<sup>34</sup>

### **What are some examples of instances when practitioners have reported success obtaining humanitarian parole?**

- Children of individuals immigrating to the United States for which there is no derivative category. Consider the following example:
  - Sarah and John were petitioned by their adult U.S. citizen son, Jim, who is 21 years old. Sarah and John also have a 10-year-old daughter, Andrea. Jim can file an I-130 petition on behalf of his sister Andrea, but there is currently a 15-year backlog in this category. In addition, the immediate relative category does not allow for derivatives, so Andrea cannot be included as part of her parents’ cases. However, Jim submits a humanitarian parole application on behalf of Andrea on Form I-131 and agrees to serve as her financial sponsor on Form I-134. In the humanitarian parole request, there is documentation that Andrea cannot remain in her home country without her parents because she has no other suitable caregiver and conditions there are dangerous. Therefore, the family requests humanitarian parole for reasons of family unity, which is granted. Once Sarah and John enter the United States as permanent residents, either or both can file an I-130 petition on behalf of Andrea in the F-2A category.
- For “derivatives of derivatives” coming to the United States in a long-term status, such as asylum status or U visa status. Consider the following examples.
  - Marie is granted asylum in the United States. Her 23-year-old daughter, Charlotte, is the beneficiary of an approved I-730 petition filed on her behalf by Marie when she was under the age of 21. Charlotte has a two-year-old daughter,

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<sup>33</sup> [Humanitarian and Country-Specific Parole | Catholic Legal Immigration Network, Inc. \(CLINIC\) \(cliniclegal.org\)](#).

<sup>34</sup> Donald Neufeld, Lori Scialabba, and Pearl Chang, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) (May 6, 2009).

Frances. Because there is no visa category for a derivative of a derivative asylee, Marie requests humanitarian parole on behalf of Frances and agrees to serve as her financial sponsor. The humanitarian parole request is approved, and Charlotte and Frances enter the United States together. After a year, Charlotte applies for and is granted adjustment of status, and she is then able to file an I-130 petition for her daughter. Assuming there has been no gap in Frances's parole status and there is a visa number available in the F-2A category, Frances may also file for adjustment of status.

- Miguelina is a 24-year-old derivative beneficiary of an I-918, Supplement A, visa petition filed on her behalf by her mother, Yesenia, the principal U visa applicant. Miguelina has a six-month-old baby, Sebastian. Miguelina is eligible for U-3 status as a derivative of her mother's approved petition. Since there is no category for Sebastian, the family seeks humanitarian parole for the child to be able to enter the United States with his mother, which is granted. Miguelina makes sure to file timely renewals of Sebastian's humanitarian parole. After holding U status for three years, Miguelina adjusts her status to an LPR and is able to file an I-130 petition on behalf of Sebastian.
- **Waitlisted U visa applicants:** A maximum of 10,000 U visas can be issued each year due to the statutory cap.<sup>35</sup> Individuals subject to the cap are placed on a waiting list for visa availability. The U visa regulations explicitly provide that individuals who have established eligibility for U nonimmigrant status who reside outside the United States should be granted parole to enter the United States while they await U visa eligibility.<sup>36</sup> However, there is no formal policy implementing these regulations. At the end of the Obama administration, USCIS agreed to create a policy to afford parole to waitlisted U visa applicants and their derivative family members.<sup>37</sup> However, this policy never went into effect. It remains to be seen whether the Biden administration will renew these efforts to create a designated parole program as provided by the regulations. Until then, waitlisted U visa applicants may seek humanitarian parole through the process described above.

### III. Special or Categorical Parole Programs

Over the years, the DHS and DOS have established special parole programs for certain classes of individuals in response to specific circumstances or humanitarian considerations. Some examples of categorical parole programs include the Haitian Family Reunification Parole program (HFRP), the Filipino World War II Veterans Parole program, and the Central American

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<sup>35</sup> INA § 214(p)(2).

<sup>36</sup> 8 CFR § 214.14(d)(2).

<sup>37</sup> Memo from Leon Rodriguez to Maria Odom, Response to Recommendations on Parole for Eligible U Visa Principal and Derivative Petitioners Residing Abroad, [uscis.gov/sites/default/files/document/legal-docs/USCIS Response to CISOMB U Parole Recommendations FINAL 09292016.pdf](https://uscis.gov/sites/default/files/document/legal-docs/USCIS%20Response%20to%20CISOMB%20U%20Parole%20Recommendations%20FINAL%2009292016.pdf) (Aug. 18, 2016).

Minor (CAM) parole program. There have also been a number of programs for Cubans throughout the years.

In 2022 and 2023, the Biden administration created a number of new categorical parole programs. On April 25, 2022, USCIS opened a new process, “Uniting for Ukraine,” which allows displaced Ukrainians outside the United States to apply for advance permission to travel to the United States and be paroled. More recently, the Department of Homeland Security (DHS) announced new parole programs for nationals of Cuba, Haiti, Nicaragua, and Venezuela who are seeking safe haven in the United States due to the conditions in their countries of origin. Because these programs are new and constantly changing, CLINIC has created separate resources on our website that explain these parole programs and may be updated as the programs change. Please consult the page, “Humanitarian and Country-Specific Parole,” on the CLINIC website for more information on these categorical parole programs.<sup>38</sup>

#### **IV. Parole at the Border**

##### **How does an individual apply for parole at a port of entry?**

CBP is authorized to issue parole at the port of entry under INA § 212(d)(5), which allows for parole for urgent humanitarian reasons or significant public benefit. If an individual presents himself or herself at a port of entry without a valid entry document, CBP can parole that individual into the United States pursuant to that statutory section. The authority to approve “port parole” is delegated to port management. The justification, as explained earlier, could include medical reasons, family reunification, or for other humanitarian bases. No Form I-131 is required to seek port parole. While CBP is authorized to collect a parole fee, it may also waive the fee in the interest of the government.<sup>39</sup> Practitioners report that CBP does not typically collect a fee for humanitarian parole issued at the border.

During the COVID-19 pandemic, both the Trump and Biden administrations relied on Title 42 of the U.S. Code, section 265 to prohibit the entry of individuals into the United States based on public health concerns. This section allows the Director of the Centers for Disease Control and Prevention (CDC) to prohibit the entry of individuals if they present a danger of introduction of a communicable disease.

In addition to the use of Title 42, the Trump administration established the “Migrant Protection Protocols (MPP),” which severely limited the entry of individuals arriving at the southern border and requesting asylum. Those arrivals were issued Notices to Appear and returned to Mexico

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<sup>38</sup> [Humanitarian and Country-Specific Parole | Catholic Legal Immigration Network, Inc. \(CLINIC\) \(cliniclegal.org\)](#).

<sup>39</sup> See CBP Memo, Port of Entry Paroles and Re-Paroles, AILA Doc. No. 19080111 (posted Aug. 1, 2019) (explaining that a parole fee may be waived).

with instructions to return to a specific port of entry at a time and date for their next hearing.<sup>40</sup> The Biden administration vowed to end MPP, and in its plans to do so, began to parole in many of those enrolled in the program by the previous DHS. In addition, although Title 42 resulted millions of denials of entry,<sup>41</sup> some individuals were granted humanitarian parole in limited circumstances at ports of entry based on compelling medical purposes or for family unity. More information about the history of these border enforcement programs can be found on our “Humanitarian and Country-Specific Parole” page.<sup>42</sup> In general, advocates should keep in mind that their clients, if previously part of the MPP or apprehended due to Title 42, may have been issued a parole. It is recommended that advocates conduct Freedom of Information Act requests (FOIAs) to learn more about the circumstances of their clients’ entries in these cases.

### **How do I seek humanitarian parole for a client through the border?**

At the time of this advisory’s publication, practitioners have reported extremely limited recent success with seeking humanitarian parole along the southern border. The process by these practitioners is to find a contact at CBP at the local port where the individual intends to seek parole into the United States. Practitioners report consulting with local counsel to determine the contact information for either CBP counsel or the port director in a particular location and submitting a humanitarian parole package over email or fax in advance of the individual actually presenting themselves at the border. In certain unique and compelling cases, it may also be advisable to contact CBP headquarters in advance of the individual seeking parole. This process involves significant advocacy to point out the unique vulnerabilities of the person seeking parole and the reasons that a grant of humanitarian parole is warranted. The processes governing humanitarian parole vary greatly from port-to-port and are subject to change on a near-daily basis. Affiliates who have a client in urgent need of humanitarian parole at the border may contact CLINIC at [national@cliniclegal.org](mailto:national@cliniclegal.org) for additional guidance.

### **What documents should be included in a humanitarian parole request made at the border?**

As with humanitarian parole requests made to USCIS, advocates should put together a compelling package explaining the reasons that a grant of parole is warranted. The package should typically include the following documentation:

- Form G-28.
- Memo from representative arguing for grant of parole.
- Photo ID of client(s).
- Birth or marriage certificates showing the family relationship, if a family unit.
- Declaration of individual seeking parole.

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<sup>40</sup> Migrant Protection Protocols, [dhs.gov/news/2019/01/24/migrant-protection-protocols](https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols) (archived content, Jan. 24, 2019)

<sup>41</sup> See FAQ: The End of Title 42 Expulsions, National Immigrant Justice Center, [immigrantjustice.org/staff/blog/faq-end-title-42-expulsions](https://immigrantjustice.org/staff/blog/faq-end-title-42-expulsions) (May 10, 2023).

<sup>42</sup> Humanitarian and Country-Specific Parole | Catholic Legal Immigration Network, Inc. (CLINIC) ([cliniclegal.org](https://cliniclegal.org)).

- Medical or psychological evaluation, if relevant.
- Country conditions evidence.
- Evidence of criminal history, if any.
- Letter from parole sponsor. CBP does not typically request Form I-134 at the border. However, it is advisable to document the parole applicant's financial support in the United States.
- Photo ID and proof of status in the United States for the sponsor.
- Financial documents for the sponsor, including most recent tax return and utility bill showing address.
- Any other supporting documentation to support a grant of parole.

### **Can an individual granted port parole seek an extension?**

Yes, it is possible for an individual granted humanitarian parole at the port of entry to seek an extension or "re-parole" through CBP. This can be done at any CBP deferred inspection office throughout the country; there is no need to return to the office at the port of entry that granted parole. CBP maintains a list of deferred inspection sites on its website and includes information about how to contact each site: [cbp.gov/contact/ports/deferred-inspection-sites](https://cbp.gov/contact/ports/deferred-inspection-sites).

Whether CBP is willing to grant an extension depends on the compelling evidence that is provided. The individual should be prepared to provide evidence of ongoing medical treatment or other supporting documentation. USCIS typically does not have jurisdiction to grant re-parole if the individual was initially paroled into the United States by CBP, although the agency has created some exceptions to this general rule, including for Afghans now seeking re-parole. As with an initial grant of humanitarian parole at the border, practitioners with experience in this area stress that obtaining re-parole with CBP is extremely challenging.

For individuals seeking to apply for asylum in the United States, applying for re-parole through CBP is likely not necessary. However, an individual wishing to preserve the ability to adjust status in a preference category must maintain a valid parole document, as explained earlier.

### **Can someone granted parole be detained by CBP when presenting themselves at the border?**

Before moving on to additional forms of parole, it is critically important to note as a reminder that CBP always conducts its own background checks and assessments of applicants for parole when they present themselves at the border after receiving grants of parole from USCIS and/or boarding foils from DOS. Should CBP have any concerns about national security or public safety, they may detain individuals and/or transfer individuals in removal proceedings to ICE for continued detention. Practitioners should comprehensively evaluate their clients' histories and advise them of the risks of detention associated with seeking parole in such circumstances.

## V. Significant Public Benefit Parole

### What is significant public benefit parole?

While there is no statutory or regulatory definition of “significant public benefit” as used in INA § 212(d)(5), DHS agencies have construed the phrase to describe two circumstances. The first is where an individual residing outside of the United States must enter temporarily to participate in a civil or criminal proceeding, typically as a testifying witness or confidential informant.<sup>43</sup> This type of parole is authorized for up to one year, and the applicant’s immediate family members can also be paroled if necessary.<sup>44</sup> There are other groups of individuals under this category, such as those whose parole is in the interest of national security or necessary to further intelligence efforts, but those are limited by statute and rare.<sup>45</sup> The second “significant public benefit parole” is available to entrepreneurs.

### What is the International Entrepreneur Parole Program?

The International Entrepreneur Parole (IEP) program was created by a final rule issued at the end of the Obama administration in January 2017.<sup>46</sup> Although DHS under the Trump administration issued a proposed rule eliminating the IEP regulations,<sup>47</sup> Biden-era DHS withdrew this proposed rule on May 11, 2021, stating that the regulations ensure that all avenues to come to the United States remain viable for “qualified entrepreneurs who would substantially benefit the United States by growing new businesses and creating new jobs for U.S. workers.”<sup>48</sup> Many are hopeful for an increase in adjudications and approvals of applications under this program, which during the Trump administration saw only 28 applications and one approval.<sup>49</sup>

Under the IEP, entrepreneurs with a substantial ownership interest in a newly formed start-up entity within the United States that brings the United States significant public benefit may be paroled to work for their start-up business. Three entrepreneurs per start-up entity may be paroled, and each paroled entrepreneur’s spouse and children are also eligible for parole. A

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<sup>43</sup> 2008 MOU, § 4(B)(4).

<sup>44</sup> “Tool Kit for Prosecutors,” US ICE, 24, 25, (April 2011) (ICE Toolkit), <https://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>.

<sup>45</sup> 2008 MOA, § 4(B)(4); 50 USC §403h.

<sup>46</sup> 82 Fed. Reg. 5238 (Jan. 17, 2017).

<sup>47</sup> 83 Fed. Reg. 24415 (May 29, 2018).

<sup>48</sup> 86 Fed. Reg. 25809 (May 11, 2021).

<sup>49</sup> “Immigration Parole,” Congressional Research Service, 8, (Oct. 15, 2020), [crsreports.congress.gov/product/pdf/R/R46570](https://crsreports.congress.gov/product/pdf/R/R46570).

grant of parole under this rule permits entrepreneurs and their families to remain in the United States up to 30 months. See the January 2017 Federal Register notice for more information.<sup>50</sup>

### **What is the application process for significant public benefit parole?**

Where an individual is necessary to assist in the prosecution or investigation of a criminal case, the federal, state, or local law enforcement agency seeking the cooperation of that individual must submit a request for parole to ICE. Federal law enforcement agencies email the parole application to the ICE Parole Unit, while state or local law enforcement agencies email the application to their local ICE HIS Parole Coordinator, which then forwards it to the ICE Parole Unit. The specific procedures and forms required are outlined in the ICE *Toolkit for Prosecutors*.

The process and forms used to apply for the IEP program also differ from those used for humanitarian or advance parole and are described on the USCIS website.<sup>51</sup> Instead of filing Form I-131, the entrepreneur must file Form I-941, Application for Entrepreneur Parole, with a filing fee of \$1,200 and biometrics fee of \$85. With the application, the entrepreneur should submit:

- A detailed description of his or her central and active role in the start-up entity, along with supporting evidence;
- Evidence of his or her ownership stake in the start-up entity;
- Evidence his or her company meets the definition of a start-up entity;
- Evidence his or her start-up entity has received a qualified investment, qualified award, or grant from a qualified investor or qualified governmental entity, or other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation, as applicable; and
- Evidence proving his or her identity.

Each immediate family member of the entrepreneur who seeks parole must submit an I-131, along with the \$575 filing fee and \$85 biometrics fee, if applicable. The family members must write "IER" in the margin in Part 2, "Application Type" of Form I-131. The family members must also submit evidence that they are an immediate family member of the entrepreneur, such as marriage or birth certificates, and that the entrepreneur either has an application for parole pending or granted. Evidence might include a copy of the entrepreneur's I-941, the I-797 approving the I-941 application, the I-512L, Authorization for Parole of an Alien into the United States, or the Form I-94 indicating the entrepreneur has been paroled.

Because the entrepreneur may only work for the start-up they helped to create, a separate I-765 is not required; proof of their employment authorization is simply their passport and I-94 indicating entrepreneur parole (PE-1). The spouse of an entrepreneur, once paroled into the

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<sup>50</sup> 82 Fed. Reg. 5238 (Jan. 17. 2017).

<sup>51</sup> [uscis.gov/humanitarian/humanitarian-parole/international-entrepreneur-parole](https://uscis.gov/humanitarian/humanitarian-parole/international-entrepreneur-parole).

United States, can apply for employment authorization on Form I-765. Children of the entrepreneur are not eligible for employment authorization under the IEP program. All forms, including the I-941, I-131 for immediate family members, and I-765 for spouses, are submitted to the USCIS Dallas Lockbox.

### **Can significant public benefit parole be renewed?**

As with other forms of parole, significant public benefit parole cannot be “renewed,” but IEP parolees can be re-paroled for a subsequent period of 30 months.<sup>52</sup> A parolee cooperating with law enforcement may be re-paroled for up to one year.<sup>53</sup> The sponsoring agency must submit a new packet 30 days prior to the expiration of the initial parole period.<sup>54</sup>

For the IEP program, USCIS includes the following evidence in their checklist for re-parole requests<sup>55</sup>:

- Evidence the applicant continues to meet the definition of entrepreneur;
- Evidence the entity continues to meet the definition of a start-up entity;
- Evidence the qualifying U.S. start-up entity has:
  - Received at least \$500,000 in qualifying investments, qualified government grants or awards, or a combination of such funding, during the initial parole period;
  - Created at least five qualified jobs with the start-up entity during the initial parole period;
  - Reached at least \$500,000 in annual revenue in the United States and averaged 20 percent in annual revenue growth during the initial parole period; or
  - Continued to show substantial potential for rapid growth and job creation based on other reliable and compelling evidence.

## **VI. Advance Parole**

### **What is advance parole?**

Advance parole is a special travel document issued by USCIS that allows certain non-citizens to travel internationally and return to the United States after a brief trip overseas. Advance parole is typically requested while the individual is inside the United States. Individuals who may qualify for advance parole include applicants for adjustment of status, applicants for asylum,

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<sup>52</sup> 82 Fed. Reg. 5238 (Jan. 17, 2017).

<sup>53</sup> ICE Toolkit, 24.

<sup>54</sup> *Id.*

<sup>55</sup> “I-941, Application for Entrepreneur Parole: Checklist of Required Initial Evidence,” [uscis.gov/i-941](https://uscis.gov/i-941) (last updated May 4, 2021).

and DACA recipients.<sup>56</sup> In addition, holders of humanitarian parole under section 212(d)(5) may apply for advance parole.

TPS holders may also apply for authorized travel overseas based on their TPS status but, in a change announced on July 1, 2022, they will no longer be granted advance parole. Rather, TPS recipients who travel and return with DHS authorization on or after July 1, 2022, must be inspected and admitted into TPS status, rather than paroled.<sup>57</sup>

### **What are the criteria to be granted advance parole?**

The eligibility criteria vary depending on the underlying basis for the advance parole request. Adjustment of status applicants are routinely granted advance parole as part of the application for permanent residency. TPS holders who apply for an authorized travel document are typically granted it as a matter of course as well. Adjustment applicants and TPS holders do not typically need to document the reason they wish to travel overseas.

Advance parole requests for DACA recipients are considered differently. For these applications, the agency requires that the DACA holder document humanitarian, educational, or employment purposes to be granted advance parole.

### **Does my client need to document the exact date and purposes of travel when applying for advance parole?**

An applicant applying for authorized travel based on adjustment of status or TPS typically does not need to document the exact date or purposes of travel. While the Form I-131 asks for the intended date of departure, it is acceptable either to estimate the date or write by hand “unknown.” Practitioners have reported success using either option; advance parole is typically granted in one-year increments.

Because DACA recipients have to document a specific humanitarian, education, or employment purpose for travel, they will be expected to state clearly the reasons for travel and the dates

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<sup>56</sup> On July 16, 2021, the U.S. District Court for the Southern District of Texas issued a decision in *State of Texas, et al., v. United States of America, et al.*, 1:18-CV-00068, (S.D. Texas July 16, 2021) (“Texas II”). The decision granted a permanent injunction prohibiting the government’s administration of DACA and the reimplementing of DACA without compliance with the Administrative Procedures Act but stayed the implementation of the order for those who had obtained DACA on or before July 16, 2021. The decision raises the question of whether the authority to grant advance parole based on DACA is lawful but does not specifically enjoin granting advance parole to those who currently hold DACA. USCIS has indicated it will continue to grant advance parole to those who currently hold DACA. On October 5, 2022, the Fifth Circuit affirmed the District Court’s judgment but remanded the matter for consideration of newly promulgated regulations. The Fifth Circuit left intact the stay of implementation of the order, essentially continuing the status quo of the District Court’s decision. *Texas v. United States*, --- F.4th --- - 2022 WL 5135501 (5th Cir. 2022).

<sup>57</sup> USCIS Policy Alert, “Temporary Protected Status and Eligibility for Adjustment of Status under Section 245(a) of the Immigration and Nationality Act,” PA-2022-16 (July 1, 2022), [uscis.gov/sites/default/files/document/policy-manual-updates/20220701-TPSAndAOS.pdf](https://uscis.gov/sites/default/files/document/policy-manual-updates/20220701-TPSAndAOS.pdf).

they wish to do so. A DACA holder will be granted advance parole for only such time as is necessary to complete the purpose of their travel.

### **How can I expedite the issuance of an advance parole travel document?**

In the event of an extremely urgent travel need, clients may call the USCIS Contact Center to request an in-person appointment to apply for an emergency advance parole document at a USCIS field office. Applicants must bring a completed I-131, filing fee, evidence to support the emergency travel request, and two passport-size photos. If the applicant has already filed the I-131 application and a need for expedited processing then arises, the same procedure is followed.

### **How can traveling on advance parole qualify an individual for adjustment of status?**

USCIS, in most cases, considers a return on advance parole to constitute being “inspected and admitted or paroled” for purposes of qualifying an individual for adjustment of status under INA § 245(a). Note that this primarily benefits those in the “immediate relative” category, which includes the spouse or children of U.S. citizens or the parents of adult U.S. citizens (21 years of age or older). Individuals immigrating through other family-based preference categories or through employment are still subject to the 245(c) bars to adjustment. In other words, they must show that they have always maintained lawful immigration status in the United States and have never worked without permission.

Special rules govern TPS holders who travel and return to the United States. TPS recipients who travel and return with DHS authorization on or after July 1, 2022, are considered “inspected and admitted” into the United States, unless they are found ineligible for admission under certain nonwaivable criminal, national security, and related grounds of inadmissibility described in INA § 244(c)(2)(A)(iii). Their return will meet the “inspected and admitted” requirement to adjust status under INA § 245, even if they initially entered without inspection before obtaining TPS. In most cases, USCIS will apply the July 1, 2022, policy retroactively and consider the TPS recipient “admitted,” “even if the policy or practice in place at the time the travel occurred instructed otherwise.”

CLINIC has a number of resources available on advance parole and adjustment, including a Practice Advisory on Adjustment of Status for TPS Beneficiaries, as well as a Practice Advisory on Advance Parole for DACA recipients. Citations for those resources are given in the “Legal Resources” section below.

## VII. Parole in Place

### What is parole in place?

“Parole in place” refers to a method by which USCIS can grant section 212(d)(5) parole to an individual who is already physically present in the United States. The benefits of being granted parole in place are the same as those for individuals who enter the United States on a parole travel document: eligibility for employment authorization and — for immediate relatives — to adjust status.

Since 2013, USCIS had adopted policies for parole in place for spouses, parents, sons or daughters of certain military personnel, veterans, and individuals seeking to enlist in the U.S. military. In the absence of a criminal conviction or other adverse factors, USCIS will generally grant parole in place to certain relatives of military personnel and veterans.<sup>58</sup>

In 2021, under the guidance of the Interagency Task Force on the Reunification of Families, DHS created a parole program for families separated by the “Zero Tolerance” policy in place under the former administration, which included a parole in place option for those family members within the United States. You can learn more about that program from our FAQ on Family Separation and Parole on our page, “Humanitarian and Country-Specific Parole.”<sup>59</sup>

### Who qualifies for military parole in place?

In order to qualify for military parole in place, the applicant must show the following:

1. He or she is the spouse, parent, son, or daughter of a “qualifying military personnel.” This term includes being an Active Duty member of the U.S. Armed Forces, in the Selected Reserve of the Ready Reserve, or an individual who (whether still living or deceased) previously served on active duty in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve. In order for the applicant to qualify for parole in place, the military family member must not have received a dishonorable discharge.
2. The applicant for parole in place has not previously been admitted<sup>60</sup>.
3. There are no adverse discretionary factors or serious criminal convictions.

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<sup>58</sup> U.S. Citizenship and Immigration Services, Discretionary Options for Military Members, Enlistees, and their Families, [uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families](https://uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families) (last updated Apr. 12, 2021); Adjudicator’s Field Manual Chapter 21.1(c)(1).

<sup>59</sup> [Humanitarian and Country-Specific Parole | Catholic Legal Immigration Network, Inc. \(CLINIC\) \(cliniclegal.org\)](https://www.cliniclegal.org/humanitarian-and-country-specific-parole).

<sup>60</sup> An applicant for parole in place who has previously been admitted may qualify for deferred action instead.

## What is the application process for military parole in place?

The parole in place applicant should submit the application to the USCIS district office having jurisdiction over his or her place of residence. A sample cover letter for parole in place application is included in the appendix. The request should be accompanied by the following documentation, as provided by the USCIS website:<sup>61</sup>

- Completed Form I-131 (without fee). The applicant must handwrite “Military PIP” in Part 2 instead of checking a box.
- Evidence of the family relationship, such as:
  - Marriage certificate.
  - Documentation of termination of previous marriage.
  - Son or daughter’s birth certificate.
  - Military member’s birth certificate with parent’s name.
  - Proof of enrollment in the Defense Enrollment Eligibility Reporting System (DEERS).
- Evidence that the applicant is a current or former member of the U.S. armed forces, such as a photocopy of the front and back of the service member’s military identification card or DD Form 214.
- Two identical, color passport-style photographs.
- Evidence of any additional favorable discretionary factors that the applicant would like USCIS to consider.

Some local offices prefer to receive the parole-in-place applications through the mail, while others prefer to receive the application at an in-person appointment. If an in-person appointment is required at the local office, practitioners may contact the USCIS contact center at 1-800-375-5283 and ask to make an appointment for the local filing of an application for parole in place.

## Is the filing of an I-130 petition or I-360 self-petition required before the applicant can be granted military parole in place?

For the initial parole in place application, there is no requirement that an immigrant visa petition be filed prior to applying for parole in place. If the applicant is applying for re-parole and if the military family member is eligible to file an I-130 petition, or if the individual is a surviving relative of a deceased military member, USCIS policy is typically to request the filing of the I-130 or I-360 petition before granting the re-parole. However, there is no requirement that the I-130 petition be approved. Individuals who are ineligible to file a Form I-130 or a Form I-

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<sup>61</sup> *Supra* fn 82.

360 are not required to do so; they may still request parole in place or deferred action, as applicable.

### **My client is subject to the permanent bar. Is she still eligible for military parole in place?**

The weight given to the applicant's immigration violations may vary from office to office. Some local offices ask for a list of applicants' entries into and exits from the United States. These offices take the position that a grant of parole in place is intended to set the client on the path towards permanent residency, and if the applicants cannot show that they are eligible for adjustment of status, they will not grant parole in place. Other offices have granted parole in place even to those subject to the permanent bar. They may require the filing of an I-130 petition prior to granting a subsequent renewal of parole in place.

There are benefits to being granted parole in place, even to those applicants who cannot adjust status. These benefits include the ability to obtain employment authorization, which in turn allows them to obtain a social security number. There is nothing in the Adjudicator's Field Manual or the DHS memo on parole in place to suggest that being subject to the permanent bar should be an automatic bar to a grant of parole in place, or that an eventual adjustment of status is required.<sup>62</sup>

A practitioner who encounters a client with a qualifying military family member who cannot adjust status may consider applying for deferred action for their client instead of parole in place. A deferred action application is also made through the local office and requires similar documentation. The advantage of deferred action is that it is granted in two-year increments instead of one-year, so recipients may find it easier to maintain an employment authorization document.<sup>63</sup>

## **VIII. Parole From Detention Following a Removal Order**

### **When are individuals released from detention following a removal order?**

Individuals with "administratively final" orders of removal may be detained under INA § 241 for an initial "removal period" of 90 days following the date the removal becomes administratively final, with extensions permitted.<sup>64</sup> If ICE does not execute the removal order within the removal period, ICE may release individuals under certain circumstances and conditions pursuant to INA § 241(a)(6). Individuals falling within this provision may be released after the removal period if they demonstrate that they do not present a public safety or flight risk pending their removal

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<sup>62</sup> Adjudicator's Field Manual Chapter 21.1(c)(1); Secretary of Homeland Security Memorandum, *Families of U.S. Armed Forces Members and Enlistees* (Nov. 20, 2014), [dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_parole\\_in\\_place.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf).

<sup>63</sup> Adjudicator's Field Manual Chapter 21.1(c)(2).

<sup>64</sup> INA § 241(a)(2); *see also* 8 CFR § 241.3(a).

from the United States.<sup>65</sup> Individuals may also be released where they have shown that there is no significant likelihood that their country of removal or a third country will accept them in the reasonably foreseeable future, absent “special circumstances” justifying continued detention.<sup>66</sup> Countries that refuse to accept their citizens after they have been ordered removed have included Cuba, Iran, China, Laos, and Vietnam, among others, though this list is subject to change.<sup>67</sup> To learn more about requesting release from detention after a removal order is administratively final, see CLINIC’s practitioner’s guide, *A Guide to Obtaining Release from Detention*.<sup>68</sup>

### **Is this post-removal order release parole?**

The language in INA § 241(a)(6) states: “An alien ordered removed . . . *if released*, shall be subject to the terms of supervision in paragraph (3).” The regulations governing such supervised release are at 8 CFR §§ 241.4, 241.5, 241.13, and 241.14. Thus, individuals with final orders of removal who cannot return to their country of origin due to its refusal to repatriate citizens from the United States with removal orders, or because removal is otherwise impracticable or contrary to the public interest, often are released on orders of supervision pursuant to INA § 241(a)(6), and they are eligible for employment authorization pursuant to 8 CFR § 274a.12(c)(18). Despite these temporary benefits, this release is distinct from and cannot be considered “parole” for any future adjustment or re-adjustment eligibility.

## **IX. Work Authorization For Parolees**

### **Are parolees eligible for work authorization?**

The regulations provide for the issuance of an employment authorization document (EAD) for those individuals granted section 212(d)(5) parole. However, an individual in expedited removal under INA 235(b)(1)(A) or in expedited removal who has a pending credible fear determination under 8 CFR 208.30 is not eligible for an initial EAD under the (c)(11) eligibility category.<sup>69</sup>

Most noncitizens must be in possession of a valid EAD in order to work lawfully in the United States. There are two important exceptions to this general rule. As of November 21, 2022, Ukrainian and Afghan parolees can work for up to 90 days in the United States without having

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<sup>65</sup> 8 CFR § 241.4(d)(1).

<sup>66</sup> 8 CFR 241.13(a)

<sup>67</sup> “Immigration: “Recalcitrant” Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals,” Congressional Research Service, 1, (Jan. 23, 2020), [fas.org/sgp/crs/homesec/IF11025.pdf](https://fas.org/sgp/crs/homesec/IF11025.pdf).

<sup>68</sup>This resource can be accessed on CLINIC’s website [cliniclegal.org/resources/enforcement-and-detention/practitioners-guide-obtaining-release-immigration-detention](https://cliniclegal.org/resources/enforcement-and-detention/practitioners-guide-obtaining-release-immigration-detention).

<sup>69</sup> 8 CFR § 235.3(b)(4)(ii).

an EAD.<sup>70</sup> For these parolees, their unexpired Form I-94 is an acceptable receipt they may present to their employer to show their identity and employment authorization for I-9 employment verification purposes. This policy allows Ukrainian and Afghan parolees to begin working while waiting for USCIS to approve their Form I-765, Application for Employment Authorization. After 90 days, these parolees must present additional documentation to show their valid employment authorization, including an EAD or an unrestricted social security card and List B document.

### **Can an individual with a pending application for parole (such as parole in place) apply for work authorization?**

No, the regulations do not provide for the issuance of employment authorization while a parole application is pending. The parole must actually have been granted in order to apply for an EAD.

### **Can an individual file a work authorization request online?**

Yes, individuals seeking employment authorization based on a grant of parole may file electronically.<sup>71</sup> Certain individuals, including Afghan and Ukrainian parolees, are exempt from payment of the filing fee. However, those seeking a fee waiver must file through the mail, as USCIS cannot process fee waiver requests electronically at this time.

### **What documents are needed to submit an application for work authorization for a parolee?**

In order to file an application for employment authorization based on a grant of parole, the applicant must submit the following documentation:

- G-28 and Form I-765, Application for Employment Authorization. The relevant employment authorization category is (c)(11);
- Copy of Form I-94, passport, or other travel document showing a grant of section 212(d)(5) parole;
- Copy of government-issued ID (such as a passport), copy of visa, copy of national ID, or birth certificate plus photo ID;
- Two passport-style color photographs; and
- Filing Fee or Form I-912, Request for Fee Waiver.

### **How long is employment authorization based on a grant of parole valid?**

An EAD is valid for the length of the validity of the parole period. If a parolee is able to renew his or her parole, he or she may re-file an application for employment authorization.

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<sup>70</sup> See USCIS News Alert, *Certain Afghan and Ukrainian parolees Are Employment Authorized Incident to Parole*, <https://www.uscis.gov/newsroom/alerts/certain-afghan-and-ukrainian-parolees-are-employment-authorized-incident-to-parole>

<sup>71</sup> I-765, Application for Employment Authorization, <https://www.uscis.gov/i-765>.

Practitioners have reported delays in processing parole-based EAD applications. Given that the EAD is matched only to the validity of the parole period, this can make it very difficult for individuals granted a one-year parole to maintain valid employment authorization. Individuals granted multi-year parole pursuant to certain special programs like CAM or HFRP may find the parole EAD provision more practically useful for their clients. Processes to apply for EADs and wait times for those EADs may vary depending on the special program the parole was granted under. See resources regarding the various special programs in effect on our “Humanitarian and Country-Specific Parole” page.<sup>72</sup>

### **What complications can arise for those paroled along the southern border?**

Obtaining a parole-based EAD for those who enter along the southern border can be particularly complicated. Individuals are often granted short durations of parole, perhaps lasting only a few months, which makes it practically impossible to obtain a work permit in a timely fashion. In addition, USCIS has recently been denying parole-based EADs to applicants who were also served with an NTA. The regulations state that service of the NTA terminates the period of parole.<sup>73</sup> While this regulation is not new, USCIS has relied on it more frequently in recent months to deny EADs even to those with facially valid parole-documents. However, practitioners should keep in mind that Afghans and Ukrainians paroled along the border may present an I-94 as proof of employment authorization for up to 90 days.

## **LEGAL RESOURCES FOR PAROLE**

### **Government Resources**

The USCIS website has the most up to date information on many of these policies and programs: [uscis.gov](https://uscis.gov).

The Policy Manual is the source of USCIS interpretation of the immigration laws, including eligibility for adjustment of status and employment authorization: [uscis.gov/policy-manual](https://uscis.gov/policy-manual).

### **CLINIC Resources**

CLINIC maintains a parole resource page with up-to-date information on many of these programs: [cliniclegal.org/issues/parole](https://cliniclegal.org/issues/parole).

Documents relating to parole requests for detained individuals can be found on CLINIC’s website: [cliniclegal.org/resources/enforcement-and-detention/practitioners-guide-obtaining-release-immigration-detention](https://cliniclegal.org/resources/enforcement-and-detention/practitioners-guide-obtaining-release-immigration-detention).

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<sup>72</sup> Frequently Asked Questions: EADs for Ukrainian Parolees, <https://cliniclegal.org/resources/frequently-asked-questions-eads-ukrainian-parolees>.

<sup>73</sup> 8 CFR § 212.5(e)(2)(i); See also *Matter of Arambula-Bravo*, 28 I&N Dec. 388 (BIA 2021). Note that based on *Arambula-Bravo*, there may be an argument that, where NTAs are served the same day as parole documents, the NTAs do not serve to terminate the parole. However, those arguments are unlikely to be successful in the context of EADs for short parole periods.

CLINIC has published a Practice Advisory on Adjustment of Status for TPS Beneficiaries: [cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/practice](https://www.cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/practice).

CLINIC has published FAQs on Advance Parole for DACA recipients: [cliniclegal.org/resources/humanitarian-relief/deferred-action-childhood-arrivals/advance-parole-faqs](https://www.cliniclegal.org/resources/humanitarian-relief/deferred-action-childhood-arrivals/advance-parole-faqs).

CLINIC has a practice advisory on Assisting Afghan Evacuees, which contains more specific guidance for those considering filing humanitarian parole requests for Afghan nationals: [cliniclegal.org/resources/humanitarian-relief/practice-advisory-assisting-afghan-evacuees](https://www.cliniclegal.org/resources/humanitarian-relief/practice-advisory-assisting-afghan-evacuees).