

CHAPTER ONE INTRODUCTION

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§ 1.1 What Is Parole?

Parole in U.S. immigration law describes various processes to allow entry or permission to remain in the United States to those who do not otherwise qualify for admission. The U.S. immigration system includes numerous types of visas and ways to gain status in the United States, all with strict eligibility requirements and some with numerical limitations. In addition to the alphabet soup of different kinds of visas and immigration statuses, the Immigration and Nationality Act has a catch-all phrase authorizing the U.S. government to “parole” people in, or to allow people to enter the United States who would not otherwise have a means to obtain a visa to enter. The parole authority is broad, and the government has exercised this parole power in different ways to address different groups of people—allowing some to enter the United States, some to return to the United States, and some simply to remain in the United States. These different programs and policies are all types of parole and derive from the same statutory authority.

Throughout history, our government has paroled into the United States various groups of people in need of humanitarian protection in what can be categorized broadly as “humanitarian parole.” Traditional humanitarian parole allows someone to enter the United States who does not otherwise qualify for a visa. In this vein, our government has paroled into the United States refugees, orphans, people in need of medical care, and people with family emergencies.

Some parole policies allow a person to leave the United States and return; this is referred to as “advance parole.” Through advance parole, a person is granted permission to leave the United States and re-enter under “parole” to resume an application or status they had prior to their departure. This process is used by adjustment applicants, Deferred Action for Childhood Arrivals (DACA) recipients, and others¹ to travel outside the United States and be permitted to return to

¹ Until recently TPS recipients were also granted travel permission through advance parole. In July 2022, however, USCIS announced it will no longer use advance parole as the legal mechanism to authorize travel for TPS holders, and that upon return with a new, non-parole TPS travel document individuals will be “admitted” rather than “paroled.” See USCIS, *Policy Memorandum: Rescission of Matter of Z-R-Z-C- as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries*, (July 1, 2022),

resume their applications or statuses, even if they are without other documents permitting their admission.

Additionally, USCIS will also grant parole for some people already within the United States who have not yet been admitted, referred to as “parole-in-place.” Those who have entered without inspection can be granted “parole-in-place” while in the United States because they have not yet been “admitted” to the United States by immigration officials. This policy is most commonly used for certain family members of current or former members of the military.

§ 1.2 The Parole Power: One Little Statutory Provision, Lots of Parole

The current legal authority for the Department of Homeland Security’s (DHS) parole power is a provision within the Immigration and Nationality Act (INA) at § 212(d)(5)(A) which permits the Attorney General, at their discretion, to “parole” any noncitizen into the United States “temporarily under such conditions as [they] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”² This one provision in the INA is the basis for the entire system of parole as it operates today. These few words do not offer much guidance for advocates as to how and when to apply for parole, but this also means that there are very few statutory restrictions on what parole could cover.

The current parole provision was enacted with the passage of the Illegal Immigration Reform and Responsibility Act (IIRIRA) of 1996. The parole power, however, has been used by the government for over sixty-five years. The Immigration and Nationality Act of 1952 first codified the concept of parole for individuals based on humanitarian and public interest reasons. The most significant change to this statutory provision since that time is the additional language requiring parole be granted on a “case-by-case” basis. Implementing regulations to the INA delineated the process of advance parole for people already within the United States, seeking to depart and return to resume pending applications and other non-permanent status. In 1998, the legal authority for granting parole-in-place was formally recognized by the former Immigration and Naturalization Service (INS) General Counsel in a 1998 opinion.³ While parole policy has undergone many changes since Congress enacted the initial statutory provision in 1952, parole continues to be used to respond to humanitarian crises, unify families, and allow freedom of travel for those with pending applications.

§ 1.3 Parole and the Concept of Admission

Parole is a form of entry specifically for people who might otherwise be inadmissible or have no means to immigrate or enter the United States legally. Parole is a way for our government to grant entry to a person without “admitting” them into the United States under our immigration laws.

<https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf>. For more information on TPS-authorized travel, see Chapter 2.

² INA § 212(d)(5)(A).

³ Memorandum from Paul W. Virtue, INS General Counsel, to INS Officials, “Authority to Parole Applicants for Admission Who are Not Also Arriving Aliens,” Legal Op. 98-10 (Aug. 21, 1998).

Being paroled into the United States thus does not count as a formal “admission” for immigration purposes,⁴ which has certain legal consequences.

A. Admission vs. entry

Current immigration law distinguishes entry from the legal process of admission.⁵ IIRIRA defined an admission as a “lawful entry” after an “inspection and authorization” by an immigration officer.⁶ Under this definition, a person may enter the United States, and be living within the United States, without having been legally admitted. People who enter the United States without inspection, for instance, have not been admitted. Those who are granted parole, although allowed into the United States, are by definition treated as if they are still at the border seeking “admission” under our immigration laws. Parole grants entry but does not count as a legal admission in immigration law.

Because parolees are treated as if they are still at the border, parolees are considered “arriving aliens.”⁷ Being an “arriving alien” and an applicant for admission has several implications for parolees in the United States. Parolees are still subject to the laws of admissibility, and in some cases have fewer legal protections than someone who was admitted to the United States. Being an arriving alien impacts whether DHS or the immigration courts have jurisdiction over aspects of the case, including custody, removal, and applications for adjustment of status. For more on these issues, see **Chapter 7**. While not a lawful admission, a parole entry may nonetheless meet the threshold requirement to adjust status under INA § 245(a), which requires the applicant have been “inspected and admitted **or paroled**.” This concept is discussed in detail in **Chapter 2**.

B. Parole is only available to those who have not been admitted

Parole may be granted to “any [noncitizen] applying for admission to the United States.”⁸ This means that someone who has already been “admitted” is not eligible for parole; this is one of the few limitations set by the statute on the parole authority. Anyone in the United States who has been lawfully admitted at a port of entry, such as on a tourist or work visa—even if such

⁴ See INA § 101(a)(13)(B) (“[A noncitizen] who is paroled under § 212(d)(5) or permitted to land temporarily as an alien crewman shall not be considered to have been admitted”); see also *Leng May Ma v. Barber*, 357 U.S. 185, 186 (1958) (“We conclude that petitioner’s parole did not alter her status as an excluded [noncitizen] or otherwise bring her ‘within the United States’ in the meaning of § 243(h).”).

⁵ INA § 101(a)(13)(A) defines admission as “the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer.”

⁶ INA § 101(a)(13)(A).

⁷ 8 CFR § 1001.1(q) (“The term arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or [a noncitizen] seeking transit through the United States at a port-of-entry, or [a noncitizen] interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to § 212(d)(5) of the Act, and even after any such parole is terminated or revoked.”). Please note the ILRC recognizes that the word “alien” is dehumanizing and seeks to use more respectful language to refer to immigrants whenever possible. However, because statutes, caselaw, and agency guidance use the term “arriving alien,” we are using the legal terminology here for instructional purposes only.

⁸ INA § 212(d)(5)(A).

authorized stay has now expired—will not be able to apply for parole while still in the United States because they are no longer considered to be applying for admission.⁹ Practically speaking, this limitation impacts only those who are already present in the United States after an admission and hope that parole could extend their stay. Unfortunately, parole is not an option for this group of people.

Example: Jorge entered on a tourist visa and stayed after his visa expired. His husband, Jay, is a U.S. citizen in the Navy. Jorge cannot get parole-in-place because he entered with a visa and has already been admitted. (Nonetheless, Jorge might be able to adjust status because he was initially inspected and admitted.)

An interesting technical exception to this is advance parole. Advance parole is routinely granted for people who are applicants to adjust status. Many of these people have been previously admitted (in fact, an admission or parole is required for adjustment under INA § 245(a)). For instance, while Jorge in the example above may not be eligible for humanitarian parole or parole-in-place as someone who has been admitted with a visa, he is not barred from applying for advance parole if otherwise eligible. If he applies to adjust status through his U.S. citizen husband, he can also apply for advance parole based on having a pending adjustment application. This extends to others eligible for advance parole as well, such as DACA applicants who may have previous admissions.

C. A parolee seeking entry and the grounds of inadmissibility

Although a parolee does not need to be admissible, Customs and Border Protection (CBP) has discretion to screen for the grounds of inadmissibility at the border. This is at odds with the actual nature of parole, which is a means of lawful entry that is *not* an admission and is often specifically granted to people who are otherwise inadmissible. Arguably, a parolee should be allowed in even if a ground of inadmissibility applies, because a parole entry is not an admission. Nonetheless, immigrants seeking parole should know that CBP still screens these applicants and can exercise discretion to deny entry. See **Chapter 7** for more information about the risks of traveling or entering with parole.

§ 1.4 Distinguishing Conditional Parole from Custody

Under INA § 236(a), a person may be paroled out of custody to pursue their case in immigration court or to provide testimony as a material witness. Both Immigration and Customs Enforcement (ICE) and an immigration judge have the power to grant conditional parole under this provision.¹⁰ This type of parole refers to the release from custody and is not the same as parole under INA § 212(d)(5)(A). As explained in detail later in this manual, parole under INA § 212(d)(5)(A) is considered permission to enter the United States. Although a parole entry is not an admission, someone who is granted parole pursuant to INA § 212(d)(5)(A) meets the threshold requirements to adjust status under INA § 245(a), which requires that the person be “inspected and admitted or *paroled*.” A conditional parole, authorizing the release from custody pursuant to INA

⁹ INA § 101(a)(13).

¹⁰ INA § 236(a)(2)(B); *Rivera v. Holder*, 307 F.R.D. 539 (W.D. Wash. 2015).

§ 236(a)(2)(B), has traditionally been considered not to constitute a “parole” entry for purposes of INA § 245(a) and thus does not qualify someone for adjustment.¹¹

However, advocates have been successful in at least one jurisdiction arguing that conditional parole still constitutes parole under INA § 212(d)(5).¹² The argument is that U.S. immigration law provides agencies can detain certain individuals seeking admission into the country pursuant to INA § 235(b), instead of INA § 236. In *Jennings v. Rodriguez*, the U.S. Supreme Court found that individuals detained under INA § 235(b) can only be released through parole under INA § 212(d)(5)(A).¹³ Thus, these individuals’ parole release from custody was pursuant to INA § 212(d)(5), like humanitarian parole or other INA § 212(d)(5) parole, and qualified as a “parole” for purposes of adjustment of status.¹⁴

Furthermore, practitioners argue that noncitizens transferred to full removal proceedings from expedited removal proceedings after a credible fear interview are detained under INA § 235(b)(1)(B)(ii), so these individuals also can only be released under INA § 212(d)(5).¹⁵

Practitioners should check how their clients are released from DHS custody to assess whether they might have an argument they were paroled for purposes of adjustment.

Example: Declan presented himself at the border with a request for humanitarian parole. Although he did not have a visa, Declan asked that he be allowed in to help his U.S. citizen sister after her husband died in a car accident. Declan had a full humanitarian parole packet prepared, and CBP paroled him into the United States to help his sister. If Declan later had a visa that allowed him to adjust status, his parole entry would allow him to do so under INA § 245(a).

§ 1.5 The Power of Parole

With the right advocacy (and presidential administration), parole has the potential to become a more robust strategy to defend against deportation for those within the United States and to

¹¹ *Matter of Castillo-Padilla*, 25 I&N Dec. 257 (BIA 2010).

¹² ILRC credits CLINIC with publicizing these arguments. See CLINIC, *All About Parole* (Aug. 4, 2022), <https://cliniclegal.org/resources/parole/all-about-parole-practice-advisory>.

¹³ 138 S. Ct. 830 (2018). Note this decision is being appealed and is not currently binding but does provide possible arguments for parole.

¹⁴ See also 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*, (Feb. 23, 2022), https://www.uscis.gov/sites/default/files/document/notices/USCIS_CAA_AA_485_Denied_NoParole_Process-Feb232022.pdf. Some individuals who were released from custody at the border have successfully argued they must have been paroled under § 212(d)(5), since § 212(d)(5) parole is the only authority to release someone from detention under INA § 235 who is seeking admission, based on the reasoning in *Jennings*. For more information on this February 23, 2022 USCIS memo and this argument, see CLINIC, *USCIS Announces Policy Change Regarding Parole Status of Certain Cubans* (Mar. 29, 2022), <https://cliniclegal.org/resources/humanitarian-relief/uscis-announces-policy-change-regarding-parole-status-certain-cubans>.

¹⁵ *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

become a more accepted method to allow immigrants to enter the United States who do not have other means to do so.

Parole remains an important tool to unite families and protect foreign nationals during humanitarian crises. Additionally, parole can be an important step in long-term strategies to secure immigration status for foreign nationals and protect those within our borders from removal. The following chapters will discuss the various eligibility criteria for different parole programs and explore these various strategies. This book seeks to make parole, a unique immigration remedy, more accessible; it is important for us, as advocates and representatives of immigrants, to remember that parole is yet another means to advocate for our clients and their families.

In recent years, we have seen both the broad capacity to apply parole to novel and emerging situations,¹⁶ as well as how it can be stifled under an administration, such as the Trump administration, that is disinclined to help immigrants through a flexible use of parole. The Trump administration all but eliminated parole, ending certain group parole programs altogether and intensely scrutinizing individual parole applications. In contrast, the Biden administration attempted to initiate a parole program to provide protection to millions of undocumented individuals in the United States,¹⁷ reinstated many of the parole programs Trump ended, and created new parole programs to address humanitarian crises, such as the violence in Afghanistan, Ukraine, and Venezuela.¹⁸

Additionally, the right to travel should not be overlooked. Parole is one rare opportunity authorized by U.S. immigration law to allow those present without permanent status to travel outside the United States and return lawfully. Without parole, many immigrants are forced to decide whether living within the United States is worth forgoing the ability to travel internationally and to their home countries. While parole is not available to all immigrants within our borders, it can help many exercise their right to travel.

§ 1.6 What You'll Find Inside

This manual is intended as a practical guide to understand the various forms of parole, how to apply, and when to use them. This manual is designed for attorneys, advocates, paralegals, and

¹⁶ For example, USCIS announced fee-exempt parole applications to allow family members of victims of the tragic May 2022 Uvalde, Texas school shooting to come to the United States to attend family members' funerals and provide other assistance.

¹⁷ Congressional Research Service, *Build Back Better Act: Immigration Provisions* (Dec. 7, 2021).

¹⁸ See Chapter 5. Many were dismayed by the generosity of the parole program for Ukraine in comparison with the parole program for Afghanistan, noting a racial bias that continues to pervade our immigration laws and policies. *See, e.g.*, Margaret Stock, "Time to treat Afghan allies with the same respect as those fleeing Ukraine," *The Hill*, (Aug. 15, 2022) (Op-ed); Letter from Members of Congress to President Biden, Secretary Mayorkas, and Director Jaddou (May 26, 2022), https://www.markey.senate.gov/imo/media/doc/oversight_letter_redisparate_treatment_of_afghan_and_ukrainian_refugees.pdf; Michal Kranz, "Afghans in US immigration limbo watch Ukrainians breeze through," *Al Jazeera*, (July 20, 2022); Abigail Hauslohner, "Biden welcomes Ukrainian refugees, neglects Afghans, critics say," *The Washington Post*, (Apr. 28, 2022). However, on October 12, 2022, USCIS created a parole program for Venezuelans that more closely matches the Ukrainian parole program.

other staff at nonprofit organizations, government agencies, and other organizations who serve immigrant communities. Through this manual, we will guide you through the entire process of handling a parole case—from determining the eligibility criteria to filling out the forms. In addition to providing a thorough explanation of the requirements and process, this manual includes numerous sample materials in the appendices that may be helpful to you in putting together your client’s case.

Chapter 1 is an introduction to the concept of parole and to the contents of this manual.

Chapter 2 focuses on the concept of advance parole. This chapter details the various circumstances under which a person could apply for advance parole, to leave the United States and re-enter, including as an adjustment applicant, a TPS holder (prior to a recent policy change, discussed in this chapter, after which date TPS holders no longer use “advance parole” to travel and return), and in emergency situations. In this chapter you will find a discussion of the legal requirements, strategies, and considerations for persons seeking advance parole.

Chapter 3 explores the process and considerations for Deferred Action for Childhood Arrivals (DACA) recipients seeking advance parole. This chapter focuses on the unique requirements and considerations that apply to DACA advance parole applicants.

Chapter 4 provides an in-depth discussion of humanitarian parole for individuals outside the United States seeking entry. This chapter explores using humanitarian parole to obtain entry in a wide range of circumstances, including in emergency situations, for Violence Against Women Act (VAWA) cancellation of removal derivatives, for U visa and VAWA derivatives’ derivatives, for U visa applicants and their derivatives on the U nonimmigrant status waitlist, and other humanitarian reasons.

Chapter 5 explores specific humanitarian parole programs for certain immigrant groups. U.S. presidents have repeatedly used the parole authority to create specific programs to assist vulnerable populations or those facing unreasonable barriers to relief resulting from natural disasters, social and political upheaval, or significant limitations of the immigration system. These special programs, including programs for Cubans, Haitians, Filipino veterans, Central American children, entrepreneurs, Ukrainians, Afghans, and Venezuelans are discussed in this chapter.

Chapter 6 explains the policy of granting parole-in-place for those who are already within the United States. Current policies for granting parole-in-place focus on certain family members of military personnel and veterans. This chapter discusses this parole policy and its requirements in detail.

Chapter 7 highlights special considerations and risks for those traveling and seeking entry based on parole. This chapter covers the risks of traveling with crimes and other grounds of inadmissibility, in addition to legal considerations such as jurisdiction over certain applications and bond for parolees.

Parole policies are ever evolving. We therefore invite you to visit the Immigrant Legal Resource Center’s website at <https://www.ilrc.org/> for updates and to join our education listserv by subscribing at <https://www.ilrc.org/subscribe> to receive email messages about updates to this manual as well as in-person and webinar training opportunities related to parole.