



## The Use of Parole Under Immigration Law

Under U.S. immigration law, the Secretary of the Department of Homeland Security (DHS) has discretion to grant “parole” to certain noncitizens to allow them to enter or remain in the United States for specific reasons. Parole under immigration law is very different than in the criminal justice context. In the immigration context, parole facilitates certain individuals’ entry into and permission to temporarily remain in the United States. This overview explains how parole requests are considered, who may qualify, and what parole programs exist.

### What is Parole?

The Immigration and Nationality Act (INA) authorizes the Secretary of Homeland Security to exercise discretion to temporarily allow certain noncitizens to physically enter the United States if they are applying for admission but are either inadmissible or do not have a legal basis for being admitted to the United States.<sup>1</sup> DHS only grants parole if the agency determines that there are urgent humanitarian or significant public benefit reasons for a person to be in the United States and that person merits a favorable exercise of discretion. Grants of parole are made for limited periods of time to accomplish a discrete purpose, and individuals are typically expected to depart the United States when the authorized period expires.

While individuals who receive a grant of parole are granted entry into the United States, they are not provided an immigration status nor are they formally “admitted” into the United States for purposes of immigration law.<sup>2</sup> An admission occurs when an immigration officer allows a noncitizen to enter the United States pursuant to a visa or another entry document, without the limitation of parole. The distinction between an admission and a parole is a significant one under immigration law.

### Who Has Authority to Grant Parole?

The Secretary of Homeland Security has delegated parole authority to the three immigration agencies within DHS: U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE).<sup>3</sup>

USCIS adjudicates many of the parole requests made by individuals seeking to enter the United States for humanitarian reasons, while ICE typically handles parole requests related to court hearings or intelligence matters. CBP has authority to make parole decisions at ports-of-entry. For example, it will parole arriving noncitizens who are fleeing persecution and who wish to apply for asylum. It also may parole individuals for deferred inspection, which means that they permit an individual to enter the United States, but they schedule a subsequent interview to address unresolved issues about their admissibility.<sup>4</sup> ICE also has separate jurisdiction

over decisions whether to parole detained individuals out of ICE custody,<sup>5</sup> including those who establish a credible fear of persecution or torture,<sup>6</sup> but that exercise of parole authority is not discussed in this fact sheet.<sup>7</sup>

## **What is Humanitarian Parole?**

While humanitarian parole is explicitly authorized by the INA, there is no statutory or regulatory definition of an “urgent humanitarian reason.” USCIS has stated, however, that it will consider factors such as the time-sensitivity of the circumstances and the degree of suffering that may result if parole is not authorized.<sup>8</sup> According to USCIS, examples of urgent humanitarian circumstances could include, but are not limited to:

- Receiving critical medical treatment in the United States;
- Becoming an organ donor to an individual in the United States;
- Visiting or caring for a sick relative in the United States;
- Attending a funeral or settling the affairs of a deceased relative in the United States; or
- Coming to the United States for protection from targeted or individualized harm.<sup>9</sup>

## **What is Significant Public Benefit Parole?**

Immigration law also authorizes parole that would result in a “significant public benefit,” but like humanitarian parole, there is no statutory or regulatory definition of the term. Typically, this form of parole is used to allow noncitizens to appear for and participate in a civil or criminal legal proceeding in the United States.<sup>10</sup> Significant public benefit parole might be granted, for example, to allow a key witness with no legal means of entering the United States to be paroled into the country long enough to testify in a criminal prosecution for drug trafficking.

## **What is Advance Parole?**

Certain noncitizens who are **already** present in the United States, but wish to leave the country and return, can apply for advance parole. Advance parole constitutes permission from DHS to re-enter the United States after travel abroad. Importantly, however, the issuance of an advance parole document is not a guarantee that a person will be permitted to re-enter the United States when inspected at a port of entry upon their return.

Advance parole is commonly used when someone:

- Filed an application for adjustment of status, but has not received a decision from USCIS;
- Has a pending application for asylum or withholding of removal status and intends to depart temporarily to apply for a U.S. immigrant visa in Canada;

- Has an emergent personal or bona fide reason to travel temporarily abroad;<sup>11</sup> or
- Is a TPS recipient who seeks advance permission to travel abroad.<sup>12</sup>

### **What Factors Are Considered in Making a Parole Decision?**

Each DHS component has its own methodology for making parole decisions. Moreover, the factors to be considered will vary depending on the type of parole requested. In general, however, since parole is a discretionary benefit, all parole decisions will be made on a case-by-case basis, with the immigration officer considering the reason for the request and whether it constitutes a basis for parole, and then weighing the positive factors in the noncitizen's case against any negative factors. In deciding whether to favorably exercise discretion, the immigration officer evaluates a number of factors, including:<sup>13</sup>

- The reason for the parole request;
- Whether there is evidence of any criminal history or previous immigration violations;
- Whether there is evidence of any previous participation in fraud;
- Whether the noncitizen's presence would benefit a U.S. citizen or lawful permanent resident or community in the United States;
- Evidence of the noncitizen's character; or
- Whether there are other means available to the noncitizen to enter the United States for the stated parole purpose, such as a visa.

### **The Parole Process and How It Works**

- Parole is reviewed on a case-by-case basis by an agency under DHS, and the burden of proof is placed on the applicant to establish that parole should be authorized.<sup>14</sup>
- If parole is authorized, the agency authorizing parole will specify the duration parole may last, tailored to accomplish the purpose of the parole.<sup>15</sup>
- Parole ends on the date it is set to expire, when the beneficiary departs the United States, or when the individual acquires an immigration status.
- DHS may revoke parole at any time if it is no longer warranted or the beneficiary violates the conditions of the parole.<sup>16</sup>

## **Must an Applicant for Parole into the United States Have a Sponsor within the United States?**

Anyone may request parole into the United States from USCIS. The request may be submitted by the noncitizen or by another person on behalf of the noncitizen. With such requests, USCIS will require proof that the noncitizen will have a means of support while in the United States, often requiring that a parolee have a sponsor who agrees to provide financial support while the parolee is in the United States and for the duration of the parole authorization period.<sup>17</sup> An inability to provide evidence of financial support while in the United States may weigh heavily in the decision and lead to a denial of parole.<sup>18</sup> While there is no official requirement regarding a sponsor's immigration status, DHS may consider a sponsor who has a more permanent status in the United States more favorably, based on its assumption that such sponsors are more reliably able to provide financial support to the parolee.<sup>19</sup>

### **Special Parole Programs<sup>20</sup>**

In addition to the general parole process, DHS has established special parole programs designed to address the circumstances of certain populations. Nonetheless, even parole decisions under these programs are made on a case-by-case basis. DHS can end special parole programs when it determines that the program is no longer necessary. As of January 2018, the following special parole programs are in place:

#### **Cuban Family Reunification Parole Program (CFRP)**

- Established in 2007, the CFRP allows certain eligible U.S. citizens and lawful permanent residents who have filed a family-based immigrant petition for their family members in Cuba to seek parole for those family members while waiting for a visa to become available.<sup>21</sup> If parole is approved, the recipients may come to the United States where they are eligible to apply for work authorization while they wait for their immigrant visa to become available.

#### **Haitian Family Reunification Parole Program (HFRP)**

- Created in December 2014, the HFRP allows certain eligible U.S. citizens and lawful permanent residents to apply for parole for family members in Haiti who are waiting for an immigrant visa to be issued in the next 18 to 36 months.<sup>22</sup> Once in the United States, they can apply for work authorization. The program was created to allow the relatives of U.S. citizens and permanent residents to leave earthquake-ravaged Haiti while their visa was pending.

#### **Filipino World War II Veterans Parole Program**

- Announced in June 2016, the Filipino World War II Veterans Parole Program was created to reunite an estimated 2,000-6,000 elderly Filipino veterans with their family members who could assist with their care. The program allows certain Filipino World War II veterans and their spouses who are U.S. citizens and lawful permanent residents to request parole for specific family members outside of the United States who have

already-approved visa petitions, so that they may come to the United States while they wait out lengthy backlogs for a visa to be issued. If approved, parole allows the family member overseas to travel to the United States before an immigration visa becomes available, but does not alter the number of visas being issued.<sup>23</sup> These parolees also are eligible to apply for work authorization.

### **Military Parole in Place**

- Certain undocumented family members of military members can seek parole in place, allowing them to lawfully remain in the United States for one-year increments, by applying to USCIS. To be eligible, the applicant must be the spouse, widow(er), parent, son, or daughter of an active-duty member of the U.S. armed forces; an individual in the Selected Reserve of the Ready Reserve; or an individual who previously served on active duty or in the Selected Reserve of the Ready Reserve and was not dishonorably discharged.

### **International Entrepreneur Parole**

- In January 2017, under the Obama administration, DHS published the International Entrepreneur Rule (IER), which was scheduled to take effect on July 17, 2017. In the days before it was due to become effective, the Trump administration attempted to delay the rule, but that effort was stopped by a federal court on December 1, 2017, allowing the rule to go into effect.<sup>24</sup> Under IER, DHS may use its parole authority to grant a period of authorized stay, on a case-by-case basis, to foreign entrepreneurs for a start-up business, who demonstrate that their stay in the United States would provide a significant public benefit through their business venture.<sup>25</sup>

### **Terminated Parole Programs**

In 2017 multiple parole programs were terminated. First, in the final week of his Presidency on January 12, 2017, the Obama administration ended the Cuban Medical Professional Parole Program as well as the special parole policy for arriving Cuban nationals, known as the “wet foot/dry foot” policy.<sup>26</sup> On August 16, 2017 the Trump administration ended the Central American Refugee Program (CAM),<sup>27</sup> Parole program, in advance of announcing the termination of the refugee admissions component of that program on November 9, 2017.

## Endnotes

1. INA § 212(d)(5)(A).
2. U.S. Citizenship and Immigration Services, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States,” Department of Homeland Security, accessed January 18, 2018, <https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states>.
3. 8 C.F.R. § 212.5(d); In 2008, the immigration agencies signed a memorandum of agreement to coordinate the exercise of parole, <https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf>.
4. “The Exercise of Discretionary Authority,” Customs and Border Protection, accessed December 20, 2017, [www.aila.org/File/DownloadEmbeddedFile/47306](http://www.aila.org/File/DownloadEmbeddedFile/47306); “Memorandum of Agreement Between United States Citizenship and Immigration Services (USCIS), United States Department of Homeland Security, United States Immigration and Customs Enforcement (ICE), United States Department of Homeland Security, and United States Customs and Border Protection (CBP) United States Department of Homeland Security,” Immigration and Customs Enforcement, accessed December 22, 2017, <https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf>.
5. INA § 236.
6. ICE Directive 11002.1, John Morton, Asst. Sec. ICE, “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture” (Dec. 8, 2009).
7. U.S. Citizenship and Immigration Services, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States.”
8. Ibid.
9. “Guidance on Evidence for Certain Types of Humanitarian or Significant Public Benefit Parole Requests,” U.S. Citizenship and Immigration Services, accessed August 21, 2017, available at <https://www.uscis.gov/humanitarian/humanitarian-parole/guidance-evidence-certain-types-humanitarian-or-significant-public-benefit-parole-requests>.
10. U.S. Citizenship and Immigration Services, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States.”
11. See e.g., “Travel Documents,” U.S. Citizenship and Immigration Services, accessed July 22, 2017, <https://www.uscis.gov/travel-documents>; “Advanced Parole,” U.S. Customs and Border Protection, accessed December 22, 2017, <https://www.cbp.gov/travel/us-citizens/advance-parole>.
12. INA § 244(f)(3).
13. See the “Determining Who is Authorized Parole” heading for a more complete list of discretionary factors. “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States,” U.S. Citizenship and Immigration Services, accessed July 12, 2017, <https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states>.
14. U.S. Citizenship and Immigration Services, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States.”
15. Ibid.
16. Ibid.
17. Ibid.
18. Ibid.
19. Ibid.
20. Starting in 2006 there was another parole program, the Cuban Medical Professional Parole (CMPP) Program. Under the CMPP Program, doctors and other professionals in the health field, sent by the Government of Cuba to work or study in third countries, could request parole into the United States. In addition, the spouse and unmarried children under the age of 21 of individuals meeting the program’s criteria could be included in the parole request. However, the program was ended in January 2017 as part of the agreement between the United States and Cuba normalizing relations.
21. “The Cuban Family Reunification Parole Program,” U.S. Citizenship and Immigration Services, accessed July 18, 2017, <https://www.uscis.gov/humanitarian/humanitarian-parole/cuban-family-reunification-parole-program>.
22. “The Haitian Family Reunification Parole (HFRP) Program,” U.S. Citizenship and Immigration Services, accessed July 19, 2017, <https://www.uscis.gov/HFRP>.
23. “Filipino World War II Veterans Parole Program,” U.S. Citizenship and Immigration Services, accessed July 19, 2017, <https://www.uscis.gov/fwvp>.
24. 82 Fed. Reg. 5238 (Jan. 17, 2017), <https://www.federalregister.gov/documents/2017/01/17/2017-00481/international-entrepreneur-rule>.
25. Ibid.
26. “Changes to Parole and Expedited Removal Policies Affecting Cuban Nationals,” Department of Homeland Security, accessed December 20,

2017, <https://www.dhs.gov/publication/changes-parole-and-expedited-removal-policies-affecting-cuban-nationals>.

27. The CAM program was part of the Obama Administration's response to an influx of unaccompanied children and families fleeing to the United States from violence in Central America. Announced in late 2014 and later expanded, the program allows parents from El Salvador, Guatemala, and Honduras who are lawfully present in the United States to submit an application to have their children join them in the United States if they qualify for refugee status or humanitarian parole. This program was ended in August 2017 as a result of President Trump's executive order from January which asked DHS to take actions to exercise parole only on a case-by-case basis; 82 Fed. Reg. 38926 (Aug. 16, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-08-16/html/2017-16828.htm>.