



Understanding *Matter of Delcarmen-Lara*: The New Meaning of “Departure” Under INA § 212(a)(9)(B)

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I. Introduction

On August 13, 2026, the Board of Immigration Appeals (BIA) issued a decision on *Matter of Delcarmen-Lara*¹, that overruled *Matter of Arrabally and Yerrabelly*² and held that travel on advance parole is now a “departure” for purposes of the unlawful presence bars at INA § 212(a)(9)(B)(i). Under this new interpretation, a person who has accrued more than 180 days of unlawful presence and then leaves the United States on advance parole will trigger the 3- or 10-year bar to admissibility. The BIA applied its holding prospectively, so trips taken before this decision was issued should not have triggered the bars. This practice advisory explains the effect of this decision and walks through the practical questions it raises for noncitizens and their advocates. It discusses how advance parole works, how unlawful presence accrues for purposes of these bars, and which exceptions apply, and provides a general overview of how Customs and Border Protection retains discretion over paroling someone at the port of entry. It closes by considering how a person with an urgent need to travel might weigh associated risks, and how, in narrow circumstances, deliberately triggering a bar and waiting for it to lapse from within the United States may open longer-term immigration relief options.

II. Overview of *Matter of Delcarmen-Lara*

A. The BIA Redefines “Departure” Under INA § 212(a)(9)(B)(i)(II)

In *Matter of Delcarmen-Lara*, the BIA reinterpreted what it means to depart the United States with advance parole, stating that for purposes of INA § 212(a)(9)(B)(i)(II), travel on advance parole is considered a “departure” and as such, the 10-year unlawful presence bar would be

¹ *Matter of Delcarmen-Lara*, 29 I&N Dec. 830 (BIA 2026).

² *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012).



triggered upon leaving the United States on advance parole. In this case, Delcarmen-Lara was seeking to reopen her removal proceedings so she could adjust status after having traveled on advance parole. To support her eligibility for adjustment of status, Delcarmen-Lara submitted evidence that she had been paroled back into the United States after traveling on advance parole and was now eligible to adjust her status. The BIA ultimately denied the motion to reopen and overruled *Matter of Arrabally and Yerrabelly*, which held that leaving the United States temporarily with advance parole was not a “departure” within the meaning of INA § 212(a)(9)(B)(i)(II). In *Matter of Delcarmen-Lara*, the BIA noted that it was clarifying the term “departure” under this section of the INA and concluded that the plain language of the statute does not support an exception for those departing under advance parole.

To do this, the BIA looked at the plain language and Congress’ intent when writing this law. In *Arrabally and Yerrabelly*, the BIA had reasoned that a person’s departure under a grant of advance parole was “qualitatively different from other departures,” because it “presupposes both that he [or she] will be permitted to return to the United States thereafter and that he [or she] will, upon return, continue to pursue the adjustment of status application he [or she] filed before departing.”³ In examining the plain meaning of the statutory text, the BIA in *Delcarmen-Lara* turned to the dictionary definition of “departure,” which is “to go away: leave,” and found insufficient evidence that Congress intended to limit the definition of the word “departure.”⁴

B. The New Rule Applies Prospectively

The BIA addressed retroactivity since this decision was overturning long-standing precedent. In doing so, they considered the following factors:

(1) whether the particular case is one of first impression; (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law; (3) the extent to which the party against whom the new rule is applied relied on the former rule; (4) the degree of the burden which a retroactive order imposes on a party; and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.

The BIA determined that the factors supported a prospective application because *Matter of Arrabally and Yerrabelly*, a longstanding BIA precedent, was being overruled. Furthermore, it reasoned that its holding would be a significant change with respect to the meaning of “departure” under INA § 212(a)(9)(B)(i)(II) and eligibility for adjustment of status under INA § 245(a), and that the statutory interest in applying the new rule retroactively would not outweigh reliance on the prior rule.

³ *Delcarmen-Lara* 29 I&N at 832.

⁴ *Id.*



As such, this new interpretation for departures with advance parole will only apply prospectively. Those who traveled on advance parole before August 13, 2026, when the decision was issued, should not have triggered any unlawful presence bars.

It is important to note that this decision only changes whether a departure pursuant to advance parole triggers the unlawful presence ground of inadmissibility. It does not change the fact that re-entering on advance parole gives someone a “parole” entry that meets the INA § 245(a) threshold requirement of having been “inspected and admitted or paroled” for adjustment purposes. Thus, if someone is able to meet all other requirements under INA § 245(a), they could still use the parole entry from traveling on advance parole to meet the threshold adjustment of status requirement.

III. General Overview of Advance Parole

Advance parole is an administrative procedure allowing a person inside the United States, who seeks to travel abroad, to receive advance authorization to re-enter the United States (to be “paroled”) upon their return. The authority for advance parole stems from the general “parole” authority under INA § 212(d)(5)(A).⁵ The U.S. Department of Homeland Security (DHS) has discretionary authority to parole, on a case-by-case basis, an individual into the United States for “urgent humanitarian reasons or significant public benefit.”⁶ This discretion exists even if the person is inadmissible or removable.⁷

Parole is not an “admission” into the United States for immigration purposes⁸, and a person granted parole (a “parolee”) is still considered an applicant for admission. Importantly, even with a grant of advance parole, “[a] separate discretionary decision on their request for parole into the United States under § 212(d)(5)(A) will be made when they arrive at a Port of Entry and apply for admission [in]to the United States upon their return.”⁹ This means that a parolee will be subject to inspection at a U.S. port of entry upon their return, at which point U.S. Customs and Border Protection (CBP) will make the final decision regarding whether to “parole” the person into the United States.

A. Who Can Obtain Advance Parole?

Advance parole is available to certain noncitizens inside the United States who have been approved for or have pending applications for certain immigration benefits. Deferred Action for

⁵ See 8 CFR § 212.5(f) and USCIS Adjudicator’s Field Manual, § 54.1 (“... the use of advance parole is an outgrowth of administrative practice stemming from the general parole authority at section 212(d)(5)”).

⁶ See U.S. Citizenship & Immigr. Servs., Policy Manual, vol. 3, pt. A, ch. 1, <https://www.uscis.gov/es/node/92960> (last visited Aug. 17, 2026).

⁷ *Id.*

⁸ See INA §§ 101(a)(13)(A)-(B); See also INA § 212(d)(5).

⁹ Form I-131, Application for Travel Document, Instructions (updated 01/20/25), p. 2 available at www.uscis.gov/sites/default/files/files/form/i-131instr.pdf.



Childhood Arrivals (DACA) recipients may apply for advance parole for qualifying educational, employment, or humanitarian purposes, and this has become one of the most common uses of the process. There are others who may also seek advance parole, such as those with pending applications for adjustment of status (Form I-485), those with pending asylum applications, those granted T nonimmigrant status (for victims of human trafficking), and those with U nonimmigrant status (for victims of certain crimes).¹⁰ Note that persons with Temporary Protected Status (TPS) no longer receive advance parole, but rather TPS Travel Authorization, which is different and discussed in detail below.¹¹

IV. Accruing Unlawful Presence and Effect of Departure

Whether a person's departure from the United States triggers a bar to future admissibility depends first and foremost on whether, and for how long, they have accrued "unlawful presence." Understanding how unlawful presence accrues, and which exceptions may apply, is essential before anyone travels on advance parole.

- **Three-year bar.** Persons who (a) beginning on April 1, 1997, are unlawfully present in the United States for a continuous period of more than 180 days but less than one year, and (b) then voluntarily depart the United States without permission before any immigration proceedings commence, are inadmissible for a period of three years from the date of departure.¹²
- **Ten-year bar.** Persons who (a) beginning on April 1, 1997, are unlawfully present in the United States for a continuous period of one year or more, and (b) leave the United States voluntarily or by deportation/removal, are inadmissible for a period of ten years from the date of departure or removal.¹³

Though *Matter of Delcarmen-Lara* was limited to the meaning of departure under INA § 212(a)(9)(B)(i)(II), the ten-year bar, USCIS describes the decision as applying to INA § 212(a)(9)(B)(i) generally, which includes the 3-year bar as well.¹⁴

Importantly, INA § 212(a)(9)(B)(iii) lists several exceptions to accruing unlawful presence for purposes of the 3- and 10-year bars, including those under 18 years of age, those with a bona fide application for asylum pending, beneficiaries of Family Unity,¹⁵ while an adjustment of

¹⁰ *Id.*

¹¹ Generally, individuals with TPS who traveled before August 20, 2020, did so using advance parole.

¹² INA § 212(a)(9)(B)(i)(I).

¹³ INA § 212(a)(9)(B)(i)(II).

¹⁴ U.S. Citizenship & Immigr. Servs., Unlawful Presence and Inadmissibility, USCIS.GOV, <https://www.uscis.gov/laws-and-policy/other-resources/unlawful-presence-and-inadmissibility> (last visited Aug. 17, 2026).

¹⁵ Family unity under § 301 of IMMACT 90 is a statutory exception under § 212(a)(9)(B) but only a policy exception for § 212(a)(9)(C); Family Unity under § 1504 of the LIFE Act Amendments of 2000 is a policy exception for both §§ 212(a)(9)(B) and (C).



status application is pending,¹⁶ the period during which DHS, an immigration court, or the BIA grants voluntary departure,¹⁷ those with a pending application for legalization or special agricultural worker status,¹⁸ and those with a pending application for temporary protected status (TPS).¹⁹ Moreover, while someone has deferred action, they are not considered to be accruing unlawful presence.²⁰ For example, an estimated 40% of DACA recipients might not have more than 180 days of unlawful presence after the age of 18²¹ because they were granted DACA close to their 18th birthday and might not have any lapses in their DACA renewals. They could therefore depart the United States on advance parole without having to worry about triggering either the 3- or 10-year bar.

When determining whether an individual will trigger unlawful presence if they travel on advance parole after this decision, it will be crucial to know how much time they accrued after their 18th birthday while out of status or without deferred action and if any of the above-listed exceptions apply to them.

V. Impact of *Delcarmen-Lara* on Removal Orders, Pending Adjustment Applications, and TPS Holders

Although Matter of Delcarmen-Lara addresses a “departure” for purposes of the 3- and 10-year inadmissibility bars as applied to a DACA recipient, it’s important to understand the legal implications for other cases such as for clients in removal proceedings, those with a removal order, or those with other types of immigration applications.

A. *Delcarmen-Lara*’s Impact on Those Traveling with Pending Removal Issues

For most advance parole travel, USCIS has long taken the position that departure executes an outstanding removal order. Matter of Delcarmen-Lara does not change this. While this BIA decision holds that a departure pursuant to advance parole may trigger the unlawful presence bars at INA § 212(a)(9)(B), it does not change the impact that a departure has for those with prior removal orders. Previously, under Matter of Arrabally and Yarrabelly, practitioners

¹⁶ See U.S. Citizenship & Immigr. Servs., Unlawful Presence Memorandum. The policies further indicate that, except in

cases of NACARA or HRIFA applications, persons filing the listed applications after being served with a Notice to Appear in removal proceedings will not be protected from accrual of unlawful presence.

¹⁷ See *id.* at 39–42 for additional information regarding the effect of reinstatements of voluntary departure, petitions for review, and motions to reopen.

¹⁸ *Id.* at 38.

¹⁹ *Id.* at 42.

²⁰ See, e.g., U.S. Citizenship & Immigr. Servs., DACA Frequently Asked Questions, Q.1., USCIS.GOV, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions> (last visited Aug. 17, 2026).

²¹ This percentage is based on over 1,600 consultations with DACA recipients by Cornell Law School’s Path2Papers.



considered whether the same argument presented in that case could apply to INA §§ 212(a)(9)(A) and (C) – that is, that a departure on advance parole would not count as a “departure,” even if the person has an outstanding removal order at the time they depart.²² This interpretation of a departure executing a removal order was also highlighted in the DACA FAQs, which caution DACA recipients against traveling outside the United States with an outstanding removal order. The FAQs note that those who have a removal order should seek to reopen their case before the Executive Office for Immigration Review (EOIR) and obtain administrative closure or termination of the removal proceedings and cautions against leaving until the request has been granted. The FAQs further note that if someone left the United States after being ordered deported or removed, they would be considered deported or removed and potentially face future immigration consequences.²³

B. Pending Adjustment of Status Applications

Per regulation, adjustment of status applicants are eligible to apply for advance parole once they have an adjustment of status application pending. Applicants are able to request advance parole without needing to specify the reason for their travel. Once an application for adjustment of status is filed, the applicant must remain in the United States until the application is decided, unless they obtain travel permission first. If they leave the United States without advance parole (or TPS-authorized travel permission), the application for adjustment of status will be considered abandoned.²⁴ People who requested and were granted advance parole with their adjustment application generally could travel without abandoning their application²⁵, and prior to *Matter of Delcarmen-Lara*, applicants who decided to travel on advance parole did not trigger the 3- or 10-year unlawful presence bars, even if they had been living in the United States without authorization thereby accruing the requisite time to trigger the bars otherwise.

Travel on adjustment of status advance parole, post-*Delcarmen-Lara*, will likely trigger the unlawful presence ground of inadmissibility at INA § 212(a)(9)(B). While USCIS has not updated the policy manual at the time of this writing, they have added a warning on the adjustment of status section, noting that “this decision has an immediate impact for certain aliens with valid

²² Note that upon return to the United States on advance parole, applicants who are adjustment-eligible may have an argument that they are an “arriving alien,” therefore vesting jurisdiction on USCIS to adjudicate their application. See 8 CFR § 245.2(a)(1); *Matter of Yauri*, 25 I&N Dec. 103, 106-107 (BIA 2009). So while departing on advance parole may give rise to inadmissibility under § 212(a)(9)(A), once the person is paroled, they may become eligible to adjust status with USCIS if the application is filed in conjunction with an I-212 waiver. In practice, advocates have had mixed results in convincing USCIS to take jurisdiction over such applications. A few practitioners have reported that some immigration judges are taking jurisdiction of adjustment applications even where the most recent entry by the applicant was with advance parole.

²³ USCIS: DACA Frequently Asked Questions, available at: <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions>.

²⁴ 8 CFR 245.2(a)(4)(ii).

²⁵ See 8 CFR 245.2(a)(4)(ii)(B)-(D).



Advance Parole Documents (Form I-512L) who are considering departing from the United States. As of Aug. 13, 2026, departing the United States after obtaining an Advance Parole Document is a departure for purposes of inadmissibility under section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA).²⁶ This means that those who apply for adjustment of status and have accrued more than 180 days of unlawful presence in the United States, depart the United States, and then seek admission (such as by filing an application for adjustment of status) within 3- or 10-year statutory period, will be inadmissible unless they are granted a waiver. Individuals who travel on advance parole after the Delcarmen-Lara decision will trigger these grounds if they depart after accruing more than 180 days of unlawful presence.

C. Travel as a TPS Recipient

TPS recipients have the ability to apply for permission to travel, enabling them to leave the United States for temporary travel abroad and return.²⁷ USCIS grants that permission by issuing a travel authorization document.²⁸ TPS recipients are eligible to request travel for any reason. Historically, USCIS issued an advance parole document to TPS recipients with approved travel requests. While USCIS continues to issue advance parole to individuals seeking travel permission based on a pending initial TPS application, for those already granted TPS, USCIS now issues a new travel document, I-512T.²⁹ The change for TPS travel from being issued advance parole to being given a travel authorization also means that now when TPS holders travel, they are being “admitted” instead of being “paroled.” On July 1, 2022, USCIS rescinded Matter of Z-R-Z-C- as an adopted decision and adopted a new travel policy, including a new legal interpretation of TPS travel and its impact on adjustment eligibility. Under the current policy, TPS recipients who travel and return on a new TPS travel document, Form I-512T, are admitted (back) into TPS, rather than paroled, and this admission allows them to meet the “inspected and admitted or paroled” threshold requirement to adjust under INA § 245(a).³⁰ The same policy also provided that travel on this document would not trigger the unlawful presence bars under INA § 212(a)(9)(B).

While Delcarmen-Lara only dealt with departure under a grant of advance parole, it is likely that Delcarmen-Lara could be extended to TPS travelers since the reasoning used in the USCIS policy memo when discussing the unlawful presence ground of inadmissibility relied on the now-overruled Matter of Arrabally and Yerrabelly. TPS recipients who are seeking to travel after

²⁶ See 7 USCIS-PM B

²⁷ INA § 244(f)(3); 8 CFR § 244.10(f)(2)(iii).

²⁸ INA § 244(f)(3); 8 CFR § 244.15(a).

²⁹ 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), <https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf>.

³⁰ 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), <https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf>.



the Delcarmen-Lara decision should be made aware of the possibility that they could trigger the unlawful presence bars and what that means for their future immigration options.

VI. Discretion to Return on Advance Parole After *Delcarmen-Lara*

Even though being paroled back into the United States is not an “admission” for immigration purposes, CBP can still use its discretion to deny the parole entry for someone who is inadmissible. Since traveling on advance parole after the Delcarmen-Lara decision will trigger the INA § 212(a)(9)(B) inadmissibility grounds, those thinking of traveling should be cautious about leaving the United States.

When analyzing how this will impact those who travel, we can think about travelers in two groups: (1) those who are currently outside the United States because they traveled prior to the Delcarmen-Lara decision and (2) those who are interested in traveling after the Delcarmen-Lara decision.

For those who have already traveled and are outside of the United States when the decision was issued, Matter of Delcarmen-Lara should not apply to them. Since the decision focuses on the meaning of departure and states that the decision is not retroactive, applicants should argue, if necessary, that even if they are returning after this decision, they have not triggered the unlawful presence inadmissibility ground and are not inadmissible since this is a prospective decision.

For those thinking about traveling now, it could be riskier for them to exit and return on advance parole. Whether they decide to travel will depend on their own circumstances. It is not yet clear how CBP will treat advance parole travelers who trigger these inadmissibility grounds after this decision, and whether CBP will use its discretion to deny them “re-entry”. Note that USCIS still recognizes that “an individual, who may be inadmissible or otherwise ineligible for admission into the United States, [can] be paroled into the United States for a temporary period.”³¹ Moreover, in the past, applicants who were inadmissible were allowed to re-enter the United States. Until we learn more information about how CBP is using its discretion after Delcarmen-Lara, applicants should be aware of the risk of being denied re-entry and be prepared to remind CBP that it has the discretion to approve their parole despite being inadmissible.

³¹ Humanitarian or Significant Public Benefit Parole for Aliens Outside the United States, U.S. Citizenship & Immigr. Servs., https://www.uscis.gov/humanitarian/humanitarian_parole (last visited Aug. 27, 2026).



VII. Immigration Options After *Delcarmen-Lara*: Adjustment of Status and Nonimmigrant Visa Options

A. Options to Pursue Adjustment of Status

Understanding how *Matter of Delcarmen-Lara* affects a person's ability to pursue immigration benefits is important. As previously mentioned, this decision applies only prospectively, so persons who departed the United States on advance parole before August 13, 2026 should not be treated as inadmissible under the 3- or 10-year bar on account of previous travel. This matters for adjustment of status because INA § 245(a) allows a person who was inspected and admitted or paroled to adjust status in the United States, provided they are admissible and otherwise eligible.

Persons who depart on advance parole on or after August 13, 2026 would become inadmissible under the 3- or 10-year bar. For these individuals, pursuing adjustment of status would still be possible, but only after either waiting out the applicable bar or obtaining a waiver on Form I-601. Under current USCIS policy, the 3- or 10-year bar can be served either outside or inside the United States after re-entry, meaning that, as long as this policy remains in place, a person may wait out the bar while physically present in the United States.³² Alternatively, a person who can demonstrate extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent may file a Form I-601 waiver to seek a waiver of the bar prior to the bar lapsing and therefore need not wait the 3 or 10 years.

On the other hand, because pre-August 13, 2026 advance parole trips should not trigger inadmissibility under INA § 212(a)(9)(B), those trips should not, on their own, prevent someone from adjusting status under INA § 245(a). INA § 245(a) requires that an applicant be admissible, but a person who departed before *Matter of Delcarmen-Lara* is not rendered inadmissible on the basis of INA § 212(a)(9)(B) alone.

Delcarmen-Lara was a DACA recipient who had previously traveled on advance parole and wanted to pursue a family-based adjustment of status. Because the BIA's holding applies prospectively, the Board declined to decide whether her earlier trip constituted a "departure" that would trigger the 10-year bar. Since this decision, practitioners have reported adjustment of status approvals for former DACA recipients who traveled and returned prior to August 13, 2026.

³² See *Matter of Duarte-Gonzalez*, 28 I&N Dec. 688 (BIA 2023) and USCIS, Policy Memorandum: INA 212(a)(9)(B) Policy Manual Guidance (June 24, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220624-INA212a9B.pdf>. Note that this guidance was incorporated in the USCIS Policy Manual.



B. Options to Pursue Nonimmigrant Status

People who leave the United States on advance parole on or after August 13, 2026 and trigger a 3- or 10-year unlawful presence bar may still be able to pursue a nonimmigrant visa through an INA § 212(d)(3) waiver (D3 waiver). The D3 waiver is a generally lenient form of relief available to people pursuing humanitarian nonimmigrant visas, such as a U visa, and other nonimmigrant visas, such as the H-1B. It can waive many immigration violations, including the 3- or 10-year bar.

While humanitarian options, like the U visa, can be pursued within the United States, others who are pursuing employment-based nonimmigrant visas commonly do so through a consulate abroad, and they often travel on advance parole to attend their consulate interview. If the visa and D-3 waiver are approved at the consulate, the person can seek admission to the United States in the relevant nonimmigrant visa classification despite having triggered the 3- or 10-year bar. That said, people should also have a long-term strategy and be prepared to either run out the 3 or 10 years in the United States or seek a Form I-601 waiver, as discussed above.

C. The Urgent Need to Travel and Long-Term Solutions

We recognize that there may be individuals who understand the risk of triggering the 3- or 10-year bar, yet still need to travel for emergency or other reasons. There may be a way to turn *Matter of Delcarmen-Lara* on its head and identify a potential silver lining in the decision. Although the case makes advance parole travel more dangerous by allowing the departure itself to trigger an unlawful presence bar that previously would not have been triggered, that same consequence may, in the right case, create a long-term strategic benefit.

As discussed previously, the threshold issue is the risk that CBP, using its discretion, could decline to parole a person back into the United States after the departure itself triggers the 3- or 10-year bar. The risk must be assessed carefully before someone travels. But if the person is successfully paroled back to the United States, deliberately triggering the unlawful presence bar may sometimes improve the person's future immigration options. This may be especially useful for someone subject only to the 3-year bar. The individual can remain in the United States while the unlawful presence bar eventually expires. At that point, the person may have permanent or temporary family or employment-based options, which can be pursued without the need for any waivers.

In that sense, though we do not recommend travel without fully understanding the risks, *Delcarmen-Lara* may create an unexpected strategic opportunity in some cases. Rather than avoiding the unlawful presence bar indefinitely, some noncitizens may be able to strategically trigger the bar, return on advance parole, allow the statutory period to run, and emerge with a cleaner admissibility posture for longer-term immigration options.



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