

**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 that 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 of different kinds of visas and immigration status, 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 entry, some return, 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. Traditional humanitarian parole allows someone to enter the United States who does not otherwise qualify for a visa. Our government has paroled refugees, orphans, people in need of medical care and people with family emergencies into the United States.

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 Temporary Protected Status (TPS) recipients, adjustment applicants, Deferred Action for Childhood Arrivals (DACA) recipients, and others to travel outside the United States and be permitted to return to resume their applications or status, 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.” Those that 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) § 212(d)(5)(A) which permits the Attorney General, at his or her discretion, to “parole” any noncitizen into the United States “temporarily under such conditions as [she or] he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”<sup>1</sup> This one provision in the Immigration and Nationality Act 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 60 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.<sup>2</sup> While parole policy has undergone many changes since congress enacted the initial statutory provision in 1952, parole continues to be used to counter 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 to the U.S. under our immigration law. Being paroled

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<sup>1</sup> INA § 212(d)(5).

<sup>2</sup> 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).

into the United States thus does not count as a formal “admission” for immigration purposes,<sup>3</sup> which has certain legal consequences.

#### A. Admission vs. Entry

Current immigration law distinguishes entry from the legal process of admission.<sup>4</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) defined an admission as a “lawful entry” after an “inspection and authorization” by an immigration officer.<sup>5</sup> Under this definition, a person may enter the United States, and be living within the United States, without having been legally admitted. People that enter the United States without inspection, for instance, have not been admitted. Those that 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.”<sup>6</sup> Being an “arriving alien” and an applicant for admission has several implications for parolees in the United States. Parolees must still face 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 adjustment of status under INA § 245(a) that requires the applicant have been “inspected and admitted **or paroled.**” This concept is discussed in detail in **Chapters 2** and **3**.

#### B. Parole Is Only Available to Those That Have Not Been Admitted

Parole may be granted to “any alien applying for admission to the United States.” 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, will not be able to apply for

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<sup>3</sup> INA 101(a)(13)(B) (“An alien who is paroled under section 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).

<sup>4</sup> INA § 101(a)(13)(A) defines admission as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”

<sup>5</sup> *Id.*

<sup>6</sup> 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 an alien seeking transit through the United States at a port-of-entry, or an alien 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 section 212(d)(5) of the Act, and even after any such parole is terminated or revoked”) (emphasis added).

parole while still in the United States because they are no longer applying for admission.<sup>7</sup> 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. Parole, unfortunately, 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 could still adjust status because he was initially inspected and admitted.)

### C. A Parolee Seeking Entry and the Grounds of Inadmissibility

Although a parolee does not need to be admissible, Custom and Border Patrol (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 her 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.<sup>8</sup> 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 § 236(a)(2)(B) does not constitute a “parole” entry for purposes of INA § 245(a) and thus does not qualify someone for adjustment.<sup>9</sup>

**Example:** Mayra was detained at the border when she presented herself, explaining that she was afraid to return to her home country. Mayra was provided a credible fear interview, in which she explained to an asylum officer the reasons she was afraid to return. Mayra was found to have a credible fear and she was scheduled to see an immigration judge to present a case for asylum. The ICE officer in charge of her detention decided to grant her conditional parole so that she did not have to stay in

<sup>7</sup> INA § 101(a)(13).

<sup>8</sup> INA § 236(a)(2)(B); *Rivera v. Holder*, 307 F.R.D. 539 (W.D. Wash. 2015).

<sup>9</sup> *Matter of Castillo-Padilla*, 25 I&N Dec. 257 (BIA 2010).

immigration detention while her case was pending. Mayra was granted parole under INA § 236(a)(2)(B), and would not be eligible to adjust based only on this parole.

**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, parole has the potential to become a more robust strategy to defend against deportation for those within the United States and to 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.

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 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 in which a person could apply for advance parole, to leave the United States and reenter, including as an adjustment applicant, a TPS holder, 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 those 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. 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, and Entrepreneurs, 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. Chapter 6 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.

Some of the parole policies are in flux, particularly after the 2016 election. We therefore invite you to visit the Immigrant Legal Resource Center's website at [www.ilrc.org](http://www.ilrc.org) for updates and to join our education listserv by subscribing at [www.ilrc.org/subscribe](http://www.ilrc.org/subscribe) to receive email messages about updates to this manual as well as in-person and webinar trainings opportunities related to parole.