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Immigration Parole

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Summary

The parole provision in the Immigration and Nationality Act (INA) gives the Secretary of the Department of Homeland Security (DHS) discretionary authority to "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."

Immigration parole is official permission to enter and remain temporarily in the United States. It does not constitute formal admission under the U.S. immigration system. An individual granted parole (a parolee) is still considered an applicant for admission. A parolee is permitted to remain in the United States for the duration of the grant of parole, and may be granted work authorization.

The DHS Secretary's parole authority has been delegated to three agencies within the department: U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). Parole can be requested by foreign nationals inside or outside the United States in a range of circumstances. Major parole categories include port-of-entry parole, advance parole, humanitarian parole, and parole-in-place.

Over the years, U.S. Administrations have used parole authority to bring in various groups of foreign nationals seeking long-term admission to the country, including Indochinese refugees, Cuban nationals, and Central American minors found ineligible for refugee status. Although created in response to specific circumstances, there are certain commonalities among these special parole programs. Many can be grouped under at least one of three headings: refugee-related parole programs, family reunification parole programs, and Cuban parole programs. Data on grants of parole under some of these programs are available from DHS.

The use of parole authority to enable designated populations abroad to enter the United States has been particularly controversial. Some policymakers have argued that such programs are an appropriate use of the DHS Secretary's statutory authority, while others see them as violations of the "case-by-case basis" requirement of the parole provision. Reflecting the latter view, President Donald Trump's Executive Order 13767 on Border Security and Immigration Enforcement Improvements directs the DHS Secretary to "take appropriate action to ensure that parole authority … is exercised only on a case-by-case basis in accordance with the plain language of the statute."

Parole does not grant, nor entitle beneficiaries to later obtain, a lawful permanent resident (LPR) status. Beginning in the mid-1950s, Congress passed measures (separate from the INA) that established processes to grant LPR status to specified groups of parolees. Since the enactment of a 1960 law, persons with parole in the United States have been able to apply for and be granted LPR status, but to do so they must be eligible to receive an immigrant visa and meet other requirements.

Bills introduced in recent Congresses illustrate differing views on the appropriate use of immigration parole authority. On the one hand, various measures have proposed utilizing parole authority as a mechanism to grant temporary immigration relief to specified populations. On the other hand, multiple bills have sought to restrict the use of parole authority; some of these bills have included language specifically to prohibit the use of parole for entire classes of people.

Contents

Appendixes

Contacts

Introduction

Executive Order 13767 on Border Security and Immigration Enforcement Improvements, issued by President Donald Trump on January 25, 2017, is perhaps best known for its call for construction of a wall on the Southwest border. It includes a number of other provisions, however, including one on immigration parole. Section 11(d) directs the Secretary of the Department of Homeland Security (DHS) to "take appropriate action to ensure that parole authority … is exercised only on a case-by-case basis in accordance with the plain language of the statute."[1]

Immigration parole permits a foreign national to be present temporarily in the United States for humanitarian or public benefit reasons. A parole provision was included in the original Immigration and Nationality Act (INA) of 1952 and was subsequently amended.[2] It currently reads, in part:[3]

> (A) The Attorney General [now the Secretary of Homeland Security] 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.

While seemingly limited and technical, INA parole authority has been the subject of considerable debate. It gives the DHS Secretary broad, discretionary authority to allow persons who may not otherwise be admissible to the country under the immigration laws to enter and remain in the United States temporarily. Persons granted parole (parolees) can apply for work authorization. Parole is one of several authorities that allow foreign nationals to live and work in the United States without being formally admitted to the country and without having a set pathway to a permanent immigration status.

Over the years, parole authority has been used to bring in various groups of foreign nationals seeking long-term admission, including Indochinese refugees, Cuban nationals, and Central American minors found ineligible for refugee status. Parole also has been granted to individuals within the United States, including certain unauthorized family members of U.S. military service members and veterans.

This report provides a brief legislative history of the INA parole provision, describes categories of parole and the application process, explores the exercise of parole authority for groups outside the United States and related debates, discusses regulations on employment authorization, explains how parolees can obtain U.S. lawful permanent resident (LPR) status, and considers recent legislative efforts to delineate appropriate uses of parole.

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[1] Executive Order 13767, "Border Security and Immigration Enforcement Improvements," 82 *Federal Register* 8793, January 30, 2017.

[2] The INA is Act of June 27, 1952, ch. 477, codified, as amended, at 8 U.S.C. Sections 1101 et seq. It is the basis of U.S. immigration law. The parole provision is INA Section 212(d)(5), 8 U.S.C. Section 1182(d)(5). See the **Appendix** for the full original 1952 parole provision and the current parole provision.

[3] An *alien* is defined in the INA as a person who is not a U.S. citizen or a U.S. national; it is synonymous with *foreign national*.

INA Parole Authority

Immigration parole is official permission to remain temporarily in the United States. In the case of individuals outside the United States, it also permits entry into the country. Parole does not constitute formal admission under the U.S. immigration system. A parolee is still considered an applicant for admission and is required to leave the United States before the period of parole expires.[4]

The original INA parole provision authorized the Attorney General, head of the Department of Justice (DOJ), to grant parole "for emergent reasons or for reasons deemed strictly in the public interest."[5] The INA, as initially enacted, did not contain distinct provisions for the admission of refugees; beginning in the 1950s, U.S. Administrations used the parole provision to bring in refugees.[6]

As part of the 1965 INA Amendments,[7] a "conditional entry" provision for the admission of refugees was added to the INA. House Judiciary Committee and Senate Judiciary Committee reports on the 1965 legislation stated, in identical language, that with this addition the INA parole authority should thereafter be limited to certain situations:

> Inasmuch as definite provision has now been made for refugees, it is the express intent of the committee that the parole provisions of the Immigration and Nationality Act, which remain unchanged by this bill, be administered in accordance with the original intention of the drafters of that legislation. The parole provisions were designed to authorize the Attorney General to act only in emergent, individual, and isolated situations, such as the case of an alien who requires immediate medical attention, and not for the immigration of classes or groups outside of the limit of the law.[8]

The conditional entry provision, however, was limited to the Eastern Hemisphere and was subject to other restrictions. As a consequence, the executive branch continued to use parole authority to address refugee situations. During the 1960s and 1970s, large numbers of individuals from Cuba, Indochina, and other areas, who the United States considered to be refugees, were paroled into the country.[9]

The Refugee Act of 1980[10] added language to the INA defining the term *refugee* and establishing a refugee admissions process.[11] Among its other provisions, the 1980 act amended the INA

[4] A parolee, however, may apply for re-parole.

[5] See the **Appendix** for the full original 1952 parole provision.

[6] In 1956, in the first use of the INA parole provision to bring in refugees, President Dwight Eisenhower directed the Attorney General to parole in 15,000 Hungarian refugees who had fled the country after the Hungarian Revolution of 1956. U.S. Congress, Senate Committee on the Judiciary, *Review of U.S. Refugee Resettlement Programs and Policies*, committee print, prepared by the Congressional Research Service, 96th Cong., 2nd sess., 66-439 O (Washington, DC: GPO, 1980), p. 9 (hereinafter cited as 1980 committee print).

[7] P.L. 89-236, §3.

[8] U.S. Congress, House Committee on the Judiciary, *Amending the Immigration and Nationality Act, and for Other Purposes*, report to accompany H.R. 2580, 89th Cong., 1st sess., H. Rept. 945, August 6, 1965, p. 15-16; U.S. Congress, Senate Committee on the Judiciary, *Amending the Immigration and Nationality Act, and for Other Purposes*, report to accompany H.R. 2580, 89th Cong., 1st sess., S. Rept. 748, September 15, 2016, p. 17.

[9] For additional information, see 1980 committee print, pp. 12-15.

[10] P.L. 96-212.

[11] The refugee definition is set forth in INA Section 101(a)(42), and the refugee admissions process in INA Section 207. For additional information about the U.S. refugee admissions program, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

section on parole to restrict its use for bringing in refugees. It added a second paragraph to the parole provision as INA Section 212(d)(5)(B).[12] This paragraph, which remains in law, reads:[13]

> (B) The Attorney General [now the Secretary of Homeland Security] may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 further amended the parole provision to replace the original 1952 language, "for emergent reasons or for reasons deemed strictly in the public interest," with the current language specifying "on a case-by-case basis for urgent humanitarian reasons or significant public benefit."[14] IIRIRA also included language to amend the INA provisions on the worldwide level of family-sponsored immigrants to require that long-term parolees be counted against those limits.[15]

The Homeland Security Act of 2002[16] abolished DOJ's Immigration and Naturalization Service (INS) and transferred most of its immigration functions to the new DHS as of March 1, 2003. Since then, the DHS Secretary has exercised immigration parole authority.

Parole can be compared to other statutory and non-statutory mechanisms that provide foreign nationals with temporary authorization to be in the United States.[17] Like recipients of statutory Temporary Protected Status (TPS) and executive branch-established Deferred Action for Childhood Arrivals (DACA), for example, parolees can live and work in the United States for a specified period.[18] Among the key differences, however, is that parole is subject to fewer eligibility requirements than TPS or DACA. It also can be granted to persons inside or outside the country, while both TPS and DACA are limited to persons within the United States. Parole, though, is subject to at least one restriction that does not apply under TPS or DACA. A person is not eligible for parole-in-place, which, as described below, is a term for the authorization of parole for someone inside the United States, if that person was lawfully admitted, even if his or her authorized period of stay has expired.

DHS Exercise of Parole Authority

The DHS Secretary's parole authority has been delegated to three agencies within the Department: U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). In 2008, the three agencies

[12] P.L. 96-212, §203(f).

[13] See the **Appendix** for the full current INA parole provision.

[14] P.L. 104-208, Division C, §602(a).

[15] P.L. 104-208, §603. For information on family-based immigration and related numerical limits, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

[16] P.L. 107-296.

[17] For further discussion, see Geoffrey Heeren, "The Status of Nonstatus," American University Law Review, vol. 64, issue 5 (June 2015).

[18] For information about TPS, see CRS Report RS20844, *Temporary Protected Status: Overview and Current Issues*; for information about DACA, see CRS Report R45995, *Unauthorized Childhood Arrivals, DACA, and Related Legislation*.

entered into a memorandum of agreement (MOA) regarding the exercise of parole with respect to aliens outside the United States and at ports of entry.[19]

As discussed in the MOA, the phrases "humanitarian reasons" and "significant public benefit" in the current parole provision have taken on particular meanings:

> As practice has evolved, DHS bureaus have generally construed "humanitarian" paroles (HPs) as relating to urgent medical, family, and related needs and "significant public benefit["] paroles (SPBPs) as limited to persons of law enforcement interest such as witnesses to judicial proceedings.[20]

Regarding the length of a parole grant, the INA provision generally states, "when the purposes of such parole shall … have been served the alien shall forthwith return or be returned." USCIS has addressed the length of its grants of humanitarian or significant public benefit parole for individuals outside the United States (these parole categories are further discussed below). As explained by the agency, it grants parole "for a temporary period of time to accomplish the purpose of the parole," which typically is no longer than one year.[21]

In addition, according to USCIS, "Parole ends on the date the parole period expires or when the beneficiary departs the United States or acquires an immigration status, whichever occurs first. In some cases, we may place conditions on parole, such as reporting requirements." The agency also notes that it "may revoke parole at any time and without notice" upon a determination that it "is no longer warranted or the beneficiary fails to comply with any conditions of parole."[22] A parolee in the United States who needs to remain beyond his or her authorized parole period can request re-parole.[23]

Categories of Parole

Parole can be requested by foreign nationals inside or outside the United States in a range of circumstances. Selected major parole categories are described below.[24] As late as the early 2000s, annual reports of immigration statistics published by the former Immigration and Naturalization

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[19] U.S. Department of Homeland Security, *Memorandum of Agreement between U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) for the Purpose of Coordinating the Concurrent Exercise by USCIS, ICE, and CBP, of the Secretary's Parole Authority Under INA § 212(d)(s)(A) With Respect to Certain Aliens Located Outside the United States*, https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf (hereinafter cited as DHS, MOA on parole). With respect to CBP, the MOA notes: "To the extent that this MOA largely assists ICE and USCIS apportion its parole caseloads, omission of specific reference to CBP should not be construed to detract from CBP's inherent authority to issue paroles. CBP does and will continue to exercise parole authority for both urgent humanitarian reasons and significant public benefit." (p. 3).

[20] DHS, MOA on parole, p. 2.

[21] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States," https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states (hereinafter cited as USCIS, parole). Information on length of parole appears under the "What is Parole?" tab.

[22] USCIS, parole.

[23] For additional information, see USCIS, parole (under the "Re-Parole" tab).

[24] The categories, as described here, are mutually exclusive but are not exhaustive. For example, the DHS MOA lists others, such as parole related to national intelligence, parole for participants in events held by U.S.-based international organizations, and parole under 50 U.S.C. Section 403(h), which provides for the "entry of a particular alien into the United States for permanent residence" when it "is in the interest of national security or essential to the furtherance of the national intelligence mission. DHS, MOA on parole, pp. 2-3.

Service (INS) and then DHS contained data on parole grants.[25] DHS's *2003 Yearbook of Immigration Statistics*, the last to include such data, contained annual data for FY1998 through FY2003 on six categories of parolees, including port-of-entry parolees, deferred inspection parolees, advance parolees, and humanitarian parolees (see descriptions below).[26] During this six-year period, the annual total number of parolees ranged from about 235,000 to about 300,000, with port-of-entry parolees accounting for more than half of each annual total.[27] While comparable cross-category data on parole are no longer available from DHS, there are some available USCIS statistics on particular parole programs, which are presented in the relevant sections below.

Port-of-Entry Parole

Port-of-entry parole is authorized at the port of arrival and can be provided in a variety of situations. These include permitting the entry of an LPR returning to the United States who is not carrying proper documents. Port-of-entry parole also can be used to allow foreign nationals to enter for short stays, such as to attend a family funeral or assist in a natural disaster.

Deferred Inspection Parole

Deferred inspection is a form of parole that is used when an alien appears at a port of entry with documentation but questions remain about his or her admissibility to the United States. In such cases, parole can be granted to enable the individual to appear at another immigration office to resolve the issue.

Advance Parole

As suggested by its name, advance parole is authorized prior to an individual's arrival at a U.S. port of entry. The term is most commonly used to describe the issuance of a document to a foreign national (other than an LPR) residing in the United States who needs to depart and wants to return, and whose conditions of stay do not otherwise allow for re-entry into the country.

An advance parole document authorizes such an alien to appear at a U.S. port of entry to seek parole after travelling abroad. However, it does not entitle the bearer to be paroled into the United States. That remains a discretionary decision to be made when the person arrives at the port of entry. Among the categories of individuals in the United States that need to request advance parole to be able to return to the country after traveling abroad are most applicants for LPR status, holders of and applicants for TPS, and individuals with parole.

Humanitarian Parole for Persons Outside the United States

This category of parole takes its name from the text of the INA provision and reflects the underlying reason for the grant of parole. Although all parole authorizations are required to be for urgent humanitarian reasons or significant public benefit, *humanitarian parole* is often used to describe a narrower category of parole grants. These are grants to persons residing outside the

[25] INS yearbooks for FY1996-FY2001 and DHS yearbooks since FY2002 are available at U.S. Department of Homeland Security, "Yearbook of Immigration Statistics," https://www.dhs.gov/immigration-statistics/yearbook.

[26] U.S. Department of Homeland Security, Office of Immigration Statistics, *2003 Yearbook of Immigration Statistics*, September 2004, pp. 81-84, https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2003.pdf (hereinafter cited as DHS, 2003 Yearbook).

[27] DHS, 2003 Yearbook.

United States who apply for parole from abroad to enter the United States temporarily for urgent humanitarian reasons, such as to receive medical treatment.

Significant Public Benefit Parole for Persons Outside the United States

A counterpart to the humanitarian parole category, this category similarly takes its name from the text of the INA provision and reflects the underlying reason for the grant of parole. As used here, it includes parole grants to persons residing outside the United States who apply for parole from abroad to enter the country temporarily for significant public benefit, such as to participate in a legal proceeding.

Parole-in-Place

Parole-in-place authorizes individuals who are physically present in the United States but have not been lawfully admitted to remain in the country. In accordance with a 2013 USCIS policy memorandum, parole-in-place has been granted to certain family members (spouses, children, and parents) of active duty members and former members of the U.S. Armed Forces and the Selected Reserve of the Ready Reserve. That memorandum specified that such grants of parole "should be authorized in one-year increments, with re-parole as appropriate."[28]

Removal-Related Parole

This category of parole applies to aliens in removal proceedings or aliens who have final orders of removal, as well as aliens granted deferred action by ICE at any point after the commencement of removal proceedings.[29]

Special Parole Programs for Persons Outside the United States

Over the years, INS and DHS established special parole programs for particular populations abroad in response to specific circumstances; these are sometimes referred to as "categorical parole" programs. Among these are parole programs—such as the Cuban lottery (described below)—established in connection with international agreements. These special parole programs are the subject of a separate section below.

Parole Application Process

Generally, individuals applying for parole in advance, whether they are inside or outside the United States, submit USCIS Form I-131, Application for Travel Document. Depending on their location, parole applicants use this form to apply for either an advance parole document for

[28] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act §212(a)(6)(A)(i)*, policy memorandum, November 15, 2013. Reasons cited in this memorandum in support of the use of parole-in-place in such cases included that U.S military service members and veterans experience stress and anxiety due to their family members' immigration status, that this worry can affect military preparedness, and that the United States has made a commitment to support and care for veterans.

[29] For information about other types of parole requests handed by ICE, see U.S. Department of Homeland Security, *Privacy Impact Assessment for the ICE Parole and Law Enforcement Programs Case Management Systems*, DHS/ICE/PIA-049, December 3, 2018, https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-plepucms-december2018.pdf.

individuals who are currently in the United States or an advance parole document for individuals outside the United States.[30] USCIS and ICE can authorize issuance of advance parole documents, in accordance with the 2008 MOA referenced above.

The advance parole document for individuals in the United States is referenced in the "Advance Parole" section above. As noted, this document authorizes an alien to appear at a U.S. port of entry after travelling abroad to seek parole into the United States. Applicants for parole-in-place also need to submit Form I-131.

Applicants for humanitarian parole or significant public benefit parole, as described above, and applicants under some of the special parole programs described below use Form I-131 to apply for an advance parole document for individuals outside the United States. Applicants for re-parole also apply for this type of advance parole document (despite being physically present in the United States).

There are exceptions to the Form I-131 application process. For example, principal applicants under the International Entrepreneur Parole program described below must submit a different application form.[31] Applicants in removal proceedings seeking release from ICE custody must contact their local ICE office.[32] ICE is responsible for handling such parole requests.

Selected Immigration Parole Programs for Persons Outside the United States

A number of parole programs have been established over the years to enable members of designated populations abroad to enter the United States. Although created in response to specific circumstances, there are certain commonalities among these special parole programs. Many of them can be grouped under one (or more) of three headings: refugee-related parole programs, family reunification parole programs, and Cuban parole programs.

There is at least one recently established special parole program, however, that does not fall under any of the three headings: the International Entrepreneur Parole (IEP) program. The subject of a final rule issued at the end of the Obama Administration in January 2017, this program reflects a novel use of parole. Supplementary information to the rule described the purpose of the IEP program as being "to increase and enhance entrepreneurship, innovation, and job creation in the United States." The supplementary information further stated:

> Under this final rule, an applicant would need to demonstrate that his or her parole would provide a significant public benefit because he or she is the entrepreneur of a new start-up entity in the United States that has significant potential for rapid growth and job creation.[33]

[30] Form 131 is also used to apply for other travel documents, such as a refugee travel document. See Department of Homeland Security, U.S. Citizenship and Immigration Services, "Instructions for Application for Travel Document" (USCIS Form I-131), https://www.uscis.gov/sites/default/files/document/forms/i-131instr.pdf.

[31] Principal applicants file USCIS Form I-941, Application for Entrepreneur Parole, while derivative spouses and children file Form I-131. See U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services "International Entrepreneur Parole," https://www.uscis.gov/humanitarian/humanitarian-parole/international-entrepreneur-parole.

[32] See U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Instructions for Application for Travel Document [Form 1-131]," April 24, 2019, p. 6, https://www.uscis.gov/sites/default/files/document/forms/i-131instr.pdf.

[33] See https://www.govinfo.gov/content/pkg/FR-2017-01-17/pdf/2017-00481.pdf.

The international entrepreneur final rule had an original effective date of July 17, 2017. Due to efforts by the Trump Administration to delay this effective date and related legal action, however, DHS did not begin accepting applications under the rule until December 2017.[34] In May 2018, DHS published a proposed rule to remove the IEP regulations.[35] According to DHS, it proposed to eliminate the final rule "because the department believes that it represents an overly broad interpretation of parole authority," among other reasons.[36] As of February 10, 2020, USCIS had received a total of 28 IEP applications. Of these, 1 was approved, 22 were denied, 3 were withdrawn, and 2 were pending.[37]

Refugee-Related Parole Programs

Since the end of World War II, the United States has established various immigration programs for the admission of foreign nationals fleeing persecution.[38] Prior to enactment of the 1980 Refugee Act, immigration parole was the chief means used to bring in aliens considered to be refugees. From the late 1950s through the 1970s, hundreds of thousands of individuals from Cuba, Indochina, Eastern Europe, and other areas were paroled into the United States.

Parole continued to be granted to some individuals considered by the United States to be refugees after enactment of the Refugee Act. In a notable 1980 example, the Attorney General paroled in tens of thousands of Cubans and Haitians who arrived in the United States by boat in what is known as the Mariel Boatlift. Until 2017, Cuban nationals were routinely granted parole under the "wet foot/dry foot" policy. As described in a 2017 DHS fact sheet, "'wet-foot/dry-foot' generally refers to an understanding under which Cuban migrants traveling to the United States who are intercepted at sea ('wet foot') are returned to Cuba or resettled in a third country, while those who make it to U.S. soil ('dry foot') are able to request parole."[39]

In the late 1980s, denial rates for Soviet refugee applicants were increasing because of changes in U.S. refugee processing and other factors. In response, in 1989, Congress passed the Lautenberg Amendment. As subsequently amended to correct references to the Soviet Union following its dissolution, it required the Attorney General (now the Secretary of DHS) to designate categories of former Soviet and Indochinese nationals—including specified categories of religious minorities from an independent state of the former Soviet Union, or of Estonia, Latvia, or Lithuania—for whom less evidence would be needed to prove refugee status. It also provided for adjustment to permanent resident status of certain Soviet and Indochinese nationals granted parole after being denied refugee status.[40] In connection with this legislation, INS and then

[34] For additional details, see U.S. Department of Homeland Security, "Removal of International Entrepreneur Parole Program," 83 *Federal Register* 8793, May 29, 2018 (hereinafter cited as DHS, proposed rule to eliminate IEP program).

[35] See DHS, proposed rule to eliminate IEP program.

[36] U.S. Department of Homeland Security, International Entrepreneur Parole, https://www.uscis.gov/humanitarian/humanitarian-parole/international-entrepreneur-parole. Also see DHS, proposed rule to eliminate IEP program.

[37] Data provided by USCIS to CRS by email, September 30, 2020.

[38] For additional information, see 1980 committee print.

[39] U.S. Department of Homeland Security, *Fact Sheet: Changes to Parole and Expedited Removal policies affecting Cuban Nationals*, January 12, 2017. According to the fact sheet: "Considering the reestablishment of full diplomatic relations, Cuba's signing of a Joint Statement obligating it to accept the repatriation of its nationals who arrive in the United States after the date of the agreement, and other factors, the Secretary concluded that … the parole policies discussed above [including the "wet foot/dry foot" policy] are no longer warranted."

[40] The Lautenberg Amendment was first enacted as part of the FY1990 Foreign Operations, Export Financing, and Related Programs Appropriations Act (P.L. 101-167, §§599D, 599E). It has been regularly extended since, although

USCIS offered parole to certain religious minorities from the former Soviet Union who were denied refugee status. This parole program continued until 2011, when, according to USCIS, the agency decided to stop it "as a matter of policy."[41]

Another parole program (for unsuccessful refugee applicants) was established in 2014. It was part of the Central American Minors (CAM) program for certain minor children in El Salvador, Guatemala, and Honduras. Under the now-terminated refugee part of the CAM program, a qualifying parent in the United States could file an application for a qualifying child living in one of the three countries to be considered for admission to the United States as a refugee, along with certain accompanying family members. If the child was found *ineligible* for refugee status, the CAM program provided for the child and his/her accompanying family members to be considered for immigration parole.[42] In written testimony prepared for a 2015 Senate hearing on the CAM program, a USCIS official explained, "[T]o grant parole under this program, USCIS must find that the individual is at risk of harm in his or her country and that the applicant merits a favorable exercise of discretion." According to the official, grants of parole generally would be for an initial period of two years.[43] According to USCIS data, there were a total of 1,464 CAM parole approvals in FY2016 and FY2017 combined. The breakdown by applicant country of citizenship was El Salvador (1,108), Honduras (325), and Guatemala (31).[44]

In August 2017, DHS announced that it was terminating the parole part of the CAM program. As a result of related litigation and a court settlement, however, DHS agreed in 2019 to process cases that had been conditionally approved for parole at the time of the termination announcement.[45] This processing has resulted in the approval of 342 CAM parole cases in FY2020, as of June 2020. The breakdown by applicant country of citizenship is El Salvador (328), Guatemala (13), and Honduras (1).[46]

Parole also figured into the CAM program in another way. A qualifying parent, for purposes of the program, was an individual who was at least age 18 and was lawfully present in a specified immigration category. The specified categories included parole (provided the parent had been issued parole for at least one year).[47]

Family Reunification Parole Programs

Family reunification is an underlying principle of the U.S. immigration system. The INA provides for U.S. citizens and LPRs to file immigrant visa petitions on behalf of certain family members. The family-based immigration system is subject to statutory preferences and numerical limits that

there have been some lapses between extensions.

[41] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Green Card for a Lautenberg Parolee*, https://www.uscis.gov/green-card/other-ways-get-green-card/green-card-lautenberg-parolee.

[42] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM)," https://www.uscis.gov/CAM (hereinafter cited as USCIS, CAM).

[43] Testimony of Joseph Langlois, Associate Director, Refugee, Asylum and International Operations, U.S. Citizenship and Immigration Services, in U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration and the National Interest, hearing, *Eroding the Law and Diverting Taxpayer Resources: an Examination of the Administration's Central America Minors Refugee/Parole Program*, 114th Cong., 1st sess., April 2015.

[44] Data provided by USCIS to CRS by email, June 17, 2020.

[45] USCIS, CAM.

[46] Data provided by USCIS to CRS by email, June 17, 2020.

[47] USCIS, CAM.

may result in years-long waits for visas for some prospective immigrants after their petitions are approved.[48] The principle of family reunification is also reflected in various immigration parole programs.[49]

The Cuban Family Reunification Parole (CFRP) program was established in 2007, a peak year for U.S. Coast Guard interdictions of Cubans. It was seen as way to both discourage Cubans from undertaking dangerous maritime crossings and meet the U.S. commitment on legal Cuban migration levels under the 1994 U.S.-Cuban Migration Agreement (see the "Other Parole Programs for Cuban Nationals" section). The CFRP program is available to Cuban nationals who are the beneficiaries of family-based immigrant visa petitions filed by certain eligible family members in the United States. Under the program, certain U.S. citizens and LPRs who have filed immigrant visa petitions on behalf of family members in Cuba that have been approved are invited by the State Department to apply to USCIS for parole for their Cuban relatives. If parole is granted, the Cuban relatives may enter and live in the United States without having to wait for their immigrant visas to become available. Grants of parole under the CFRP program are for two years.[50] After one year of physical presence in the United States, a Cuban parolee can apply to become an LPR under the terms of the Cuban Adjustment Act (see the "Parole and Permanent Immigration Status" section). According to USCIS, the CFRP program remains in effect but all CFRP processing in Havana has been suspended for security reasons.[51]

The similar Haitian Family Reunification Parole (HFRP) program was implemented in 2015 to "provid[e] the opportunity for certain eligible Haitians to safely and legally immigrate sooner to the United States."[52] Like the Cuban program, the HFRP program is available to Haitian nationals who are the beneficiaries of family-based immigrant visa petitions filed by certain eligible family members in the United States. To be invited to apply for the HFRP program, the immigrant visa petition must have been approved by December 18, 2014, and the expected wait for an immigrant visa must be between about 18 and 42 months. If parole is granted, the Haitian relatives may enter and live in the United States while they wait for visa numbers to become available so they can apply for LPR status. Grants of parole under the HFRP program are for three years.[53]

In August 2019, USCIS announced its intention to terminate the HFRP program in accordance with Executive Order 13767.[54] Between the program's inception and December 31, 2019, the

[48] See CRS Report R43145, *U.S. Family-Based Immigration Policy*.

[49] Family reunification is also a feature of some refugee-related parole programs, including the CAM program and the Lautenberg Amendment (as discussed in the preceding section). To be considered for U.S. admission under the Lautenberg Amendment, a prospective refugee must have family in the United States.

[50] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Cuban Family Reunification Parole Program*, https://www.uscis.gov/sites/default/files/document/fact-sheets/CFRP_Fact_Sheet_8.26.2016.pdf.

[51] Email from USCIS to CRS, February 20, 2020. According to USCIS: "In light of the significant drawdown in U.S. government personnel from the U.S. Embassy in Cuba for security reasons and the subsequent decision to close the USCIS field office in Cuba on December 10, 2018, all CFRP processing in Havana has been suspended. The Department of Homeland Security is working with our colleagues at the Department of State to evaluate options for interviewing and processing CFRP beneficiaries in alternative locations."

[52] Remarks of Deputy Secretary of Homeland Security Alejandro Mayorkas, in U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "DHS To Implement Haitian Family Reunification Parole Program," press release, October 14, 2014.

[53] For additional information, see U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "The Haitian Family Reunification Parole (HFRP) Program," February 21, 2018, https://www.uscis.gov/humanitarian/humanitarian-parole/the-haitian-family-reunification-parole-hfrp-program.

[54] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "USCIS to End Certain Categorical Parole Programs," news release, August 2, 2019 (hereinafter cited as USCIS, August 2019 news release).

agency issued 12,534 invitations (covering 23,993 beneficiaries) to petitioners to submit applications on behalf of their beneficiary relatives and accepted 10,534 applications. As of December 31, 2019, 8,313 of these applications had been approved, 2,209 had been denied, and 12 remained pending.[55]

The Filipino World War II Veterans Parole Program, implemented in 2016, makes eligible for parole certain beneficiaries of approved family-based immigrant visa petitions that were filed by Filipino veterans or their surviving spouses. If parole is granted, according to USCIS, the beneficiaries could "provide support and care to their aging veteran family members" in the United States while waiting for their visas to become available.[56] Under the family-based immigration system and its per country limits, visa waiting times for nationals of the Philippines can be particularly long. In specified circumstances, this program permits beneficiaries to seek parole on their own behalf based on an approved petition filed by an eligible veteran or surviving spouse. Grants of parole under the Filipino World War II Veterans Parole Program are for three years.[57]

In August 2019, USCIS announced its intention to terminate this parole program in accordance Executive Order 13767.[58] Between the program's inception and December 31, 2019, the agency accepted 664 applications. As of December 31, 2019, 301 of these applications had been approved, 266 had been denied, and 97 were pending.[59]

Other Parole Programs for Cuban Nationals

Cuban nationals have been the beneficiaries of several special parole programs over the years. In addition to refugee-related grants of parole and the CFRP program, Cubans have been granted parole under programs that include the Special Program for Cuban Migration and the Cuban Medical Professional Parole (CMPP) program.

The Special Program for Cuban Migration, also known as the Cuban lottery, grew out of the 1994 U.S.-Cuban Migration Agreement. Under that accord, the United States agreed, among other things, to allow at least 20,000 Cubans to migrate legally to the United States each year, excluding immediate relatives of U.S. citizens. The Cuban lottery, which was established to help meet that target of 20,000, has been restricted to Cuban adults who meet certain basic qualifications. Interested Cubans have applied during an open season, and winners have been randomly chosen. Lottery winners have then been interviewed for consideration for parole.

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[55] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Form I-131, Travel Document Applications for the Haitian Family Reunification Parole (HFRP) Program As of December 31, 2019," https://www.uscis.gov/sites/default/files/document/data/HFRP_performancedata_fy2020_qtr1.pdf. The latest round of invitations was issued in June 2016.

[56] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Filipino World War II Veterans Parole Program*, https://www.uscis.gov/fwvp. Also see U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "USCIS to Implement Filipino World War II Veterans Parole Program," news release, May 9, 2016, https://www.uscis.gov/news/news-releases/uscis-implement-filipino-world-war-ii-veterans-parole-program.

[57] For additional information, see U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Filipino World War II Veterans Parole Program," https://www.uscis.gov/humanitarian/humanitarian-parole/filipino-world-war-ii-veterans-parole-program.

[58] USCIS, August 2019 news release.

[59] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, " Form I-131, Travel Document Applications for the Filipino World War II Veterans Parole (FWVP) Program Applications Accepted, Denied, Approved, and Pending As of December 31, 2019," https://www.uscis.gov/sites/default/files/document/data/FWVP_performancedata_fy2020_qtr1.pdf.

Successful applicants could bring their spouses and minor children with them to the United States. There have been three Cuban lottery open seasons to date (in FY1994, FY1996, and FY1998).[60] According to USCIS, "since 1998, the Cuban Government has not permitted a new registration for the Special Program for Cuban Migration."[61]

The CMPP program, which was established in 2006, allowed Cuban health-care providers who were conscripted by the Cuban government to study or work in another country to apply to enter the United States on parole. Their accompanying spouses and any minor children could also be considered for parole.[62] The program was terminated in 2017 as "part of the ongoing normalization of relations between the governments of the United States and Cuba."[63] USCIS approved 9,693 applications under the CMPP program between January 1, 2006, and December 31, 2017.[64]

Debate Over Parole Programs for Specified Populations

Over the years, the executive branch's use of its discretionary parole authority for specified classes of foreign nationals has been controversial. Objections were voiced in a 1996 House Judiciary Committee report on a predecessor bill to IIRIRA that proposed more restrictive changes to the parole provision than were ultimately enacted (see the "INA Parole Authority" section):

> The text of section 212(d)(5) is clear that the parole authority was intended to be used on a case-by-case basis to meet specific needs, and not as a supplement to Congressionally-established immigration policy. In recent years, however, parole has been used increasingly to admit entire categories of aliens who do not qualify for admission under any other category in immigration law, with the intent that they will remain permanently in the United States.[65]

Some House Judiciary Committee members at the time opposed the committee-approved changes to the parole provision. In a "dissenting views" section of the report, they argued against revising the language of INA Section 212(d)(5): "The current law provides the Attorney General with

[60] For additional information, see archived CRS Report R40566, *Cuban Migration to the United States: Policy and Trends*.

[61] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Notice of Changes to Application Procedures for the Cuban Family Reunification Parole Program," 79 *Federal Register* 75579, 75580, December 18, 2014. In this notice, USCIS cited Cuba's failure to permit a new lottery registration as a reason for the establishment of the CFRP program: "Without this pool of individuals, there was a deficiency in the number of Cubans potentially eligible for travel to the United States."

[62] For additional information, see U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Cuban Medical Professional Parole (CMPP) Program," https://www.uscis.gov/humanitarian/humanitarian-parole/cuban-medical-professional-parole-cmpp-program.

[63] U.S. Department of Homeland Security, "Statement by Secretary Johnson on the Continued Normalization of our Migration Relationship with Cuba," January 12, 2017, https://www.dhs.gov/news/2017/01/12/statement-secretary-johnson-continued-normalization-our-migration-relationship-cuba.

[64] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Electronic Reading Room, Cuban Medical Professional Parole Approvals from 2006-2017, September 02, 2019, https://www.uscis.gov/records/electronic-reading-room?ddt_mon=&ddt_yr=&query=parole&items_per_page=10. The data are available at https://www.uscis.gov/sites/default/files/document/data/Cuban_Medical_Professional_Parole_Approvals_from_2006-2017.pdf.

[65] U.S. Congress, House Committee on the Judiciary, *Immigration in the National Interest Act of 1995*, report to accompany H.R. 2202, 104th Cong., 2nd sess., H.Rept. 104-469, pt. 1, March 4, 1996, p. 140 (hereinafter cited as H.Rept. 104-469, pt. 1).

appropriate flexibility to deal with compelling immigration situations."[66] (Recent legislation related to the use of parole for classes of individuals is discussed in the "Legislation in Recent Congresses" section.)

Almost 20 years later, during the Obama Administration, then-DHS Secretary Jeh Johnson directed USCIS to issue new policies on the use of parole-in-place for individuals in the United States who had U.S. citizen and LPR family members seeking to enlist in the U.S. Armed Forces. He provided the following rationale for using parole authority for a class of individuals:

> Although parole determinations must be made on an individualized basis, the authority has long been interpreted to allow for designation of specific classes of aliens for whom parole should be favorably considered, so long as the parole of each alien within the class is considered on a discretionary, case-by-case basis.[67]

In FY2019 and FY2020 (as of June 18, 2020) combined, USCIS approved 8,952 military parole-in-place applications and denied 2,040. As of June 18, 2020, 4,943 applications were pending.[68]

The Trump Administration has acted to end some parole programs in accordance with Executive Order 13767. Citing the executive order, USCIS announced the termination of the CAM parole program in August 2017, although some cases continue to be processed (see the "Refugee-Related Parole Programs" section).[69]

In August 2019, USCIS announced its intention to end the Haitian Family Reunification Parole program and the Filipino World War II Veterans Parole program (see the "Family Reunification Parole Programs" section).[70] The news release quoted then-USCIS Acting Director Ken Cuccinelli as saying, "Under these categorical parole programs, individuals have been able to skip the line and bypass the proper channels established by Congress."[71] It further explained that USCIS continues to review the remaining categorical parole programs but will not terminate any program until it completes "required administrative changes to Form I-131, Application for Travel Document, and the form is approved for public use."[72]

Work Authorization for Parolees

Immigration regulations providing that parolees are eligible for employment authorization date to the 1980s. In May 1981, INS amended its regulations to add new provisions on employment authorization.[73] These provisions enumerated two classes of aliens eligible to work: (1) aliens

[66] H.Rept. 104-469, pt. 1, p. 538.

[67] U.S. Department of Homeland Security, Memorandum to Leon Rodriguez, Director, U.S. Citizenship and Immigration Services, from Jeh Charles Johnson, Secretary of Homeland Security, *Families of U.S. Armed Forces Members and Enlistees*, November 20, 2014.

[68] Data provided by USCIS to CRS by email, September 30, 2020.

[69] The *Federal Register* notice on the termination points out, however, that "[t]his discretionary change in policy does not preclude such individuals from applying for parole consideration independent of the … program." U.S. Department of Homeland Security, "Termination of the Central American Minors Parole Program," 82 *Federal Register* 38926, August 16, 2017.

[70] USCIS, August 2019 news release.

[71] USCIS, August 2019 news release. The news release describes *categorical parole* as "programs designed to consider parole for entire groups of individuals based on pre-set criteria."

[72] USCIS, August 2019 news release.

[73] U.S. Department of Justice, Immigration and Naturalization Service, "Employment Authorization to Aliens in the United States," 46 *Federal Register* 25079, May 5, 1981. According to the rule summary, "The new rules are necessary to codify the various Service Operations Instructions and policy statements in one place in the regulations so that the

who were authorized for employment incident to their status, and (2) aliens who had to apply for work authorization. The first class included aliens who were paroled into the United States as refugees, as described in INA Section 212(d)(5)(B) and discussed above in the "INA Parole Authority" section. Other aliens granted parole in accordance with INA Section 212(d)(5) were not listed as part of either class.

In November 1981, INS published a final rule to add INA Section 212(d)(5) parolees to the class of aliens who had to apply for work authorization, describing them as follows: "Any alien paroled into the United States temporarily for emergent reasons or for reasons deemed strictly in the public interest: *Provided*, The alien establishes an economic need to work."[74] The rule also added a new provision on criteria to establish economic necessity. The supplementary information to the rule discussed the rationale for adding the new paragraph on parolees: "Although section 212(d)(5)(A) of the Act authorizes the exercise of discretion regarding the conditions of parole for such alien, and which implies work authorization, this new class of aliens is added to Part 109 of 8 CFR to avoid any uncertainty."[75]

Current DHS regulations on employment authorization describe three classes of employment-authorized aliens: (1) "Aliens authorized employment incident to status," (2) "Aliens authorized for employment with a specific employer incident to status or parole," and (3) "Aliens who must apply for employment authorization."[76] Different parolees fall within each of these classes. As under the 1981 regulations, the first class includes aliens who are paroled in as refugees.[77] The second class includes aliens who are paroled in as entrepreneurs under the International Entrepreneur Parole program[78] (see the "Selected Immigration Parole Programs for Persons Outside the United States" section). The third class includes aliens granted parole under INA Section 212(d)(5), with some exceptions. The relevant paragraph of the regulation describing this third class reads, in part, "an alien paroled into the United States temporarily for urgent humanitarian reasons or significant public benefit pursuant to section 212(d)(5) of the Act."[79] (It does not include any language on economic necessity.) Also included in the third class, in a separate paragraph, are spouses of entrepreneur parolees.[80]

public may conveniently locate the rules on employment authorization for aliens and the standards which are applicable." (p. 25080).

[74] U.S. Department of Justice, Immigration and Naturalization Service, "Employment Authorization; Revision to Classes of Aliens Eligible," 46 *Federal Register* 55920, 55921, November 13, 1981 (hereinafter cited as INS rule, November 13, 1981). The "emergent reasons" and "strictly in the public interest" language reflected the text of the INA 212(d)(5)(A) at the time.

[75] INS rule, November 13, 1981, p. 55921.

[76] 8 C.F.R. §274a.12.

[77] 8 C.F.R. §274a.12(a)(4).

[78] 8 C.F.R. §274a.12(b)(37).

[79] 8 C.F.R. §274a.12(c)(11). Among the exceptions, this provision excludes asylum seekers and others requesting humanitarian relief who are paroled from custody after establishing a credible fear or reasonable fear of persecution or torture. For information about credible fear and reasonable fear, see CRS Report R45539, *Immigration: U.S. Asylum Policy*

[80] 8 C.F.R. §274a.12(c)(34).

Parole and Permanent Immigration Status

A parolee is permitted to remain in the United States for the duration of the grant of parole, and may be granted work authorization. A parole grant, however, does not provide a set pathway to a permanent immigration status.

The INA, as originally enacted in 1952, did not allow a parolee to apply for adjustment of status, which is the standard process of obtaining LPR status while in the United States. The main adjustment of status provision in the 1952 act (INA §245(a)) provided only for the adjustment of status of an alien lawfully admitted to the United States as a nonimmigrant[81] if the alien had an immigrant visa immediately available and met other requirements.

INA Section 245(a) was amended in 1960 to provide for the adjustment of status of an alien who had been inspected and admitted or *paroled* into the United States.[82] This provision thus gives parolees a potential pathway to LPR status, but it is subject to a number of requirements and restrictions. Among the requirements, an individual must be eligible to receive an immigrant visa and must have an immigrant visa immediately available in order to adjust status. This, in turn, typically requires the individual to have either a family member or employer who can sponsor him or her under the existing family-based or employer-based permanent immigration system. To be eligible for adjustment of status, an individual also must be admissible to the United States for permanent residence. The INA enumerates grounds of inadmissibility, which are grounds upon which aliens are ineligible to receive visas or to be admitted to the United States.[83] These include health, criminal, and security grounds, among others. Some grounds of inadmissibility include exceptions, and some can be waived. In addition, adjustment of status under INA Section 245(a) is not applicable to individuals who, for example, have engaged in unauthorized employment or have failed to maintain lawful status continuously since U.S. entry, although there are exceptions to these ineligibilities for certain persons, including certain relatives of U.S. citizens.[84]

Adjustment of Status Legislation

As noted, prior to the enactment of the Refugee Act of 1980, parole authority was one of the mechanisms used to bring refugees into the United States. Laws enacted between the mid-1950s and the late 1970s provided for the adjustment of status of specified groups of parolees, including paroled refugees from World War II, the Hungarian Revolution of 1956, and the Vietnam War.[85] Also enacted during this period, in the aftermath of the Cuban Revolution, was the Cuban Adjustment Act. Unlike the other adjustment of status measures, the Cuban Adjustment Act was not limited to a finite group of Cuban parolees and did not include an end date. In its current form, it provides for the adjustment of status "of any alien who is a native or citizen of Cuba and

[81] A nonimmigrant is a foreign national who is legally admitted to the United States for a temporary period of time and a specific purpose (e.g., tourists, students, diplomats).

[82] P.L. 86-648, §10.

[83] INA §212(a), 8 U.S.C. §1182(a).

[84] An exception applies to *immediate relatives* of U.S. citizens. INA Section 201(b)(2) (8 U.S.C. §1151(b)(2)) defines this term to mean the unmarried children under age 21, spouses, and parents of a U.S. citizen, with the U.S. citizen required to be at least age 21 in the case of parents.

[85] These laws included P.L. 85-559, July 15, 1958; P.L. 86-648, July 14, 1960; and P.L. 95-145, October 28, 1977.

who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year."[86]

After 1980, parole continued to be granted to particular groups of foreign nationals seeking permanent admission to the United States, and legislative provisions continued to be enacted to enable members of these groups to adjust to LPR status. One of these adjustment provisions was enacted as part of the Lautenberg Amendment, which, as amended, provided for the adjustment of status of nationals of an independent state of the former Soviet Union, Estonia, Latvia, Lithuania, Vietnam, Laos, or Cambodia who were granted parole after being denied refugee status (see the "Refugee-Related Parole" section).[87]

Most beneficiaries of the current special parole programs have an existing avenue to obtain LPR status. In the case of the Cuban programs, parolees can adjust status under the Cuban Adjustment Act. In the case of the family reunification programs, parolees can adjust status under the standard INA adjustment of status provisions once their immigrant visas become available. Individuals granted parole under the CAM program or the IEP program, however, would not necessarily have an existing pathway to LPR status and would likely require special adjustment of status legislation.

Advance Parole and Adjustment of Status

The potential use of advance parole as a mechanism to gain access to adjustment of status has received attention in recent years. While this issue has been raised mainly in connection with the DACA initiative (and is discussed in that context here), it has broader relevance. It is also applicable to others present in the United States in a capacity that makes them eligible for advance parole but who did not enter the country lawfully—such as certain holders of TPS.[88]

DACA provides temporary protection from removal to individuals who have met a set of requirements. Among these, the individual must have been in unlawful status on June 15, 2012. It does not matter if the individual initially entered the United States legally as long as he or she no longer had lawful status on June 15, 2012. DACA recipients who entered the United States unlawfully are not eligible to adjust to LPR status (because they were never inspected and admitted or paroled into the country), even if they meet the other eligibility requirements discussed earlier in this section of the report.

During the Obama Administration, DACA recipients who initially entered the United States unlawfully could become eligible for adjustment of status if they were granted advance parole and were permitted to re-enter the country after travelling abroad. Now-archived USCIS DACA FAQs enumerated the following bases for granting advance parole: "humanitarian purposes, including travel to obtain medical treatment, attending funeral services for a family member, or visiting an ailing relative; educational purposes, such as semester-abroad programs and academic research[; or] employment purposes."[89] When DACA recipients who were granted advance parole

[86] P.L. 89-732, as amended, 8 U.S.C. §1255 note.

[87] P.L. 101-167, §599E, as amended, 8 U.S.C. §1255 note. Other post-1980 parolee adjustment of status acts include P.L. 104-208, Division C, Section 646 (Poles and Hungarians), 8 U.S.C. Section 1255 note, and P.L. 111-293 (Haitian orphans), 8 U.S.C. Section 1255 note.

[88] For additional information about this form of relief, see CRS Report RS20844, *Temporary Protected Status: Overview and Current Issues*.

[89] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Frequently Asked Questions, DHS DACA FAQs," response to question 57, March 8, 2018 (archived content), https://www.uscis.gov/archive/frequently-asked-questions#education.

returned to the United States, they could be paroled in. They would therefore meet the threshold "inspected and admitted or paroled" requirement for adjustment of status, which could enable them to become LPRs. To do so, however, such individuals would need to meet the other applicable requirements for adjustment of status, including being eligible to receive an immigrant visa, being admissible to the United States, having an immigrant visa immediately available, and being covered by an exception that shielded the individuals from any applicable ineligibilities.[90]

According to preliminary data provided to Congress by DHS, 45,447 DACA recipients had been approved for advance parole as of August 21, 2017.[91] It is not known how many of these individuals subsequently applied for or were granted adjustment to LPR status.

When the Trump Administration acted to rescind DACA in 2017, it announced that it would no longer grant advance parole under the DACA program. As stated in the September 2017 DHS DACA rescission memorandum, DHS "will not approve any new Form I-131 applications for advance parole under standards associated with the DACA program, although it will generally honor the stated validity period for previously approved applications for advance parole."[92]

In response to the June 2020 Supreme Court decision vacating the DACA rescission, acting DHS Secretary Wolf issued a memorandum in July 2020 "making certain immediate changes to the DACA policy to facilitate my thorough consideration of how to address DACA." Regarding advance parole, the memorandum stated that it "should be granted to current DACA beneficiaries only in exceptional circumstances."[93] An August 2020 USCIS memorandum providing implementing guidance included some examples of such circumstances, among them travel in furtherance of U.S. law enforcement interests and travel for life-sustaining medical treatment not available to the individual in the United States. The USCIS memorandum further stated that "in most instances, traveling abroad for educational purposes, employment related purposes, or to visit family members living abroad will not warrant advance parole."[94]

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[90] For additional discussion and case examples, see Immigrant Legal Resource Center, *From Advance Parole to a Green Card for DACA Recipients*, May 17, 2016, https://www.ilrc.org/advance-parole-green-card-daca-recipients.

[91] These data were made publicly available by the Office of Senator Chuck Grassley in a September 2017 news release; see https://www.grassley.senate.gov/news/news-releases/data-indicate-unauthorized-immigrants-exploited-loophole-gain-legal-status.

[92] U.S. Department of Homeland Security, Memorandum to James W. McCament, Acting Director, U.S. Citizenship and Immigration Services, Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement, Kevin K. McAleenan, Acting Commissioner, U.S. Customs and Border Protection, Joseph B. Maher, Acting General Counsel, Ambassador James D. Nealon, Assistant Secretary, International Engagement, Julie M. Kirchner, Citizenship and Immigration Services Ombudsman, from Elaine C. Duke, Acting Secretary, *Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children"*, September 5, 2017, https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca.

[93] U.S. Department of Homeland Security, Memorandum to Mark Morgan, Senior Official Performing the Duties of the Commissioner, U.S. Customs and Border Protection, Matthew Albence, Senior Official Performing the Duties of Director, U.S. Immigration and Customs Enforcement, Joseph Edlow, Deputy Director of Policy, U.S. Citizenship and Immigration Services, from Chad F. Wolf, Acting Secretary, *Reconsideration of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children"*, July 28, 2020, https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf.

[94] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Memorandum to Associate Directors and Program Office Chiefs, from Joseph Edlow, Deputy Director for Policy, *Implementing Acting Secretary Chad Wolf's July 28, 2020 Memorandum, "Reconsideration of the June 15, 2012 Memorandum 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children'"*, August 21, 2020, https://www.uscis.gov/sites/default/files/document/policy-alerts/DACA%20implementation%20memo%20v2%208.21.20%20final.pdf.

Some bills introduced and considered in recent Congresses directly addressed the advance parole-adjustment of status issue. The Security, Enforcement, and Compassion United in Reform Efforts (SECURE) Act of 2017 (S. 2192), as introduced in the 115th Congress, proposed to rewrite the INA parole provision. Among other changes, it would have added a definition of *advance parole* to the provision and would have stipulated that "a grant of parole into the United States based on an approved application for advance parole shall not be considered a parole for purposes of qualifying for adjustment of status to lawful permanent resident status in the United States." Similar language was included in the Solution for Undocumented Children through Careers, Employment, Education, and Defending our Nation (SUCCEED) Act (S. 1852), as introduced in the 115th Congress, and in S.Amdt. 1959, the SECURE and SUCCEED Act, as considered on the Senate floor in February 2018.[95]

Legislation in Recent Congresses

Bills introduced in recent Congresses illustrate differing views about the appropriate use of immigration parole authority. One key area of debate is the use of parole for designated groups.

On the one hand, various legislative proposals have sought to utilize parole authority as a mechanism to grant temporary immigration relief to specified populations. For example, the Healthcare Opportunities for Patriots in Exile Act (HOPE) Act, as introduced in 116th Congress and earlier Congresses,[96] would give DHS the discretion to parole into the United States certain veterans for purposes of receiving healthcare from the Department of Veterans Affairs.

The 116th Congress has also seen the introduction of a variety of bills to grant parole to designated groups. The Families Belong Together Act (H.R. 883/S. 271) would require DHS to grant parole to certain parents and children separated by the department. The Syrian Allies Protection Act (S. 2625), which would establish a special immigrant program for certain Syrians, would direct the executive branch to "develop and implement a framework" to grant parole to applicants for special immigrant status who are at risk in their current locations.[97] In addition, at least one bill, the Cuban Family Reunification Act (H.R. 4884), seeks to resuscitate a currently inactive parole program of the same name.

On the other hand, multiple bills introduced in recent Congresses have sought to restrict the use of parole authority. Among these are similar bills ordered to be reported by the House Judiciary Committee in the 114th (H.R. 1153) and 115th (H.R. 391) Congresses, both entitled the Asylum Reform and Border Protection Act. These bills proposed to amend the text of the INA parole provision to limit the use of parole to an enumerated "urgent humanitarian reason" or "reason deemed strictly in the public interest." These bills also would have prohibited DHS from granting immigration parole to a foreign national who had applied for and been denied refugee status.

Some other recent bills that would have permitted the use of parole only for enumerated reasons also included language specifically to prohibit the use of parole for classes of people. For example, S. 2192, as introduced in the 115th Congress, would have prohibited the use of parole authority for "generalized categories of aliens or classes of aliens based solely on nationality, presence, or residence in the United States, family relationships, or any other criteria that would

[95] S.Amdt. 1959 was considered as a floor amendment to the unrelated Broader Options for Americans Act (H.R. 2579)). The Senate rejected a motion to invoke cloture on it.

[96] S. 1042 in the 116th Congress; H.R. 2761 and S. 1703 in the 115th Congress; H.R. 6092 in the 114th Congress.

[97] For information about special immigrants, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

cover a broad group of foreign nationals either inside or outside of the United States."[98] In the 116th Congress, the Secure and Protect Act of 2019 (S. 1494), as reported by the Senate Judiciary Committee, would amend the INA parole provision to make it unlawful for DHS to grant parole "according to eligibility criteria describing an entire class of potential parole recipients." It also would add new language to the INA provision to prohibit DHS from using parole authority "to supplement established immigration categories without an Act of Congress."

Conclusion

Parole authority, as currently defined in the INA, is potentially applicable to a variety of persons and circumstances. For example, the Immigrant Legal Resource Center, an immigrant advocacy organization, views it as a useful tool: "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."[99] On the other hand, groups that advocate for restrictions on immigration, such as the Center for Immigration Studies (CIS), see some recent uses of parole—such as for immigrant entrepreneurs—as overbroad. A 2018 CIS article characterized the IEP rule as "just one more way of wedging in an ever-increasing group of aliens who couldn't fit within the scope of the INA as enacted into law."[100] Bills in the 116th Congress can be seen as efforts to further these competing points of view on parole—by alternatively legislating the use of parole for particular groups or adding new statutory restrictions to prohibit such use. If Congress opts to enact one or more of these measures, it may in the process further define the appropriate use of parole.

[98] Similar language was included in S. 1852, as introduced in the 115th Congress, and in S.Amdt. 1959 to H.R. 2579, as considered on the Senate floor in February 2018.

[99] Immigrant Legal Resource Center, *Parole in Immigration Law*, October 2016, Chapter 1, p. 1-5, https://www.ilrc.org/sites/default/files/sample-pdf/parole-1st_ed-2016-ch_01.pdf.

[100] Dan Cadman, *Rescinding an Inappropriate Obama-Era Immigration Parole Rule*, Center for Immigration Studies, May 29, 2018, https://cis.org/Cadman/Rescinding-Inappropriate-ObamaEra-Immigration-Parole-Rule.

Appendix. INA Parole Provision (§212(d)(5))

Current Provision

(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f)[101], 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.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.[102]

As Originally Enacted

The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest 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.

[101] INA Section 214(f)(2) places restrictions on the granting of parole to crewmembers in certain circumstances.

[102] 8 U.S.C. §1182(d)(5).

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