Frequently Asked Questions on Trump Administration Policies Affecting Parolees: Enforcement and Termination of Parole

April 2025

I. Introduction

In recent weeks, the Trump administration has issued several executive orders, Department of Homeland Security (DHS) directives, and memoranda that significantly impact parolees and expand the group of noncitizens within the United States subject to expedited removal. It is essential for legal advocates and legal service providers to understand these changes and their potential effects on clients, particularly on those with parole status.

This resource provides an overview of parole, including the various categorical and group-based parole programs; highlights key policy changes affecting parolees; and examines the expanded use of expedited removal. The resource is designed to help advocates navigate these developments and effectively advise and represent their clients, including noncitizens in removal proceedings or in DHS detention. CLINIC also seeks to clarify common misconceptions and confusions about parole and will update this resource as policies continue to evolve.

II. What is parole?

Under INA § 212(d)(5), humanitarian parole allows noncitizens to enter the United States temporarily for urgent humanitarian reasons or significant public benefit. The Secretary of DHS, which includes Customs and Border Protection (CBP), United States Citizenship and Immigration Services (USCIS), and Immigration and Customs Enforcement (ICE) may grant an individual parole on a case-by-case for purposes such as medical emergencies, family reunification in exceptional cases, protection from imminent harm, and law enforcement cooperation. Notably, while parole is a lawful entry into the United States, it neither confers lawful immigration status, counts as an "admission" for immigration purposes, nor leads to permanent status. Indeed, inadmissible noncitizens may nevertheless be paroled into the United States. As outlined in 8 CFR § 253.2, parole is a temporary and discretionary measure, subject to termination at any time. Parolees are expected to leave the United States when their authorized period expires unless they obtain another form of relief.

The length of parole depends on the specific humanitarian or public benefit purpose for which it was granted, but it is often for one or two years. The parole expiration date is listed on Form I-94, Arrival/Departure Record, issued by CBP. Parolees may be eligible for work authorization by applying for an Employment Authorization Document (EAD) using Form I-765. Work authorization is typically granted for the duration of the parole period. To extend their stay,

eligible parolees may apply for re-parole.[1] If the parolee plans to travel outside the United States, they must first obtain an advance parole travel document from USCIS by filing Form I-131, Application for Travel Document; failure to do so will result in automatic termination of their parole upon departure.

III. Who can grant parole?

As previously mentioned, CBP, USCIS, and ICE officials have the discretionary authority to grant parole.[2] To request humanitarian parole with USCIS,[3] the process varies depending on whether the applicant is inside or outside the United States. Individuals inside the United States seeking humanitarian parole to return after traveling abroad for medical emergencies or significant public benefit must file Form I-131 with USCIS. USCIS reviews the application and determines whether to grant parole based on the circumstances. For those outside the United States, the same Form I-131 is filed with USCIS. But after approval, the individual must apply for travel authorization at a U.S. consulate or embassy and attend an interview. If granted, they can travel to the United States to enter temporarily, which is usually for up to a two-year period. Note that CBP always inspects the parolee to determine whether parole is appropriate; entering on parole after consular processing abroad is not a valid "admission" for immigration purposes.[4]

In addition to inspecting pre-authorized parolees for entry, CBP has the discretion to independently grant parole on a case-by-case basis to noncitizens at the border seeking entry into the United States for humanitarian reasons or emergencies. There is no specific form required to apply for parole directly with CBP. Those officers can grant parole under INA § 212(d)(5) to the following noncitizens: 1) those arriving at a port of entry (POE) without a valid entry document ("arriving aliens") who are inadmissible under INA § 212(a)(7)(A)(i)(I); and 2) those apprehended at the border attempting to enter without inspection (EWI) who are inadmissible under INA § 212(a)(6)(A)(i). Under the Biden administration, the CBP One mobile device application was implemented to allow individuals to schedule appointments at U.S. ports of entry to apply for asylum, request humanitarian parole, or participate in programs like the Cuban, Haitian, Nicaraguan, and Venezuelan (CHNV) parole program. Individuals entering the United States via the CBP One app were typically granted parole for one or two years under INA § 212(d)(5).

ICE also has the authority to grant parole under INA § 212(d)(5). Pursuant to the 2008 Memorandum of Understanding among DHS agencies,[5] ICE typically has jurisdiction over humanitarian parole requests for individuals in removal proceedings. These requests may come

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[1] Visit Humanitarian or Significant Public Benefit Parole for Aliens Outside the United States | USCIS and click on "re-parole" to learn about eligibility for re-parole.
[2] Memorandum of Agreement Between USCIS, ICE, and CBP for the Purpose of Coordinating the Concurrent Exercise by USCIS, ICE, and CBP of the Secretary's Parole Authority Under INA § 212(d)(5)(A) with Respect to Certain Aliens Located Outside of the United States, ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf (2008).
[3] *Id.*
[4] See DOS, Information Sheet for Individuals Paroled into the United States, state.gov/wp-content/uploads/2023/02/Appendix-2_Humanitarian-Parole-Information_ENGLISH-1.pdf, (last visited Mar. 18, 2025), for additional information on parole into the United States.
[5] *Supra* fn 2.

from detained individuals seeking release for urgent humanitarian, medical, or significant public benefit reasons. Non-detained individuals in removal proceedings can also request humanitarian parole from ICE for similar reasons. Parole requests by those in proceedings may also be used as a strategy to seek prosecutorial discretion and have removal proceedings dismissed when the individual is not eligible for any immigration relief. To request humanitarian parole with ICE, the noncitizen must submit Form I-131 to USCIS, which will forward it to ICE for case-by-case review.

It is important to note that, separate from INA § 212(d)(5), ICE also has authority under INA § 236(a)(2)(B) to grant conditional parole to noncitizens who are detained under INA § 236(a), which allows for their release from detention while their immigration case is pending with the immigration court. Individuals must meet certain conditions, such as reporting to immigration authorities or submitting to electronic monitoring and demonstrating that they are not security or flight risks. Although this method of release is called "conditional parole," it has been found by the Board of Immigration Appeals (BIA) and courts to be distinct from humanitarian parole under INA § 212(d)(5). As such, it does not afford the same benefits as the latter.[6]

IV. What are group-based or categorical parole programs?

Various administrations have implemented "group-based" or categorical parole programs under INA § 212(d)(5) to allow individuals from certain countries or in similar circumstances to enter or remain in the United States, often in response to humanitarian concerns. While these parole requests are still reviewed and granted on a case-by-case basis, the application process is generally more streamlined. The Biden administration launched several parole programs to address humanitarian needs and provide safe, legal pathways to the United States for individuals facing crises. The aims of these programs, according to the administration, were to reduce irregular migration while offering temporary relief, work authorization, and the opportunity for individuals to seek permanent residency through U.S. sponsorship. These parole programs included:

- **CHNV Parole Process** – Allowed individuals from Cuba, Haiti, Nicaragua, and Venezuela to apply for parole and provided temporary relief and a legal pathway to the United States after securing a financial sponsor in the United States and undergoing background checks.
- **Uniting for Ukraine (U4U)** – Granted parole to Ukrainians fleeing war, enabling them to seek refuge in the United States with the support of a U.S. sponsor.
- **Operation Allies Welcome (OAW)/Operation Allies Refuge (OAR)**[7]– Provided parole for Afghan nationals and certain family members who assisted U.S. military operations in Afghanistan.
- **Family Reunification Parole Process (FRP)** – Permitted beneficiaries of approved family-based petitions from Cuba, Haiti, Guatemala, El Salvador, Honduras, Colombia, and Ecuador to enter the United States temporarily while their eligibility to seek permanent residency is pending.

V. How do the recent executive orders affect parolees?

[6] Sections XV and XVI.
[7] Hereafter "Afghan OAW/OAR Program."

On Jan. 20, 2025, the Trump administration issued two executive orders (EO), "Protecting the American People Against Invasion" and "Securing Our Borders," which significantly impact parolees. The "Securing Our Borders" EO directs the DHS Secretary to terminate all "categorical" parole programs that are contrary to the policies of the United States. The EO also orders the DHS Secretary to suspend the CBP One mobile device application and to halt the process through which noncitizens, including asylum seekers, were previously permitted entry into the United States under humanitarian grounds.

The "Protecting the American People Against Invasion" EO directs the Secretary of the DHS to ensure that the parole authority is exercised on only a case-by-case basis and only when an individual demonstrates urgent humanitarian reasons or a significant public benefit. The EO also orders the DHS Secretary to take all appropriate action under the INA to "ensure the efficient and expedited removal of" noncitizens from the United States, with a focus on "recent entrants." Taken together, these executive orders direct DHS to terminate the categorical parole programs and then consider whether parolees should be subject to expedited removal as "recent entrants."

VI. What actions have been taken to implement these executive orders?

On Jan. 21, 2025, a DHS spokesperson announced an ICE directive that effectively ends the Biden-era special parole programs and returns humanitarian parole to a strictly case-by-case basis. The directive orders ICE and CBP to "phase out any parole programs that are not in accordance with the law." DHS has not yet released this memo to the public. However, the directive has potentially broad implications for parolees or those applying for parole status, especially those who entered via a categorical or group-based parole program.

On Jan. 24, 2025, DHS issued a notice in the *Federal Register* (FRN), "Designating Aliens for Expedited Removal," that expands the use of expedited removal to the fullest extent authorized by Congress. This expansion significantly affects noncitizens who are inadmissible under specific provisions of the INA, particularly those who have not been admitted or paroled into the United States and cannot establish a sufficient period of continuous physical presence.

Under this new policy, DHS has designated for expedited removal — except in limited circumstances — noncitizens who meet the following criteria:

- They are inadmissible under:
  - INA § 212(a)(6)(C) (fraud or misrepresentation), or
  - INA § 212(a)(7) (lack of valid entry documents).
- They have not been admitted or paroled into the United States.
- They cannot affirmatively demonstrate to an immigration officer that they have been *continuously present* in the United States for *at least two years* before the determination of inadmissibility.

This expansion allows DHS to remove individuals who meet these conditions without referring them to immigration court for a hearing before a judge, which significantly reduces procedural safeguards for affected noncitizens.

In addition, on Jan. 23, 2025, ICE issued a memorandum titled *Guidance Regarding How to Exercise Enforcement Discretion* that directs officers to take enforcement actions against two groups:

1. Category 1: Noncitizens who are subject to the expanded expedited removal criteria under the Jan. 24 FRN.
2. Category 2: Noncitizens on categorical parole programs that do not fall under category (1).

For individuals in category 1, DHS should take steps to review their cases and consider:

- Terminating removal proceedings for those already in proceedings.
- Terminating active parole status, particularly for those granted categorical parole
- Applying expedited removal procedures, which leads to removal without an immigration court hearing.

For individuals in category 2, DHS should take steps to review their cases and:

- Consider placing the noncitizens in full removal proceedings.
- Review their parole status to determine if parole is appropriate given any changed legal or factual circumstances.

The memo emphasizes that parole is not an admission, and the expedited removal process includes asylum screening. However, it also emphasizes that DHS should prioritize for enforcement action those subject to expedited removal who failed to file for asylum within one year, subject to the statutory exceptions to the one-year filing deadline as provided in INA § 208(a)(2)(D). These include "changed circumstances," if circumstances have materially impacted the applicant's asylum eligibility, and "extraordinary circumstances," if extraordinary situations have led to a delay in filing the application.

According to reports, including from the Washington Post[8] and Reuters,[9] ICE has issued internal guidance seeking to fast track removals by expanding the use of expedited removals (as discussed further below). The reported guidance specifically targets noncitizens who entered the United States under Biden-era parole programs, as well as others granted parole by CBP, including those who may have been in the United States for more than two years if they entered as "arriving aliens." In the following sections, we will explore the potential implications of these developments.

Finally, on March 25, 2025, DHS issued a notice in the Federal Register, "Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans." (CHNV Termination Notice).[10] In addition to announcing the termination of the CHNV program, DHS purported to

[8] *Washington Post*, "ICE expands expedited removal, raising fears of mass deportation," washingtonpost.com/immigration/2025/02/28/ice-expedited-removal-mass-deportation/ (Feb. 28, 2025).
[9] Reuters, "Trump weighs revoking legal status of Ukrainians as US steps up deportations," reuters.com/world/us/trump-plans-revoke-legal-status-ukrainians-who-fled-us-sources-say-2025-03-06/ (Mar. 6, 2025).
[10] 90 Fed. Reg 13611 (March 25, 2025).

give, through the published notice, constructive notice to hundreds of thousands of parolees that their parole periods would end in 30 days from the date of the notice. DHS indicated that it will also provide parolees notice through their online MyUSCIS accounts, and that both the FRN and the notices in parolees' MyUSCIS accounts would serve as independent written notice under 8 CFR § 212.5(e)(2)(i). DHS also announced that it "intends to revoke parole-based employment authorization consistent with" procedures for such revocation under 8 CFR § 274a.14(b).

VII. What parole programs have been affected?

In compliance with these EOs, the FRN, and subsequent DHS directives and memos, USCIS has stopped accepting applications for the following parole processes:

- **CHNV Parole Program:** This program was specifically named in the "Securing Our Borders" EO as a program that is contrary to this administration's policies and the March 18, 2025, CHNV Termination Notice. In addition, the CHNV webpage has been taken down and instead directs users to a Jan. 28, 2025, announcement, "Update on I-134A," that states: "Due to the Jan. 20, 2025 Executive Order, Securing Our Borders, USCIS is pausing acceptance of Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, until we review all categorical parole processes as required by that order."
- **Uniting for Ukraine "U4U:"** On Jan. 27, 2025, USCIS announced that it would stop accepting new applications for the U4U program pending the Trump administration's review of all humanitarian parole programs. This parole process has been suspended indefinitely. The former U4U website is currently labeled "Archived Content."
- **Family Reunification Parole Process (FRP):** Several FRP programs that were linked to the streamlined I-134A application implemented by the Biden administration have been removed from the USCIS website, and the agency now directs users to the "Update on I-134A page." The affected programs include FRP for Ecuador, Cuba, El Salvador, Guatemala, Honduras, and Colombia. The Haitian FRP page remains up, but it links users to the "Update on I-134A" page under "Applying for HFRP." The Cuban FRP page appears unaffected at the present time.
- **CBP One Parole:** On Jan. 21, 2025, CBP updated its website to end the use of the CBP One App. Migrants using the app received a cancellation notice for any appointments that had been scheduled.

VIII. Can current Afghan OAW/OAR parolees apply for re-parole?

Notably, DHS has not yet made an official announcement regarding actions that directly impact Afghan parolees under the OAW/OAR program. The USCIS website for Afghan parolees remains active and includes guidance for Afghans seeking to apply for re-parole.[11] Under current policy, USCIS automatically considers Afghan parolees for re-parole on a case-by-case basis if

[11] https://www.uscis.gov/humanitarian/humanitarian_parole; https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-aliens-outside-the-united-states/information-for-afghan-nationals-on-requests-to-uscis-for-parole; https://www.uscis.gov/humanitarian/information-for-afghan-nationals/re-parole-process-for-certain-afghans/afghan-re-parole-faqs.

they have an application for asylum or for permanent residency pending with USCIS. While CLINIC is uncertain whether USCIS will continue to automatically grant re-parole to certain Afghan parolees, we will continue to update Affiliates and the public of any changes to policies affecting the Afghan re-parole process.

In the meantime, advocates should thoroughly screen Afghan parolees for other potential immigration relief and advise against relying solely on re-parole. If an Afghan parolee has no other pending relief, such as asylum, they should carefully consider the risks of applying for re-parole, as it may flag their case with DHS and trigger enforcement This would also be true for persons who entered in other categorical parole programs. Afghan parolees are strongly encouraged to consult with an attorney or an DOJ Accredited Representative as soon as possible to explore alternative immigration relief options and determine if re-parole is their best option.

IX. What parole appears to remain in place?

The new policies set forth in the EOs and in DHS memoranda do not eliminate the government's ability to grant parole, which is an authority derived from the statute under INA § 212(d)(5). While category-based, streamlined parole processes are no longer available, individuals may still seek humanitarian parole, or re-parole, on a case-by-case basis. However, given this administration's apparent hostility to parole, applicants may expect to see increased scrutiny and denial rates.

Note that "advance parole," while also a form of INA § 212(d)(5) parole, is somewhat different from the humanitarian parole that noncitizens abroad seek in order to enter the United States for humanitarian or significant public benefit reasons. Advance parole allows someone with permission to remain in the United State to request authorization to return to the United State after temporary travel abroad. Advance parole does not appear to be affected by the recent policies of this administration. Therefore, adjustment applicants, TPS holders, DACA beneficiaries, and others who are eligible to request advance parole (or advance travel authorization, in the case of TPS holders) may continue to request advance parole (or travel authorization) and travel abroad if approved. However, while these benefits appear to remain available, applicants should be screened carefully for inadmissibility issues prior to traveling. In addition, given the administration's negative view of TPS and rapid termination of several current country designations, as well as its historically negative approach to DACA, TPS, and DACA holders should exercise extreme caution when considering travel outside of the country on these prior authorizations.

X. What happens to pending applications?

Pending parole requests made through the CHNV, U4U, and FRP process are not being adjudicated. As reported by multiple news outlets,[12] including CBS, acting USCIS Director Andrew Davidson issued an internal memorandum on Feb. 14, 2025, implementing an agency-

[12] See "USCIS Memo Pauses TPS, Asylum, EAD, and Other Applications for Parolees," The National Law Review, Feb. 14, 2025, https://natlawreview.com/article/uscis-memo-pauses-tps-asylum-ead-other-applications-parolees; "U.S. pauses immigration applications for certain migrants welcomed under Biden," CBS, Feb. 19, 2025, https://www.cbsnews.com/news/u-s-pauses-immigration-applications-for-certain-migrants-welcomed-under-biden/.

wide "administrative pause" on all pending benefit requests filed by applicants granted parole through programs such as CHNV, U4U, and FRP. This administrative pause potentially affects these parolees' applications for TPS, asylum, an EAD, and permanent residency. This effectively freezes their ability to move into another legal status and leaves them vulnerable to expedited removal. OAW/OAR Afghan parolees do not appear to be discussed in the memo. The application freeze is expected to remain in place indefinitely as government officials work to identify alleged fraud and to strengthen vetting procedures. These are meant to address national security and public safety concerns, which reflect the Trump administration's unfounded claims of widespread immigration fraud. Notably, this pause does not prevent parolees from filing their applications with USCIS; they should just not expect their applications to be adjudicated during this new vetting process.

XI. Will current parolees in the United States lose their parole and EAD?

USCIS is not currently adjudicating parole applications submitted under the categorical programs mentioned above. In addition, the DHS memo "Guidance Regarding How to Exercise Discretion Under the Parole Authority" instructs immigration officers to consider taking steps to terminate an individual's parole status and to place them into expedited removal. Consistent with this guidance, DHS published the CHNV Termination Notice on March 25, 2025, in which it purports to have terminated the parole periods for all CHNV parolees via the publication of the notice[13] and indicated its intent to revoke these individuals' employment authorization. This is perhaps the first time DHS has attempted to terminate the parole periods of thousands of parolees through the publication of an FRN, and the validity of such an action is unclear. Likely because of this uncertainty, the CHNV Termination Notice indicates that DHS is also providing notice to parolees via their electronic MyUSCIS accounts. The CHNV Termination Notice directs CHNV parolees "without a lawful basis to remain in the United States" to "depart the United States before their parole termination date." As is discussed further below, parolees who are eligible for additional benefits, especially those who fear return to their countries of origin, should explore and apply for those benefits promptly to protect themselves from possible removal. Even if they submit applications, DHS may still place them in expedited removal proceedings and/or detain them pursuant to current policies. Challenges to such proceedings are limited and are discussed at Section XIII below.

XII. Will enforcement action be taken against former or current parolees?

Perhaps the most critical question many parolees and their representatives are now asking, in the wake of this guidance, is whether they are subject to immigration enforcement. Certainly, taken together, these actions by the administration indicate a policy of targeting parolees for enforcement. Indeed, according to reporting, some advocates fear that an internal directive circulated at ICE on Feb. 18, 2025, may be so broad as to direct officers to interpret the expedited removal statute and regulations to apply, in essence, to ***anyone released from CBP custody in the past, regardless of whether they were granted parole***.[14] We consider below the

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[13] Effective 30 days following publication of the notice, 90 Fed. Reg 13611.

[14] *"Trump seeks to fast-track deportations of hundreds of thousands," Washington Post*, Feb. 28, 2025, washingtonpost.com/immigration/2025/02/28/ice-expedited-removal-mass-deportation/; *"Trump weighs*

relative risk of enforcement to several categories of noncitizens, the strength of the government's positions as to who is subject to expedited removal, and potential arguments against the application of expedited removal in such cases. Ultimately, expedited removal orders are subject to administrative or judicial review in only very limited circumstances and would not be applicable to most of the noncitizens described in this advisory. Accordingly, it is ***imperative that where noncitizens have a fear of persecution upon their removal or a claim of asylum, they express that fear affirmatively upon apprehension.***

- **Category 1:** *Individuals who were previously released or paroled from DHS custody and filed an affirmative asylum application.*[15] According to an allegedly leaked copy of the ICE directive, ICE officers are directed to "consider for expedited removal all aliens previously released by U.S. Customs and Border Protection who have not affirmatively filed an application for asylum with U.S. Citizenship and Immigration Services, when they report to an ERO Field Office." This suggests that those individuals who have made their affirmative claim to asylum will not be prioritized, regardless of whether they are subject to expedited removal based on the circumstances of their entry. However, unless they've had a positive credible fear interview (CFI), these individuals may remain subject to expedited removal proceedings if they otherwise meet the requirements under INA § 235(b)(1). For this reason, the risk that these individuals will be placed in expedited removal proceedings is not zero, should ICE modify its current priorities.
    - *Case Example*: Marcus, a Peruvian citizen, attempted to enter the United States without inspection (EWI) in March 2022 and was apprehended by CBP. When he expressed fear of returning to Peru, CBP did not refer him for a CFI. Instead, they issued him a *Notice to Report* (NTR) without initiating removal proceedings by issuing a *Notice to Appear* (NTA). Since his entry, Marcus has consistently reported to ICE, and he timely filed an affirmative asylum application with USCIS within one year of his entry.
        - Marcus could be subject to expedited removal, but ICE could also choose to exercise its prosecutorial discretion and refrain from initiating these proceedings since he has an affirmative asylum application pending.

- **Category 2:** *Individuals who presented themselves at a port of entry, were found inadmissible under INA § 212(a)(6)(C) (fraud or misrepresentation) or INA § 212(a)(7) (lack of documentation), were released or paroled from DHS custody, and never filed an affirmative asylum application.* DHS's public position in the CHNV Termination Notice appears to be that these individuals are subject to expedited removal for up to two years following their entry. Any proceedings initiated after that point must go forward in EOIR under INA §

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revoking legal status of Ukrainians as US steps up deportations," Reuters, Mar. 6, 2025, reuters.com/world/us/trump-plans-revoke-legal-status-ukrainians-who-fled-us-sources-say-2025-03-06/.

[15] The CHNV Termination Notice indicates that DHS will prioritize noncitizens who have not filed *any* immigration benefit request (including, e.g., adjustment of status, asylum, TPS, or T or U nonimmigrant status) *by the publication of the notice*, which was March 25, 2025. 90 Fed. Reg 13611, 13619 (Mar. 25, 2025). Therefore, those who file after that date may still be prioritized – nevertheless, it is likely still useful to file a benefit application where eligible.

240.[16] However, the leaked Feb. 18, 2025, ICE email suggests that ICE's reading of the expedited removal statute at INA § 235(b)(1)(A)(i) is broader. In particular, according to this interpretation, these noncitizens are subject to expedited removal ***without time limitation***. This would clearly apply to anyone who presented themselves at the border (thus, "arriving aliens" under the statute), including CBP One applicants or post-Migrant Protection Protocol parolees who didn't have parole authorized in advance by USCIS. Advocates are worried that ICE would try to apply this provision even to those who received authorization to travel ahead of their arrival (such as pursuant to the CHNV, FRP, or U4U programs), given the current animosity to those parolees. Perhaps less of a focus are those who were granted humanitarian parole on a case-by-case basis and not pursuant to a categorical program initiated by the Biden administration.

- **Category 3:** *Individuals who entered without inspection, were apprehended by DHS within 14 days of entry and 100 air miles of the border, were released or paroled from DHS custody, never filed an affirmative asylum application, and are inadmissible under INA §§ 212(a)(6)(C) or (a)(7).* Again, DHS's public position, as indicated in the CHNV Termination Notice, appears to be that these noncitizens are only subject to expedited removal for up to two years following their entry; proceedings initiated thereafter must be in EOIR under INA § 240. However, the Feb. 18, 2025, ICE email suggests that ICE interprets INA §§ 235(b)(1)(A)(i) and (iii)(II) to mean that as long as someone was apprehended within the previously-applicable designation for expedited removal under INA §§ 235(b)(1)(A)(iii)(I) and (II), namely within 14 days and 100 air miles of the border, and released or paroled, they remain subject to expedited removal ***without time limitation*** and without regard to whether they were ultimately paroled.

- **Category 4:** *Individuals who entered without inspection, were apprehended by DHS more than 14 days after entry or further than 100 air miles of the border, were released or paroled from DHS custody, never filed an affirmative asylum application, cannot affirmatively prove physical presence for at least two years, and are inadmissible under INA §§ 212(a)(6)(C) or 212(a)(7).* The final category of individuals is those who were not apprehended within the time and geographical limits of previous designations under INA §§ 235(b)(1)(A)(iii)(I) and (II) but cannot affirmatively prove physical presence for **at least two years**. Expedited removal is limited to the two-year period in these cases. Otherwise, ICE would have to rely on INA § 236 to arrest and detain an undocumented noncitizen and place them in full INA § 240 proceedings.[17]

    a. **What if my client came to the United States with pre-authorized parole, such as CHNV, U4U, or FRP?**

[16] 90 Fed. Reg. 13611, 13619 (Mar. 25, 2025).

[17] **Note:** Another category of people subject to expedited removals under the statute is those who have not yet been apprehended but have been physically present in the United States for less than two years. These individuals do not appear to be targeted by the most recent leaked ICE directive, but are included in the Jan. 24, 2025 Notice, "Designating Aliens for Expedited Removal." We do not discuss this group further because this FAQ focuses on those previously paroled into the country.

As discussed above, the CHNV Termination Notice indicates that DHS may believe that this class of individuals can be placed in expedited removal proceedings only within two years of their entry date; otherwise, these noncitizens must be detained under INA § 236 and placed in full removal proceedings pursuant to INA § 240. In addition, the leaked copy of the Feb. 18 directive may be read to mean that only those noncitizens who were first encountered at a port of entry without any documentation and were *subsequently* released or paroled will be subject to expedited removal. However, as discussed above, many advocates are fearful that ICE intends that *any* "arriving alien," even those who came to the border with parole issued by USCIS prior to their arrivals, are subject to expedited removal.[18] This interpretation may have some support in the BIA decision, *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012),[19] where the BIA stated:

> Typically, an alien who presents himself for inspection at a United States port of entry is permitted to enter only if he possesses a valid visa or other document authorizing his "admission" [under provisions of the INA governing immigrant and nonimmigrant admission to the United States]. Sometimes, however, an alien *who lacks a valid visa or other entry document* may need to come into the United States temporarily "for urgent humanitarian reasons or [for] significant public benefit," in which case, with certain exceptions not pertinent here, the DHS may, in its discretion, "parole" the alien into this country for a limited time, subject to conditions. . . . Although a grant of parole does not "admit" an alien into the United States, see [INA 101(a)(13)(B)], it does typically allow him to leave the inspection facility *free from official custody and to be physically present* inside the United States until the purpose of his parole is completed. . . . Once the DHS determines that the purpose of an alien's parole has been satisfied, parole is terminated and the alien *reverts to the status of any other applicant for admission* by operation of law.

(emphasis added) (select citations omitted). In that case, the respondents came to the border with advance parole pre-approved by USCIS. The BIA nevertheless found that they were inadmissible under INA § 212(a)(7). DHS appears to interpret this to mean that advance parole approval is not a valid entry document but rather advance permission for the noncitizen to be released from custody after their arrival at the border. This means that these noncitizens are inadmissible under INA § 212(a)(7). Because they are deemed inadmissible under INA § 212(a)(7), as well as being "arriving aliens," under 8 CFR § 1.2, they are potentially subject to expedited removal under INA § 235(b)(1).

However, as described above, the language of the Feb. 18, 2025, directive is vague as to whether ICE is being tasked with going after parolees who received preauthorization to enter on

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[18] Parolees are "arriving aliens" pursuant to 8 CFR § 1.2, which provides: "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."

[19] *Accord Iredia v. A.G. of U.S.*, 25 F.4th 193, 195, 197 (2d Cir. 2022) (noncitizen who overstayed visa, departed and was paroled back into the country, was subject to INA § 212(a)(7).) A similar conclusion was reached in *Membreno-Rodriguez v. Garland*, 95 F.4th 219 (5th 2024) regarding a parolee applying for adjustment of status. But that case was later vacated based on a stipulated agreement of the parties.

parole or only those who arrived at the border without any documents, including not having those documents authorizing parole. In addition, DHS's public position in the CHNV Termination Notice appears to be that CHNV parolees can be placed in expedited removal proceedings only within two years of their entry. CLINIC will be monitoring the situation in the coming weeks and months and updating this resource as appropriate. Practitioners are invited to share what their clients and communities are experiencing by emailing CLINIC at national@cliniclegal.org.

b. **What if my client was issued a Notice to Appear?**

The Feb. 18, 2025, memo is somewhat unclear as to whether DHS will pursue expedited removal against individuals who were issued a Notice to Appear (NTA). It states: "Under the NTR process, certain aliens encountered at the Southwest Border were released into the United States without a Notice to Appear (NTA) or parole. Aliens identified as having been subject to any of these processes are subject to [expedited removal] if..." This direction appears to suggest that officers should not be placing noncitizens who *were* issued NTAs in expedited removal. However, this conflicts with a statement in the Jan. 23, 2025, Guidance Memo, which states:

> For any alien DHS is aware of who is amenable to expedited removal but to whom expedited removal has not been applied . . . Take all steps necessary to review the alien's case and consider, in exercising your enforcement discretion, whether to apply expedited removal. *This may include steps to terminate any ongoing removal proceeding* and/or any active parole status.

This statement is echoed by an emphasis in the CHNV Termination Notice that "[f]ollowing [the] termination, DHS generally intends to removal promptly aliens who entered the United States under the CHNV parole programs . . ."[20] Thus, despite the apparent directive in the Feb. 18, 2025, email for officers to focus on noncitizens who have not been issued NTAs, practitioners should remain cautious. Even individuals issued NTAs may nevertheless be targeted for expedited removal, especially if they are not in active removal proceedings. For individuals in proceedings, meaning ICE filed their NTA with the immigration court, ICE may seek to dismiss proceedings under 8 CFR § 239.2(a)(7) and argue that changed circumstances make it no longer in the government's best interest to continue the case because DHS is now pursuing expedited removal. Practitioners with clients in removal proceedings who are in the above categories should be prepared to fight unilateral motions from ICE to dismiss on these grounds.[21] Importantly, the Immigration Judge (IJ) must first grant ICE's motion to dismiss before ICE can proceed with expedited removal under INA § 235. Where clients have passed CFIs, jurisdiction should properly be with the immigration court under 8 CFR § 208.30(f). Where removal proceedings were initiated without the provision of a CFI, which is possible under INA § 235(b)(2)(A), respondents should promptly and affirmatively indicate a fear of return and file an application for asylum with the court. Finally, practitioners should be prepared to argue that a client does not fall within one of the categories subject to expedited removal described above, including by showing evidence of physical presence for longer than two years.

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[20] 90 Fed. Reg. 13611, 13618 (March 25, 2025).

[21] For a Template Opposition to DHS Motion to Dismiss to Pursue Expedited Removal, see Template-Opposition-to-DHS-MTD-Pursue-ER.docx, prepared by attorneys at the National Immigration Project (NIPNLG), Feb. 28, 2025.

- *Case Example*: Angelica, a Cameroonian citizen, entered the United States on May 20, 2024, through a designated Port of Entry (POE) during her scheduled CBP One appointment. CBP briefly detained her, found her inadmissible as an "arriving alien" under INA § 212(a)(7) for lacking a valid entry document, and issued her an NTA. She was then released on 212(d)(5) parole for a period of two years. Angelica is currently in removal proceedings and her first Master Calendar Hearing is scheduled for May 3, 2025. She has yet to file for any relief, including Form I-589, Application for Asylum, with the immigration court. She also has an ICE check-in scheduled for April 13, 2025.
    - Angelica could be placed in expedited removal proceedings if DHS moves to dismiss her case and the IJ grants the motion. If that happens, ICE may initiate expedited removal proceedings against her. While Angelica has only been in the United States for a few months, DHS could still pursue expedited removal proceedings even if she had been in the country for more than two years. Angelica should consider filing for asylum with the immigration court as soon as possible and before her ICE check-in,[22] assuming she is eligible. CLINIC has received reports of non-detained respondents — including those with pending asylum applications— being detained by ICE during check-ins. When advising clients on immigration enforcement risks, practitioners should refer to CLINIC's Draft Letters to Clients Regarding Immigration Enforcement (English and Spanish).

XIII. Is there any way to fight expedited removal for those within these categories?

The options to fight expedited removal are unfortunately extremely limited. For those who arrived at the border with pre-authorized parole, there are some potential arguments that ICE's interpretation of the law, as discussed above, is simply wrong. First, the above language from *Arrabelly* is arguably not the holding of the case but rather just *dicta*. Even were it a holding, one might argue that it was decided incorrectly, and that parole documents granted in advance are "valid entry documents." Another potential argument is that noncitizens with pre-authorized parole are not seeking entry as immigrants or nonimmigrants, as provided in INA § 212(a)(7), but rather simply seeking temporary authorized "presence." In that respect, INA § 212(a)(7) would not apply to noncitizens granted advance parole. Both arguments face challenges given, of course, that *Arrabally* is good law and the fact that all noncitizens who are not admitted are, according to INA § 235(a)(1), "applicants for admission." If they are applicants for admission, the only way they can be "admitted" is either as immigrants (under INA § 211) or nonimmigrants (under INA § 214), because pursuant to INA § 212.5(d)(5), parole is not an admission. If they do not have proper documentation as immigrants or nonimmigrants, therefore, they are inadmissible under INA § 212(a)(7) and subject to expedited removal.

[22] For helpful resources on preparing clients for ICE Check-ins, see Asylum Seeker Advocacy Project, FAQs: ICE ISAP, ASYLUM SEEKER ADVOCACY PROJECT, https://help.asylumadvocacy.org/faqs-ice-isap/ (last visited March 18, 2025) *See also* American Immigration Lawyers Association, Featured Issue: Representing Clients Before ICE, AM. IMMIGRATION LAWYERS ASS'N, https://www.aila.org/library/featured-issue-representing-clients-before-ice?limit=100 (last visited March 18, 2025).

For those who crossed the border without inspection, ICE's historic practice has been to charge them with INA § 212(a)(6)(A)(i) inadmissibility rather than INA § 212(a)(7). It was generally understood that INA § 212(a)(7) only applied to noncitizens arriving at the port of entry charged as "arriving aliens," since they are applying for admission at the border. Noncitizens apprehended in the interior of the United States, on the other hand, were only charged with INA § 212(a)(6)(A) as being present without inspection and admission or parole. The understanding has been that because noncitizens are already in the interior of the United States, they are no longer making an "application for admission" when apprehended. Therefore, INA § 212(a)(7) should not apply to them. The 9th Circuit has ruled on this question and held that clause (iii) of INA § 235(b)(1)(A) allows the government to treat recent entry without inspection (EWI) arrivals – namely anyone physically present in the United States for less than two years or as otherwise designated by the Attorney General within that definition – as though they are functionally "arriving aliens" for the purposes of making the INA § 212(a)(7) determination.[23] Since EWI entrants by definition do not have documentation allowing their admission, they would be inadmissible under this clause.

Even if there were strong arguments against the finding of expedited removal for those in one of these categories, it is unclear when a noncitizen would make such arguments. There is very limited judicial or administrative review available for those in expedited removal. First, administrative review is limited to asylum claims of noncitizens who express a credible fear of persecution under INA § 235(b)(2)(A)(i)-(ii) and 8 CFR § 235.6(a)(1)(i), and to claims by noncitizens that they are U.S. citizens, lawful permanent residents, admitted refugees, or asylees. *See* INA § 235(b)(1)(C) and 8 CFR § 235.6(a)(1)(ii).

Judicial review of individual challenges to expedited removal is barred by INA § 242(a)(2)(A). There are only two exceptions to this bar. The first involves habeas petitions by individuals claiming they are U.S. citizens, lawful permanent residents, admitted refugees, or asylees, under INA § 242(e)(2). This is similar to the limitation on administrative review described above. The second involves challenges to the "validity of the system" by a noncitizen and is filed with the U.S. District Court for the District of Columbia under INA § 242(e)(3). These challenges are limited to questions of whether a new policy regarding expedited removal is constitutional or consistent with a statute or other law. Most critically, such challenges must be raised **within 60 days** of the *implementation of the particular policy*, rather than the *application* of the policy to the challenging noncitizen. Accordingly, pursuing such a challenge is functionally impossible for individual noncitizens.

For these reasons, we urge practitioners to warn clients and members of the community to be prepared with evidence of their physical presence and/or be prepared to immediately raise any credible fears of return to their countries of origin. In addition, if applicants have not filed an application for asylum or failed to do so within one year of their arrival, they should be prepared with evidence that they meet an exception under INA § 208(a)(2)(D), namely “changed circumstances” or “extraordinary circumstances.” The regulations specifically identify one such extraordinary circumstance where the “applicant maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing

[23] *U.S. v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024).

of the asylum application." 8 CFR § 1208.4(a)(5)(iv). Therefore, individuals who have been granted parole will qualify for this exception if they apply for asylum either before the expiration of their status or shortly thereafter.

While nonprofit agencies have raised constitutional challenges to the entire expedited removal system, as well as individual administration policies, courts, including the Supreme Court, have been extremely dismissive of such challenges. The courts have generally held that noncitizens do not have the same constitutional rights to due process when arriving at the border that they do when they have resided in the United States for some time. Nevertheless, agencies have begun to challenge this most recent expansion of expedited removal, given its unprecedented breadth of application to noncitizens who have ties to this country.[24]

Several organizations have sued the administration over the termination of various parole programs, including U4U and CHNV.[25] In addition to the arguments the advocates make, there are arguments that the terminations of thousands of individuals' paroles via a notice published in the Federal Register and subsequent notices to noncitizens' MyUSCIS accounts are invalid. Regulations at 8 CFR § 212.5(e)(2)(i) require written notice "*to the alien*," which can be argued to mean *individual* notice rather than a public notice published in the Federal Register.[26] Moreover, use of the MyUSCIS account system for the I-134A and related notices has been replete with issues from the start: noncitizens have not have consistent access to technology or email in order to create or login to their MyUSCIS account. Many beneficiaries who relied heavily on assistance from legal representatives, sponsors, friends, or relatives in order to access and navigate MyUSCIS will continue to have difficulty accessing their MyUSCIS account, old email addresses, or the same level of assistance they previously received. These challenges mean that many beneficiaries will not receive adequate notice of termination via their online account. CLINIC will monitor challenges to these policies and update practitioners as we learn more.

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[24] *Make the Road New York v. Benjamine Huffman, et al.*, Case 1:25-cv-00190, U.S. District Court, District of Columbia, Jan. 22, 2025, acludc.org/en/cases/make-road-new-york-v-huffman-challenging-expedited-removal-immigrants.

[25] *See* the website Justice Action Center has set up for providing updates on the litigation, *Svitlana Doe v. Noem*, Case No. 1:25-cv-10495 (D.C. Mass., filed Feb. 28, 2025), justiceactioncenter.org/case/svitlana-doe-v-noem/.

[26] DHS cites several cases in support of the proposition that Federal Register notices suffice to give the public notice of federal actions. However, in those cases the government was either providing notice *to the public* of the promulgation of regulations generally, *Fed. Crop Ins. Corp. v. Merrill et al.*, 332 U.S. 3801, 385 (1947), or other government actions where no more individualized means of notice were required under law. *Friends of Sierra R.R., Inc. v. I.C.C.*, 881 F.2d 663, 667-68 (9th Cir. 1989). In contrast, in the case of noncitizens given parole, parolees are not merely members of the public – rather they are parties to the specific grants of parole and thus subject to the regulations governing the issuance and termination of parole. Those regulations specify at 8 CFR § 212.5(e)(2)(i) that written notice must be given *to the alien*. DHS also cites 44 USC § 1507 for the proposition that publication of a notice in the Federal Register is legal sufficient notice. However, all that section of the statute states is that such publication is constructive notice of that notice itself – not that it is sufficient to satisfy other notice requirements provided by statute or regulation. The language of 44 USC § 1507 itself provides: "*Unless otherwise specifically provided by statute*, filing of a document . . . except in cases where notice by publication is insufficient in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it." (emphasis added). Such publication should therefore not be sufficient to satisfy the regulations.

XIV. Will current or former parolees be detained?

If your client is in one of the categories above subject to expedited removal, they are also subject to mandatory detention pursuant to INA § 235(b)(1)(B)(ii) and (iii)(IV). Under INA § 235(b)(1)(B)(ii), an individual in expedited removal proceedings who has expressed a fear of return and is awaiting their CFI is subject to mandatory detention. If an individual in expedited removal receives a negative CFI decision, they are subject to mandatory detention under INA § 235(b)(1)(B)(iii)(IV) pending an immigration judge review of that CFI decision and until removal from the United States. Finally, individuals who are placed in expedited removal proceedings, receive a positive CFI determination, and are placed into INA § 240 proceedings are also subject to continued mandatory detention under INA § 235(b)(1)(B)(ii).[27] The only way the individuals subject to mandatory detention under INA § 235(b) can be released is with a grant of parole under INA § 212(d)(5)(A).[28]

Individuals requesting parole from detention must do so directly from ICE. *See* ICE, Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009). The regulations at 8 CFR § 212.5(b)(3) outline situations in which ICE should consider releasing individuals on parole for humanitarian reasons or a significant public benefit and include those where the detained individual is suffering from a serious medical condition, pregnant, a minor, requested to serve as a witness in legal proceedings in the United States, or whose detention is "not in the continued public interest." In addition, the individual must demonstrate to the satisfaction of ICE that they are not a security or flight risk. Furthermore, the ICE directive provides that "arriving aliens" who receive a positive CFI *should* be granted parole unless negative discretionary factors are present that do not support a grant of parole. IJs have no jurisdiction to either grant parole requests or review ICE parole decisions.[29] It is important to note, however, that the likelihood of ICE granting parole requests for individuals paroled into the United States and thereafter placed into expedited removal proceedings and detained is minimal. The parole request process initiates with the detainee or the detainee's representative submitting a parole request to their ICE detention officer. For more information on ICE parole requests, see CLINIC's Removal Toolkit (affiliate only), which includes a sample parole request checklist.

XV. Can former or current parolees still apply for adjustment if otherwise eligible?

Former and current parolees who are eligible for adjustment of status should carefully consider whether to apply, given the expanded use of expedited removal and its implications for

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[27] *See Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018).

[28] *Id.* at 287. Recall from the discussion above that habeas corpus actions in federal district court are the only method of challenging expedited removal proceedings. For this reason, habeas actions are the only vehicle to challenge INA § 235(b)(1)(B)(ii) detention since bond is not available to these individuals. If each of the categories of individuals granted parole are subject to expedited removal and thus mandatory detention, forms of release under INA § 236, such as bond and conditional parole, are not relevant for the purposes of this discussion. If you are successful in arguing that expedited removal or its related mandatory detention provisions should not apply, you may consider seeking these forms of release under INA § 236. For more information on conditional parole and bond, see NIPNLG's practice advisory, A Guide to Obtaining Release from Immigration Detention.

[29] *See Matter of Oseiwusu*, 22 I&N Dec. 19 (BIA 1998).

parolees. As noted in Section VI, USCIS may have suspended the adjudication of applications, including adjustment of status, for parolees entering under the CHNV, U4U, and FRP programs. While this internal memo has not been publicly released, practitioners should remain aware of the reported developments and advise their clients accordingly. Additionally, as previously explained, parolees are particularly vulnerable to enforcement actions under the administration's recently implemented enforcement policies, and they should therefore ensure their eligibility for adjustment of status before voluntarily notifying DHS of their continued presence in the United States. The decision to file for adjustment of status should also be considered in light of the Feb. 28, 2025 USCIS policy memorandum, "Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens.[30] This memo revives previous Trump administration policies that expanded situations where USCIS was directed to issue NTAs to individuals applying for immigration benefits.[31] Given these important considerations, it is crucial to thoroughly review and understand the eligibility criteria for adjustment of status under INA § 245(a).

To qualify for adjustment of status under INA § 245(a), an individual must meet the following requirements:[32]

1. **Admissible to the United States or Eligible for a Waiver**: The individual must be admissible to the United States. This includes not being subject to grounds of inadmissibility under INA § 212 or else being eligible for a waiver.
    - Individuals with a pending non-frivolous asylum application do *not* accrue unlawful presence under INA § 212(a)(9)(B)(ii) throughout the pendency of their claim;
    - TPS holders also do not accrue unlawful presence while they are in valid TPS status; and
    - Parolees in the United States do not accrue unlawful presence throughout the duration of their parole.

2. **Inspected and Admitted *or* Paroled**: The individual must have been "inspected and admitted or paroled" into the United States. This includes individuals who entered the United States with inspection or were paroled into the United States under INA § 212(d)(5).[33]

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[30] For additional information on the new memo and a template informed consent document for clients, visit USCIS Issues New NTA Guidance Memo | Catholic Legal Immigration Network, Inc. (CLINIC).
[31] Recall that DHS states in the CHNV Termination Notice that it will prioritize for removal individuals who have not, as of March 25, 2025, filed for an immigration benefit. The possibility of being prioritized for removal should be weighed against the benefit of indicating eligibility for long-term immigration relief.
[32] *See* https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-2.
[33] Given the current administration's animosity towards parolees, it is possible that DHS will begin to argue that those whose parole has been terminated revert to their pre-parole status per *Matter of Arambula-Bravo*, 28 I&N Dec. 388, 397 (BIA 2021). The language discussing 245(a) ineligibility in *Arambula-Bravo* is merely *dicta*, however, and inconsistent with regulations at 8 CFR § 245.1(d)(1)(v). Those regulations interpret the INA § 245(c) bar as providing for adjustment for family preference immigrants "in parole status which has not expired, been revoked, or terminated." If INA § 245(a) was not meant to be available to those whose parole had ended, the 245(c) bar and implementing regulation at 8 CFR § 245.1(d)(1)(v) would be meaningless as applied to parolees.

- A person granted parole under INA § 212(d)(5)(A) can meet the requirements to apply for adjustment of status under INA § 245(a).
    - Thus, parolees entering via a categorical parole program were inspected and paroled into the United States and meet this eligibility criteria.
    - Individuals who entered via the CBP One App should also meet this criterion if CBP granted parole under INA § 212(d)(5), which is typically for one to two years. Carefully review the entry records, including Form I-94. A "DT" class of admission on the I-94 indicates that parole was granted at a port of entry.
    - Individuals granted parole for a deferred inspection satisfy the "inspected and paroled" requirement for purposes of adjustment eligibility.[34]
- However, conditional parole under INA § 236(a)(2)(B), which allows release from detention, does not count as a "parole" entry for adjustment of status purposes and does *not* qualify someone for adjustment.[35]
- A grant of TPS status alone is not an admission. However, TPS recipients who travel and return on advance travel authorization are "admitted" for 245(a) eligibility purposes.

3. **Physical Presence**: Applicants for adjustment must be physically present in the United States.

4. **Eligible for an Immigrant Visa that Is Immediately Available**: The individual must have an approved immigrant visa petition and a visa that is immediately available. Most commonly, this is an approved Form I-130 (family-based petition) or Form I-140 (employment-based petition). In recent years, nonprofit practitioners have seen an increase in the number of Cubans eligible for adjustment under the Cuban Adjustment Act (CAA).[36]

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[34] 8 CFR § 235.2, "Parole for deferred inspection."

[35] *See* INA 236(a)(2)(B). Neither the statute nor regulations deem a release on conditional parole equal to a parole under INA 212(d)(5)(A). Several circuits and the BIA have opined on this and rejected the argument that the two concepts are equivalent processes. See *Ortega-Cervantes v. Gonzales* (PDF), 501 F.3d 1111 (9th Cir. 2007); *Matter of Castillo-Padilla* (PDF), 25 I&N Dec. 257 (BIA 2010); *Delgado-Sobalvarro v. Atty. Gen.* (PDF), 625 F.3d 782 (3rd Cir. 2010); *Cruz Miguel v. Holder*, 650 F.3d 189 (2nd Cir. 2011); Matter of Cabrera-Fernandez, 28 I&N Dec. 747 (BIA 2023). *See also* CLINIC's Resource Board Holds Entry Without Inspection Border Releases to Be Conditional Parole, Which Does Not Qualify Noncitizens for Adjustment | Catholic Legal Immigration Network, Inc. (CLINIC).

[36] Cuban nationals and their immediate relatives are eligible to adjust status to lawful permanent resident (LPR) under both INA § 245(a) and the Cuban Adjustment Act (CAA). The CAA provides a special adjustment pathway for Cubans, allowing them to apply for LPR status after being physically present in the United States for at least one year, regardless of their legal status during that time. Most importantly, the 245(c) bars do not apply to Cubans adjusting under the CAA. Thus, Cuban nationals who entered the United States as parolees or through other means may still be eligible for adjustment of status, even if they have violated certain immigration laws. Cuban nationals, nevertheless, are still subject to other grounds of inadmissibility (e.g., criminal convictions, national security concerns), and those grounds may affect their eligibility for adjustment of status. For more information on the Cuban Adjustment Act, see the USCIS page, "," (last updated Jan. 22, 2025). *See also*, CLINIC, "All About Cuban Adjustment," (March 24, 2022).Green Card for a Cuban Native or Citizen," (last updated Jan. 22, 2025). *See also*, CLINIC, "All About Cuban Adjustment," (March 24, 2022).

- Note: Many parolees do not qualify as immediate relatives and instead fall under the family-sponsored preference category, which requires them to wait for a visa to become available before applying for adjustment of status. Immediate relatives of U.S. citizens can file a "One-Step" I-130 petition and I-485 application to USCIS and are not subject to the INA § 245(c) adjustment bars. Those bars include failing to maintain lawful immigration status since entry into the United States, having engaged in unlawful employment in the United States, and not being in lawful status at the time of submitting the I-485. Certain preference-category beneficiaries can also file a One-Step if their I-130 petition's priority date is current in Chart B of the Visa Bulletin, but preference immigrants are subject to the 245(c) adjustment bars, as discussed below. The 245(c) bars do not apply to Cubans under the CAA.

5. **Not Subject to Bars to Adjustment, including INA § 245(c) Bars**: An individual in one of the preference categories applying to adjust status under INA § 245(a) is ineligible if they have ever failed to maintain lawful status or violated their nonimmigrant status (such as working without authorization), *unless* it was due to no fault of their own or for technical reasons.[37]
    - INA § 245(c) bars do *not* apply to immediate relatives or applicants under the CAA.
    - Under INA §§ 245(c)(2) and (c)(8), an individual is barred from adjusting status if they have engaged in unauthorized employment before or after filing the adjustment application, including during *any previous stays in* the United States§, or has otherwise violated the terms of nonimmigrant visa, with certain exceptions.
    - Under INA § 245(c)(2), an individual is barred from adjusting status if they are in unlawful immigration status *on the date of filing* the adjustment application *or has ever* been out of lawful status at any time since any entry up to the date of filing.
        - The regulation at 8 CFR § 245.1(d)(1) defines "lawful immigration status" as limited to six categories, including LPRs, nonimmigrants, refugees, asylees, and parolees.[38]
        - Although applicants need only maintain status until filing the I-485, filing for an immigration benefit or having a pending application does not grant

[37] For additional information on 245(c) bars, visit https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-6; Chapter 8 - Inapplicability of Bars to Adjustment | USCIS; Chapter 4 - Status and Nonimmigrant Visa Violations (INA 245(c)(2) and INA 245(c)(8)) | USCIS.

[38] Note that the USCIS Policy Manual also lists noncitizens in valid TPS status as maintaining lawful immigration status. *See* U.S. Citizenship & Immigration Services, **Volume 7: Adjustment of Status, Part B: Adjustment of Status under the Cuban Adjustment Act**, U.S. CITIZENSHIP & IMMIGRATION SERVICES, https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-3. While the statute does not include a pending asylum application as one of the six categories of lawful immigration status, some legal advocates cite to the BIA decision, *In re L-K-*, Respondent, and argue that individuals who apply for asylum while still in lawful status, such as on a nonimmigrant visa or TPS, qualify for the INA § 245(c)(2). This exception to failing to maintain status due to "no fault" of their own or "for technical reasons" applies if they seek adjustment of status before USCIS adjudicates or acts on their asylum application. However, no statute, regulation, or policy memo explicitly supports this interpretation that suggests USCIS's failure to act on the adjudication of an asylum application is not the applicant's fault for failing to maintain lawful status. Thus, the best advice for these asylum applicants in a preference category seeking to adjust status under 245(a) is to maintain lawful immigration status through some other status such as TPS at least until filing for adjustment.

lawful status, which is only obtained once the application is approved. In addition, neither a pending nor approved I-130 petition confers lawful immigration status on the beneficiary.

6. **Timely Application**: The individual must file for adjustment of status before their period of authorized stay expires and while they are physically present in the United States.
    - Filing while in lawful immigration status is not a requirement for immediate relatives or CAA applicants seeking adjustment of status.
    - Preference category applicants must maintain lawful status only until they file their adjustment application. Once their application is pending, they may fall out of status. However, if USCIS denies their adjustment application, they will not be considered to have maintained lawful status during the pendency of the application if they later seek to refile.

7. **Discretion**: The applicant merits the favorable exercise of discretion.

The following hypothetical scenarios help illustrate how INA §§ 245(a) and (c) apply in practice, particularly regarding parolees in the United States.

A. Fatima is an Afghan citizen who entered the United States on Jan. 23, 2025, pursuant to 212(d)(5) humanitarian parole status for a two–year period. Her U.S. citizen brother had filed Forms I-131 and I–134 on her behalf. USCIS approved the applications, and the DOS interviewed and processed Fatima's parole application abroad at the U.S. embassy in Islamabad. Upon entering the United States, Fatima sought advice on how to apply for lawful permanent residency. Fatima's brother filed an I-130 petition in the F-4 category for her that is still pending with USCIS.
    - Legal Options: Fatima can continue to pursue the family-based route. But being in the F-4 category, once her I-130 is approved, she will still have a long wait before her visa becomes available and she can apply for permanent residency. Since her parole status expires in less than two years, to be eligible to apply for adjustment in the family preference category, she will need to maintain lawful immigration status, at least until she files her adjustment application. This also includes not working without authorization. With her late entry date, she is not eligible for TPS from Afghanistan. Fatima should consider filing for asylum, if eligible, to provide another option for immigration relief leading to permanent residency. However, if Fatima's parole expires, a pending asylum claim is not lawful immigration status for purposes of adjusting under 245(a). She can pursue her asylum claim, however, and if granted, apply for adjustment as an asylee under INA § 209.

B. Miguel is a Colombian citizen, aged 23, and single. He entered the United States in May 2023 on a two-year parole through the FRP program, and his parole is set to expire in May 2025. His U.S. citizen father filed Form I-130 for Miguel with a priority date of Aug. 2, 2021. The March 2025 *Visa Bulletin* lists the F-1 final action date for that preference category as Nov. 22, 2015. It will be several years before Miguel's priority date becomes

current, allowing him to file for adjustment of status. Miguel is very concerned because he has not applied for other relief and has years before he can seek permanent residency.

- Legal Options: To remain eligible to apply for adjustment of status under INA § 245(a), Miguel must maintain lawful immigration status and avoid working without authorization. He should first be screened for other forms of immigration relief, such as asylum or a U or T visa. Miguel could also consider leaving the United States before his parole status expires or is terminated to avoid accumulating unlawful presence. He could then consular process once his priority date becomes current and return as a lawful permanent resident. If he remains in the United States, he must be aware of the potential for increased enforcement actions against him.

XVI. Can current parolees still apply for EADs?

Individuals who were paroled into the United States under INA § 212(d)(5) are eligible for work authorization under category (c)(11) while their parole remains valid, i.e., until their parole expires or is terminated. However, according to reports, USCIS has followed 8 CFR § 212.5(e)(2) and taken the position that once a parolee is issued an NTA, the issuance of the NTA terminates any period of parole that they were granted for the purposes of eligibility or work authorization. If an individual was granted parole and thereafter issued an NTA, they are deemed ineligible for an employment authorization document (EAD) under (c)(11). Moreover, even for those who have not been issued an NTA, DHS announced in the CHNV Termination Notice that it intends to revoke employment authorization for all those CHNV parolees whose paroles were ostensibly being terminated through the CHNV Termination Notice. Although those in a valid period of parole are technically eligible for employment authorization, practitioners should advise their clients that, given all of this guidance that targets recent parolees, the filing of Form I-765 in a parole category may flag their case with DHS and trigger enforcement actions. This is especially true if they have not applied for asylum or another immigration benefit. Practitioners should thoroughly screen clients with parole for other potential immigration relief in lieu of relying only on parole for work authorization.

XVII. Can current parolees/others apply for advance parole?

Current parolees and individuals who entered with parole and now hold another status, such as TPS, are eligible for advance parole or travel authorization to temporarily leave the United States and return with an advance parole document or a I-512T Travel Authorization (for those with TPS). However, if an individual is in current parole status and does not have a pending Form I-589 or I-485, practitioners should advise them that filing Form I-131 based on parole status runs the same risks as applying for an EAD based on parole status – it flags their case with DHS and may trigger enforcement actions. If USCIS grants their advance parole request and they leave, these individuals may not be permitted to re-enter the United States if CBP finds that they are subject to expedited removal. Instead, they may be placed in expedited removal and detained pending their CFI. Those granted CHNV parole should not apply for advance parole, as the government's position is that their parole period has been terminated by the publication of the CHNV Termination notice.

Individuals applying for travel authorization based on TPS may be less at risk of enforcement as the DHS guidance does not specifically target those with TPS as it does parolees. Where an individual has both TPS and a pending application for a permanent status, such as asylum or adjustment of status, however, it may be advisable to apply for advance parole based on the pending benefit application given the precarity of TPS designations under the current administration. If applying for advance parole based on a pending adjustment application, recall the potential risks of applying for adjustment as a parolee, as discussed in Section VII, above. In all scenarios, individuals should be apprised of the risks of traveling and cautioned against any unnecessary travel at this time.

XVIII. How should we protect and advise our clients?

Practitioners representing clients who entered the United States on parole should focus on several steps to best protect their clients. First, they should warn clients of the potential risks of enforcement, including the possibility of detention and placement in expedited removal proceedings, depending on the circumstances of their parole. For clients interested in seeking re-parole, employment authorization, adjustment of status, or advance parole based on their current parole status, practitioners should provide a realistic assessment of the likely outcomes of seeking such benefits under the current administration. Furthermore, practitioners should advise their clients of the new USCIS NTA guidance that revives previous Trump-era policies by expanding the circumstances in which USCIS is directed to issue NTAs to individuals applying for immigration benefits.[39] While the memo specifically outlines when USCIS will issue an NTA, it also signals a broader intent to prioritize the removal of noncitizens. As a result, parolees applying for USCIS benefits are particularly vulnerable to ICE enforcement if they are denied. Additionally, practitioners should caution CHNV, U4U, and FRP parolee clients that USCIS may pause the adjudication of their applications, subject them to heightened scrutiny, and initiate expedited or full removal proceedings.

Second, practitioners should thoroughly screen parolee clients for any potential forms of relief for which they may be eligible. CLINIC recently developed an up-to-date and comprehensive Screening Tool for affiliates that can assist in conducting these comprehensive screenings.[40] In particular, because DHS has indicated in guidance that it will prioritize for expedited removal those parolees who have not filed for asylum before the one-year deadline and it will not seek expedited removal against those who already have affirmative asylum applications pending (according to reporting), noncitizens previously granted parole should promptly assess their eligibility for asylum and consider filing as soon as possible.

Third, practitioners who represent clients in removal proceedings should be prepared to challenge ICE motions to dismiss proceedings in order to pursue expedited removal. Advocates should emphasize statutory protections, particularly for noncitizens who have received positive credible fear determinations. Under 8 CFR § 208.30(f), these individuals have a statutory right to

[39] For additional information on the new guidance, see CLINIC's resource: USCIS Issues New NTA Guidance Memo - English and Spanish | Catholic Legal Immigration Network, Inc. (CLINIC), which includes a sample draft informed consent document for individuals who may be subject to NTA issuance.
[40] CLINIC, "Immigration Legal Services Screening Tool 2025."

have their asylum claims reviewed by either USCIS or by an immigration judge in INA § 240 proceedings.

Fourth, practitioners should advise their clients to carry certain documents in case they are apprehended by ICE. These documents should be copies, not originals, and may include copies of valid entry documents, documents evidencing current lawful status or pending applications for status, and documents evidencing at least two years of continuous presence in the United States. Noncitizens should not carry documents that show or admit alienage. In addition, they should be copies of true documents issued in clients' names. In other words, clients should not rely on false or misleading documents.

Helpful Resources:

- IRAP Explainer on Initial Trump Actions Attacking Parole and Parolees
- Practice Alert: New Updates Regarding Parole
- Parole-Toolkit-without-FAQs-Edited-2.3.25.pdf
- ILRC Toolkit
- Practice Tips on How to Prepare Noncitizens for Possible Detention
- 2025 USCIRF Barriers to Protection Today
- 2024 Update to NIPNLG's Practice Advisory, "A Guide to Obtaining Release from Immigration Detention"
- AILA, Featured Issue: Representing Clients Before ICE