Parole in Place:
A Possibility for Administrative Protection

One of the provisions of the Immigration and Nationality Act (INA), amended throughout the years, grants the U.S. Attorney General the ability to parole non-citizens into the country. Congress transferred this authority to the Secretary of the Department of Homeland Security (DHS) in 2003.

In the immigration context, parole allows a person who may be inadmissible or otherwise ineligible for admission into the United States to enter, or be paroled, into the U.S. for a temporary period. Parole can be granted in several forms, including parole in place for those who are already inside the United States.

Parole is a powerful tool for the U.S. president that some argue could be used to protect undocumented individuals already within the U. S. In 2017, it was estimated that there were over 10 million undocumented immigrants living in the country. About two-thirds of this population has lived in the U.S. for over ten years, building a life and becoming important parts of their communities. The U.S. is their home – parole, and parole in place more specifically, is part of the conversation regarding ways that would allow undocumented people to access temporary protections.

What is Parole in Place?

As mentioned above, parole is a humanitarian benefit that permits noncitizens to temporarily remain in the United States if they are applying for admission but do not have a legal basis for that admission. U.S. Citizenship and Immigration Services (USCIS) has created several parole programs to decide who qualifies for immigration parole. Parole in Place (PIP) is one such program.

Under PIP, USCIS uses its a discretion on a case-by-case basis to allow individuals *already inside the United States* who are present without admission – which means, entered the U.S. unlawfully between ports of entry (without inspection) - to be paroled into the country for a temporary period. Those receiving PIP are eligible for work authorization and do not accrue unlawful presence during the period they receive parole. PIP also allows family members to apply for immigration benefits they may be eligible for that require a lawful entry into the U.S., specifically by exempting them from the three and ten-year unlawful presence grounds for inadmissibility. Practically, PIP allows non-citizens, on a case-by-case basis, to be granted the ability to temporarily live and work in the country without fear of deportation.

Currently, PIP is used "only sparingly". USCIS has placed narrow parameters on the program and who is eligible for the benefit. According to their manual, PIP is for "a spouse, parent, son, or daughter of an Active Duty member of the U.S. Armed Forces, an individual in the Selected Reserve of the Ready Reserve, or an individual who previously served on active duty in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve." Although PIP can be granted to individuals that are not in this category, the manual directive has led to PIP being granted almost exclusively to the immediate relatives of members of the U.S. Armed Forces. This is because USCIS is to grant PIP sparingly and this relation "ordinarily weighs heavily in favor of" PIP. This has led to it being called 'Military Parole in Place' (MIL-PIP) rather than just Parole in Place (PIP).

Nonetheless, this narrow interpretation – as a military benefit– is not grounded in the statute. There is no regulation that spells out which non-citizens qualify for PIP. USCIS officers have full discretion to parole non-citizens into the U.S., without the requirement that they have a relative in the U.S. military. Because being an immediate relative of a member of the U.S. Armed Forces weighs so heavily in favor of being granted PIP, it is mainly these relatives that are granted the status.

Does USCIS have the authority to use Parole in Place to protect undocumented individuals in the U.S.?

Yes. The parole power in the INA lays out the requirements for receiving parole. The statute says (*bolding added for emphasis*):

> The Attorney General may, except as provided in subparagraph (B) or in section 212 (f) of this title, 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. INA § 212(d)(5)(A).

The statue grants the Attorney General – now the DHS Secretary - the ability to **temporarily parole any person into the U.S. on a case-by-case basis**. The statue permits this power to be used so long as a potential parolee is admitted as "for urgent humanitarian or significant public benefit." The language is relatively broad: there is a wide range of possible humanitarian and public benefit reasons that can be used to parole someone into the U.S. Given the broad language, the case-by-case nature of immigration parole may be the most limiting aspect of such programs.

Some existing parole programs (such as the special parole program for Cubans, Haitians, Nicaraguans, and Venezuelans; the Central American Minor Refugee/Parole Program; the Afghan Special Immigrant Parolee and Lawful Permanent Resident Status; and Uniting for Ukraine) address the circumstance of certain populations, such that nationals from these countries may be granted parole so long as they meet certain eligibility criteria and, in some cases, have a financial sponsor in the United States. These parole decisions are still made on a case-by-case basis, but the scope for eligibility is broader. Programs such as Uniting for Ukraine or the Afghan Special Immigrant Parolee and Lawful Permanent Resident Status program are a means to facilitate access to humanitarian protections.

The **second part of this statute specifies that being granted parole is not "regarded as an admission to the United States."** However, a grant of PIP allows an individual, who previously entered unlawfully, to be eligible to adjust status under INA § 245(a), as parole is considered an equivalent to inspection and admission for the purposes adjustment. This is based in the statute, which specifies that both parole and admission are eligible for adjustment of status: "the status of an alien who was inspected and admitted or paroled into the Unted States… may be adjusted by the Attorney General, in his discretion… to that of an alien lawfully admitted for permanent residence…". As a result, a person who initially entered the country without inspection but was granted PIP would be eligible to adjust status under § 245(a).

The **third part of this statute specifies that, once paroled**, the parole is at the mercy of the Attorney General. They **can end the parole whenever they deem the reason for the parole has ended,** and either return the noncitizen to their home country or submit them to the admissions process. While the Attorney General is granted this power via the statute, the Homeland Security Act of 2002 transferred this power to the Secretary of Homeland Security, who subsequently delegated the power of PIP to USCIS. As there are no statutes or regulations that explicitly state which non-citizens are eligible for PIP, DHS immigration agencies – USCIS, Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE) – have full discretion to decide who is granted the benefit.

Which undocumented individuals would be eligible for Parole in Place? What protections would they receive?

PIP is only available for non-citizens who have not been admitted into the United States. Under U.S. immigration law, entry and admission are two different concepts. Entry is physical presence in the country, whereas admission is being physically allowed in the United States, whether as a legal immigrant, temporary employee, or tourist. PIP is only available for non-citizens who have not been admitted into the United States. The INA explicitly states that parole is only available to those applying for admission, meaning that those who have already been granted admission are ineligible.

Two of the main ways that undocumented immigrants enter into the United States is entry without inspection – called EWIs – and overstaying visas. EWIs are eligible for parole, as they were never inspected CBP and subsequently granted admission. Visa overstays were admitted to the United States upon their arrival as they were inspected at a port of entry. Overstaying a visa does not invalidate that initial admission. Approximately half of all undocumented immigrants are visa overstays. Therefore, the other half of the over 10 million undocumented immigrants may be eligible for parole in place.

What is the longest possible period of protection for a Parole in Place program?

As of September 2023, the standard practice of USCIS and the U.S. Military is to grant PIP for one-year increments. Nevertheless, the INA does not require the period of PIP be for one year. In fact, it is entirely at the discretion of the DHS Secretary, and thus USCIS, when the period of parole ends. Consequently, the period of parole can go on indefinitely, as seen in *Matter of Accardi* (BIA Decisions, 1973), where the Bureau of Immigration Appeals ruled that "a grant of parole 'indefinitely' is not in contravention of a grant of parole 'temporarily' within the contemplation of section 212(d)(5) of the Act."

Therefore, the period of protection is not limited to one year.

How has Parole in Place been used in the past?

PIP originated in 2007. Since then, it has been primarily used as a military benefit. Under current USCIS guidelines, immediate relatives of members of the U.S. Armed Forces are the primary group eligible for PIP. Under this system, so long as someone is (1) the immediate relative of a member of the U.S. Armed Forces, (2) physically present in the United States, (3) has not been admitted into the country, and (4) does not have a criminal conviction, they are eligible for PIP.

However, PIP has also been used – admittedly sparingly – for people without relation to U.S. military personnel. Many of these take place in the Northern Mariana Islands; in the first five

months of 2011, the first year in which the territory was able to grant such status, the Northern Mariana Islands' USCIS Office granted parole-in-place to 2,625 individuals. There have also been at least 5 cases (*subscription required*) in recent years where it is stated that someone has PIP status but has no relation to a member of the U.S. Armed Forces.

Would parole in place allow certain individuals to adjust status?

Parole in Place gives individuals a direct path to citizenship because parolees are statutorily eligible for adjustment of status. INA § 245(a) states that noncitizens who are "inspected and admitted or paroled into the Unted States." Consequently, those granted PIP are "paroled" into the country and can adjust status.

Have there been any legal challenges to the use of Parole in Place?

In recent years, there have been several legal challenges to the parole power generally, which includes PIP. In January 2023, 21 states sued the Biden administration over a policy announced that same month that permitted paroling 30,000 migrants each month into the United States from the countries of Cuba, Haiti, Nicaragua, and Venezuela. These states argue that the Biden administration has overstepped its authority by not allowing parole on a case-by-case basis, as stated in the statute. They also argue that it is causing financial harm, as bordering states – primarily Texas – will have to provide certain. The administration, supported by various human rights groups, have stated that the case-by-case basis applies to groups, not just individuals, and that the policy is a safe way to dissuade illegal border crossings. The trial began August 24, 2023 in Victoria, Texas, and is ongoing.

What steps could USCIS take to expand its use of Parole in Place?

Current USCIS policy is to grant PIP sparingly. According to the statute and subsequent legislative history, it is up to USCIS to choose who is granted PIP. Furthermore, there is no limit on the number of people that can be paroled into the United States, as the statute does not give a maximum number. Consequently, USCIS can expand the program or create new "parole in place" programs. Changing current policy to allow for the parole of undocumented immigrants without ties to U.S. Armed Forces members could be a step within the capabilities of the agency. USCIS could investigate whether the following is an appropriate action:

1. Change USCIS policy directives that instructs "parole in place," as a general concept, is to be applied sparingly;

2. Create a PIP program for undocumented individuals that meet certain criteria, such as having a U.S. citizen immediate relative (spouse, child, or parent) or is the caretaker to a U.S. citizen, having significant financial or humanitarian needs, or has been living in the U.S. in good standing for 10 years or more.

As mentioned previously, the statute that explains the parole power is vague. This has led to many different types of parole, like advance parole, humanitarian parole, significant public benefit parole, and the many types of special parole programs, such as Uniting for Ukraine and the Cuban Family Reunification Parole Program. Since parole is at the discretion of DHS, the federal government could make a parole program for undocumented immigrants based on certain criteria. In creating a criteria-based parole program for undocumented immigrants, USCIS could meet the case-by-case statutory requirement and still allow for many more people to be permitted

entry into the United States and, for some, qualify for a path towards legal permanent residency. This would protect some of the most vulnerable in our communities.

Conclusion

The Immigration and Nationality Act (INA) of 1965 does not specify that one must be the immediate relative of a member of the U.S. Armed Forces to be eligible for parole in place. The only requirements that do exist is that the applicant cannot be a refugee, nor can they have already been admitted into the United States. Other than these requirements, it is entirely up to the discretion of USCIS and other immigration agencies whether or not to grant entry. In practice, as they want to grant parole in place only sparingly, they tend to do so only to the immediate relatives of members of the U.S. Armed Forces. This, however, is nonbinding and not based in the statutory language. The period of parole can be longer than one year. In fact, it can be indefinite, so long as the Attorney General deems that the reason for their parole still exists.

Parole in place is a useful tool that could be utilized by presidential administrations to provide temporary protection from deportation and work authorization to certain undocumented individuals. Various parole programs have been used in this capacity before, as seen during the Cold War when both Republican and Democratic administrations paroled thousands of refugees fleeing from Communist countries into the United States and President Biden's recent policy of allowing parolees from Afghanistan and Ukraine. This temporary relief would go far for migrants, yet still allow them to be admitted under the normal channels. Consequently, USCIS should consider altering its guidance and broaden the use of the Parole in Place program to protect the long-term undocumented community in the United States.

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