

Memorandum of Agreement

Between

United States Citizenship and Immigration Services (USCIS)
United States Department of Homeland Security,

United States Immigration and Customs Enforcement (ICE)
United States Department of Homeland Security,

And

United States Customs and Border Protection (CBP)
United States Department of Homeland Security

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

1. PARTIES

The parties to this Memorandum of Agreement (MOA or Agreement, inclusive of addenda thereto) are U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and United States Customs and Border Protection (CBP), three bureaus within the U.S. Department of Homeland Security (DHS).

2. AUTHORITY

This Agreement is authorized under § 872 of the Homeland Security Act (HSA) of 2002 (Pub. L. No. 107-296) and is in accordance with the following DHS Delegation Orders: *Delegation of Authority to the Commissioner of U.S. Customs and Border Protection* (Delegation No. 7010.3, Sec. 2(B)(15)); *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement* (Delegation No. 7030.2, Sec. 2(M)); and *Delegation of Authority to the Bureau of Citizenship and Immigration Services* (Delegation No. 0150.1, Sec. 2(O)).

3. PURPOSE AND SCOPE

This Agreement articulates a decisional framework to coordinate the bureaus' concurrent exercise of parole authority with respect to aliens who are outside of the United States or who present themselves at a U.S. port of entry upon initial approach to the United States. Next, the MOA applies the framework to a non-exhaustive, sample list of parole requests and designates the appropriate bureau(s) that would exercise jurisdiction over each request. Third, the MOA establishes two case management rules: (1) consolidation of principal and derivative parole applications for adjudication by one bureau; and (2) except as provided herein, requests for re-parole will be adjudicated by the bureau that adjudicated the initial parole request. Finally, the MOA establishes a dispute resolution mechanism.

This MOA does not cover conditional parole and release from detention pursuant to section 236 of the Act,¹ nor other forms of parole issued to aliens who are already within the United States (e.g., parole to trafficking victims; parole in place; advance parole), nor other immigration benefits often associated with certain categories of parole (e.g., work authorization, adjustment of status). An Addendum to this MOA will address jurisdiction over parole issued to aliens who are in removal proceedings, who have a final order, or who have been granted deferred action by ICE at any time after commencement of removal proceedings, regardless of whether the alien is within or outside of the United States. See Addendum 1.

4. BACKGROUND

A. Parole under INA § 212(d)(5)(A)

¹ See memorandum dated August 21, 1998, by U.S. Immigration and Naturalization Service General Counsel Paul W. Virtue entitled, *Authority to Parole Applicants for Admission Who Are Not Also Arriving Aliens, superseded in part by Memorandum of the DHS General Counsel, dated September 28, 2007, by DHS General Counsel Gus P. Coldebella entitled, Clarification of the Relation Between Release Under Section 236 and Parole Under Section 212(d)(5) of the Immigration and Nationality Act.*

Section 212(d)(5)(A) of the Immigration and Nationality Act (INA, or the Act) authorizes the Secretary of the Department of Homeland Security (DHS)² "in his discretion [to] parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission into the United States, . . ." Parole is an extraordinary measure, sparingly used only in urgent or emergency circumstances, by which the Secretary may permit an inadmissible alien temporarily to enter or remain in the United States. Parole is not to be used to circumvent normal visa processes and timelines.

The Secretary has delegated his parole authority USCIS, ICE, and CBP.

B. Current Parole Practice by Bureaus

As practice has evolved, DHS bureaus have generally construed "humanitarian" paroles (HPs) as relating to urgent medical, family, and related needs and "significant public benefit paroles (SPBPs) as limited to persons of law enforcement interest such as witnesses to judicial proceedings. Categorizing parole types helps prospective parole beneficiaries direct their applications to the appropriate bureau and facilitates DHS tracking. In the vast majority of cases, parole queries and applications are directed to the appropriate bureau and adjudicated without re-routing the parole request to another bureau.

In a January 18, 2007, letter to the Senate Committee on Health, Education, Labor, and Pensions, DHS Secretary Chertoff explained that the Cuban and Haitian Entrant Program (CHEP), Humanitarian Parole Program, and the Moscow Refugee Parole Program would transfer from ICE to USCIS, stating, "DHS will consolidate CHEP and the non-law enforcement functions of related parole programs from [ICE] to [CIS]."

Below is a non-exhaustive list of outside the United States and port of entry parole programs and categories and how those requests are staffed:

1. Urgent medical, family, and related needs: USCIS
2. Moscow Refugee Parole Program (MRPP): USCIS
3. Specific Cuban parole programs:³
 - a. Special Cuban Migration Parole issued at U.S. Interest Section (USINT) Havana (Lottery; CP-2/5): USCIS
 - b. Cuban Family Reunification Program issued at USINT Havana (CFRP; CP-1): USCIS
 - c. Cuban family of immigrant-visa bearers, issued at USINT Havana (CP-3): USCIS
 - d. Cuban Medical Professional Parole (CMPP): USCIS
 - e. Cubans paroles from the U.S. Naval Station at Guantánamo, Cuba: USCIS
4. As further clarified with the examples and exception below, aliens who will participate in administrative, judicial, or legislative proceedings, and/or investigations, whether at the federal, state, local, or tribal level of government: ICE
 - a. Individual necessary for prosecution or investigation in the U.S.: ICE
 - b. Confidential Informant from overseas with a specific credible threat: ICE
 - c. Extradition of an individual to the U.S.: ICE
 - d. Aliens who will participate in civil proceedings where all parties are private litigants: USCIS
5. Section 7 parole [50 USC 403h]: ICE
6. Trainees: ICE
7. Intelligence:
 - a. If the individual is a registered source of a member of the US Intelligence Community and the parole furthers the national Intelligence mission: ICE

² Homeland Security Act, 6 U.S.C. §§ 251-98 (transferring authorities exercised exclusively by the former Immigration and Naturalization Service to DHS).

³ This MOA addresses parole adjudications relating to aliens who are either outside of the United States (OCONUS) or at a U.S. port of entry. Each bureau may and does issue paroles to Cuban nationals who are present without inspection in the United States, and this MOA does not assign such cases to one or more bureaus.

- b. Promote National Security—If the parole application is submitted or recommended by the Department of State Cooperative Threat Reduction Program or by the Intelligence Community: ICE
- 8. In Transit Aliens (paroled to travel through the U.S. en route to legal proceedings in a 3rd country): ICE
- 9. Aliens who will participate in events hosted by an international organization located within the United States (e.g., UN, OAS): ICE

C. Notes on Construction

- 1. The bureaus have attempted to draft the above categories in a manner that captures and assigns as many parole scenarios as could be foreseen. Nonetheless, if a parole request does not readily fall within an above category, the bureaus will weigh the totality of the circumstances, including but not limited to the motive(s) for the parole application and its nexus to one of the above categories, to determine which bureau should adjudicate the parole request.
- 2. To the extent that this MOA largely assists ICE and USCIS apportion its parole caseloads, omission of specific reference to CBP should not be construed to detract from CBP's inherent authority to issue paroles. CBP does and will continue to exercise parole authority for both urgent humanitarian reasons and significant public benefit.

5. CASES THAT WARRANT MONITORING

- A. USCIS will adjudicate all other parole applications that are not otherwise apportioned pursuant to Sections 4 and that relate to aliens with respect to whom, as necessary, ICE concludes do not warrant monitoring by DHS or DHS organizations.
- B. Notwithstanding Section 4, ICE will adjudicate any parole request in which ICE determines that, if granted, the parolee would warrant monitoring by DHS or DHS organizations.
- C. If USCIS receives a parole request for which USCIS determines that parole is otherwise appropriate but questions whether monitoring is appropriate to the situation, it will request that ICE evaluate whether monitoring is warranted. ICE will respond within one (1) working day in writing or by email.
 - 1. If ICE concludes that monitoring by DHS or DHS organizations is required, per Section 5.B., ICE will adjudicate the parole request.
 - 2. If ICE concludes that monitoring by a non-DHS agency is warranted, ICE will stipulate the conditions of monitoring by the non-DHS entity. USCIS will retain jurisdiction and secure the non-DHS agency's agreement to comply with the ICE stipulated conditions before USCIS approves the parole. During the period of initial parole or upon any request for re-parole, USCIS and/or ICE may require that the agency demonstrate compliance with set conditions.

6. CONSOLIDATION OF PRINCIPAL AND DERIVATIVE PAROLE APPLICATIONS

The bureau that adjudicates a parole (and re-parole) request related to a principal applicant will adjudicate all related parole (and re-parole) applications on behalf of derivative family members, whether accompanying the principal or following to join at a later date. Consolidating principal and derivative parole adjudication affords comprehensive analysis of derivatives' merits, as well as efficiencies in adjudication and post-adjudication case management. This case management rule may not be circumvented by advancing or construing a derivative's parole application under a different parole category than that of the principal parole applicant.

7. ADJUDICATION OF REQUESTS FOR RE-PAROLE

Except as provided in the paragraph below, if a bureau has previously adjudicated and granted parole to an individual, the issuing bureau should, in the interest of efficiency, adjudicate requests for re-parole, unless (1) the circumstances or intent of the parole have changed such that additional factors render the bureau inappropriate to adjudicate the new application, or (2) another bureau agrees to assume a particular caseload in the interest of expediency or settled local practice.

If an original parole was granted by the ICE Parole and Humanitarian Assistance Branch (PHAB) prior to the transfer of the HP, MRPP, and CHEP parole programs to USCIS under the Memorandum of Understanding dated July 26, 2007, a subsequent request for re-parole will be apportioned among the bureaus pursuant to Sections 4 and 5 above.

8. FORUM-SHOPPING PREVENTION

To discourage forum-shopping by parole-requesters, engender inter-bureau comity, promote consistency of case adjudication, and preserve resources, the bureaus adopt the following case management rule: If a bureau identifies a request that was previously denied on the merits by another bureau, the second receiving bureau will refer such a request back to the bureau that originally adjudicated and denied parole.

There may, however, be situations where it is inappropriate for one bureau to grant a parole, whereas the same applicant may and possibly should be granted parole by another bureau at a different time, location, and/or under different factual or procedural circumstances. In such a case, the second bureau to receive the parole request may elect to adjudicate the new request after consultation with the original bureau.

9. POINTS OF CONTACT

To enhance coordination among the bureaus in the exercise of the Secretary's parole authority under INA § 212(d)(5)(A), the following positions within the respective bureaus designates, or their assigned delegates, will serve as points of contact for parole-related matters that fall within the scope of this Agreement.

- A. ICE: Branch Chief, Law Enforcement Parole Branch
ICE Office of International Affairs
800 N. Capitol, NW
Washington DC, 20002
Telephone: 202-762-6666, (b)(7)(C)
- B. CBP: Executive Director
CBP Admissibility and Passenger Programs
1300 Pennsylvania Avenue, NW, Suite 2.5A
Washington, DC 20004
Telephone: 202-364-6666, (b)(7)(C)
- C. USCIS: Chief, Humanitarian Assistance Branch
USCIS Refugee, Asylum, & International Operations Directorate (RAIO)
20 Massachusetts Avenue, NW, 3rd Floor
Washington, DC 20529
Telephone: 202-272-6666, (b)(7)(C)

10. EXTERNAL GUIDANCE TO PAROLE REQUESTING ENTITIES

While most parole applications are directed by the requesting entity, in the first instance, to the appropriate bureau, and while this MOA will guide the bureaus in case assignment, the bureaus will make available to appropriate U.S. government entities external guidance contained in Addendum 2 to this MOA, so that the requesting entities better understand to which bureau a request for parole should be directed. Addendum 2 is to be read consistent with the terms of this MOA and Addendum 1 thereto. Addendum 2 is incorporated into the MOA and subject to all governing paragraphs, including but not limited to, paragraphs 14 through 16. The parties will also update public outreach materials consistent with the terms of this MOA and Addendum 1.

11. DISPUTE RESOLUTION MECHANISM

It is contemplated that the decisional framework set out above will produce a consensus as to case assignment among the bureaus. In the event that the parole unit staff of the bureaus are unable, within one work day, to agree upon proper case assignment, the receiving bureau(s) will refer the case to their respective bureau deputies -- USCIS Deputy Director, ICE Deputy Assistant Secretary, and CBP Deputy Commissioner -- or their designees to confer on case assignment. If the deputies (or designees) cannot concur upon case assignment within one additional work-day, the case will be referred to the Deputy Secretary of DHS, or designee, for assignment.

12. OTHER PROVISIONS

Nothing in this MOA or addenda thereto is intended to conflict with current law or regulation or the directives of DHS or existing agreements. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect. This MOA and addenda thereto supersede bureau-issued guidance or directives that are inconsistent.

This Agreement does not disturb the July 26, 2007, Memorandum of Agreement between USCIS and ICE for the purpose of Defining the Roles and Responsibilities of Both ICE and USCIS on the Transfer of the Cuban and Haitian Entrant Program, the Moscow Refugee Parole Program, and the Humanitarian Parole Program to USCIS, or its August 3, 2007 implementing Interagency Agreement. To the extent that there is a disagreement between the documents, USCIS and ICE agree to make every effort to resolve the inconsistency.

13. NO PRIVATE RIGHT STATEMENT

This MOA and addenda thereto provide internal administrative guidance to DHS components and are not intended to, nor do they, create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against: the United States; its departments, agencies or other entities; nor its officers, employees, or any other person.

14. MODIFICATIONS

This Agreement may be modified upon the mutual written consent of the parties.

15. TERMINATION

The terms of this Agreement, and any subsequent modifications consented to by the parties, will remain in effect unless terminated as provided herein. Any party, upon 30 days written notice to the other two parties, may terminate this Agreement, which thereafter would not be in force as between the remaining parties.

16. EFFECTIVE DATE

The terms of this Agreement will become effective immediately upon signature of both this MOA and Addendum 1.

APPROVED BY:



Jonathan Scharfen
Acting Director
U.S. Citizenship & Immigration Services, U.S. Department of Homeland Security

9/10/08
Date



Julie L. Myers
Assistant Secretary
U.S. Immigration & Customs Enforcement, U.S. Department of Homeland Security

9/9/08
Date



W. Ralph Basham
Commissioner
U.S. Customs & Border Protection, U.S. Department of Homeland Security

9/29/08
Date

Addendum 1 to Tri-Bureau Parole MOA of [DATE of signature]

1. Further to Section 4 of the MOA, ICE will adjudicate parole requests relating to aliens in removal proceedings or who have final orders, as well as aliens granted deferred action by ICE at any point after the commencement of removal proceedings, regardless of whether the alien is within or outside of the United States. Given the context of removal proceedings, it is anticipated that parole of such aliens would occur only in very rare circumstances. Addendum 1 is incorporated into the MOA and subject to all governing paragraphs, including but not limited to, paragraphs 6 through 8.

APPROVED BY:


Jonathan Scharfen

Acting Director

U.S. Citizenship & Immigration Services, U.S. Department of Homeland Security

9/10/08
Date


Julie L. Myers

Assistant Secretary

U.S. Immigration & Customs Enforcement, U.S. Department of Homeland Security

9/10/08
Date


W. Ralph Basham

Commissioner

U.S. Customs & Border Protection, U.S. Department of Homeland Security

9/29/08
Date

Guidance for U.S. Government entities requesting that DHS parole an alien into the US under INA § 212(d)(5)(A)¹

Section 212(d)(5)(A) of the Immigration & Nationality Act (INA) authorizes the Secretary of the Department of Homeland Security (DHS) to parole persons into the US "for urgent humanitarian reasons or significant public benefit." Parole is an extraordinary measure, sparingly used only in urgent circumstances, and not to circumvent normal visa processes and timelines. DHS will not generally adjudicate a parole request absent evidence that the prospective parolee has exhausted visa processes, including any available waivers to applicable grounds of inadmissibility.

The Secretary delegated his parole authority concurrently to Customs & Border Protection (CBP), Immigration & Customs Enforcement (ICE), and U.S. Citizenship & Immigration Services (USCIS). Below is a list of parole categories, followed by which DHS bureau will receive and adjudicate parole requests for each category.

1. Urgent medical, family, and related needs: USCIS
2. Aliens who will participate in civil proceedings where all parties are private litigants: USCIS
3. Except as provided in (2) above, aliens who will participate in administrative, judicial, or legislative proceedings, and/or investigations, whether at the federal, state, local, or tribal level of government: ICE
4. Aliens in removal proceedings or who have final orders, as well as aliens granted deferred action by ICE at any point after the commencement of removal proceedings, regardless of whether the alien is within or outside of the US: ICE
5. Aliens who will participate in events hosted by an international organization located within the U.S. (e.g., UN, OAS): ICE
6. Section 7 parole [50 U.S.C. 403(h)]: ICE
7. Intelligence. Aliens who are registered sources of a member of the US Intelligence agency Community and whose parole would further the national Intelligence mission, or aliens whose parole is sought by the Department of State Cooperative Threat Reduction Program or by the Intelligence Community: ICE

The following case management rules apply:

1. Consolidation of family members: A single bureau will adjudicate parole applications of both principal and derivative family members, whether accompanying the principal or later following to join.
2. Requests for re-parole: The issuing bureau will adjudicate subsequent requests for re-parole.

U.S. Government entities may contact the appropriate DHS immigration bureau as follows:

- | | | | |
|----|--------|---|--|
| A. | ICE: | Branch Chief, Law Enforcement Parole Branch
ICE Office of International Affairs
800 N. Capitol, NW
Washington DC, 20002 | Telephone: 202-732- (b)(6) , (b)(7)(C) |
| B. | CBP: | Executive Director
CBP Admissibility and Passenger Programs
1300 Pennsylvania Avenue, NW, Suite 2.5A
Washington, DC 20004 | Telephone: 202-346- (b)(6) , (b)(7)(C) |
| C. | USCIS: | Chief, Humanitarian Assistance Branch
USCIS Refugee, Asylum, & International Operations Directorate (RAIO)
20 Massachusetts Avenue, NW, 3 rd Floor
Washington, DC 20529 | Telephone: 202-272- (b)(6) , (b)(7)(C) |

With this guidance, DHS seeks to better assist other U.S. entities with its missions, while performing our essential mission of protecting homeland security.

¹ Revised 8-27-08. *No private right:* This guidance addresses internal administration and is not intended to, nor does it, create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against: the US; its departments, agencies or other entities; nor its officers, employees, or any other person.