

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
Parole of Arriving Aliens Found to Have a “Credible Fear” of Persecution or Torture

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1. **PURPOSE.** The purpose of this ICE policy directive is to ensure transparency, consistency and quality assurance in ICE decisions on the parole requests of arriving aliens seeking asylum in the United States. This Directive provides guidance to Detention and Removal Operations (DRO) Field Office personnel for exercising their discretion to consider parole requests by arriving aliens processed under the expedited removal provisions of section 235 of the Immigration and Nationality Act (INA) who have been found to have a “credible fear” of persecution or torture by U.S. Citizenship and Immigration Services (USCIS) or an immigration judge (IJ) of the Executive Office for Immigration Review. While preserving DRO’s discretion to make case-by-case parole determinations, this Directive seeks to promote consistently high-quality parole decision-making and, accordingly, establishes a quality assurance process and includes record-keeping requirements to ensure accountability and compliance with the procedures set forth in this guidance.
 - 1.1 This Directive does not apply to aliens in DRO custody under INA Section 236(a). This Directive applies only to arriving aliens who have been found by USCIS or an IJ to have a "credible fear" of persecution or torture.
2. **AUTHORITIES/REFERENCES.**
 - 2.1. INA §§ 208, 212(d)(5), 235(b), and 241(b)(3), 8 U.S.C. §§ 1158, 1182(d)(5), 1225(b), and 1231(b)(3); 8 C.F.R. §§ 1.1(q), 208.30(e)-(f), 212.5 and 235.3.
 - 2.2. Department of Homeland Security Delegation Number 7030.2, “Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement” (Nov. 13, 2004).
 - 2.3. ICE Delegations of Authority to the Directors, Detention and Removal and Investigations and to Field Office Directors, Special Agents in Charge and Certain Other Officers of the Bureau of Immigration and Customs Enforcement, No. 0001 (June 6, 2003).
3. **SUPERSEDED POLICIES AND GUIDANCE.** All other ICE or former Immigration and Naturalization Service (INS) directives, memoranda, bulletins, manuals, handbooks, and other guidelines and procedures, including those

specifically listed below, no longer apply to DRO parole determinations under INA § 212(d)(5) for arriving aliens who have been determined to have a credible fear of persecution or torture.

- 3.1. Memorandum from Victor X. Cerda, DRO Acting Director, Expedited Removal Guidance 3 (Sept. 14, 2004);
 - 3.2. Memorandum from Michael J. Garcia, ICE Assistant Secretary, Detention Policy Where an Immigration Judge has Granted Asylum and ICE has appealed (Feb. 9, 2004);
 - 3.3. Memorandum from Michael A. Pearson, INS Executive Associate Commissioner for Field Operations, Detention Guidelines Effective October 9, 1998 (Oct. 7, 1998); and
 - 3.4. Memorandum from Michael A. Pearson, INS Executive Associate Commissioner for Field Operations, Expedited Removal: Additional Policy Guidance (Dec. 30, 1997).
4. **BACKGROUND.** Arriving aliens processed under the INA’s expedited removal provisions may pursue asylum and related forms of protection from removal if they successfully demonstrate to USCIS or an IJ a “credible fear” of persecution or torture. Aliens who establish a credible fear of persecution or torture are to be detained for further consideration of the application for asylum. INA § 235(b)(1)(B)(ii). Such aliens, however, may be paroled on a case-by-case basis for “‘urgent humanitarian reasons’ or ‘significant public benefit,’ provided the aliens present neither a security risk nor a risk of absconding.” 8 C.F.R. § 212.5(b); see also 8 C.F.R. § 235.3(c) (providing that aliens referred for INA § 240 removal proceedings, including those who have credible fear of persecution or torture, may be paroled under § 212.5(b) standards).

The applicable regulations describe five categories of aliens who, on a case-by-case basis and depending upon whether the alien presents a flight or security risk, may meet the parole standards: (1) aliens who have serious medical conditions, where continued detention would not be appropriate; (2) women who have been medically certified as pregnant; (3) certain juveniles; (4) aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; and (5) aliens whose continued detention is not in the public interest. 8 C.F.R. § 212.5(b).

Given that the expedited removal statute is generally oriented towards detention, the regulations governing parole determinations make clear that aliens are only to be paroled in limited circumstances and only on a case-by-case basis. Accordingly, this Directive clarifies the applicable parole standards under 8 C.F.R. § 212.5(b) as they relate to arriving aliens determined to have a credible

fear of persecution or torture. The Directive also provides standardized procedures and analytical guidance for DRO Field Offices' parole decisions for arriving aliens and mandating uniform recordkeeping and review requirements for such decisions. Parole remains an inherently discretionary determination entrusted to the agency, but this Directive will serve to guide the exercise of that discretion.

5. DEFINITIONS.

- 5.1. **Arriving alien.** For purposes of this Directive, "arriving alien" has the same definition as provided for in 8 C.F.R. §§ 1.1(q) and 1001.1(q).
- 5.2. **Credible fear.** Consistent with INA § 235(b)(1)(B)(v), and for purposes of this Directive, with respect to an alien processed under INA § 235(b) "expedited removal" process, "credible fear" of persecution or torture is a finding by USCIS or an IJ that indicates a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the interviewing USCIS officer, that the alien may be able to establish eligibility for asylum under INA § 208 or entitlement to withholding or removal under INA § 241(b)(3) or protection under the Convention Against Torture.
- 5.3. **Parole.** For purposes of this Directive, "parole" is an administrative measure used by ICE to temporarily authorize (without lawfully admitting) the release of an inadmissible arriving alien found to have a "credible fear" of persecution or torture from DRO custody. Parole does not constitute a lawful admission or a determination of admissibility, see INA §§ 212(d)(5)(A), 101(a)(13)(B), and reasonable conditions may be imposed on the parole, see 8 C.F.R. § 212.5(d). Parole may only be used, in the discretion of ICE and under such conditions as ICE may prescribe, in individually compelling cases for urgent humanitarian reasons or for significant public benefit.
- 5.4. **Urgent humanitarian reasons and significant public benefit.** For purposes of this Directive, the terms "urgent humanitarian reasons" and "significant public benefit" include the five categories set forth at 8 C.F.R. § 212.5(b), as those five categories are further explained in paragraphs 8.3.1 through 8.3.5 of this Directive.

6. POLICY.

- 6.1. Generally, subject to any applicable legal restrictions on removal, it is ICE policy to remove all aliens with final orders of removal irrespective of any type of immigration relief or protection that an alien may elect or may have elected to pursue during the course of the alien's immigration proceedings.

- 6.2. Continued custody of aliens who pose a risk of flight throughout the course of their immigration proceedings is the most effective way of ensuring their appearance at all immigration hearings and appointments.
- 6.3. Parole decisions under INA § 212(d)(5) are to be made only on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit.” Arriving aliens found by USCIS to have a “credible fear” of persecution or torture may be individually considered for parole by DRO if they fall within one of the categories set forth at 8 C.F.R. § 212.5(b), subject to the terms of this Directive.
- 6.4. While each alien’s parole request will be unique and should be analyzed individually, DRO Field Offices shall uniformly document their parole decision-making processes using the *Record of Determination/Parole Determination Worksheet*. Field Office personnel are authorized to exercise their judgment and to document additional factors appropriate for consideration based on the facts of each particular case.
- 6.5. Consistent with the terms of this Directive, DRO shall maintain national and local statistics on parole determinations and have a quality assurance process in place to monitor parole decision-making, as provided for in section 8 of this Directive.
- 6.6. In conducting parole determinations for arriving aliens in custody after they are found to have a “credible fear” of persecution or torture, DRO shall follow the procedures set forth in section 8 of this Directive.
- 6.7. DRO shall provide any such alien who submits a written request for INA § 212(d)(5) parole with a written response if the decision is to deny parole.
- 6.8. Generally, a decision to grant or deny parole shall be initially prepared by a DRO officer assigned such duties within his or her respective DRO Field Office. The decision shall pass through at least one level of supervisory review and concurrence must be finally approved by the Field Office Director (FOD) or Deputy FOD, where authorized by the FOD.

7. **RESPONSIBILITIES.**

- 7.1. The **DRO Director** is responsible for the overall management of the parole decision-making process for arriving aliens in DRO custody following determinations that they have a “credible fear” of persecution or torture.
- 7.2. The **DRO Assistant Director for Operations** is responsible for:
 - 7.2.1. Ensuring high nationwide quality and consistency of DRO parole decision-making and recordkeeping in cases of arriving aliens found to have a “credible fear” of persecution or torture;

- 7.2.2. Overseeing monthly tracking of parole statistics by all DRO Field Offices for such cases; and
- 7.2.3. Overseeing an effective national quality assurance program that monitors the Field Offices to ensure consistent compliance with this Directive.
- 7.3. **DRO Field Office Directors** are responsible for:
 - 7.3.1. Implementing this policy and quality assurance processes;
 - 7.3.2. Maintaining a log of parole adjudications for “credible fear” cases within their respective geographic areas of responsibility (AORs), including copies of the ICE *Record of Determination/Parole Determination Worksheet*;
 - 7.3.3. Providing monthly statistical reports on parole requests received from arriving aliens found to have a “credible fear;”
 - 7.3.4. Making the final decision to grant or deny parole requests made by arriving aliens found to have a “credible fear” of persecution or torture within their respective AOR’s or, alternatively, delegating such responsibility to their Deputy FODs (DFODs) (in which case, the FOD nevertheless retains overall responsibility for his or her office’s respective compliance with this Directive) regardless of delegating signatory responsibility to the DFOD; and
 - 7.3.5. Ensuring that DRO field personnel within their respective AORs who will be assigned to receive and prepare responses to parole requests are familiar with this Directive and corresponding legal authorities.
- 7.4. **DRO Deputy Field Office Directors** are responsible for reviewing, and forwarding for their respective FODs’ approval, proposed parole decisions prepared by their subordinates in the cases of arriving aliens found to have a “credible fear” or persecution or torture. Alternatively, DFODs delegated responsibility under paragraph 7.3.4 of this Directive are responsible for discharging final decision-making authority over parole requests in such cases within their respective AORs.
- 7.5. As applicable, **DRO field personnel** assigned parole-related duties by their local chains-of-command are responsible for fully and accurately completing the ICE *Record of Determination/Parole Determination Worksheet*, in accordance with this Directive and corresponding legal authorities.

8. **PROCEDURES.**

- 8.1. Upon receipt of a written INA § 212(d)(5) parole request by an arriving alien found to have a “credible fear” of persecution or torture, the receiving DRO Field Office shall assign the request to a DRO officer familiar with the requirements of this Directive and corresponding legal authorities, who will complete the ICE

Record of Determination/Parole Determination Worksheet, which sets forth the correct two-part analysis applicable to parole requests in such cases.

- 8.2. **Step One.** Step one of the parole analysis is a threshold assessment of whether the alien's parole request and any supporting documents establish: (1) the alien's identity; (2) that he or she does not pose a risk of flight; and (3) that he or she is not a danger to the community.
- 8.2.1. **Identity.** Identity is a critical element in qualifying for parole. Asylum applicants who arrive in the United States without any identifying documents or who present fraudulent documents or claims raise significant security concerns. Field Office personnel must review all relevant documentation offered by an alien, as well as other information available about the alien to determine whether the alien is who he or she claims to be. If an alien lacks valid government-issued documents that support his or her assertion of identity, Field Office personnel should request that the alien provide government-issued documentation of identity. If the alien cannot reasonably provide valid government-issued evidence of identity, the alien can provide for consideration affidavits from third parties, if the affiants include copies of valid, government issued photo-identification document, and fully establish their identity and address. Without such additional documentation, affidavits from third parties may not suffice for establishing identity for parole purposes, particularly if the alien attempted to enter the U.S. through fraud.
- 8.2.2. **Flight Risk.** An alien determined to have a credible fear of persecution or torture must present sufficient evidence demonstrating his or her likelihood of appearing when required. Factors appropriate for consideration in determining whether an alien has made the required showing include, but are not limited to: community and family ties, employment history, manner of entry and length of residence in the United States, stability of residence in the United States, record of appearance for prior court hearings, prior immigration history, ability to post bond, property ownership, and possible relief from removal available to the alien. An alien must be able to post bond in an amount deemed sufficient for reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so, and to ensure that the alien will comply with all periodic reporting conditions.
- 8.2.3. **Danger to the Community.** An alien must demonstrate that he or she will not pose a risk to the security of the community. Evidence to the contrary may include, but is not limited to, past criminal history in the United States and abroad, national security interests, concerns of public safety or danger to the community, prior immoral acts or participation in subversive activities, and any detention history that shows that he or she has harmed himself or herself or others.
- 8.3. **Step Two.** Step two of the parole analysis is an assessment of whether the alien has established that he or she falls within one or more of the five categories enumerated in 8 C.F.R. § 212.5(b) and it is determined on a case-by-case basis

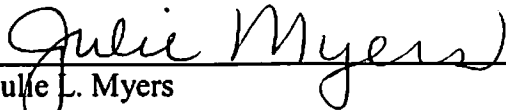
that parole is justified for “urgent humanitarian reasons” or “significant public benefit,” provided the alien presents neither a security risk nor a risk of absconding. The five categories are aliens in 8 C.F.R. § 212.5(b): (1) aliens who have serious medical conditions, where continued detention would not be appropriate; (2) women who have been medically certified as pregnant; (3) certain juveniles; (4) aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; and (5) aliens whose continued detention is not in the public interest. While Step One and Step Two of the parole analysis should be individually documented during the decision-making process, officers must take care to consider whether any interrelationship exists between them, such as where an alien’s pregnancy or serious medical condition might reduce his or her risk of flight, or where a juvenile’s young age would suggest that he or she poses little danger to the community.”

- 8.3.1. **Serious Medical Condition.** Based on a finding of urgent humanitarian need or significant public benefit, a favorable exercise of discretion may be considered on a case-by-case basis whenever a medical or psychological evaluation, diagnosis, treatment plan, or other documentation provided by a qualified medical or psychological professional indicates the existence of a serious medical condition or an impairment that makes detention problematic or inappropriate. DRO may consult with medical professionals to determine the severity of any alien’s medical condition.
- 8.3.2. **Women Medically Certified as Pregnant.** Parole for a woman medically certified as pregnant should be considered on a case-by-case basis.
- 8.3.3. **Juveniles.** ICE detains a small number of accompanied alien minors under the age of 18. When adjudicating parole requests from juvenile aliens, FODs shall consult with the Juvenile and Family Residential Management Unit (JFRMU) at Headquarters about these parole requests.
- 8.3.4. **Witnesses.** Parole under this category should require a substantial showing from the alien as to why serving as a witness for some limited purpose justifies release from custody. Factors to consider in this discretionary determination may include: whether the law enforcement agency, prosecutor, judicial, administrative, or legislative body before which the alien is to serve as a witness has presented a formal request; whether some other law enforcement agency will take custody of the alien (usually referred to as a Bench Warrant or Writ); and whether the alien’s potential testimony could endanger him or her and why the alien would be safer in the community-at-large than in a secure detention setting.
- 8.3.5. **Public Interest.** Parole on public interest grounds requires careful consideration of whether, consistent with ICE’s mission to protect the United States, uphold public safety, and enforce the immigration laws, a specific alien’s case is appropriate for

parole because of some public interest. Because the term “public interest” is not amenable to a single, standard definition, the decision to grant parole on this basis must be documented by a well-reasoned justification.

- 8.4. Assigned DRO officers should, where appropriate, request that parole applicants provide any supplementary information that would aid the officers in reaching a decision. The *ICE Record of Determination/Parole Determination Worksheet* should be annotated to document the request for supplementary information and any response from the detainee.
- 8.5. After conducting this two-part analysis, preparing and signing the *ICE Record of Determination/Parole Determination Worksheet*, and in the case of a denial of parole, drafting a written response to the alien, the assigned DRO officer shall forward these materials and the parole request documentation to his or her first-line supervisor for review and concurrence. If the DRO officer believes parole is warranted in the public interest under 8 C.F.R. § 212.5(b)(5) and paragraph 8.3.5 of this Directive, the officer shall draft a full written justification for supervisory review.
- 8.6. Upon his or her concurrence, the first-line supervisor shall sign the *ICE Record of Determination/Parole Determination Worksheet*, and forward this form and other documentation to the FOD (or, where applicable, the DFOD) for final approval.
- 8.7. The FOD (or, where applicable, the DFOD) shall review the parole documentation, consult with the preparing officer and supervisor as necessary, and either grant or deny parole by completing the *ICE Record of Determination/Parole Determination Worksheet*, and in the case of a denial, signing the written response to the alien. If the FOD (or, where applicable, the DFOD) believes that parole is warranted in the public interest under 8 C.F.R. § 212.5(b)(5) and paragraph 8.3.5 of this Directive, he or she shall document the well-reasoned justification for parole.
- 8.8. Following a final decision by the FOD to deny parole (or, where applicable, the DFOD), the Field Office shall provide a standardized written response to the alien or, if represented, to the alien’s legal representative, indicating that the parole request was denied. If parole is granted, the Field Office shall provide the alien with a stamped I-94 Form that authorizes parole under INA Section 212 (d) (3) (5)(A) in accordance with DRO guidelines.
- 8.9. The parole request, supporting documents, a copy of the decision sent to the alien (if applicable), the *ICE Record of Determination/Parole Determination Worksheet*, and any other documents related to the parole request or adjudication should be placed in the alien’s A-file in a record of proceeding format. In addition, a copy of the *ICE Record of Determination/Parole Determination Worksheet*, shall be stored and maintained under the authority of the FOD for use in preparing monthly reports.

- 8.10. The FOD shall submit monthly parole reports to the Assistant Director for Operations as directed by DRO Headquarters.
- 8.11. At least once every six months, the Assistant Director for Operations shall conduct a thorough and objective quality assurance review of the Field Offices' parole decision-making as directed by DRO Headquarters. The quality assurance review will become part of the Deportation Officer's Field Operations Manual.
9. **ATTACHMENT.** *ICE Record of Determination/Parole Determination Worksheet.*
10. **NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

Approved: 
Julie L. Myers
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U.S. Immigration and Customs Enforcement