



Dispelling Myths about Advance Parole^{*}

The DHS Prosecutorial Discretion Policy Does Not Create a New Path to Citizenship

On February 13, 2015, House Chairman of the Judiciary Committee, Rep. Bob Goodlatte announced that “hundreds of thousands of unlawful immigrants” who are not eligible for citizenship and who obtain deferred action and advance parole under Deferred Action for Childhood Arrivals (DACA) will be able to bypass existing law and obtain lawful permanent resident status and citizenship. Senators Jeff Sessions and Mike Lee have made similar claims that DACA and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)¹ will enable thousands or even “millions of illegal aliens” to obtain citizenship.²

Neither advance parole nor the Department of Homeland Security’s (DHS) prosecutorial discretion policy creates a new path to citizenship for DACA or DAPA recipients.

Who can apply for a green card?

- Immigration law allows only certain individuals to apply for a green card and eventually citizenship. These individuals must have a qualifying family member to sponsor them or qualify for an employment-based visa. Unless they already have a qualifying family member who can sponsor them, which is unlikely, DACA and DAPA applicants will **not qualify** for adjustment of status under this process.

What is advance parole?

- Senator Lee and Chairman Goodlatte claim that DHS has created a new path to citizenship by allowing DACA and DAPA recipients to use “advance parole.” Advance parole is a well-established procedure authorized in statute by which USCIS permits an individual to travel abroad and re-enter the United States. Advance parole is commonly used by people with a wide range of immigrant statuses including employment visas, family visas, or recipients of deferred action.

^{*} Contact Greg Chen, AILA Director of Advocacy, 202/507-7615, gchen@aila.org

¹ On November 20, 2014, DHS announced new policies on prosecutorial discretion and enforcement priorities. DHS expanded the 2012 DACA program and also established DAPA, which provides a temporary reprieve from deportation to certain parents of U.S. citizens and lawful permanent residents. On a case-by-case basis, individuals who pass criminal background and national security checks will be granted prosecutorial discretion in the form of deferred action.

² Letter from Bob Goodlatte, Chairman, House Judiciary Committee, to Jeh Johnson, Secretary, U.S. Department of Homeland Security (Feb. 14, 2015) available at http://judiciary.house.gov/_cache/files/fede258e-55c4-45e1-885f-9ed9eefdc00/021315-daca-letter.pdf. December 11, 2014 Blog of Senator Mike Lee: <http://www.lee.senate.gov/public/index.cfm/2014/12/how-illegal-aliens-will-receive-fast-track-to-citizenship-under-the-president-s-executive-amnesty>

- Senators Sessions and Lee and Chairman Goodlatte assert that the BIA's advance parole rule will enable DACA and DAPA recipients to bypass the 3- and 10-year unlawful presence bars and adjust status because those who receive advance parole have not effectuated a "departure" to trigger the bars. The bars prevent lawful re-entry for a period of 3 or 10 years for anyone who has been in an unlawful status in the U.S. for more than 180 days and then departs the country.
- In 2012, the appellate Board of Immigration Appeals (BIA) held that individuals who travel abroad after a grant of advance parole do not effectuate a "departure" from the United States.³ Under the BIA's decision, the advance parole policy will eliminate family separation for 3 or 10 years for a limited group of individuals who independently qualify for a green card, but it does **not** create a *new* path to a green card or citizenship.

Will millions or hundreds of thousands obtain green cards using advance parole?

- A small percentage of all individuals who receive advance parole will be eligible to apply for a green card when they return to the U.S. Only the spouses, parents or children of U.S. citizens would qualify, and in those cases, only if the immigrant is unmarried and under the age of 21, or a U.S. citizen adult child (21 years or older). Others who worked without authorization or failed to maintain a lawful status since entry are **not eligible**. Most DACA or DAPA recipients will not have the required qualifying relative to sponsor them or meet the other requirements to adjust status.
- To claim that millions, or even hundreds of thousands, will get green cards using this method is a gross and inflammatory exaggeration.

Advance parole allows family reunification for those who independently qualify for a green card

- Family reunification has long been a cornerstone of our immigration policy. Under current law, spouses and minor children of U.S. citizens and parents or adult U.S. citizens can apply for a visa based on their family relationship without regard to numerical quotas.
- The formalized advance parole policy will enable some families to reunify more quickly and obtain legal status under existing immigration law, as Congress intended. Family unity has long been a cornerstone of immigration policy, and Congress authorized US citizens and lawful permanent residents to sponsor their children, spouses and parents for green cards. The comparatively small number of DACA or DAPA recipients who have qualifying relatives and can adjust status using advance parole are using the method created by Congress to ensure family unity.

³ See *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012).

- Prominent members of Congress have called for elimination of the 3- and 10-year bars because they keep families apart. In 2014, Rep. Raul Labrador (R-ID) said “I think most Republicans agree that the 3-and 10-year bars have to go away.”⁴ Chairman Goodlatte has also indicated interest in eliminating the bars.⁵

Advance parole is granted in limited circumstances

- Under current guidelines, advance parole will only be granted for humanitarian, educational or employment purposes. Travel for other reasons or for trivial or frivolous purposes is not a valid basis for advance parole.
- In order to apply for advance parole, an individual must file an application with USCIS stating the purpose of the trip and pay the \$360 fee. Applications are granted on a case-by-case basis at the discretion of the agency; applicants must receive approval before leaving the country.

⁴ <http://www.washingtontimes.com/news/2014/may/8/republicans-look-to-loosen-penalties-on-illegal-im/>

⁵ <http://bigstory.ap.org/article/house-chairman-sees-path-legalization> See also CATO:
<http://www.cato.org/blog/removing-310-year-bars-not-amnesty>.