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BIA OVERRULES ARRABALLY: ADVANCE-PAROLE TRAVEL CAN TRIGGER THE UNLAWFUL-PRESENCE BAR

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On August 13, 2026, the Board of Immigration Appeals issued *Matter of DelCarmen-Lara*, 29 I&N Dec. 830 (BIA 2026), a decision that immediately changes how practitioners and noncitizens should evaluate advance-parole travel. The Board held that when a person departs the United States under a grant of advance parole, that trip is still a "departure" for purposes of INA § 212(a)(9)(B)(i)(II), the 10-year unlawful-presence inadmissibility bar. In the same decision, the Board overruled *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the precedent that had long been cited for the opposite proposition.

For years, *Arrabally* gave many noncitizens and their families a measure of protection. Under that 2012 BIA decision, a temporary trip abroad on advance parole was not treated as the kind of "departure" that triggered the 10-year unlawful-presence bar. *Arrabally* reasoned that travel under advance parole was "qualitatively different" because it presupposed return to the United States and continuation of the adjustment process. *DelCarmen-Lara* rejects that reasoning and returns to a stricter reading of the statute.

That change is significant because INA § 212(a)(9)(B)(i)(II), as quoted in *DelCarmen-Lara*, makes inadmissible a person who "has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States." The same decision also states that INA § 245(a), 8 U.S.C. § 1255(a), requires an adjustment applicant to prove he or she is "admissible to the United States for permanent residence." In other words, this is a case about who can still adjust status after travel and who may now be blocked by a bar that *Arrabally* had once eliminated

In Board's view, Congress used the word "departure," did not define it, and did not create a special advance-parole exception in INA § 212(a)(9)(B)(i)(II). The Board also stressed that, elsewhere in the INA, Congress knew how to address advance-parole departures expressly when it wanted to do so. That textual argument became the foundation for overruling *Arrabally.* The Board acknowledged the statutory scheme in INA § 212(a)(9) is designed to "compound the adverse consequences of immigration violations" by making lawful readmission harder after departure, and it cited authority recognizing that treating advance-parole travel as a triggering departure may produce "a harsh result." The Board nevertheless concluded that the statutory text did not permit an exception for advance-parole travel. *DelCarmen-Lara* removes a longstanding defense that practitioners used to protect clients who traveled with government authorization and then sought to continue family-based or other immigration processes inside the United States.

Arrabally had held the opposite. The BIA there said that respondents who temporarily left the United States under advance parole did not thereby make a "departure" that triggered inadmissibility under INA § 212(a)(9)(B)(i)(II). In support of that conclusion, *Arrabally* emphasized the distinctive nature of advance parole and discounted the fact that advance-parole documents warned travelers they could be found inadmissible under INA § 212(a)(9)(B) upon return. *DelCarmen-Lara* states the Board had impermissibly read an exception into the statute, and it now "clarif that the term 'departure' under this section of the INA does not include an exception for aliens who leave the country temporarily under a grant of advance parole".

The facts of the case also make the decision especially important for DACA-based and Temporary Protected Status advance-parole. The respondent in *DelCarmen-Lara* had been granted DACA in 2013, later departed temporarily, and was paroled back into the United States on January 1, 2024, pursuant to advance parole. Prior to *DelCarmen-Lara*, a DACA or TPS recipient who may have entered the US without inspection could depart the US under advance parole, and this would render them eligible for adjustment of status as under INA 245(a) an eligible applicant for adjustment of status has to be "inspected and admitted or paroled" into the US. The return of the applicant under advance parole, who may have not otherwise been eligible for adjustment of status due to the entry without inspection, rendered them eligible for adjustment of status. This is no longer the case under *DelCarmen-Lara* as the trip under advance parole would now trigger the 3 or 10-year bar. As *DelCarmen-Lara* explains, adjustment applicants must prove they are "admissible to the United States for permanent residence". USCIS explains, in its Policy Manual, that adjustment under INA § 245(a) generally requires inspection and admission or parole, physical presence, visa availability, admissibility or a waiver, and a favorable exercise of discretion. In other words, a return on advance parole may satisfy the "paroled" part of adjustment eligibility, but if the travel itself triggers inadmissibility under INA § 212(a)(9)(B)(i), the person may still be unable to adjust, unless a waiver or another solution is available.

The 9 FAM guidance states that both INA § 212(a)(9)(B)(i)(I) and INA § 212(a)(9)(B)(i)(II) are triggered by departure, but it distinguishes the 3-year and 10-year bars. According to 9 FAM 302.11-3(B)(2), the 3-year bar under INA § 212(a)(9)(B)(i)(I) applies only where the person leaves voluntarily before DHS commences proceedings, while the 10-year bar under INA § 212(a)(9)(B)(i)(II) applies after one year or more of unlawful presence whether the departure occurred before, during, or after removal proceedings and regardless of whether the departure was voluntary or under a removal order. Although *Matter of DelCarmen-Lara* directly addresses the 10-year bar in INA § 212(a)(9)(B)(i)(II), its interpretation of "departure" has implications for the 3-year bar as well, because USCIS has previously applied the *Arrabally* rationale to both INA § 212(a)(9)(B)(i)(I) and INA § 212(a)(9)(B)(i)(II).

Another important follow-up question is whether *DelCarmen-Lara* applies retroactively. The Board answered that directly. Because it was expressly overruling longstanding Board precedent, it performed a retroactivity analysis and held that the new rule would apply prospectively. That limitation is critical for pending matters because it preserves an argument that pre-decision advance-parole travel should not automatically be evaluated under *DelCarmen-Lara*'s new interpretation.

DelCarmen also illustrates how the Supreme Court's decision in *Loper Bright v. Raimondo*, which abolished the longstanding *Chevron* doctrine, can be used to overturn precedential BIA decisions that are favorable to noncitizens. The *Chevron* doctrine required courts to defer to an agency's interpretation of an ambiguous statue. Although the BIA did not directly reference *Loper Bright* in *DelCarmen*, *Loper Bright*'s influence can been felt in the BIA's citation to *Matter of Forjoe* as supporting the idea that "Adjudicators must adhere to the unambiguous meaning of statutory language, unless doing so would lead to an absurd or bizarre result that is 'demonstrably at odds with the intentions of its drafters.'" In *Matter of Forjoe*, discussed in detail in a prior blog, the BIA held that "admission" in INA § 237(a)(1)(H) of the INA, 8 U.S.C. § 1227(a)(1)(H), refers only to a noncitizen's lawful entry into the United States after inspection and authorization by an immigration officer, overruling *Matter of Agour*, which had held that "adjustment of status constitutes an "admission" for purposes of determining an alien's eligibility to apply for the fraud waiver" under INA § 237(a)(1)(H). In *Forjoe*, the BIA relied on *Loper Bright* to revisit and narrow its own prior interpretation of INA 237(a)(1)(H) in *Agour*.

The BIA's citation to *Forjoe* in *DelCarmen-Lara* to support its narrow interpretation of the term "departure" reflects a troubling post-*Chevron* trend: in which the BIA is invoking *Loper Bright* to overturn its own more generous readings of INA provisions. The BIA's reference to *Forjoe* in *DelCarmen* also calls into question whether it is appropriate for the BIA to rely on *Loper Bright* to overturn its own past interpretations of regulations, or whether determining what the law requires is best left to federal courts. In *Matter of Yajure Hurtado*, the BIA held that individuals who entered the United States without inspection are ineligible for bond pursuant to INA 235(b)(2)(A), relying on *Loper Bright*. The California federal court disagreed, however, and held that this "expansive interpretation of 'applicants for admission' would effectively nullify a portion of the INA through the DHS's legislative or interpretive exercise of power". Several circuit courts have also agreed. *See, eg*. here, here and here. *Loper Bright* may have eliminated *Chevron* deference to the BIA's interpretation of the statute, but the BIA does not get to invoke *Loper Bright* to signal to federal courts that its interpretation of the INA is correct and federal courts should follow suit. It is for federal courts to independently interpret an INA provision without regard to the BIA's interpretation and its faux invocation of *Loper Bright.* That holding returns the inquiry to the principle from *Marbury v. Madison*: it is the province and duty of the judicial department to say what the law is. An Article III federal court must decide independently whether INA § 212(a)(9)(B) treats advance-parole travel as a triggering "departure."

DelCarmen-Lara changes the way advance parole has to be analyzed in any case involving prior unlawful presence. A trip on advance parole is no longer just a travel event. After the Board's August 13, 2026 decision, it may be a "departure" under both INA § 212(a)(9)(B)(i)(I) and INA § 212(a)(9)(B)(i)(II), and that has immediate consequences for adjustment cases because INA § 245(a) still requires the applicant to be admissible to the United States for permanent residence. Cases involving DACA history, prior unlawful presence, adjustment under INA § 245(a), or reopening after a return on parole should now be screened with *DelCarmen-Lara* in mind. The unlawful-presence inquiry remains intensely fact-specific. Under the State Department's 9 FAM 302.11 guidance, unlawful presence generally begins when a period of authorized stay ends or when a person is present without admission or parole, while also recognizing that some periods still count as authorized stay, including deferred action and certain procedural postures. The same guidance makes clear that a later authorized period does not wipe out unlawful presence already accrued. In practice, that means these cases now turn on careful timeline work: identifying when unlawful presence started, whether it stopped, what periods may have been authorized, and whether the person can still satisfy the admissibility requirement for adjustment despite *DelCarmen-Lara.*

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