

Don't Worry, We'll Take Care of You: Immigration of Local Nationals Assisting the United States in Overseas Contingency Operations

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I. Introduction

War and refugees often share a similar history. Imagine the history of World War II in Europe without a discussion of the millions of Jewish, German, and Eastern European refugees that scattered from their homelands as a result of war.¹ Today, in conflicts such as Iraq and Afghanistan, war continues to drive persecution, displacement, and immigration.²

In overseas contingency operations, Americans often work closely with local nationals. These foreign counterparts sometimes risk great danger by associating themselves with the United States.³ In such circumstances, it is only natural to want to provide these comrades with assistance. In some cases, a Soldier or the command may decide that local nationals are in such danger that the optimal solution is for them to seek immigration to the United States.

A typical case might involve a local national police officer who has developed a close relationship with U.S. forces operating in his town. The local national routinely provides information about militia activities to U.S. forces. In several instances, he arrested powerful individuals who were working against the United States. One day, members of the militia kill his son and wife in retaliation for his cooperation with U.S. forces. They warn his neighbors that they would come after him next. In fear for his life, the police officer calls the local commander of U.S. forces and explains his dire situation. The commander, who has come to trust the police officer, is in the process of moving his forces out of the area and turning over security to the host nation. Realizing that the police officer faces imminent harm as soon as U.S. forces withdraw, the commander asks his judge advocate for options to help the local national police officer. The judge advocate in such a situation may be directed to assist the local national on behalf of the command. Scenarios such as this may become even more common as the United States scales back its presence in Iraq.⁴

This primer provides guidance on the most common solutions for assisting local nationals associated with the United States during contingency operations. Although intended to have applicability in any deployed environment, this primer will focus on the situation in Iraq as a model. First, the primer will examine the nature of refugee status and will outline the difficult asylum process a refugee faces in the United States. Second, the primer will examine the authority to parole individuals into the United States under the theories of humanitarian urgency and significant public benefit. Finally, the primer will discuss two special visa programs available to certain individuals associated with the United States in Iraq and Afghanistan.

This primer is neutral on the issue of whether immigration is beneficial both to the United States and to the host nation. Certainly, the United States should have stringent procedures and checks in place to ensure that only those individuals with good intentions cross our borders. Additionally, when true heroes leave their homelands, they create a vacuum of courage and talent that their home country could surely use. Nevertheless, there inevitably will be circumstances in which

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¹ See, e.g., Bernard Wasserstein, *European Refugee Movements After World War Two*, BBC, Apr. 28, 2005, http://www.bbc.co.uk/history/worldwars/wwtwo/refugees_print.html.

² See Kevin Walsh, Note, *Victims of a Growing Crisis: A Call for Reform of the United States Immigration Law and Policy Pertaining to Refugees of the Iraq War*, 53 VILL. L. REV. 421 (2008); RHONDA MARGESSON ET AL., CONG. RESEARCH SERV. REPORT, IRAQI REFUGEES AND INTERNALLY DISPLACED PERSONS: A DEEPENING HUMANITARIAN CRISIS?, RL33936, at CRS-2 (2008).

³ See generally George Packer, *Betrayed: The Iraqis who Trusted America the Most*, NEW YORKER, Mar. 26, 2007, at 54 (providing a detailed account of the plight of several Iraqi translators who have worked for the United States in Iraq).

⁴ See generally Anne E. Kornblut & Ann Scott Tyson, *Obama Lays Out Iraq Plans at N.C. Base; Combat Troops to Be Withdrawn By Aug. 31, 2010*, WASH. POST, Feb. 28, 2009, at A10 (outlining plans for drawdown in Iraq). In Iraq, for example, as U.S. forces withdraw, individuals such as this hypothetical police officer would no longer have the umbrella of protection previously provided by U.S. forces. Similarly, those local nationals who worked for the United States directly or as contractors may no longer have a job and may face retaliation for their past association with the United States.

immigration to the United States is the most appropriate solution. Although no path to immigration to the United States is easy, there are options available to those who stood with the United States during a time of conflict. Familiarity with these issues will assist the judge advocate who may be called upon by the command to provide advice and assistance to local nationals seeking immigration to the United States.

II. Refugee Status and Asylum Application Process

The term “refugee” will certainly arise when dealing with local national immigration in an overseas contingency operation. A refugee is defined in the Immigration and Nationality Act as “any person who is outside any country of such person’s nationality . . . who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁵ Simply put, a refugee is a person who has fled his country of nationality because he fears persecution there.⁶ Significantly, a refugee is not eligible to apply for asylum in the United States unless he is physically present in the United States or in a safe third country.⁷ This section will discuss how individuals obtain refugee status. It will then survey the asylum application process that occurs once a potential refugee has fled his own nation.

Before thinking in terms of refugee status, judge advocates should first consider whether an individual qualifies for immigration to the United States under a special program.⁸ In many cases, these special programs are preferable to simply seeking refugee status. Applying for refugee status can be burdensome, and refugees fortunate enough to arrive in the United States still face a complex asylum application process. Nevertheless, judge advocates can assist refugees by gathering the documentation necessary to support their applications.

A. Refugee Status

An individual may only apply for refugee status once he is physically located outside his country of nationality.⁹ Consequently, many Iraqi citizens seeking refugee status are forced to “make the difficult decision about whether or not to remain in Iraq or seek asylum or temporary protection in another country.”¹⁰ This is not an easy choice. On the one hand, Iraq remains dangerous for many of its citizens.¹¹ For example, according to a U.S. Agency for International Development official, approximately three hundred Iraqi interpreters working with the United States have been killed since 2003.¹² On the other hand, most Iraqis have a limited ability to travel outside Iraq to apply for refugee status, and recent restrictions imposed by neighboring countries have made travel even more difficult. For example, Syria closed its border to nearly all Iraqis in late 2007 despite serving as one of the primary outlets for approximately 1.5 million Iraqi refugees since 2003.¹³ The Kingdom of Jordan, the temporary home for approximately 500,000 to 700,000 Iraqi refugees, tightened its admission requirements in 2006.¹⁴

⁵ 8 U.S.C. § 1101(a)(42) (2006).

⁶ *Id.*

⁷ 8 U.S.C. § 1158(a) (2006). For example, it is not uncommon to hear of foreign athletes in the United States for an event seeking asylum once they arrive. *See, e.g.,* Katie Thomas, *Cuban Players Fled Their Team for an Uncertain Future*, N.Y. TIMES, Mar. 5, 2008, at D1 (reporting on five Cuban soccer players who sought asylum in the United States while in Florida for a tournament). In addition, the Supreme Court has held that it is permissible for the Coast Guard to interdict refugees at sea to prevent them from becoming physically present in the United States. *Sale v. Haitian Ctrs. Council*, 509 U.S. 155, 164 (1993).

⁸ *See infra* pt. IV.

⁹ 8 U.S.C. § 1158(a)(1). There are two exceptions, neither of which has broad applicability. The first is if the person has “no nationality” and is “outside any country in which such person last habitually resided.” *Id.* Second, the President may designate “special circumstances” where refugees may be recognized while still living in their own country. *Id.* There is a limited exception with respect to Iraqis associated with the United States that may allow them to remain in Iraq while seeking refugee status. *See infra* notes 19–24 and accompanying text.

¹⁰ Frequently Asked Questions, U.S. Dep’t of State, U.S. Refugee Admissions Program (USRAP) Frequently Asked Questions—Iraq Processing, <http://damascus.usembassy.gov/media/pdf/cons-pdf/faq-iraqi-processing-en.pdf> (last visited Sept. 21, 2009) [hereinafter Refugee Admissions FAQ].

¹¹ *See* Ernesto Londono, *Mask Ban Upsets Iraqis Hired as U.S. Interpreters*, WASH. POST, Nov. 17, 2008, at A01.

¹² *Id.*

¹³ Thanassis Cambanis, *Syria Shuts Main Exit from War for Iraqis*, N.Y. TIMES, Oct. 20, 2007, at A18.

¹⁴ *Id.*

Refugees who flee to a third country, such as Syria or the Kingdom of Jordan, must register with the United Nations High Commissioner for Refugees (UNHCR).¹⁵ The UNHCR “is mandated by the United Nations to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems.”¹⁶ In furtherance of this mission, the UNHCR administers refugee camps throughout the world.¹⁷ More significantly, it also conducts refugee status determinations.¹⁸ In some cases, the UNHCR will refer the individual refugees to a third country, such as the United States, for resettlement.¹⁹

The United States Refugee Admissions Program (USRAP) provides an exception to the general rule requiring individuals to be outside their countries of nationality when applying for refugee status.²⁰ In limited circumstances, Iraqis facing persecution because of an affiliation with the United States may apply for refugee status while in Iraq.²¹ Most Iraqis applying for refugee status through the USRAP, however, must file their paperwork in Jordan or Egypt.²² Those eligible for direct access through USRAP include full time employees of the U.S. Government, employees of an organization “closely associated” with the United States, and Iraqi employees of a “media organization or non-governmental organization” that is based in the United States.²³ In addition, family members of those otherwise eligible and family members of United States citizens or permanent residents are also eligible for in-country refugee status processing.²⁴

Despite offering certain benefits to refugee applicants in Iraq, the USRAP still has limitations. For example, the program is limited to Iraqis and “does not guarantee access to the [refugee] program or an interview for resettlement in the United States.”²⁵ In addition, the application process and resettlement can take many months, even with assistance, exposing refugee applicants to continued violence and persecution in the interim.²⁶

Ultimately, resettlement in the United States is rare. Resettlement in the United States was limited to 80,000 refugees for fiscal year 2009.²⁷ The United States allocated 37,000 of those openings to refugees from the Near East and South Asia and, of that 37,000, “a minimum of 17,000 of the most vulnerable Iraqis” were expected to be admitted “for resettlement in the U.S. through the U.S. Refugee Admissions Program.”²⁸ Although this is a significant sum, there are already 90,000 identified Iraqi refugees in countries such as Syria and the Kingdom of Jordan that are seeking resettlement.²⁹ There are an estimated two million Iraqi refugees outside of Iraq in total.³⁰ Therefore, it would be difficult to advise a local national who has been associated with the United States to become one of millions of refugees unless there truly were no other options available. There simply is too much uncertainty, and the odds are not favorable for eventual resettlement in the United States.

¹⁵ Refugee Admissions FAQ, *supra* note 10.

¹⁶ UNHCR, Mission Statement, <http://www.unhcr.org/publ/PUBL/4565a5742.pdf> (last visited Sept. 21, 2009).

¹⁷ Mark Pallis, *The Operation of UNHCR's Accountability Mechanisms*, 37 N.Y.U. J. INT'L L. & POL. 869, 883 (2005).

¹⁸ *Id.* at 877.

¹⁹ Refugee Admissions FAQ, *supra* note 10.

²⁰ Fact Sheet, Bureau of Population, Refugees, and Migration, Refugee Resettlement Program for Iraqis in Jordan, Egypt, and Iraq with U.S. Affiliations (Feb. 3, 2009), <http://www.state.gov/g/prm/rls/115888.htm>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See, e.g., Jennifer Utz, *From Baghdad to Brooklyn: My Journey with an Iraqi Refugee*, ALTERNET, Nov. 15, 2008, <http://www.alternet.org/story/106919/> (discussing the case of an Iraqi refugee whose case took multiple years despite a journalist providing significant assistance to him at every stage of the process).

²⁷ Presidential Determination No. 2008-29 (Sept. 30, 2008), 73 Fed. Reg. 58,865 (Oct. 7, 2008). Of the 80,000, there is an additional 5000 that is not allocated by geographic location. *Id.*

²⁸ Press Release, U.S. Dep't of State, U.S. Government Reaches Record for Iraqi Refugee Admissions and Humanitarian Assistance in Fiscal Year 2008 (Oct. 2, 2008), http://iraq.usembassy.gov/pr_dos_10022008.html. The United States met its fiscal year 2008 goal of admitting a minimum of 12,000 Iraqi refugees. *Id.* Of the Iraqi refugees admitted in fiscal year 2008, approximately three quarters of them came through Syria or the Kingdom of Jordan. *Id.*

²⁹ Walter Pincus, *U.S. to Admit 17,000 Iraqi Exiles; 5,000 More Refugees to Receive Special Visas Next Fiscal Year*, WASH. POST, Sept. 13, 2008, at A12.

³⁰ *Id.* Of course, not all of the two million Iraqi refugees even want to go somewhere other than back to their homeland. *Id.*

Individuals selected for resettlement receive assistance coordinated by the Office of Refugee Resettlement at the Department of Health and Human Services.³¹ “The Office of Refugee Resettlement is authorized to make grants to public and private nonprofit agencies for initial resettlement, training, medical services and support of refugees.”³² Although these refugees receive some benefits once in the United States, they still face the challenging prospect of applying for asylum.

B. Asylum Application Process

Asylum “provides a haven in the United States for people who have been persecuted in their countries of origin” and may be granted to those who have gained resettlement through the UNHCR, as well as others who have managed to become physically present in the United States by other means.³³ In general, “[a]ny noncitizen in the United States can apply for asylum, even if he or she is here illegally, temporarily or on parole.”³⁴ An asylum applicant must prove he meets the definition of “refugee”³⁵—that is, he has a “well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion” in his home country.³⁶

Showing actual persecution in the past is not a requirement;³⁷ however, past persecution creates a rebuttable presumption of a well-founded fear of future persecution.³⁸ The presumption may be rebutted when conditions in the asylum applicant’s country of nationality have changed.³⁹ In a notable example, one court found that “conditions in Iraq [had] changed so fundamentally” upon the “fall of Saddam Hussein’s regime and the institution of an interim Iraqi government” that there was no longer a rebuttable presumption that an Iraqi Christian had a well-founded fear of prosecution.⁴⁰

An extensive body of law defines such key terms as persecution, social groups, and political opinion.⁴¹ Although each asylum case is fact specific, mere flight from war or violence is generally not a sufficient basis for asylum.⁴² The asylum applicant must also establish a nexus between his fear of persecution and one of the protected grounds, such as race or religion, enumerated in the Immigration and Nationality Act.⁴³ Consequently, many local nationals who have assisted the United States may not qualify for asylum because their fear of persecution is due to their association with the United States, which is not a protected ground such as race or religion.

Judge advocates can often provide the most help to individual asylum applicants by obtaining the evidence necessary to support their applications. “Genuine asylum seekers often have great difficulty obtaining evidence to support their claims. They usually have neither the foresight, the time, nor the ability to collect corroborating evidence before fleeing their homes.”⁴⁴ Judge advocates assisting asylum applicants can provide this foresight and begin the process of collecting statements or documents that may be helpful to them.

³¹ CHARLES GORDON ET AL., IMMIGRATION LAW AND PROCEDURE § 33.03(5) (2008).

³² *Id.*

³³ *Id.*

³⁴ *Id.* § 33.05(3)(a)(i).

³⁵ *Id.*

³⁶ 8 U.S.C. § 1101(a)(42) (2006).

³⁷ GORDON ET AL., *supra* note 31, § 33.04(2)(b)(i).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Aoraha v. Gonzales*, 209 F. App’x 473 (6th Cir. 2006).

⁴¹ See GORDON ET AL., *supra* note 31, § 33.04 (providing an extensive discussion on the many issues facing an asylum applicant).

⁴² *Al-Fara v. Gonzales*, 404 F.3d 733, 740 (3d Cir. 2005) (“Harm from country-wide civil strife is not persecution”); *Ambartsumian v. Ashcroft*, 388 F.3d 85, 93 (3d Cir. 2004) (“[T]he facts that life in Georgia was difficult due to a civil war, and that [the asylum applicant] was conscripted to fight in that war, do not in themselves establish past persecution.”).

⁴³ See *Al-Fara*, 404 F.3d at 740.

⁴⁴ GORDON ET AL., *supra* note 31, § 34.02(9)(a).

Even with substantial assistance, individuals seeking refugee status and applying for asylum in the United States should expect uncertainty and difficulties. Those assisting these individuals should first consider other avenues for immigration, including special programs designed to aid individuals associated with the United States.⁴⁵

III. Parole

While refugee resettlement and asylum are relatively common in the context of immigration, parole is a relatively unfamiliar concept. Nevertheless, parole can be a useful tool for judge advocates assisting local nationals in imminent danger because it can allow individuals to gain physical presence in the United States very quickly.⁴⁶

A. Parole Generally

Parole is the discretionary authority of the Attorney General to allow an individual to enter the United States.⁴⁷ Although parole may enable an individual to enter the United States, parole does not confer any immigration status on the individual.⁴⁸ Parole simply provides physical entry into the United States for a fixed period of time.⁴⁹ When parole is no longer necessary or when the fixed period of time has expired, the parolee is expected to return to his home country.⁵⁰ Furthermore, parole is expressly not intended to serve as a way to bypass the normal refugee resettlement process. An alien cannot be paroled into the United States unless “compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee.”⁵¹

Parole is a short-term solution with potentially serious long-term drawbacks. Parole can transfer an individual to the safety of the United States relatively quickly, but it is temporary and parolees may lack adequate support once they reach the United States.⁵² Prudent planning with a long-term view is essential.

Two discretionary theories support admission by parole.⁵³ Humanitarian parole may be warranted when an “urgent humanitarian reason” exists to support a foreign national’s entry into the United States. Alternatively, significant public benefit parole may be warranted when a “significant public benefit” may be achieved by bringing an individual to the United States. Judge advocates may draw on both theories when assisting local nationals in an overseas contingency operation.

B. Humanitarian Parole

When an “urgent humanitarian reason” exists to justify allowing a foreign national into the United States, the Department of Homeland Security may authorize the foreign national’s entry by humanitarian parole.⁵⁴ For example, aliens

⁴⁵ See *infra* pt. IV.

⁴⁶ The author has assisted approximately five individuals and several of their family members who eventually received parole to the United States from Iraq. Unless otherwise noted, the information presented here is the personal knowledge of the author gained through personal experiences while working on parole cases in Iraq.

⁴⁷ 8 U.S.C. § 1182(d)(5)(A) (2006). As a practical matter, this authority is exercised by officials within the Department of Homeland Security. 8 C.F.R. § 212.5(a) (2008).

⁴⁸ 8 U.S.C. § 1182(d)(5)(A) (“[P]arole of such alien shall not be regarded as an admission.”). In fact, with respect to due process rights, the parolee is not entitled to the full spectrum rights that other aliens in the United States may have under the fiction that they are not actually in the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958).

⁴⁹ 8 U.S.C. § 1182(d)(5)(A).

⁵⁰ *Id.* The period of parole is terminated “upon accomplishment of the purpose for which the parole was authorized” or when “neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States.” 8 C.F.R. § 212.5(e)(2)(ii). For parolees of the Department of Defense, the maximum length of parole is one year. U.S. DEP’T OF DEF., DOD SIGNIFICANT PUBLIC BENEFIT PROGRAM (SPBP) RULES OF ENGAGEMENT (May 2007) [hereinafter SPBP RULES OF ENGAGEMENT] (on file with author).

⁵¹ 8 U.S.C. § 1182(d)(5)(B).

⁵² In the author’s experience, a non-controversial parole application with strong support from the chain of command can take as little as twenty days for approval. However, because procedures often change, it is essential to verify a timeline in each individual case.

⁵³ The two theories, although distinct, are sometimes incorrectly used interchangeably.

⁵⁴ 8 C.F.R. § 212.5(e)(2)(ii).

with serious medical conditions facing deportation may be released from detention and granted entry into the United States under the theory of humanitarian parole.⁵⁵ Similarly, juveniles in detention may be released to an adult relative for humanitarian reasons.⁵⁶

A typical humanitarian parole in an overseas contingency operation may involve a local national in need of acute medical care he cannot receive in his own country.⁵⁷ Allowing him entry into the United States for medical attention can be strategically advantageous to deployed units because it may build good will among the local population or generate positive media coverage.⁵⁸

C. Significant Public Benefit Parole

Another basis for parole exists when a local national has provided or will provide a significant public benefit to the United States.⁵⁹ For example, law enforcement may arrange parole for key witnesses, necessary for trial, who would not otherwise be able to enter the United States.⁶⁰ In these cases, the sponsoring agency is responsible for all needs of the parolee while he is physically present in the United States, including his security, travel, food, and lodging.⁶¹

The Department of Defense (DoD) maintains “a small program to process and staff carefully selected applicants eligible for” significant public benefit parole.⁶² Once identified, the cases of selected applicants are forwarded to the Department of Homeland Security for approval or disapproval.⁶³

The Firas al-Qaisi case is a typical example of significant public benefit parole involving the DoD where the parolee has provided a prior benefit to the United States.⁶⁴ Al-Qaisi had developed a reputation as a tough prosecutor in Iraq and was known to have a close relationship with the United States. Subsequently, al-Qaisi was arrested and tortured by sectarian Iraqi police.⁶⁵ The United States intervened to secure his release from Iraqi custody, and he was initially sent to Baghdad’s International Zone for protection.⁶⁶ However, the danger to al-Qaisi was so great he could not return home or even remain in Iraq.⁶⁷ With the support of the Commander of the Multi-National Force–Iraq, General David Petraeus, Firas al-Qaisi and his pregnant wife were granted significant public benefit parole to the United States.⁶⁸ In this case, significant public benefit parole was used to provide temporary and urgent security to an individual who had provided significant assistance to the United States in the past.

⁵⁵ *Id.* § 212.5(b)(1). This type of parole into the United States is granted for humanitarian reasons. *Id.* A distinct authority for the conditional parole from detention independent of any humanitarian basis exists. 8 U.S.C. § 1226; Ortega-Cervantes v. Gonzales, 501 F.3d 1111, 1114 (9th Cir. 2007) (discussing the difference between the two authorities for parole).

⁵⁶ 8 C.F.R. § 212.5(b)(3).

⁵⁷ See, e.g., Gina Barton, *Mission: Adoption; Soldier Finds a Purpose Beyond Serving His Country While in Iraq*, MILWAUKEE J. SENTINEL, Feb. 27, 2005, at A1.

⁵⁸ U.S. DEP’T OF ARMY, FIELD MANUAL 3-24, COUNTERINSURGENCY para. 1-153 (15 Dec. 2006) (“Some of the Best Weapons for Counterinsurgents Do Not Shoot.”).

⁵⁹ 8 C.F.R. § 212.5(e)(2)(ii).

⁶⁰ *Id.* § 212.5(1). In fact, Significant Public Benefit Parole can be used for certain “[w]itnesses [and] threatened family members . . . to enable them to enter or remain in the United States temporarily” when other means of entry to the United States do not exist. United States Dep’t of Justice, Attorney General Guidelines for Victim and Witness Assistance, May 2005, para. 5(d), at 71.

⁶¹ 8 C.F.R. § 212.5(1).

⁶² SPBP RULES OF ENGAGEMENT, *supra* note 50. After obtaining chain of command approval, judge advocates in the field should contact the Director, Significant Public Benefit Parole Program at the Office of the Deputy Assistant Secretary of Defense (Middle East) for the latest procedures.

⁶³ *Id.*

⁶⁴ Kevin Whitelaw, *When Helping America Is a Death Sentence*, U.S. NEWS & WORLD REP., Oct. 1, 2007, at 33.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* It is not clear whether the Department of Defense or another agency actually sponsored the parole or not, but the U.S. military had an existing relationship with Firas al-Qaisi, and he traveled to the United States using military aircraft, arriving at Andrews Air Force Base. *Id.*

The actual process and procedures for DoD's use of parole are subject to the discretion of the officials processing the application. Nevertheless, as a general matter, all parole applications require approval "from the nominator's chain of command."⁶⁹ Applications also require evidence of the significant public benefit the individual provided.⁷⁰ In many cases, the evidence will include records of the individual's association with the United States and the "imminent, documented danger" that resulted from that individual's association.⁷¹

Most significantly, when acting as a sponsor, DoD must appoint an individual located in the United States, affiliated with the DoD, to host the parolee.⁷² This person will be responsible for monitoring the parolee and ensuring that the parolee has a support network in place to provide basic needs, such as shelter, food, and health care.⁷³ Identifying an individual willing to assume this responsibility can be one of the most difficult and time-consuming tasks associated with the parole process.

Nevertheless, when the chain of command is supportive, when there is a documented and imminent threat, and when there is a host in the United States willing to sponsor a parolee, the significant public benefit parole program can be a robust mechanism for protecting local nationals who have been of assistance to the United States. It is important, however, for the judge advocate to keep in mind that parole is temporary.⁷⁴ Parole may quickly get an individual to safety, but it is not a long-term solution.

D. Criticism of Parole

Very few Iraqi nationals relative to the total number of Iraqi refugees from the war have been granted parole.⁷⁵ Moreover, the "obscure program that bypasses the State Department's normal immigration procedures" has been subject to criticism.⁷⁶ First, parolees are spared the difficult "multimonth waiting period in a third country like Jordan or Syria" that is typical of the "estimated 2 million Iraqi refugees" who have fled their country.⁷⁷ Bypassing the queue benefits the parolees themselves, but it creates a disparity and an appearance of unfairness to those not fortunate enough to receive parole. Second, the public benefit to the United States that the parolees provided may not be clear to the media or the general public.⁷⁸ Third, it is arguably counterproductive to remove Iraqis that are beneficial to the public from their home nation. Their country could use some heroes.

In response to the criticisms, the significant public benefit parole program has been characterized as "an extraordinary measure that is sparingly used to bring an otherwise inadmissible alien into the United States for a temporary period due to a compelling emergency."⁷⁹ Those granted parole are carefully screened, and only a small percentage of them eventually seek permanent residence in the United States.⁸⁰ "Applicants with the intent of paroling into the US to seek asylum are not good candidates" for parole.⁸¹

⁶⁹ SPBP RULES OF ENGAGEMENT, *supra* note 50. In the author's experience, the concurrence of a general or flag officer is necessary.

⁷⁰ *Id.*

⁷¹ *Id.* There are other possibilities such as "[w]itnesses at DOD sponsored legal proceedings" and "[s]enior, high value personnel needing to attend DOD sponsored meetings associated with US Coalition programs." *Id.*

⁷² *Id.*

⁷³ In the author's experience, these hosts are typically referred to as case agents, control agents, or sponsors. They can be active duty, civilian employees, reservists, or retirees. There is no database or list of potential agents or sponsors to host parolees. It is the responsibility of the command nominating a parolee to find a host. There is no source of funding available to compensate hosts for expenses.

⁷⁴ 8 U.S.C. § 1182(d)(5)(A) (2006).

⁷⁵ Whitelaw, *supra* note 64, at 33. About one tenth of a percent of the approximately two million Iraqi refugees have obtained significant public benefit parole to the United States. *Id.*

⁷⁶ James Glanz & Thom Shanker, *U.S. Opens a Sheltered Path to Asylum for Some Iraqis*, N.Y. TIMES, May 25, 2007, at A6.

⁷⁷ Whitelaw, *supra* note 64, at 33.

⁷⁸ See Glanz & Shanker, *supra* note 76, at A6 (discussing the case of Dr. Ali al-Shammari, the former Iraqi Minister of Health).

⁷⁹ *Id.* (quoting Michael Keegan, a spokesman for Immigration and Customs Enforcement).

⁸⁰ *Id.*

⁸¹ SPBP RULES OF ENGAGEMENT, *supra* note 50.

Perhaps the most serious criticism of the DoD's use of parole is that it could create a humanitarian disaster for parolees in the United States with no plans for their long-term support or safety upon termination of the parole. Judge advocates involved in nominating individuals for parole must ask whether the parolee's basic needs will be met while in the United States and must consider what will happen to the parolee once the period of parole expires.

IV. Special Programs Unique to Iraq and Afghanistan

Two special programs created in response to the wars in Iraq and Afghanistan provide alternate avenues to immigration for select individuals. Other than their limited applicability, these special programs feature few drawbacks compared to both the asylum process and the parole program. The first program assists translators from Iraq and Afghanistan, and the second supports employees and contractors of the United States in Iraq. For those who qualify, these are attractive programs.

A. Translators in Iraq and Afghanistan

Iraqi and Afghan translators who have worked for the United States for at least twelve months may be eligible for "special immigrant" status,⁸² which entitles them to immigrate to the United States and basic assistance.⁸³ "They have Legal Permanent Resident Status (LPR) upon entry into the United States" and may seek citizenship after five years.⁸⁴ Their immediate family members are also eligible for LPR.⁸⁵ Significantly, the law does not require translators to be in any danger in order to qualify, but as a practical matter, some degree of danger may be a factor in determining whether the chain of command will support a bid for immigration under this program.

This special program includes certain eligibility restrictions, including a numerical quota limiting it to fifty persons per fiscal year.⁸⁶ For fiscal year 2008, the limit was five hundred individuals, but even that increased limit was met in fiscal year 2008.⁸⁷ Additionally, since the special program is limited to translators,⁸⁸ other groups, including contractors, other employees of the United States, and local nationals who have been associated with the United States, would not qualify for special immigrant status under the program.⁸⁹

Applying for immigrant status under the special program for translators involves significant coordination and documentation. Both the translator and the chain of command should be prepared to become involved in the process.⁹⁰ First, "a General or Flag Officer in the chain of command of the unit supported by the translator" must provide a recommendation supporting the translator's immigrant application.⁹¹ The applicant must also have a passport⁹² and either a United States or APO address to which the visa processing center can send replies; the processing center cannot send replies to a foreign address.⁹³ Finally, the translator must arrange an interview with U.S. State Department personnel.⁹⁴ Inexplicably, interviews are generally not possible in Baghdad and not possible at all in Kabul,⁹⁵ and most applicants must travel to a third country,

⁸² National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, § 1059, 119 Stat. 313. The statute itself only references translators who have worked for the armed forces. *Id.* However, this has been interpreted in practice to include translators who worked under Chief of Mission authority. See Frequently Asked Questions, U.S. Dep't of State, Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters, http://travel.state.gov/visa/immigrants/info/info_3738.html (last visited Sept. 21, 2009) [hereinafter Translators FAQ].

⁸³ Translators FAQ, *supra* note 82.

⁸⁴ *Id.*

⁸⁵ *Id.* The immediate family includes "spouses and minor unmarried children." *Id.*

⁸⁶ National Defense Authorization Act for Fiscal Year 2006 § 1059.

⁸⁷ Translators FAQ, *supra* note 82.

⁸⁸ National Defense Authorization Act for Fiscal Year 2006 § 1059.

⁸⁹ Potential examples include informants, local law enforcement personnel, witnesses, and even local nationals who have had a business relationship with the United States by providing supplies or services.

⁹⁰ Translators FAQ, *supra* note 82.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

such as Pakistan or Jordan, for the interview.⁹⁶ Judge advocates may become involved in the process, which may include coordination with the local U.S. embassy with chain of command approval.

B. Employees and Contractors in Iraq

Congress created another special immigration program in 2008⁹⁷ for Iraqi employees and U.S. contractors who had “provided faithful and valuable service to the United States” for at least one year.⁹⁸ Unlike the special program for translators, the special program for Iraqi employees and contractors requires that the applicant “has experienced or is experiencing an ongoing serious threat as a consequence of the alien’s employment by the United States Government.”⁹⁹ Special immigrant status is authorized for up to five thousand individuals each fiscal year under this program.¹⁰⁰ Significantly, the program applies only to Iraq and not Afghanistan or other areas of contingency operations. The program also excludes individuals associated with the United States in non-employment contexts, such as informants.

Unlike the special program for translators, this program does not require the recommendation of a General Officer; however, a United States citizen for whom the employee worked must provide a letter of recommendation.¹⁰¹ The U. S. Department of State Chief of Mission in Baghdad screens the application, including the recommendation letter and material documenting the threat faced by the employee, before forwarding the application for processing.¹⁰²

Once the Chief of Mission has screened and forwarded the application, it undergoes a review process very similar to the process for translators’ applications. The applicant must arrange a visa interview,¹⁰³ which can be held in Baghdad but is often conducted in Jordan or another third country.¹⁰⁴ Special immigration status under this program confers “Lawful Permanent Resident (LPR) status upon admission to the United States” and the option to apply for citizenship after five years of residence in the United States.¹⁰⁵ Immediate family members are eligible to accompany the employee to the United States.¹⁰⁶

V. Conclusion

Local nationals who have put themselves and their families in danger by associating with U.S. forces have various avenues for immigration to the United States. Three options, discussed in the primer, include refugee resettlement and asylum, parole, and two special programs created for specific categories of Iraqis and Afghans.

The refugee resettlement process is demanding and should be the option of last resort. Once in the United States, refugees fortunate enough to gain entry into the United States may avail themselves of the asylum application process. Parole represents a second option. Parole differs significantly from the other options discussed in this primer because it is not intended to be a method of immigration at all; rather, it serves as temporary authorization for an individual to enter the United States for a fixed period of time. Humanitarian parole may justify helping local nationals with serious medical needs that cannot be addressed in their home country, while significant public benefit parole may be invoked to assist local nationals in immediate danger and in need of evacuation from their country of nationality.

⁹⁶ *Id.*

⁹⁷ National Defense Authorization Act for Fiscal Year 2008, 110 Pub. L. No. 181 § 1244, 122 Stat. 3, *amended by* Act of June 3, 2008, 110 Pub. L. No. 242, 122 Stat. 1567 (2008).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* The authorization for this special immigration status is currently set for five fiscal years. *Id.*

¹⁰¹ Frequently Asked Questions, U.S. Dep’t of State, Special Immigrant Visas for Iraqis—Who Worked for/on Behalf of the U.S. Government, http://travel.state.gov/visa/immigrants/info/info_4172.html (last visited Sept. 21, 2009).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* Immediate family members are “spouses and minor unmarried children.” *Id.*

Finally, special programs for certain translators, employees, and contractors are often the best option for those who qualify. Although these programs are strictly limited, they also offer significant benefits including legal permanent resident status and the possibility of citizenship after five years.

All of these options, with the exception of refugee resettlement, require the support of higher headquarters. Judge advocates involved in the process, therefore, must ensure early coordination with the chain of command and must be careful not to make promises to local nationals. Judge advocates should also bear in mind that entry into the United States is often just the beginning for new immigrants.¹⁰⁷ New immigrants must adjust to a new culture and will require assistance with shelter, food, employment, health care, education and transportation. Those who assist local nationals to immigrate have a moral obligation to ensure that there is a plan in place to ensure they succeed in their new environment. Anything less means simply removing them from one bad situation into another.

With determination, hard work, and support from the chain of command, brave men and women who have stood with the United States have hope for safety and a new life in the United States. Upon arriving in the United States after enduring kidnapping and other harsh treatment in Iraq, one Iraqi citizen told the author he was “a new man” and “everything that happened to me before never happened.”¹⁰⁸ Judge advocates responsible for assisting these local nationals have a unique opportunity to make a direct and positive impact on their lives.

¹⁰⁷ One organization that specifically helps Iraqi and Afghan citizens who have been of assistance to the United States is the Checkpoint One Foundation. Their website is <http://www.cponefoundation.org/home>.

¹⁰⁸ Statement to the author on Apr. 26, 2008. This individual's name is omitted to protect his privacy.