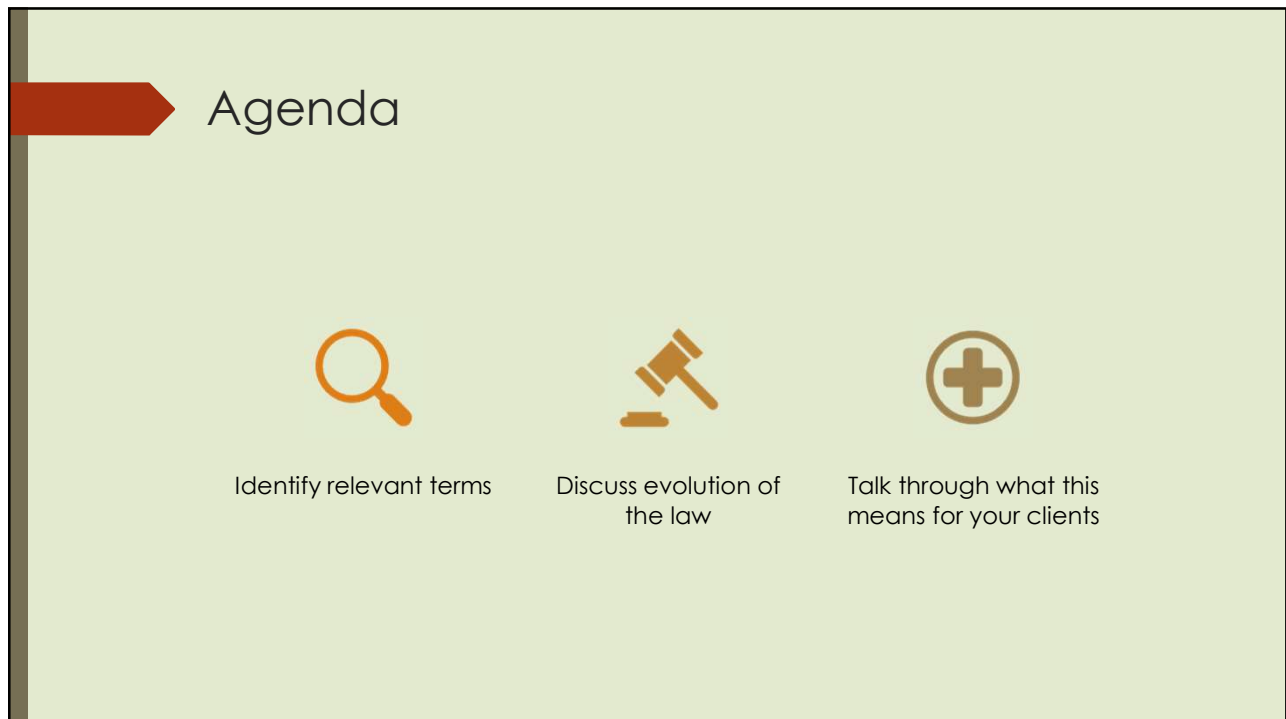


1



2

A client comes to your office talking about having been paroled into the United States, and having a court date. Where to begin?



3

Start by assessing...

- Manner of Entry to the U.S.
 - “Entered without permission” “crossed on my own” “crossed the river” “crossed through the desert / the hills” “came with a coyote / smuggler”
 - Entry Without Inspection (EWI)
- **Parole**
- Admission on a visa

4



Parole

- Authorized under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)
- The INA uses 'parole' as a catch-all phrase, authorizing the U.S. government to allow people to enter the U.S. who would not otherwise have a means to enter the country with permission


5



Parole, Continued

- USCIS, ICE, and CBP all have authority to authorize parole
- Parole allows entry* to the U.S.
 - ≠ admission to the U.S.
 - Parolees are considered applicants for admission

6




Common Types of Parole Under INA § 212(d)(5)

- **Advanced Parole:** grants certain individuals permission to leave the U.S. and re-enter the U.S. under 'parole' to resume an application or status they had prior to departure
- **Parole-in-Place:** grants certain individuals who entered the U.S. without inspection permission to remain in the U.S. with 'parole' to seek adjustment of status

7

In Practice:
what do these
documents
look like?



8

Example Parole Documents:

Advanced Parole:

- Form I-512L from USCIS provides approval
- Passport stamps granted at the time of entry by CBP



9

Example Parole Documents:

- Parole-in-Place:** Form I-94 from USCIS provides a record of admission or parole into the U.S.

10



§ 212(d)(5) Parole, Continued

- **Humanitarian Parole:** a discretionary grant of temporary permission to enter the U.S. for urgent humanitarian reasons or significant public benefit
 - *Historically* applied for by folks outside of the U.S., but this category keeps getting applied more expansively to address emergent crises
 - Application process administered by USCIS's Humanitarian Affairs Branch
 - However... USCIS, ICE, and CBP all have authority to authorize parole

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Humanitarian Parole Analysis

- 3 Factors Considered:
 - Level of suffering experienced if parole is not granted
 - Time pressure
 - Effect a rejection might have on the applicant's well-being

12

Humanitarian Parole Application

- ▀ Country Specific Programs
 - ▀ Ukrainian Nationals: “Uniting for Ukraine”
 - ▀ Afghan Nationals
 - ▀ New Process for Cubans, Haitians, Nicaraguans, and Venezuelans
 - ▀ Cuban Family Reunification Parole Program

13

HP Applications, Continued

- ▀ As a resolution for the ‘Migrant Protection Protocols’
 - ▀ January 2019: MPP initiated
 - ▀ January 2021: MPP terminated by executive order
 - ▀ February 2021: approx. 20,000 people stranded in Mexico under MPP began the process of being **paroled** into the U.S.
 - ▀ Thus far, only people with “active” pending immigration cases are eligible for parole under this program (i.e. not those ordered removed, or whose cases were never filed)

14

In Practice:
what do these
documents
look like?



15

Example Parole Documents:

➤ **Humanitarian Parole:** Form I-94 from CBP provides a record of parole to the U.S.

16

CAVEAT!

- CBP issues a variety of documents to evidence INA § 212(d)(5) humanitarian parole into the United States *beyond* Form I-94
 - Call-In Letters (Form G-56)
 - Parole stamps in passports, border encounter documents, appointment notices, etc.

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Humanitarian Parole ~ AS DISTINGUISHED FROM ~

- **Conditional Parole:** grants certain individuals 'parole' release from custody to allow them to pursue their case in immigration court or provide testimony as a material witness
 - **MAJOR DEPARTURE:** authorized under a different section of the INA
 - § 236(a)(2)(B) → does not grant legal 'entry' to the U.S.

18

In Practice:
what do these
documents
look like?



19

Example Parole Documents:

Conditional Parole:

Form I-220A
from CBP
provides an
Order of
Release on
Recognizance

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
ORDER OF RELEASE ON RECOGNIZANCE

Name: _____ File No.: _____
Date: _____

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☐ You must report for any hearing or interview as directed by Immigration and Customs Enforcement or the Executive Office for Immigration Review.

☐ You must surrender for removal from the United States if so ordered.

☐ You must report in (withholding removal) to ICE office at _____ (or _____) as directed.

If you are allowed to reenter the country, your report must contain your name, alien registration number, current address, place of employment, and date of previous deportation as required by the officer listed above.

☐ You must not obstruct or interfere with any investigation or enforcement of immigration laws or regulations.

☐ You must not violate any applicable state or federal laws or ordinances.

☐ You must assist Immigration and Customs Enforcement in obtaining any necessary travel documents.

☐ Other: Your release is contingent upon your successful participation in an Alternatives to Detention (ATD) program as designated by the U.S. Department of Homeland Security. As part of the ATD program, you will be subject to electronic monitoring and must follow all program rules. Failure to comply with the requirements of the ATD program will result in a re-determination of your status and may result in your arrest and detention.

If filed with a U.S. Immigration and Customs Enforcement Officer (ICE Officer) in the field, do not tamper with or remove the device. Under federal law, it is a crime to willfully tamper with, destroy, or damage property of the United States. Damaging or attempting to damage the GPS tracking device or associated equipment (including, but not limited to, the charging station, batteries, power cords, etc.) may result in your arrest, detention, and prosecution under 18 U.S.C. § 1361 and/or 18 U.S.C. § 1461, each of which may result in up to five years imprisonment or both.

☐ See attached sheet containing other specified conditions (Conditions of Release and/or other required).

NOTICE: Failure to comply with the conditions of this order may result in your arrest and your arrest and detention by Immigration and Customs Enforcement.

(Name and Title of ICE Official)

Alien's Acknowledgement of Conditions of Release under Order of Recognizance

I hereby acknowledge that I have (read) that interpreted and explained to me in the _____ language the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

(Signature of ICE Official Serving Order) _____ (Signature of Alien) _____

Date: _____

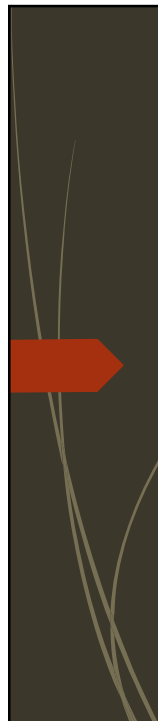
I hereby cancel this order of release because:

☐ The alien failed to comply with the conditions of release. ☐ The alien was taken into custody for removal.

(Signature of ICE Official Cancelling Order) _____ Date: _____

ICE Form I-220A (1/2022) Page 1 of 1


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My client has shown me parole documents... what does this mean for them?

- Functionally, the significance of having been paroled into the United States depends on what outcome your client is seeking, and whether or not they are eligible for it...

21



Next Ask:

- Are they in removal proceedings?
 - Expedited Removal under INA § 235(b)(1)
 - Unless you work at the border, you are unlikely to see this
 - If you do see this, it is likely because that individual is in the process of receiving a *credible-fear* assessment
 - "Formal" Removal Proceedings under INA § 240
 - Comes with certain procedural protections, such as the right to judicial review, etc.

22




Removal Proceedings under INA § 240

Ask:

- Have they been issued a Notice to Appear (NTA), Form I-862?
- If so, has that NTA been filed with the Immigration Court?

23

In Practice:
what does this
document
look like?



24

The Notice to Appear (NTA)

- Charging document for removal proceedings under INA § 240
- Contains factual allegations supporting removability
- States government's legal basis for charging respondent as removable under the INA

U.S. Department of Homeland Security **Notice to Appear**

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: _____ EIN #: _____ File No.: _____
 DOB: _____ Event No.: _____

In the Matter of: _____

Respondent: _____ currently residing at: _____
 (Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
 2. You are a native of MEXICO and a citizen of MEXICO;
 3. You arrived in the United States at or near SAN YSIDRO, CALIFORNIA, on or about August 1, _____;
 4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(4)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
☐ Section 215(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(b)(2) ☐ 8CFR 215.30(b)(3)(v)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

1435 Metro Parkway Suite 120 Bloomington MINNESOTA 55425

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set, at a time to be set, to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: October 5, 2009

Resident Agent in Charge

Steve Palla, South Dakota

See reverse for important information

Form I-862 (Rev. 06/01/07)

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Case Status Info:

- EOIR Online Automated Case Information:
<https://acis.eoir.justice.gov/>
- EOIR Case Status Hotline:
 1-800-898-7180

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Your client has
both parole
documents
and a NTA...
Now what?



27

Ask:

■ What came first?

- Parole or NTA?
- 1) If your client was paroled and *then* issued an NTA, their parole has been canceled, per 8 C.F.R. 212.5(e)(2)(i)
- 2) If your client was issued an NTA and then paroled, that parole continues until expiration or termination. However, they will remain in removal proceedings until those proceedings are concluded.

28

Then Ask:

▀ **What outcome do they want?**

- ▀ Termination of proceedings?
- ▀ Do they want to apply for some sort of relief from removal (like adjustment of status under the Cuban Adjustment Act, or asylum)?


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When parole *does not* influence outcome / eligibility in removal proceedings:

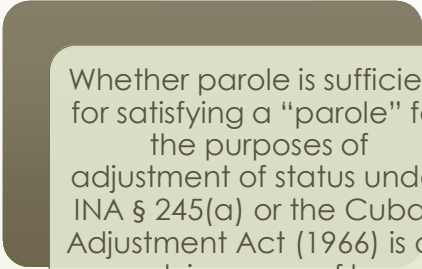
Termination is a matter of prosecutorial discretion, requires an inquiry into whether your client is an enforcement priority

Asylum / withholding of removal / protection under the Convention Against Torture does not require parole or admission for eligibility

30




When parole does influence outcome / eligibility in removal proceedings:

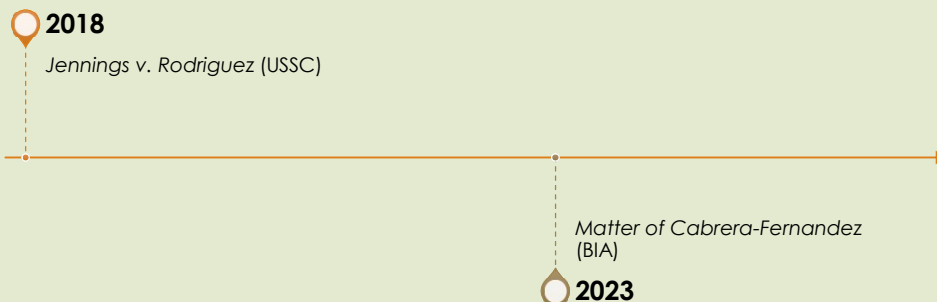


Whether parole is sufficient for satisfying a "parole" for the purposes of adjustment of status under INA § 245(a) or the Cuban Adjustment Act (1966) is an evolving area of law.

31



Evolving Law



32

Jennings v. Rodriguez, 138 S.Ct. 830(2018)

- Case focused on due process issues of prolonged detention without hearings
- Pertinent to our discussion, found that :
 - 1) certain non-citizens* are subject to mandatory detention under INA § 235(b)(1)
 - 2) the only mechanism for release from such detention is humanitarian parole under INA § 212(d)(5)**

33

Matter of Cabrera-Fernandez, 28 I&N 747 (BIA 2023)

- The Board reversed an immigration judge's finding that, under *Jennings*, the respondent's release from mandatory detention was a release under Humanitarian Parole as a function of law
- It found that the release from detention was a Conditional Parole under pursuant to INA § 236(a)(2)(B), such that they did not qualify as having been paroled into the U.S. for purposes of adjustment under the Cuban Adjustment Act

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Ultimately:
What does this
mean for my
client?



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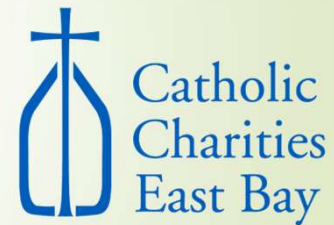
Takeaways

- This is an actively evolving area of law.
- Knowing your client's options requires an inquiry intensive assessment. Ask:
 - 1) Was my client detained?
 - 2) Is my client in removal proceedings?
 - 3) What documents does my client have?
 - An NTA?
 - Parole documents?
 - Which came first?
 - 4) What outcome does my client want?
 - And are they eligible for it?

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QUESTIONS?

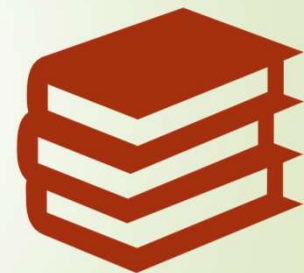
Courtney McCausland
Managing Attorney
 Catholic Charities East Bay
 cmccausland@cceb.org



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Resources Referenced:

- Boundless, 'Humanitarian Parole, Explained,' (last accessed 2 Nov 2023), <https://www.boundless.com/immigration-resources/humanitarian-parole-explained/>.
- Congressional Research Service, *Expedited Removal of Aliens: An Introduction* (25 Mar 2022), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://crsreports.congress.gov/product/pdf/IF/IF11357.
- Department of Homeland Security, *Information Sheet for Individuals Paroled into the United States*, (last accessed 2 Nov 2023), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.state.gov/wp-content/uploads/2023/02/Appendix-2_Humanitarian-Parole-Information_ENGLISH-1.pdf.
- Emma Winger, 'New Board of Immigration Appeals Decision Sets Roadblock for Cubans, Others Seeking Green Cards,' *Immigration Impact: American Immigration Council* (28 Sept 2023), <https://immigrationimpact.com/2023/09/28/new-board-of-immigration-appeals-decision-sets-roadblock-for-cubans-others-seeking-green-cards/>.
- Immigrant Legal Resource Center, *Parole in Immigration Law*, (1st Ed., Oct 2016), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ilrc.org/sites/default/files/sample-pdf/parole-1st_ed-2016-ch_01.pdf.
- Joanna Mexicano Fumarska, 'Board Holds Entry Without Inspection Border Releases to be Conditional Parole, Which Does not Qualify Noncitizens for Adjustment,' *CLINIC* (26 Sept 2023), <https://www.cliniclegal.org/resources/removal-proceedings/board-holds-entry-without-inspection-border-releases-be-conditional>.
- National Immigrant Justice Center, *Migrant Protection Protocols / Remain in Mexico: Frequently Asked Questions* (last updated Mar 2021), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://immigrantjustice.org/sites/default/files/content-type/know-your-rights/documents/2021-03/MPP%20FAQ%20FINAL%20%28002%29.pdf.
- United States Citizenship & Immigration Services, *Policy Manual, Vol. 3: Humanitarian Protection and Parole*, (last accessed 2 Nov 2023), <https://www.uscis.gov/policy-manual/volume-3>.



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