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UPHOLDING DIGNITY PROTECTING RIGHTS

Representing Afghans in Removal Proceedings

Presented by CLINIC and Human Rights First

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Presenters

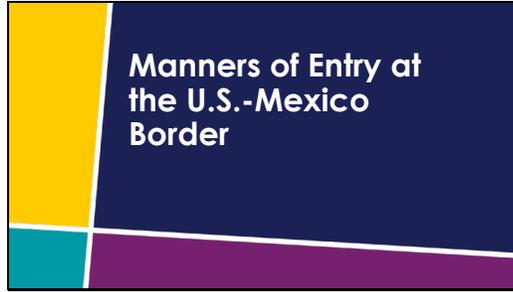
 <p><i>Elizabeth Carlson,</i> Supervisory Senior Attorney, CLINIC</p>	 <p><i>Carrie Hansen</i> Senior Attorney, CLINIC</p>	 <p><i>Rebekah Niblock,</i> Supervisory Senior Attorney, CLINIC</p>	 <p><i>Mona Iman,</i> Supervising Senior Staff Attorney, Human Rights First</p>
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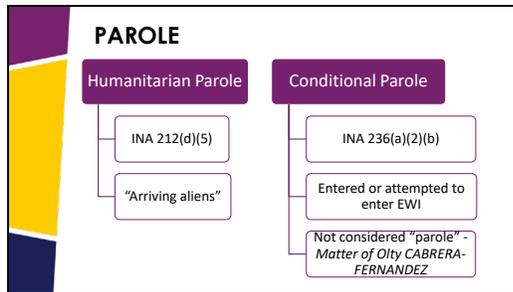
Agenda

- Review of Manners of Entry at the U.S.-Mexico Border
- Afghans in Detention
- Representing Non-Detained Afghans
- Strategies to Expand Representation of Afghans in Removal Proceedings

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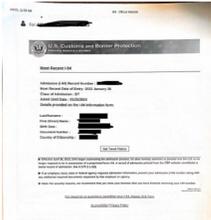
A slide with a white background and a purple and yellow decorative border on the left. It lists documents and duration for parole.

Documents

- I-94
- Parole stamp in passport
- Interim Notice Authorizing Parole

Duration

- OAR/OAW – 2 years
- Otherwise, varies



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Humanitarian Parole – Legal Implications

- “Inspected and admitted or paroled”
- Temporary
- Work authorization – 90 days, then need EAD
- Issuance of NTA terminates parole period
- ORR Benefits

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Conditional Parole

Documents

- DHS I-220A Order of Release on Recognizance

Duration

- Does not show expiration date
- Pending removal proceedings – NTA



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Conditional Parole – Legal Implications

- NOT “inspected and admitted or paroled”
- Must follow conditions
- Typically issued NTA with I-220A
- No work authorization

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Asylum Processing Rule

- Went into effect in May 2022, but limited in scope.
- Started with single detained adults in certain detention facilities, now expanding to certain non-detained family units.
- An applicant who passes a credible fear interview will now receive an ["asylum merits interview."](#)
- Officer can either grant or refer for "streamlined" EOIR Proceedings.

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Circumvention of Lawful Pathways Regulations

•Regulation that went into effect on May 11, 2023 and applies to those entering on or after that date (lasts 24 months)

•Creates a presumption of asylum ineligibility for those who cross the southwest land border or adjacent coastal borders but does not apply to those who

- 1) Availed themselves of an existing lawful process such as CHNV parole,
- 2) Presented at a port of entry at a pre-scheduled time using the CBP One app or presented without an appointment and established inability to use CBP One app, or
- 3) Have been denied asylum in a third country through which they traveled

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Rebutting the Presumption of Asylum Ineligibility

To rebut presumption of ineligibility, must show "exceptionally compelling circumstances", including

- An acute medical emergency;
- An extreme and imminent threat to their life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or
- Being a victim of a severe form of trafficking, as defined in 8 CFR § 214.11.

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Poll: What Trends Are You Seeing At the Southern Border?

- From what you see in your practice, are most Afghan clients arriving at the Southern Border receiving 212(d)(5) humanitarian parole?
 - Yes
 - No
- What kind of parole?
 - 212(d)(5) at least 1 year parole
 - 212(d)(5) less than 1-year parole
 - Other
- Are most Afghans using the CBP one app and entering at a designated POE?
 - Yes
 - No
- Please describe in the chat the main travel route for Afghans to arrive at the border.

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Afghans Increasingly in Removal Proceedings

Immigration Court	Total New Afghan Cases FY 2023
Sacramento	601
San Francisco	485
Arlington	329
San Diego	299
Sterling	294
Seattle	263
Dallas	235
Houston - Gessner	174
Buffalo	167
New York	166
Denver	164
San Antonio	134
Portland	124
Santa Ana	120
Chicago	115
Kansas City	112
All Other	1652
Total	5434

Source: The Immigration Lab, Growing Numbers of Afghan Humanitarian Parolees in Removal Proceedings (April 2024)

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Brief Overview of Removal Proceedings: What Happens in Immigration Court?

- Hearing on inadmissibility or deportability charge
- Determine eligibility for relief from removal

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Who's Who in Immigration Court

- **Respondent:** non-citizen, person in removal proceedings
- **Respondent's attorney or fully accredited rep**
- **Trial Attorney (TA):** Assistant Chief Counsel, Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS)
- **Immigration Judge (IJ):** Executive Office for Immigration Review (EOIR), Department of Justice (DOJ)
- **Interpreter:** employed/contracted w/ by Court
- **IJ's clerk**

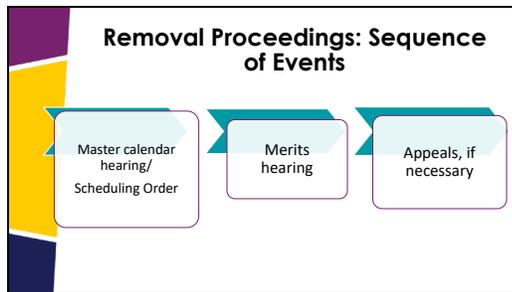
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Notice to Appear: Charging Document in Immigration Court

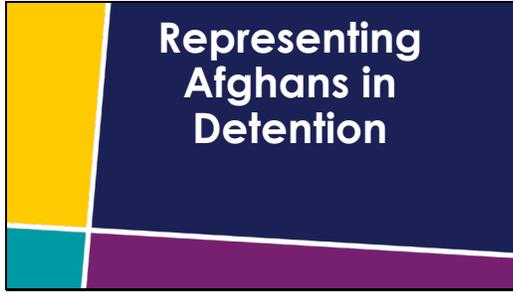
- Filed with the Immigration Court
- Describes category:
 - a. arriving alien
 - b. present without admission
 - c. admitted but deportable
- Factual allegations
- Underlying legal charges
- Hearing date, time, place



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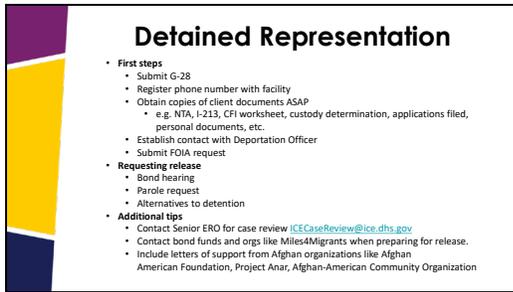
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Bars to Asylum for Afghans

- Note that mandatory bars to asylum also apply to TPS*

INA § 208(b)(2)(A)

- Persecutors of others
- Those convicted of a particularly serious crime
- Those engaged in terrorist-related activity or who have provided material support to terrorist groups
- Commission of a serious nonpolitical crime
- Firm Resettlement (does not apply to withholding of removal)
- Those presenting a danger to the security of the U.S.

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Navigating Bars to Asylum

- Resource available on CLINIC website:
<https://www.cliniclegal.org/resources/asylum-and-refugee-law/practice-advisory-common-obstacles-when-representing-afghans>
- Address bars in direct examination v. waiting for cross examination

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Exemptions and Exceptions to the Material Support Bar

- **Situational Exemptions** (authority under INA §212 (d)(3)(B)(i))
- **Duress** (material support, military training and solicitation – All Tiers)
- Group based Exemptions
- Voluntary Activity (medical care)
- **Certain Limited Material Support**
- Insignificant Material Support
- **Afghan Civil Service**
- **Afghan Allies**

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 A presentation slide with a white background and a colorful geometric border. The title "Access to Legal Representation for Afghans in Removal" is at the top left. Below it is a bulleted list of statistics. To the right is an image of a scale of justice with the text "ACCESS TO COUNSEL IN IMMIGRATION COURT".

Access to Legal Representation for Afghans in Removal

- # Afghans in Removal Nationwide with Legal Representation: 1,277 (22.6%) representation;
 - Of this #, 4,207 (77.4%) have no attorneys.
 - Smaller % for detained Afghans.
- Only 137 asylum cases involving Afghan nationals have been decided by judges thus far.
 - 22 in total (16%) were denied
 - Remaining were approved for asylum or another form of relief. Source: Immigration Law Lab, <https://themigrationlab.org/blog/following-numbers-of-afghan-migrants-face-deportation-in-court>.

ACCESS TO COUNSEL IN IMMIGRATION COURT

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 A presentation slide with a white background and a colorful geometric border. The title "Expanding Representation to Afghans in Removal" is at the top. Below it are several bullet points providing information about legal representation, funding, and challenges.

Expanding Representation to Afghans in Removal

- **Pro Se Asylum Clinics for the Skeletal Filing of the I-589**
 - Attorneys/Fully Accredited Representatives Must Submit EOIR-61
 - **EOIR FAQ Rules/Procedures Limited Appearance:** <https://www.justice.gov/eoir/page/file/1551476/download>.
 - Recommend Signing a Limited Representation Agreement
- Clear Instructions and Advisories
 - Urgent needs: Change of Venue, OYD, proof of filing to secure ongoing housing in shelters
 - Challenges: providing substantive assistance beyond I-589 without actual representation may confuse IJ on level of preparedness
- **Special Funding/Grants for Afghans in Removal?**
 - Most organizations specifically servicing Afghan refugees were funded only for affirmative OAR/CAW parolees. Push toward removal defense funding growing. Please respond in the Chat if you know of any funding/grant opportunities to represent Afghans in removal proceedings.

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Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs.

cliniclegal.org
