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#### **Presenters**



Elizabeth Carlson, Supervisory Senior Attorney,



Rebekah Niblock, Supervisory Senior Attorney,



Corrie Hansen Senior Attorney, CLINIC



Mona Iman, Supervising Senior Staff Attorney, Human Rights First

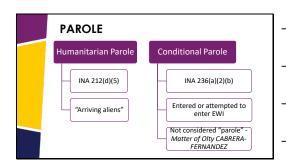
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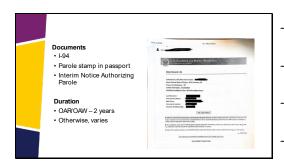
#### Agenda

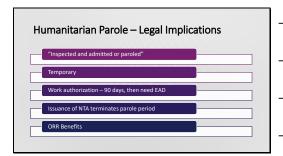
- •Review of Manners of Entry at the U.S.-Mexico Border
- •Afghans in Detention
- •Representing Non-Detained Afghans
- •Strategies to Expand Representation of Afghans in Removal Proceedings

Manners of Entry at the U.S.-Mexico Border

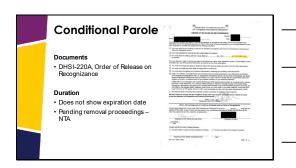
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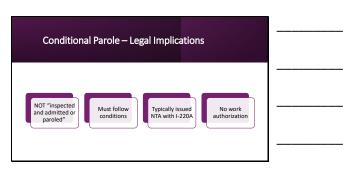






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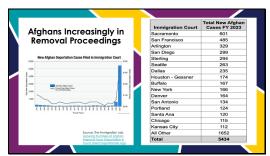
Slide 10	Asylum Processing Rule	·
	Went into effect in May 2022, but limited in scope. Started with single detained adults in certain detention facilities, now expanding to certain non-detained family units.  An applicant who passes a credible fear interview will now receive an "asylum merits interview."  Officer can either grant or refer for "streamlined" EOIR Proceedings.	
Slide 11	Circumvention of Lawful Pathways Regulations  -Regulation s  -Regulation that went into effect on May 11, 2023 and applies to those entering on or after that date (lasts 24 months)  -Ceates 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	
Slide 12	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.	

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

- From what you see in your practice, are most Afghan clients arriving at t
  Border receiving 212(d)[5] humanitarian parole?

  Yes
  No
  What kind of parole?
  2 12(d)[5] at least 1 year parole
  2 12(d)[6] set shan 1-year parole
  Other
  Are most Afghanas vising the CPP

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### Who's Who in Immigration Court

•Respondent: non-citizen, person in removal proceedings •Respondent's attorney or fully accredited rep

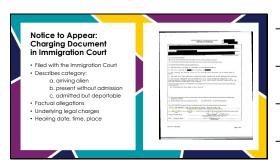
• Trial Attorney (TA): Assistant Chief Counsel, Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS)

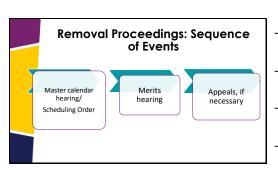
•Immigration Judge (IJ): Executive Office for Immigration Review (EOIR), Department of Justice (DOJ)

•Interpreter: employed/contracted w/ by Court

·IJ's clerk

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## Representing Afghans in Detention

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#### **Detained Representation**

- · Detained removal proceedings are conducted on a faster timeline
- When represented by counsel, detained immigrants are approx. 10 times more likely to win relief, and almost 7 times more likely to be released from custody
   https://www.aclu.org/sies/default/files/field\_document/no\_fishting\_chance\_aclu\_reserpent\_off.
- Detained immigrants face increased barriers to access to counsel
   E.g. inadequate phone access and poor audio, lack of confidential communication, issues with mail, scheduling appointments, contact vs. non-contact visits, attorney electronics, interpretation
- Deportation Officers are notoriously difficult to reach and change frequently

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#### **Detained Representation**

- First steps

  Submit G-28

  Submit G-28

  Register phone number with facility

  Obtain copies of client documents ASAP

  e.g. NTA, P-123, CFI worksheet, custody determination, applications filed, personal documents, etc.

  Establish contact with Deportation Officer

  Submit FOIA request

  Requesting request

  Parole request

  Atternatives to detention

  Additional tips

  Additional tips

  Additional tips

- Additional tigs

  Contact Senior ERO for case review (CECaseReview@ice dhs.gov

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  Contact Sonior flunds and orgs like Miles4Migrants when preparing for release.

  Include letters of support from Afghan organizations like Afghan

  American Foundation, Project Anar, Afghan-American Community Organization

Slide 22	Trends in Afghan Detained Cases  Most Alghans in removal proceedings cross through the south-west border and travel through Brazil. No consistency on parcie. Increasing numbers have SIV. Prepare Asylum Ban-Lawful Pathways arguments for entry after \$51/12/3\$  Mostly men destined, even when enter with family. KE transferring to facilities away from family.  E.g. entry in CA, detention in LA/TX, family in IL.  Immigration Judges (II) often unfamiliar with Afghanistan country conditions, limited identification evidence, changing calendar  E.g. evideng on entry failable promises rather than current situation  E.g. evideng on entry failable promises rather than current situation  E.g. evideng on entry failable promises rather than current situation  E.g. evideng on entry failable promises rather than current situation  E.g. evideng entry failable complete services and the promises of the	
	Hearings held via VTC Tips: establish trutting relationship with client; employ cultural sensitivity and trauma-informed practices TPS should lead to release, but not always in practice. PD not being applied to EWI cases.	
Slide 23	Afghan case example  Mohammad is an ethnic Hazara university professor who survived multiple attacks by ISIS-K and the Taliban, and was repeatedly threatened before fleeing AFG.  Prosecuted under 1910 254 1459 and imprisoned for months before transfer into ICE custody  Pursued asylum pro se, IJ denied relief  Bis Aurmarily dismissed appeal due to purported waiver. PFR fleed but voluntarily dismissed vicrounistances and previously unavailable evidence  MITR granted based on changed circumstances and previously unavailable evidence  Multiple new paths to relief, but still in prolonged detention	
Slide 24	Special Consideration for Afghans in Removal: Advising on TPS and Asylum	

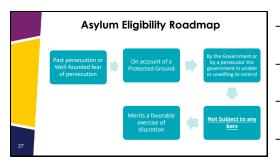


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#### All Afghans Seeking Asylum Must Meet The Definition of a Refugee

A refugee is a person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unufling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. NA\$ 51016 (18/22)

-An asylee is a person who meets the definition of a refugee under INA  $\S$  101(a)42), but who is either physically present in the United States or is at a land border or port of entry of the United States at the time he or she seeks refuge. INA  $\S$  208(a) and (b)(1)(A)



Slide 28	Bars to Asylum for Afghans  -*Note that mandatory bars to asylum also apply to TFS*  RNA \$208(b)(X)(A)  -Persecutors of others  -Those convoked 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  -Pirm Resettlement (does not apply to withholding of removal)  -Those presenting a danger to the security of the U.S.	
Slide 29	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	
Slide 30	Exemptions and Exceptions to the Material Support Bar  -Stuational Exemptions (authority under INA §212 (d)(3)(B)(0))  -Duress (material support, military training and solicitation – All Tiers).  -Group based Exemptions  -Voluntary Activity (medical care)  -Cortain Limited Material Support  -Insignificant Material Support  -Afghan Civil Service  -Afghan Allies	

## Slide 31 TRIG Exemptions before EOIR •If IJmakes a finding that a TRIG bar applies, the IJcannot grant an exemption. Must issue final order of removal. Exemption MUST come from USCIS •IJshould make a finding that would have granted asylum "but for" the TRIG issue. $\bullet \text{USCIS will issue Notice of Determination granting exemption and joint motion to} \\$ reopen must be submitted to court Slide 32 Typical Adjudication Process for TPS and Asylum Temporary Protected Status Hie the TPS application (and, if applicable, any EAD/I601 waiver applications) with USCIS the agency with jurisdiction. Grant of TPS=DHS prohibited from removing the noncitizen. Defensive: For noncitizens with an NTA filed with EOIR. Automated Case Information (justice.gov) • File the Asylum Application w/in one year of entry with the immigration Court with jurisdiction over proceedings. • Asylum Merits Interview with USCIS. Slide 33 Prosecutorial Discretion: Who is a Priority? Prosecutorial Discretion is reviewed on a case-by-case basis and can be used to seek: 1. Non-filing of NTA. 2. Dismissal of Proceedings. 3. Unilateral Motions to Dismiss (can be very concerning).



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## **Requesting Prosecutorial Discretion** to Dismiss with DHS mine if the client is a priority for enforcement and if any mitigating factors (such as eligibility in 1. DHS Memo, ICE Principal Legal Advisor Kerry E. Doyle https://www.sa.govid-colla/about/offices/opis/CPI-Ammigration-enforcement\_quidance.

- DOJE Director is Memo, Director David L. Neal, EDIR DM 23-04: DEPARTMENT OF HOME AND SECURITY ENFORCEMENT PRORTIES AND PROSECUTORAL DISCRETION INTRATIVES (justice, gov).

- a. Check EOIR case status online at Automated Case
- 3. Consult with the client to determine their objectives and goals.

  - a work to coentro determine their objectives and goals.

    mine DHS's local practice for filling and objecteding PD requests.

    2. Approved TRS position vs. a copy of the Picrospit.

    5. Background thesic Completed biometrics for underlying relief or PB prints (2 age 14).

    6. Well hitters illumin any quantitood lead position proceedural-discretion for CPLA filling addresses and not based on location.

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#### Discussion for the Chat:

- dismissing removal proceedings against Afghan noncitizens?

   Amenable to dismissal for Afghans with a pending TPS application
  - (demonstrating prima facie eligibility).
- Amenable to dismissal for Afghans with only approved TPS.
- Unsure.
- Have you experienced success with submitting a request to ICE for prosecutorial discretion to cancel an NTA for an Afghan client?
  - Yes, I have been successful.
  - No, I have not been successful.
  - I have yet to try this.

# Expanding Representation for Afghans in Removal

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#### **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
-See 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, CYFD, proof of filling to secure ongoing housing in shelters

·Special Funding/Grants for Afghans in Removal?

-Most organizations specifically servicing Afghan refugees were funded only for affirmative CARYOWV
paroises. Push toward removal defense funding growing. Resee respond in the Chat if you know of any
funding/grant opportunities to represent Afghans in removal proceedings.

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