

IMMIGRATION **JUSTICE** CAMPAIGN



Immigration Justice Campaign: The Impact of Crimes on Immigration Status

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Agenda

- Introduction
- About the Justice Campaign
 - Where We Work
 - How We Work
- Background
- The impact of crimes on immigration status
- How you can help

Our Model

- Joint project of AILA and American Immigration Council
- We partner with local nonprofit service providers around the country that refer cases to us
- We recruit, train, support and mentor pro bono attorneys on detained and non-detained cases

Work We Support

- Release from detention (bond & parole)
- Detained & non-detained merits hearings (asylum, cancellation of removal)
- BIA, federal Circuit Court appeals & motions to reopen
- Affirmative asylum cases
- Limited scope work
- Work authorization applications
- Adjustment of status applications

Support We Provide

- Training and practice resources to help pro bono attorneys through every part of their case
 - Samples, templates, and more
- Expert mentoring
 - Group mentoring for merits cases
 - “Office hours” for parole and bond cases
 - Review of draft filings

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BACKGROUND

Immigration Detention System

- Shadow prison system
- 20,000-30,000 jailed every day
- Hostile jurisdictions
 - Texas is the state with the most amount of detained individuals
- 14% of detained immigrants have counsel
- Immigrants with counsel 10 times more likely to prevail



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The Impact of Criminal History on Immigration Proceedings

The Impact of Criminal History on Immigration Proceedings

- Grounds of inadmissibility and removability (deportability)
- Some grounds do not require a conviction
- Definition of “conviction” for immigration purposes is different than in criminal court
- Generally triggers detention
- Grounds apply to recent arrivals and long-term U.S. residents

The Impact of Criminal History on Immigration Proceedings

Criminal history can bar eligibility for most immigration benefits (including asylum), and can result in the deportation of long-time U.S. residents.

There are remedies, but the burdens of proof and persuasion are on the non-citizen

Who needs assistance?

- Both recent arrivals and long-time U.S. residents
- Asylum seekers in removal proceedings
- Cancellation of removal applicants
- People seeking release from custody on bond or parole
- No guarantee of representation in removal (deportation) proceedings
- "Death penalty cases in a traffic court setting"

Bond & Parole

- Two-part analysis: flight risk and dangerousness
- Some immigration detainees eligible for potential release on bond, some only eligible for release on parole

Eligibility

Bond

- A form of release from immigration detention decided by an immigration judge
- No Jurisdiction Over:
 - Arriving Aliens (Parolees)
 - **Individuals Who Went Through Expedited Removal Proceedings**
- Minimum \$1,500 payment, no max

Parole/Release Request

- A form of release from immigration detention decided by ICE
- The only option for people not eligible for IJ bond proceedings
- Different types:
 - Parole
 - Different from parole in criminal justice system
 - Release on Recognizance
 - *Fraihat*/ICE COVID-19 Pandemic Response Requirements

Process

Bond

1. Meet with client; confirming sponsor information
2. Meet with sponsor to get necessary sponsor information
3. Collect criminal records
4. Prepare and submit bond motion (template provided) with supporting documents
5. Bond hearing
6. Decision
7. Bond payment

Parole/Release Request

1. Meet with client; confirming sponsor information
2. Meet with sponsor to get necessary sponsor information
3. Collect criminal records
4. Prepare and submit release request submission (template provided) with supporting documents
5. Follow up with ICE
6. Decision

Criminal Issues in Bond & Parole Cases

- Collecting records
- Assessing impact of criminal history on legal case (with assistance from mentors)
- Collecting & presenting evidence of mitigating factors
- Preparing client to testify

Example

Mr. LR is a 27 year-old Honduran man who was charged with breaking and entering into a government office three weeks after refusing to provide information to local police about his cousin, a prominent member of an opposition political party. Mr. LR fled to the United States and applied for asylum asserting that the charges were fabricated in order to coerce him into complying. In bond proceedings, the Department of Homeland Security alleges that his criminal history suggests that he is a danger to the community and should be held without bond.

What is Asylum?

- A form of legal protection for people fleeing harm in their home countries
- Granted to those inside, or at the border of, the US (unlike refugee status, which is granted to applicants outside the US)
- If asylum is granted, the person is protected from deportation and can remain in the US
- Generous post-grant benefits: green card, cash and medical assistance, and derivative status

Criminal Issues in Asylum Cases

- Detention
- Conviction for a particularly serious crimes in the United States
- Commission of serious non-political offenses outside the United States

Example

Ms. SV is a 32 year-old Venezuelan woman. In 2019 she was approached by members of a trans-national drug cartel who demanded that she transport drugs to the U.S. for them, and threatened to kill her if she refused. She complied, and in 2022 was caught and convicted of possession with intent to distribute a controlled substance. She has applied for asylum, alleging that members of the cartel will assume she testified against them in her criminal trial, and will kill her. The Department of Homeland Security asserts that her conviction is for a particularly serious crime, which bars her from asylum eligibility.

Non-LPR Cancellation of Removal

Remedy for long-time U.S. residents without legal status but with strong U.S. family ties

- 10 years' continuous physical presence
- Good moral character
- Exceptional & extremely unusual hardship to anchor relative
- Not subject to certain criminal grounds of inadmissibility or removability

Criminal Issues in Non-LPR Cancellation

- Collecting records
- Assessing legal effect of dispositions (with mentor's assistance)
- Detention
- Collecting & presenting mitigating evidence of good moral character
- Collecting & presenting hardship evidence

Example

Mr. NT is a Ugandan man who came to the United States in 2008 with a visitor's visa and who has been undocumented ever since. He is separated from his U.S. citizen wife and is the sole caretaker for their two U.S. citizen children, ages 9 and 11. His wife is addicted to opioids and for the past six years has been in and out of jail, only sporadically in touch with their children. Mr. NT himself has three convictions for driving without a license, and one for driving under the influence of alcohol. DHS asserts that his criminal history precludes him from establishing that he is a person of good moral character, and as such that he is ineligible for cancellation of removal.

LPR Cancellation of Removal

A discretionary remedy for green card holders (LPRs) who have been convicted of certain crimes

- LPR for 5 years
- Resided in U.S. for at least 7 years after having been admitted in any status
- Not convicted of an aggravated felony

Criminal Issues in LPR Cancellation Cases

- Legal analysis (with assistance from mentor)
- Assessing and documenting discretionary factors
- Detention

Example

Mr. BT is a 51 year-old Vietnamese man who came to the United States with his family as a refugee in 1978, and who has been a permanent resident since 1994. His parents and four siblings are all naturalized U.S. citizens. Mr. BT is alcoholic and has multiple convictions for trespass, public intoxication, and petit larceny, as well as one for solicitation of a prostitute. DHS asserts that he does not warrant a favorable exercise of the court's discretion because of his lengthy criminal record.

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HOW CAN I HELP?

Take a Case!

- Two step process:
 1. Sign up on our [website](#)
 2. Fill out a [volunteer application](#)
- After you sign up on our website, review [Current Volunteer Opportunities](#) and email probonocoordinator@immcouncil.org to take a case (must be logged into website)

Cases

Mr. JOGW

Relief Sought: Asylum, Withholding of Removal, and Protection under the Convention Against Torture

Location: Stewart Detention Center (Lumpkin, GA)

Country of Origin: Nicaragua

Language: Spanish

Next Hearing: July 25, 2023 (Master Calendar Hearing)

Mr. JOGW is a man in his 20's from Nicaragua who arrived in the United States in 2020. He fled Nicaragua between 2018 and 2019 to live in Costa Rica after he was harmed at anti-government protests by police and collaborators of the police. Mr. JOGW is part of the Miskito indigenous group, which has a long-documented history of opposition to the Nicaraguan Sandinista government. He was paroled into the U.S. for criminal prosecution after being arrested by the U.S. Coast Guard between Colombia and Costa Rica for traveling on a boat that was carrying drugs. Mr. JOGW took a plea deal for this crime. If he returns to Nicaragua, he is afraid that he will be persecuted for his opposition to the government for collaborating with the DEA for his plea deal.

Mr. RPO

Relief Sought: Parole, Other Request for Release from DHS

Location: Aurora Contract Detention Facility (Aurora, CO)

Country of Origin: Mexico

Language: Spanish

Next Hearing: August 7, 2023 (Individual Hearing)

Mr. RPO is a man in his 40s from Mexico who entered the United States for the first time in 2000. He was granted voluntary departure (VD) in 2011 and returned to the U.S. again about six months later. Mr. RPO was arrested for possession of a controlled substance and bonded out, but he was later arrested again for trespassing and was transferred to ICE custody as a result. He has a ten-year-old USC daughter who depends on him since her mother has cancer. Mr. RPO seeks pro bono legal assistance with his release so that he may pursue immigration relief from outside of detention.

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Questions?

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