

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 25-cv-25271-JB

ISIDRO ACANDA CEBALLO,

Petitioner,

v.

CHARLES PARRA, in his official capacity
as Assistant Field Office Director, Krome
North Service Processing Center, et al.,

Respondents.

RESPONDENT'S SUPPLEMENTAL FILING CONCERNING RELEASE

Respondents¹, by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order [ECF No. 16] directing Respondent to file a Supplemental Filing setting forth the authority upon which Petitioner was released in December, 2022.

As set forth in the Government's Return [ECF No. 11], the petitioner, Isidro Acanda Ceballo ("Petitioner"), is a native and citizen of Cuba. *See* [ECF No. 11-1], I-213. On or about December 23, 2022, Petitioner entered the United States without being inspected or admitted at or near Marquesas, Florida, which is about 21 miles west of Key West, Florida. *See id.* On or about December 26, 2022, the United States Coast Guard ("USCG") encountered Petitioner and others, who arrived on a wooden vessel, and determined that Petitioner was not in possession of a valid

¹ A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Krome Detention Center, an ICE detention facility in Miami, Florida. His immediate custodian is Charles Parra, Assistant Field Office Director. The proper Respondent in the instant case is Mr. Parra in his official capacity.

entry document to enter or reside in the United States. *Id.*

On or about December 26, 2022, Customs and Border Protection (“CBP”) placed Petitioner in expedited removal proceedings through the issuance of a Form I-860, Notice and Order of Expedited Removal, charging him with inadmissibility under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as amended, as an immigrant who, at any time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act. *See* Notice and Order of Expedited Removal, [ECF No. 17] at 2.

Attached hereto is the G-56 “Call in Letter” that was provided to the Petitioner on or about the time of his release from the custody of CBP, December 27, 2022, which directed the Petitioner to report to United States Immigration and Customs Enforcement. The Petitioner’s detention record, to the knowledge of the undersigned, does not indicate what authority was relied upon to release the Petitioner.

As discussed in the Response, while an applicant for admission subject to the expedited removal statute is subject to detention, he may be eligible for parole “for urgent humanitarian reasons or significant public benefit.” INA § 212(d)(5)(A); 8 U.S.C. § 1182(d)(5). Otherwise, his detention is mandatory, and the alien cannot be released on bond under 8 U.S.C. § 1226(a). *Matter of M-S-*, 27 I&N Dec. 509, 517-18 (A.G. 2019). Here, Petitioner alleges that DHS released the Petitioner from custody on his own recognizance due to lack of bed availability; “thereby employing their statutory powers under INA § 212(d)(5)(A) and paroling him into the United States.” There is no factual basis in the record or the pending Petition [ECF No. 1] substantiating that the Petitioner was paroled. On a grant of humanitarian parole, DHS typically provides the alien with a Form I-94 Arrival-Departure Record endorsed with a parole stamp or an Interim

Authorizing Parole, which Plaintiff did not receive in this case. *See Ortega-Cervantes*, 501 F.3d 1111, 1112 (9th Cir. 2007); *see also* 8 C.F.R. § 235.1(h)(2). The Petitioner has provided no record evidence that he ever received a parole document, there no indication in the record that such a parole was granted, nor is there any factual basis alleged that parole was appropriate “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” *See* 8 U.S.C. § 1182(d)(5)(A). Plaintiff does not claim that, as a factual matter, DHS granted humanitarian parole under 8 U.S.C. § 1182(d)(5)(A), issued him a Form I-94 or any other paperwork that reflects the grant of a parole, or considered the statutory standard necessary for such a grant of parole. Parole, like an admission, is a factual occurrence and there is no evidence in this record that the Department paroled the respondent pursuant to INA § 212(d)(5). *See Hing Sum v. Holder*, 602 F.3d 1092, 1098 (9th Cir. 2010) (citing *Matter of Ayala-Arevalo*, 22 I&N Dec. 398, 401 (BIA 1998) (“Ayala’s criminal activity at the time of admission did not alter ‘the *historical fact* that, when he entered, it was in the status of a lawful permanent resident.’” (emphasis added))).

To the extent that Petitioner argues that he was “constructively paroled” or paroled as a matter of law, any such parole would be terminated upon his proper and mandatory re-detention pursuant to INA § 235(b)(1)(B)(iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). *See* INA § 212(d)(5) (when the purposes of such parole have been served....) Furthermore, if in the alternative, Petitioner was released pursuant to 8 U.S.C. § 1226(a)(2), INA § 236(a)(2) – pursuant to conditional parole, which is distinct from humanitarian parole, DHS possesses unilateral authority to revoke release under that section and re-detain the Petitioner pursuant to 8 U.S.C. § 1226(b), INA § 236(b).

Furthermore, the Immigration and Nationality Act (INA) makes it clear that parole “shall not be regarded as an admission” and once parole ends “the alien shall forthwith return ... to the

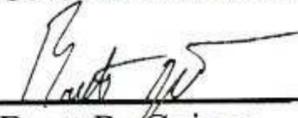
custody from which he was paroled” and thereafter be treated “in the same manner as that of any other applicant for admission.” 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 1.2 (“An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the (INA)”). Thus, Congress specified that parole is simply a temporary release of an alien into the United States that confers no vested immigration status. This is a proposition that has repeatedly been affirmed by the Supreme Court. *See Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (“(A)liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border’”) (citations omitted); *Leng May Ma v. Barber*, 357 U.S. 185, 188-91 (1958); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925).

Accordingly, regardless of the authority relied upon for the release of the Petitioner in December of 2022, for the reasons set forth in the government’s Response to the Petition [ECF No. 11], and this Supplement, the Petitioner in subject to expedited removal and mandatory detention pursuant to INA § 235(b)(1); 8 U.S.C. § 1225(b)(1).

Respectfully submitted,

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DEPARTAMENTO DE SEGURIDAD INTERNA
 Servicio de Inmigración y Control de Aduanas de los Estados Unidos

Numero del Expediente: [REDACTED]

Fecha de Nacimiento: [REDACTED]

PD G-56

Nombre: ISIDRO ACANDA-CEBALLO

Fecha: 12/27/2022

Domicilio: FAILED TO PROVIDE

Favor de presentarse con este aviso en la oficina local de ICE cuando sea solicitado

UBICACIÓN DE LA OFICINA	Las oficinas locales de ICE están enumeradas en el documento adjunto titulado "Oficinas Locales de ICE". Favor de llamar al 1-888-351-4024 si usted necesita asistencia en localizar o reportarse a su oficina local de ICE.
FECHA LIMITE	Debe presentarse en su oficina local de ICE en los 60 días siguientes de su puesta en libertad.
SOLICITUD	Preséntese ante un Oficial de Deportación de ICE para que continúe su tramitación y consideración para su inscripción en un Programa Alternativo a la detención (ATD, por sus siglas en inglés).
MOTIVO DE LA CITA	Usted ha sido puesto en libertad a discreción del Servicio de Aduanas y Protección Fronteriza de los Estados Unidos y ahora debe ponerse en contacto con su oficina local para completar la tramitación. Reportarse con ICE asegurará de que el Departamento de Seguridad Interna (DHS, por sus siglas en inglés) tiene su domicilio e información de contacto actualizados. Una vez que se presente con ICE por primera vez, será evaluado para cumplir con los requisitos de presentación continua que pueden incluir la presentación en persona. El no reportarse a la oficina local de ICE puede resultar en su detención o se le coloque en formas adicionales de supervisión o monitoreo.
TRAIGA CON USTED	Documentos de identificación (acta de nacimiento, documentos de identidad emitidos por el gobierno, tales como licencia de conducir o cédula) y todos los documentos de inmigración.

Plazo de un Año de la Solicitud de Asilo: Si usted cree que puede reunir los requisitos para el asilo, debe presentar el Formulario I-589, la Solicitud de Asilo y de Retención de Expulsión. El Formulario I-589, instrucciones, y la información sobre dónde presentar el Formulario se pueden encontrar en www.uscis.gov/i-589. Si no presenta el Formulario I-589 en el plazo de un año desde su llegada, no podrá solicitar asilo de acuerdo con el artículo 208(a)(2)(B) de la Ley de Inmigración y Nacionalidad.

SI NO SE PRESENTA COMO SE LE HA INDICADO, PUEDE SER DETENIDO Y/O PERDER EL DERECHO A CUALQUIER POSIBLE RECURSO. GRACIAS POR SU COOPERACIÓN.