UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ORLANDO IMMIGRATION COURT

Respondent Name:
[redacted]

To:
[redacted]

A-Number:
[redacted]

Riders:
In Removal Proceedings
Initiated by the Department of Homeland Security
Date:
06/05/2025

ORDER OF THE IMMIGRATION JUDGE

☑ Respondent ☐ the Department of Homeland Security has filed a motion to terminate these proceedings, and the non-moving party was accorded notice and an opportunity to respond. The motion is ☐ opposed ☑ unopposed.

After considering the facts and circumstances, the immigration court orders that the motion to terminate is ☑ granted ☐ with ☑ without prejudice ☐ denied because:

☐ The Department of Homeland Security ☐ met ☐ did not meet its burden of proving by clear and convincing evidence that Respondent is removable as charged. 8 C.F.R. § 1240.8(a).

☐ Respondent ☐ met ☐ did not meet the burden of proving that Respondent is clearly and beyond a doubt entitled to admission to the United States and is not inadmissible as charged. 8 C.F.R. § 1240.8(b)-(c).

☑ Other.

☑ Further analysis/explanation:

Under 8 C.F.R. sec. 1003.18(d)(1)(ii)(B), an Immigration Judge has discretion to terminate proceeding where a respondent is eligible to adjust status before USCIS. These regulations supersede the holding of Matter of Coronado Acevedo, 28 I&N Dec. 648 (A.G. 2022)

USCIS guidance indicates that it will adjudicate a Cuban Adjustment Act (CAA) application, so long as the Cuban respondent is paroled in at any time prior to the date of adjudication or is an arriving alien. Green Card for Cuban Native or Citizen, U.S. Citizenship and Immigr. Servs., https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-a-cuban-native-or-citizen (last visited August 11, 2023). Moreover, the Memorandum of Agreement between USCIS, Immigration and Customs Enforcement ("ICE") and Customs and Border

Protection ("CBP) appears to allow USCIS to issue such parole, so long as the respondent is not currently in removal proceedings. Memorandum of Agreement Between USCIS, ICE, and CBP, Coordinating the Concurrent Exercise by USCIS, ICE, and CBP, of the Secretary's Parole Authority Under INA § 212(d)(5)(A) with Respect to Certain Aliens Located Outside of the United States (Sep. 29, 2008), available at https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf.

Previously, under in Matter of Cabrera-Fernandez, 28 I&N Dec. 747 (BIA 2023), the Board noted that mere apprehension and release by DHS did not amount to a parole under INA sec. 212(d)(5). Specifically, the BIA held that release of respondent by DHS, as opposed to a bond issued by an immigration judge, was a conditional parole under INA sec. 236(a). Such a conditional parole is made after the issuance of a warrant and was fundamentally different from a humanitarian parole under INA sec. 212(d)(5). A conditional parole did not render the respondent eligible for the CAA.

However, the Board has issued a decision that presents greater clarity, specifically the effect of the timing of the warrant. See Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025). According to the BIA in that case, an individual apprehended entering unlawfully between the ports of entry shortly after their entry is detained subject to INA sec. 235. Id. at 67-68. This applies even if DHS elects to place the respondent directly in removal proceedings rather than expedited removal. Id. at 68. Where Q. Li departs from Cabrera-Fernandez, is an exploration of the timing of the warrant to trigger INA sec. 236(a). The BIA explained in the subsequent case that detention does not change from section 235 to 236 even if a warrant is issued after the arrest of the alien is made. Id. at 69, FN 4. That alien would remain detained under INA sec. 235 even after the warrant is issued. The Court finds that Q. Li is to applied retroactively, not merely prospectively. BIA decisions are to be applied retroactively unless the Board expresses that it is consciously altering or overriding a previous decision or regulation. See Matter of Larios-Guiterrez de Pablo, 28 I&N Dec. 868 (BIA 2024). In Q. Li, the Board relied on prior holdings, from itself and the Supreme Court, regarding applicants for admission and did not depart from existing rules. Thus, the Court will apply the decision retroactively.

As the individual described above is not held under INA sec. 236, logically, they could not be released under conditional parole as described under subsection (a) of that same statute. At first blush, it may appear that Q. Li and Cabrera-Fernandez are contradictory. However, the holding in Cabrera-Fernandez was limited to the release under conditional parole under INA sec. 236 and the consequences of that parole, not whether the timing of the warrant had any effect on the nature of the detention. Q. Li subsequently clarified that an alien detained under INA sec 235, which includes those where the warrant was issued after their apprehension, are "ineligible for any subsequent release on bond under section 236(a) of the INA …" Id. at 69. This would include release on conditional parole.

This naturally leads to the question of the nature of a respondent's release following being held under INA sec. 235. As noted above, it cannot be a conditional parole based on the holding of Q. Li. Id. at 70 (noting that INA sec. 236 is for those aliens already within the United States and not applicants for admission). The Court concludes that such a release is a humanitarian parole. See generally Jennings v. Rodriguez, 583 U.S. 281, 300 (2018); See also Matter of M-S-, 27 I&N Dec. 509, 510 (A.G. 2019) ("There is no way to apply those provisions except as they were written—unless paroled, an alien must be detained until his asylum claim is adjudicated." (emphasis added). The Court acknowledges that the issuance of parole requires an affirmative act by DHS. See Matter of Arrabally and Yerrabelly, 25 I&N Dec. 771, 777 n.5 (BIA 2012) . DHS can not accidentally or negligently parole an individual. The Court finds that the DHS affirmative release by the respondent while that individual was held under INA sec. 235(b) is such an affirmative act. DHS may have called it conditional parole or release on one's own recognizance, but, under the posture of this case and the applicable precedent, that release is a humanitarian parole. This is function of substance not labeling.

There is a possibility that the release by DHS is a type of ultra vires action that exists in a space beyond any type contemplated by the INA. However, the Court has no case law or statutory basis to reach this conclusion nor what the ultimate effect of it would be. Indeed, the controlling case law militates against this reading. The Supreme Court notes that the release of someone from INA sec. 235(b) detention can only be a parole. See Jennings, 583 U.S. at 300

Please note that the Court is not ascribing to DHS any type of malicious or deceptive behavior in the release of the respondent, or those like them. Rather, DHS was operating under its understandable interpretation of the law. In fact, this Court, in its reading of the law prior to the issuance of Q. Li, found many individuals under identical circumstances to this case had not been paroled.

The respondent's case appears to fit the definition in Q. Li of an individual held under section 235 of the INA. The respondent was apparently apprehended in the vicinity of the border and was placed into removal proceedings shortly after that apprehension. The respondent was released by DHS, and not by an order from an Immigration Judge. Under these circumstances, the Court must conclude the respondent's release is a humanitarian parole.

The Court notes there are some differences in Q. Li versus this matter. First, the alien in that case was explicitly granted parole under INA sec. 212(d)(5). That same respondent was returned to DHS custody due to an Interpol "Red Notice." The Court concludes that these differences do not render the holding of Q Li

inapplicable to this case. Once again, both the Supreme Court and the BIA have noted a release for an individual held under section 235 is a parole. Indeed, Q. Li reaffirmed that the only method that person detained under INA sec. 235(b) was humanitarian parole. Id. at 69 ("The only exception permitting the release of aliens detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), is the parole authority provided by section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A)."). That DHS did not explicitly do so in this case does not alter the legal result. Second, the "Red Notice" was only related to the alien's redetention and not their original release. Therefore, this is a distinction without a difference. In addition, the mere fact that Q. Li was a case regarding bond does not limit its application solely to those proceedings. Bond and removal have different burdens and 8 C.F.R. 1003.19(d) does create an evidentiary and procedural barrier between the two in individual cases. However, there is nothing to suggest that a published BIA decision in a bond matter would render its reasoning inapplicable in a removal matter, and vice versa. To hold otherwise would lead to ludicrous results- i.e. a published case holding that a crime is categorically a crime involving moral turpitude would be limited only to bond or removal, whichever is the source of that published decision.

The Court terminates under 8 C.F.R. 1003.18(d). While this Court could hear the adjustment of status, that reason is neither a factor for or against denying the motion to terminate. The Court does consider the respondent's unlawful entry a negative factor, but to the Court it is not so negative that the motion should be denied. Further, there are no unusual circumstances or legal factors that give the Court pause in termination. DHS has not provided any other negative factors for the Court to consider. Based on the evidence of record and absent any evidence that USCIS will apply Q. Li differently from what is outlined above, the Court will exercise its discretion and terminate proceedings.

It should be noted that the Court does not terminate because of any defect in the charging document or charge. The holding of Q. Li does not invalidate the charge for those who have been paroled. As noted in that decision, a grant of parole is revoked once the charging document is issued. While this does not affect eligibility for the Cuban Adjustment Act, the respondent effectively "reverts back" to their prior status- that of one who has entered without inspection. See Matter of Armabula-Bravo, 28 I&N Dec. 388, 396 (BIA 2021).

The Motion to Terminate is granted.

Immigration Judge: NIZIOLEK, ALEC 06/05/2025

Appeal: Department of Homeland Security: ☐ waived ☑ reserved
Respondent: ☐ waived ☑ reserved
Appeal Due: 07/07/2025

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