FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-12318

YOAN AGUIAR-FERNANDEZ,
YENISLEY GONZALEZ-SANABRIA,
ESSINED YOANA AGUIAR-GONZALEZ,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A220-281-837

Before BRANCH, BRASHER, and HULL, Circuit Judges.

BRASHER, Circuit Judge:

The main question in this appeal is whether Cuban nationals who have been released on their own recognizance from immigration detention with documents citing 8 U.S.C. § 1226 as the basis for release are eligible for relief under the Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (codified as amended at 8 U.S.C. § 1255 note). The Aguiar-Fernandez family—Yoan Aguiar-Fernandez, his wife Yenisley Gonzalez-Sanabria, and his daughter Essined Yoana Aguiar-Gonzalez—were apprehended by border patrol officers, charged with being removable, and released on conditional parole under section 1226. They applied for an adjustment of status under the CAA. An immigration judge concluded that they are not eligible, the Board of Immigration Appeals affirmed, and the Aguiar-Fernandez family petitioned this Court for review. We conclude that to be eligible for relief under the CAA, the Aguiar-Fernandez family, as aliens who had not been inspected and admitted into the United States, had to receive humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). Release from immigration detention under section 1226's conditional parole provision does not suffice. Accordingly, we deny the petition for review.

I.

The Aguiar-Fernandez family, all Cuban citizens, unlawfully entered the United States near San Luis, Arizona, on June 25, 2021. After "jump[ing] the border," the family "turned [themselves] in to

the border patrol." They were briefly detained by the U.S. Department of Homeland Security, and each was issued a Form I-220A Order of Release on Recognizance. The Form I-220A Orders cited 8 U.S.C. § 1226 as the basis for their release.

Each member of the Aguiar-Fernandez family received a Form I-862 Notice to Appear, charging them with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as aliens who entered the United States without admission or parole. The family conceded removability at a hearing before an immigration judge.

Aguiar-Fernandez applied for asylum, withholding of removal, and protection under the Convention Against Torture. His wife and daughter were listed as joint applicants. Aguiar-Fernandez submitted that his family "ha[d] suffered past persecution on account of [their] political opinion in opposition to the Cuban regime" and that Aguiar-Fernandez's "life and freedom would be threatened on account of [his] political beliefs" if returned to Cuba.

Each member of the family filed a Form I-485 Application to Register Permanent Residence or Adjust Status, seeking to adjust their status under the CAA. They separately sought humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

The family appeared before an immigration judge for a merits hearing. During the hearing, the immigration judge noted that DHS had denied the family's request for humanitarian parole under section 1182(d)(5)(A) earlier that day, though the family resubmitted their request soon after.

Aguiar-Fernandez then testified about the events preceding his family's unlawful entry into the United States. He testified that he lived in Venezuela from 2010 to 2013 while on a service mission on behalf of the Cuban government. He sought to abandon the mission after being asked to persuade Venezuelan citizens to vote for the Venezuelan government, and he returned to Cuba in March 2013 after his colleagues informed the Cuban government of his intentions to leave the mission. Although Aguiar-Fernandez's mission passport—which authorized travel only to Venezuela—was confiscated upon returning to Cuba, he was never arrested or interrogated and remained employed by the same government agency. He also obtained a license from the Cuban government to operate an auto body shop from his residence. Aguiar-Fernandez's wife also was never arrested or interrogated and continued working as a nurse practitioner.

Aguiar-Fernandez further testified that Captain Cordero, a Cuban police captain, visited his auto body shop five or six times. Captain Cordero threatened to jail Aguiar-Fernandez and "tell[] everybody" that he abandoned the mission in Venezuela if he did not fix Cordero's car. During Captain Cordero's last visit to the shop, he struck Aguiar-Fernandez twice with a baton, prompting a scuffle during which both men fell to the ground. A May 14, 2016, medical report documented bruises to Aguiar-Fernandez's chest and scratches to his legs.

The Cuban authorities never cited or arrested Aguiar-Fernandez over his altercation with Captain Cordero. Aguiar-Fernandez then remained in Cuba for another two years without incident. Captain Cordero never again visited Aguiar-Fernandez after the altercation, and Aguiar-Fernandez did not experience issues with any other Cuban police officer. Moreover, Aguiar-Fernandez and his family obtained personal Cuban passports and ultimately left for Mexico in August 2018, where they remained until they illegally crossed the border into the United States on June 25, 2021. Though Cuban police visited his in-laws for an unspecified reason in 2019, and officials once questioned Aguiar-Fernandez's brother about his whereabouts, "nothing else has happened" since then.

Despite finding Aguiar-Fernandez's testimony credible, the immigration judge (1) pretermitted the applications for adjustment of status under the CAA; (2) denied Aguiar-Fernandez's application for asylum, withholding of removal, and CAT protection; and (3) ordered the family removed from the United States to Cuba.

For the adjustment-of-status applications, the immigration judge concluded that the Aguiar-Fernandez family was "released on condition of parole, rather than humanitarian parole." Doc. 8 at 221. The immigration judge reasoned that conditional parole under 8 U.S.C. § 1226(a) is distinct from humanitarian parole under section 1182(d)(5)(A). And the immigration judge concluded the CAA requires release through humanitarian parole under section 1182(d)(5)(A), not conditional parole under section 1226(a). Consequently, the family was ineligible for relief.

The immigration judge also denied Aguiar-Fernandez's application for asylum because he failed to establish past persecution or a well-founded fear of future persecution on account of his political opinion. The immigration judge similarly denied Aguiar-Fernandez's request for withholding of removal, reasoning that he had failed to prove that Cuba would be "unable or unwilling" to protect him. The immigration judge further denied Aguiar-Fernandez's request for protection under CAT because he failed to establish that he "would be tortured in the future by or at the acquiesce [sic] and consent or instigation of any public official or other person acting in an official capacity." *Id.* at 226.

The Aguiar-Fernandez family appealed to the BIA. They argued that the immigration judge erred in pretermitting their applications for adjustment of status under the CAA because, contrary to the paperwork granting them conditional parole under 8 U.S.C. § 1226, their release "constituted a humanitarian parole under [8 U.S.C. § 1182(d)(5)(A)]." They also challenged the immigration judge's decision to deny Aguiar-Fernandez's application for asylum, withholding of removal, and CAT protection.

The BIA summarily affirmed the immigration judge's ruling. This petition for review followed.

II.

"Where the BIA issues a decision, we review that decision, except to the extent that it expressly adopts the [immigration judge's] opinion." *Chen v. U.S. Att'y Gen.*, 463 F.3d 1228, 1230 (11th Cir. 2006). Because the BIA summarily affirmed the immigration

judge's decision, we review the immigration judge's decision as if it were the BIA's. *Id.*

We review the BIA's legal conclusions *de novo* and factual findings under the "highly deferential" substantial evidence test. *See A.P.A. v. U.S. Att'y Gen.*, 104 F.4th 230, 236 (11th Cir. 2024); *Serra v. U.S. Att'y Gen.*, 60 F.4th 653, 658 (11th Cir. 2023). Under this test, we "must affirm the BIA's decision if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole." *A.P.A.*, 104 F.4th at 236. To reverse factual findings, "we must find that the record not only supports reversal, but *compels* it." *Mendoza v. U.S. Att'y Gen.*, 327 F.3d 1283, 1287 (11th Cir. 2003) (emphasis added) (citing *Fahim v. U.S. Att'y Gen.*, 278 F.3d 1216, 1218 (11th Cir. 2002)). "[I]n the language of the [INA], the agency's determination whether a given set of undisputed facts rises to the level of persecution . . . is generally 'conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.'" *Urias-Orellana v. Bondi*, 607 U.S. 537, 545 (2026) (quoting 8 U.S.C. § 1252(b)(4)(B)).

III.

The Aguiar-Fernandez family challenges the immigration judge's determinations, which the BIA adopted, in two main respects. First, they argue that the immigration judge should not have pretermitted their applications for adjustment of status under the CAA. They contend that they are eligible for adjustment of status under the CAA because, as a matter of law, they received humanitarian parole when they were released from custody after

crossing the border. Second, they say that Aguiar-Fernandez will be subjected to persecution or torture upon removal to Cuba. They therefore contend that they should receive asylum, withholding of removal, or protection under the Convention Against Torture. We address each issue in turn.

A.

We begin with the Aguiar-Fernandez family's applications for adjustment of status. The BIA did not err when it determined that each member of the family is ineligible for relief under the CAA.[1]

The general adjustment of status provision, 8 U.S.C. § 1255(a), establishes a legal framework for aliens already inside the United States to become permanent residents without leaving the country. *Arevalo v. U.S. Att'y Gen.*, 872 F.3d 1184, 1191 (11th Cir. 2017). By enacting the CAA, Congress created a specific pathway for eligible Cubans to obtain lawful permanent residence beyond this general framework. Specifically, the CAA grants the Attorney General discretion to adjust the status of an individual who

[1] We ordinarily lack jurisdiction to review "judgment[s] regarding the granting of relief under" 8 U.S.C. § 1255, which is the general statute for adjustment of status. *See* 8 U.S.C. § 1252(a)(2)(B)(i). But we have previously held that adjustment of status under the CAA is separate and apart from adjustment of status under section 1255. *See Perez v. USCIS*, 774 F.3d 960, 967–68 (11th Cir. 2014). Moreover, the Aguiar-Fernandez family raises questions of law about their eligibility for relief under the CAA. We have jurisdiction to address those legal questions even if they arise from the denial of adjustment of status. *See* 8 U.S.C. § 1252(a)(2)(D), (b)(9).

(1) "is a native or citizen of Cuba"; (2) "has been inspected and admitted or paroled into the United States subsequent to January 1, 1959"; (3) "has been physically present in the United States for at least one year"; and (4) is "eligible to receive an immigrant visa and is admissible to the United States for permanent residence." 8 U.S.C. § 1255 note. Its provisions also apply to "the spouse and child of any alien" who qualifies under the Act. *Id.*

The dispute in this appeal centers on the second element of the CAA: whether each member of the Aguiar-Fernandez family has "been inspected and admitted or paroled into the United States." *Id.* The government argues that to satisfy this element and be eligible for CAA relief, each member of the family must have been granted humanitarian parole under section 1182(d)(5)(A). But because DHS released the family on conditional parole under section 1226(a)(2)(B), the government contends that they do not meet that requirement. The Aguiar-Fernandez family argues that, as a matter of law, they received humanitarian parole under section 1182(d)(5)(A) because their initial detention was governed by 8 U.S.C. § 1225(b)(2)(A), and humanitarian parole is the only mechanism for releasing an alien under that provision. As such, they argue that they are eligible for CAA relief.

Other circuits have held that aliens who have not been inspected and admitted into the United States are eligible for adjustment of status under section 1255(a) only if they have been "paroled into the United States" under 8 U.S.C. § 1182(d)(5)(A). *See Cruz-Miguel v. Holder*, 650 F.3d 189, 195–96, 198–200 (2d Cir. 2011);

Delgado-Sobalvarro v. Att'y Gen. of U.S., 625 F.3d 782, 786 (3d Cir. 2010); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116–20 (9th Cir. 2007); *Texas v. Biden*, 20 F.4th 928, 995–96 (5th Cir. 2021), *rev'd on other grounds*, 597 U.S. 785 (2022); *see also Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 258, 263 (BIA 2010). These circuits have reasoned that the statute's use of the phrase "paroled into the United States" compels this result.

We agree and adopt the same rule for the CAA. Like section 1255(a) itself, the CAA uses the term of art "paroled into the United States." "Paroled into the United States" tracks the wording of the humanitarian parole provision, section 1182(d)(5)(A). *Compare* 8 U.S.C. § 1255(a) (Attorney General may adjust the status of "an alien who was inspected and admitted or *paroled into the United States*" (emphasis added)), *and id.* § 1182(d)(5)(A) (Secretary of Homeland Security has discretion to "*parole into the United States* . . . for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States" (emphasis added)), *with id.* § 1255 note (Attorney General may adjust the status "of any alien who is a native or citizen of Cuba and who has been inspected and admitted or *paroled into the United States* subsequent to January 1, 1959 . . ." (emphasis added)). Unless statutory context counsels otherwise, we presume that "language carries the same meaning as does the same language in related statutes." *United States v. Gillis*, 938 F.3d 1181, 1201 (11th Cir. 2019); *see also United States v. Davis*, 588 U.S. 445, 458 (2019). And there is no reason to believe the phrase "paroled into the United States" should

carry different meanings in the CAA, section 1255(a), and the humanitarian parole provision, section 1182(d)(5)(A).

Although conditional release under section 1226(a) may be a type of generic parole, it does not authorize "parole[] into the United States." Section 1226(a)(2)(B) provides for "conditional parole," which permits the release of aliens "arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Like the Second Circuit concluded in *Cruz-Miguel* while interpreting section 1255(a), "[t]his textual distinction by itself signals that Congress intended the phrase 'paroled into the United States' . . . to reference persons granted 'parole into the United States' under § 1182(d)(5)(A), not those released on 'conditional parole' under § 1226(a)(2)(B)." *Cruz-Miguel*, 650 F.3d at 196; *see also Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 232 F.3d 854, 859 (11th Cir. 2000) ("[W]hen Congress uses different language in similar sections, it intends different meanings."). For these reasons, we conclude that humanitarian parole—that is, "parole into the United States"—under section 1182(d)(5)(A) is required for CAA eligibility.

We next ask whether the members of the Aguiar-Fernandez family were granted such parole. They were not. The record reflects that DHS never granted humanitarian parole to the family. Instead, DHS expressly released them on conditional parole under section 1226(a)(2)(B). The Form I-220A Orders governing their release from immigration detention cite the federal regulations cor-

responding to section 1226; the applications for adjustment of status directly list the Form I-220A Orders as the basis for their presence in the United States; and no member of the family was ever given an I-94 card, which humanitarian parolees normally receive. *See Ortega-Cervantes*, 501 F.3d at 1115. When they asked for humanitarian parole during their removal proceedings, that parole was expressly denied by DHS.

Even so, the Aguiar-Fernandez family argues that they were granted humanitarian parole under section 1182(d)(5)(A) as a matter of law. Under their theory, DHS's detention authority derived from section 1225(b)(2)(A), and the only form of parole available under section 1225(b)(2)(A) is humanitarian parole. Thus, the family reasons, they were granted humanitarian parole as a matter of law when they were released from custody.

We disagree with this theory. Whether DHS has granted humanitarian parole under section 1182(d)(5)(A) is a question of historical fact. That determination depends on the agency's rationale for releasing the alien. It is not a legal question that turns on the agency's detention authority. Like any other factual question, whether the agency has granted humanitarian parole is primarily resolved by the record. An agency's detention authority might be relevant in a case where the rationale for the parole decision is unclear on the record. *Cf. Williams v. United States*, 985 F.3d 813, 817 (11th Cir. 2021) (district court's reason for imposing a sentence is one of "historical fact" that may be proved by direct evidence, such as record of decision, or indirect evidence, such as the state of the

law at the time of the decision). But the question remains a factual question about whether and why the agency granted parole.

Other circuits have likewise treated this question as one of historical fact. For example, the Ninth Circuit addressed a similar circumstance in *Ortega-Cervantes*, 501 F.3d at 1115–16. There, after a Mexican citizen crossed the U.S.-Mexico border and was apprehended, the Immigration and Naturalization Service issued a warrant for his arrest under section 1226. *Id.* at 1115. Later, as here, the petitioner received a Form I-220A Order releasing him on his own recognizance under section 1226. *Id.* ("It is apparent that the INS used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."). And, as here, the petitioner in *Ortega-Cervantes* never received any form referencing "parole into the United States" under section 1182(d)(5)(A). Nor did "immigration officials . . . issue [him] an I-94 card, which is typically given to § 1182(d)(5)(A) parolees." *Id.* (citation modified). Because it saw "no indication that the government intended to parole [the petitioner] into the United States pursuant to § 1182(d)(5)(A)," the Ninth Circuit concluded that he had not been granted humanitarian parole. *Id.* at 1116 (citation modified).

Here, the record establishes that the Aguiar-Fernandez family was granted conditional parole under section 1226 rather than humanitarian parole under section 1182(d)(5)(A). The family is therefore ineligible for adjustment of status under the CAA.

B.

We now turn to the Aguiar-Fernandez family's requests for asylum, withholding of removal, and Convention Against Torture protection. The BIA did not err when it determined that the family was not entitled to any form of relief.

To qualify for asylum, an alien must present "credible evidence" establishing "(1) past persecution on account of her political opinion or any other protected ground, or (2) a 'well-founded fear' that her political opinion or any other protected ground will cause future persecution." *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1230–31 (11th Cir. 2005) (quoting 8 C.F.R. § 208.13(a), (b)).

The burden for withholding of removal and CAT relief is higher than the burden for asylum. *See Lingeswaran v. U.S. Att'y Gen.*, 969 F.3d 1278, 1293 & n.10 (11th Cir. 2020). To receive withholding of removal, an alien must prove that his "life or freedom would be threatened in [the] country [of removal] because of [his] race, religion, nationality, membership in a particular social group, or political opinion." *Id.* at 1232 (citation modified) (quoting 8 U.S.C. § 1231(b)(3)(A)). CAT relief likewise carries a higher burden than for asylum eligibility and requires proving "that it is more likely than not that [the alien] would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2) (citation modified).

The Aguiar-Fernandez family has not satisfied any of those standards here. As for past persecution, although Aguiar-Fernandez argues on appeal that he was surveilled and interrogated after

returning to Cuba from the Venezuela mission, the record fails to provide any evidence that Aguiar-Fernandez or his wife was arrested or interrogated. Instead, both remained employed, and Aguiar-Fernandez was able to continue working for the same government-sponsored organization until he voluntarily chose to leave to operate an auto body shop, for which the government issued him an occupational license. Moreover, Aguiar-Fernandez was never cited, arrested, or interrogated for his altercation with Captain Cordero. The record also contains no evidence that he had any further interactions with Cordero or any other Cuban police officer following the incident. And despite abandoning the Venezuela mission and his altercation with Captain Cordero, Aguiar-Fernandez and his family were issued passports and traveled to Mexico in August 2018 without incident.

The family points us to Aguiar-Fernandez's interactions with Captain Cordero as establishing past persecution. But the record suggests that Cordero acted in a private capacity. *Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1258 (11th Cir. 2006) ("[E]vidence that either is consistent with acts of private violence . . . or that merely shows that a person has been the victim of criminal activity, does not constitute evidence of persecution based on a statutorily protected ground."). And, in any event, our past decisions make clear that Aguiar-Fernandez's interactions with Cordero do not rise to the level of persecution. *See Murugan v. U.S. Att'y Gen.*, 10 F.4th 1185, 1192–93 (11th Cir. 2021) (no past persecution where a Sri Lankan petitioner was "detained three times and, during a [] [four]-day detention, tied to a chair, slapped, and kicked"); *Djonda v. U.S.*

Att'y Gen., 514 F.3d 1168, 1171, 1173–74 (11th Cir. 2008) (no past persecution despite testimony that the Togolese petitioner was arrested, beaten, detained for thirty-six hours, hospitalized for two days, and threatened with rearrest); *see also Martinez v. U.S. Att'y Gen.*, 992 F.3d 1283, 1291 (11th Cir. 2021) ("Persecution is an 'extreme concept' requiring evidence of 'more than a few isolated incidents of verbal harassment or intimidation.'" (quoting *Sepulveda*, 401 F.3d at 1231)).

The Aguiar-Fernandez family's arguments about future persecution, a threat to their life or freedom, or the likelihood of torture fare no better. The family has not established why the BIA's conclusion about the likelihood of future persecution or torture warrants reversal. In any event, the record confirms that the family is not entitled to asylum, withholding of removal, or CAT protection based on a fear of future persecution or torture upon removal to Cuba. Accordingly, we reject the family's requests for those forms of relief.

IV.

For the foregoing reasons, the petition is **DENIED**.