



# BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2013-05

**SUBJECT: SPECIAL PAROLE PLAN CONSIDERATIONS FOR INMATES  
SUBJECT TO DEPORTATION**

## INTRODUCTION

This Administrative Directive clarifies special factors to be considered at parole hearings when an inmate is subject to deportation by Immigration and Customs Enforcement (ICE).

## LEGAL AUTHORITY

**California Code of Regulations (CCR), title 15, section 2281(d)(8)** states that a panel, in determining an inmate's suitability for parole, may consider that "[t]he prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release."

*In re Andrade* (2006) 141 Cal.App.4th 807 held that the Board cannot require parole plans in both California and Mexico when the probability of deportation is high. Specifically, the court found that "[b]y requiring petitioner to develop parole plans in both California and Mexico, the Board is holding him to a higher standard than the standard required by California Code of Regulations, title 15, section 2402. . . . Accordingly, he need only have realistic parole plans in Mexico to satisfy the requirements of section 2402, subd (d)(8)." (*Id.*, at pp. 817-818.)

However, "In construing this regulation we are not holding that the Board is barred from ever requiring a prisoner facing deportation to develop parole plans in the state. It may be that because of other circumstances (e.g., inmate not convicted of an aggravated felony or the inmate is eligible for asylum), that a prisoner's deportation is not a near-certainty . . . . In many cases, . . . the Board would be able to discharge its responsibility by conditioning parole upon a prisoner's release to [ICE] custody. [Citations.]" (*Id.*, at p. 818.)

## DISCUSSION

Pursuant to CCR, title 15, section 2402(d)(8), a parole panel should consider an inmate's plans for release when deciding whether to grant parole. Such inquiries are case specific and should focus on the viability of the inmate's plans (i.e., whether they are realistic). Based on *In re Andrade*, if the panel determines there is a high probability the inmate will be deported<sup>1</sup> then the hearing panel may not require California parole plans. However, if it is uncertain whether an inmate will be deported then the hearing panel may inquire into California parole plans.

For example, if the inmate is contesting the deportation order or seeking asylum in the United States then it is less likely the inmate will be deported. Also, if the inmate's deportation order involves a country that does not have an extradition treaty with the United States then it is less likely the inmate will be deported. In such cases, the panel should inquire into the inmate's plans for release in California. (A list of non-treaty countries is attached to this administrative directive.)

## DIRECTIVE

When deciding whether to ask an inmate who is not a United States citizen about their plans for release in California, a parole panel need not determine whether the inmate will actually be deported (that decision will be reached by an immigration judge) but simply determine how likely it is that the inmate will be deported. If it is a near certainty that an inmate will be deported, then the panel shall not deny parole based on the lack of realistic plans for release in California. However, if it is uncertain that an inmate will be deported, then the panel may deny parole if the inmate's plans for release in California pose an unreasonable risk of danger to society.

*This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the legal office at (916) 324-7604.*

APPROVED BY:

  
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JENNIFER P. SHAFFER  
Executive Officer, BPH

DATE:

12/17/2013

<sup>1</sup> If an inmate who is not a United States citizen is granted parole, they are transferred to an ICE detention center and scheduled for deportation proceedings before an immigration judge. At the hearing, the judge considers many factors when deciding whether or not to order the inmate's deportation, including whether there is a treaty with the destination country, the nature of the inmate's crime, the inmate's medical condition, whether the inmate is contesting deportation or seeking asylum, among other things.

## Appendix B. Countries with Which the United States Has No Bilateral Extradition Treaty

Afghanistan	Georgia	Qatar
Algeria	Guinea	
Andorra	Guinea-Bissau	Russian Federation
Angola		Rwanda
Armenia	Indonesia	
Azerbaijan	Iran	Sao Tome & Principe
		Saudi Arabia
Bahrain	Kazakhstan	Senegal
Bangladesh	Korea, North	Serbia and Montenegro <sup>a</sup>
Belarus	Kuwait	
Benin	Kyrgyzstan	Somalia
Bhutan		Sudan
Bosnia and Herzegovina <sup>a</sup>		Syria
Botswana	Laos	
Brunei	Lebanon	Taiwan <sup>b</sup>
Burkina Faso	Libya	Tajikistan
Burundi		Togo
	Macedonia <sup>a</sup>	Tunisia
Cambodia	Madagascar	Turkmenistan
Cameroon	Maldives	
Cape Verde	Mali	Uganda
Central African Republic	Mauritania	Ukraine
Chad	Moldova	United Arab Emirates
China	Mongolia	Uzbekistan
Comoros	Montenegro <sup>a</sup>	
Croatia <sup>a</sup>	Morocco	
Ivory Coast (Cote D'Ivoire)	Mozambique	Vanuatu
		Vatican City
Djibouti	Namibia	Vietnam
	Nepal	
	Niger	Western Samoa
Equatorial Guinea		
Eritrea	Oman	Yemen, Republic of
Ethiopia		
		Zaire

- a. The United States had an extradition treaty with the former Yugoslavia prior to its breakup (32 Stat. 1890). Since then, it has recognized at least some of the countries which were once part of Yugoslavia as successor nations, see, e.g., *Arambasic v. Ashcroft*, 403 F.Supp.2d 951 (D.S.D. 2005) (Croatia); *Sacirbey v. Guccione*, 2006 WL 2585561 (No. 05 Cv. 2949(BSJ)(FM))(S.D.N.Y. Sept. 7, 2006)(Bosnia and Herzegovina), overruled on other grounds by 589 F.3d 52 (2d Cir. 2009).
- b. The United States severed official relations with Taiwan in 1979, when it recognized the People's Republic of China as the sole legal government of China. Certain agreements entered prior to the termination of official relations, as well as relations contemplated under multilateral agreements since then, are administered on a nongovernmental basis by the American Institute in Taiwan, which was established pursuant to the Taiwan Relations Act (P.L. 96-8).