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Discrimination, Detention, and Deportation: Immigration & Refugees

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Asylum seekers apprehended at a United States port-of-entry are immediately interviewed by immigration officials. If they fail to establish a credible fear of persecution in their home countries, they are summarily deported. If they do meet the credible fear standard, they are held in detention pending removal proceedings before an immigration judge, a process that may take months or even years to complete. Rather than being detained indefinitely, asylum-seekers are to be considered for release on parole. According to the current U.S. Customs and Enforcement (ICE) directive (Parole Directive), when an arriving alien found to have a credible fear establishes to the satisfaction of [ICE] his or her identity and that he or she presents neither a flight risk nor danger to the community, [ICE] should, absent additional factors . . . , parole the alien on the basis that his or her continued detention is not in the public interest. The Parole Directive further provides for an automatic parole interview within seven days after the finding of credible fear, as well as other procedural safeguards, including notice, translation, and a written decision.

The overwhelming majority of arriving asylum seekers have no criminal histories, pose no threat to the community, and do not need to be detained to ensure their appearance in immigration court. However, under the Trump administration, several ICE regional field offices have adopted what are effectively no parole policies, whereby ICE categorically denies parole in nearly all cases (94%-98%) except for extreme medical emergencies, or where there is insufficient detention space. These ICE field offices are Detroit (which covers Michigan and Ohio), El Paso (which covers New Mexico and West Texas), Los Angeles, Philadelphia (which covers Pennsylvania), and the Otay Mesa Detention Center in San Diego.

ICE also routinely ignores its own Parole Directives procedures, including the requirement of a prompt (within seven days) and automatic parole review. The result is that asylum seekers are routinely detained for the duration of their removal casesfor months or even yearswith no possibility of release. ICEs no parole policy has resulted in the arbitrary detention of thousands of asylum seekers who pose no flight risk or danger to the community.

The no parole policy violates the Immigration and Nationality Act (INA); the Fifth Amendment Due Process Clause; the Administrative Procedures Act (APA); and ICEs own Parole Directive, which generally provides for the parole of arriving asylum seekers with a credible fear.

On March 15, 2018, we filed a class action complaint in the U.S. District Court for the District of Columbia. We requested that the Court require the federal government to provide an individualized review of flight risk and danger, either through the parole process or by providing bond hearings before an Immigration Judge. Plaintiffs are eight individuals currently detained by ICE, all of whom have passed credible fear screenings meaning that a U.S. asylum officer has determined their fear of persecution is credible, and that they have a significant possibility of being granted full asylum. Defendants are the Secretary of the Department of Homeland Security (DHS), Acting Director for ICE, Director of the Executive Office for Immigration Review, U.S. Attorney General Jeff Sessions, and the directors of the five ICE Field Offices that have almost entirely stopped granting humanitarian parole.

We requested Class Certification, and a Preliminary Injunction. The Court ordered that our Motion for Class Certification would not be briefed until other motions were litigated. After the Preliminary Injunction and a Motion to Dismiss filed by Defendants were briefed, we filed a Notice of Supplemental Authority informing the Court that, in recent oral arguments in a similar case, the Justice Department conceded that federal courts have jurisdiction to enjoin federal parole statutesa position contrary to the federal governments position in this case.

On July 2 the Court granted our Motion for Preliminary Injunction and Motion for Class Certification. The Courts Preliminary Injunction Order prevents Defendants from denying parole to any provisional class members unless an individualized parole hearing results in a determination the class member presents a flight risk or a danger to the community.

At a July 10 status conference the Court ordered Defendants Motion to Dismiss to be held in abeyance. The parties agreed on steps for implementation including an advisory notice describing those steps.

On July 24 the Court held a status conference and ordered Defendants to post the agreed-upon notice to class members in all detention centers, in addition to directly advising class members, by July 29; to provide Plaintiffs a preliminary list of all class members and where they were detained by August 1, and continue to supplement the list on a rolling basis as Defendants determined where class members were detained; to advise all class members of the Order by August 14; to conduct parole interviews within seven days of when class members were advised, then make parole determinations within seven days of each interview; and to submit a progress report to the Court by August 24. Defendants filed updated class lists on September 24 and September 28.

In August the Court ordered Defendants to produce a monthly updated spreadsheet showing progress on parole determinations. Attorneys at the ACLU Immigrant Rights Project created a practice advisory for the local immigration bar, and distributed it through the affiliates, to ensure that the Order can be employed by all putative class members.

On September 7 Plaintiffs filed a Motion to Compel the production of documents and testimony that would show Defendants progress in complying with the Preliminary Injunction Order or, in the alternative, an Order to Show Cause why Defendants should not be held in contempt of the preliminary injunction. On September 25 Defendants filed their opposition to our brief, and on October 4 we filed a Reply.

Since the Court granted the preliminary injunction, seven of the nine named plaintiffs have been released on parole. On September 4, we sent a letter to ICE demanding the release of the remaining two named plaintiffs by September 10, 2018. On September 11, after Defendants did not release these two plaintiffs, Plaintiffs filed two petitions for writ of habeas corpus, one in U.S. District Court for the Eastern District of Michigan (see Damus v. Director ICE) and one in U.S. District Court for the District of Columbia.

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