

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://www.acluohio.org/en/cases/amaya-cruz-et-al-v-adducci-et-al>

Policy Issue Resources

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U.S. Customs and Immigration Enforcement (ICE) contracts with four local jails in Ohio to imprison civil immigration detainees (people whom the federal government detains under immigration, rather than criminal, statutes). Two of these are in the Northern District of Ohio: the Seneca and Geauga county jails. Between them, these two jails were holding over 100 ICE detainees at the beginning of the pandemic. The jails were doing no testing and taking almost no precautionary measures to contain the spread of the virus should it enter the facilities. Meanwhile, many of the people detained were elderly or had other comorbidities including, for example, diabetes, hypertension, and asthma, which put them at excessively high risk for serious, long-term complications or death if they contracted COVID-19. We have been retained by ten such individuals detained at these two highly dangerous jails. Although ICE had published internal guidance directing field offices to perform reviews and consider administrative release of high-risk people, the ICE field office with jurisdiction over Ohio and Michigan released zero people voluntarily. A few detainees had been released in Michigan based on a federal court order.

Continued incarceration of civil detainees who are at heightened risk of serious illness or death if they contract COVID-19 is unconstitutionally punitive under the Fifth Amendment and the appropriate remedy is 28 U.S.C. Sec. 2241 habeas corpus release.

On April 10, 2020, we filed a Complaint and Petition for Writ of Habeas Corpus along with a motion for temporary restraining order in the United States District Court for the Northern District of Ohio, demanding the release of Petitioner-Plaintiffs (Original Plaintiffs) Romel Amaya-Cruz, Jonas Nsongi Mbonga, Elvira Pascalenco, and Hector Manuel Reyes Cruz from the ICE detention facilities where they were being held. On April 13 we filed an amended petition and complaint, and new TRO, demanding the release of additional Petitioner-Plaintiffs (Second Round Plaintiffs) Nidal Aburidi, Karen Vanessa Castro Murillo, Mariano Cortez Rodriguez, Marcelo Hernandez Lopez, Gelacio Hernandez Velaquez, and Jose Luis Ramirez Alonso. Defendants-Respondents were ICE, local ICE field director Rebecca Adducci, interim ICE director Matthew Albence, acting DHS Secretary Chad Wolf, and U.S. Attorney General William Barr. Respondents filed their Answer to our first Petition on April 14.

The Court held a hearing addressing the first Motion for TRO on April 15, and on April 16 ordered the parties to confer on the conditions of release for Petitioner-Plaintiff Amaya-Cruz. However at that time the Court did not find sufficient evidence to release the other three Petitioner-Plaintiffs who had filed the first TRO motion. After negotiation, Respondents refused to release Mr. Amaya-Cruz, claiming his medical conditions were not severe enough to warrant release. After further emergency briefing and another hearing, on April 18 the Court amended its April 16 order, directing Mr. Amaya-Cruz's immediate release. Respondents then filed a brief seeking overly restrictive conditions of release, which we opposed, and the Court ruled again as to the conditions of his release. In this order, the first instance of an Ohio federal court releasing an ICE detainee because of the pandemic, the Court set conditions of release similar to a bond hearing: Mr. Amaya-Cruz had to self-quarantine for 14 days and was prohibited from driving. At that point, the parties resumed negotiation for potential release of the remaining three Original Plaintiffs.

On April 24 Respondents filed their opposition to the second Petition and Motion for TRO. Between April 24 and May 1, the parties filed briefing, attempted to negotiate, and participated in telephonic hearings regarding every Petitioner's particular medical circumstances as well as their criminal (if any) and immigration histories. During this time, ICE suddenly deported second-round Plaintiff Karen Vanessa Castro Murillo to Honduras, mooted her habeas claim. Due to pressure from the litigation, ICE also released Second Round Plaintiffs Hernandez Velazquez and Ramirez Alonso on GPS monitoring without a court order. On April 27 the Court denied the release of Nidal Aburidi, Mariano Cortez Rodriguez, Marcelo Hernandez Lopez not because they were not at risk, but rather on the basis of flight risk and community danger and sustained the denial of release as to Original Plaintiff Mr. Reyes Cruz. And finally on May 1, after additional briefing and expert testimony, the Court ordered the release of Original Plaintiffs Elvira Pascalenco and Jonas Nsongi Mbonga.

The Court entered a final order and closed the case. However, with respect to the released Petitioner-Plaintiffs, the Court ordered that if ICE wishes to seek their re-detention, it should file a brief with the Court on August 13, 2020, explaining its reasoning, and we should reply on August 18, and the Court set a hearing on August 20. On August 12, in light of the ongoing severity of the pandemic, the parties jointly requested to extend the case schedule, and the Court approved a deferral to October. As the pandemic persisted, the Court approved multiple additional 60-day continuances. On April 12, 2021, the parties requested that the Court suspend the briefing deadlines so they could complete settlement discussions and draft and execute a settlement agreement.

Negotiations stalled when opposing counsel learned that all settlement agreements had to go through Washington, D.C. Recently, the government obtained approval for settlement terms, and the parties are actively working towards a settlement. The Court held a status conference on September 22 and set a deadline of October 29 for parties to finalize a settlement agreement and file a stipulated dismissal. In the event the parties cannot settle by the Court's deadline, the Court indicated it would dispose of the case on that date. In the

meantime, all of our clients continue to fight their underlying immigration cases, and they are all healthy and safe.

On December 17, we filed a Stipulated Notice of Dismissal pursuant to a mutually beneficial Settlement Agreement. The terms of the Settlement Agreement will remain in effect for three years with the hope that our clients underlying immigration cases will be resolved during that time. The case is now closed, and the Court retains jurisdiction to enforce the terms of the Settlement Agreement.

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