

Discrimination, Detention, and Deportation: Immigration & Refugees

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

Policy Issue Resources

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In the Southern District of Ohio, ICE contracts with the Morrow and Butler county jails to imprison federal immigration detainees. 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 against spread of the contagion should the disease enter the facilities. Meanwhile, many of the people detained were elderly or had other comorbidities that put them at excessively high risk if they contracted COVID-19, including, e.g., diabetes, hypertension, and asthma. If these people became sick which was very likely once the virus entered the facility, given its virulence and the difficulty of suppressing contagion in a congregate environment they could have long-term health ramifications or die. Although ICE had published internal guidance directing field offices to perform reviews and consider administrative release of high-risk people, the field office with jurisdiction over Ohio released zero people voluntarily. The few detainees, in Michigan, that had been released resulted from federal litigation. Originally, we represented three people detained at the Morrow and Butler jails who were at high risk of contracting COVID-19 once the virus entered the jails. At the time we filed suit, there had been one case detected at Butler. But within one week of our filing, Morrow jail suddenly became the locus of an outbreak; almost everyone there became COVID-19 positive. We undertook representation of 20 additional people detained at Morrow - with and without relevant comorbidities - after they were repeatedly denied medical care necessary to shield them from the virus's worst outcomes. The situation at Morrow was unconscionable: temperatures were being taken with expired thermometers, indicating that feverish people were hypothermic; people could not call 911 from the inside and the jail cancelled ambulances dispatched from the outside; people were hospitalized only after entire dorm populations had begged for hours because a person has collapsed or turned blue. During the litigation, one person died from COVID-19 complications after his release from Morrow. ICE has not released anyone to the community without litigation, except for the man who died, Oscar Lopez Acosta.

Detention 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. The appropriate remedy is 28 U.S.C. Sec. 2241, habeas corpus release. Detention of COVID-19-positive comorbid people in conditions where they cannot access medical treatment violates the Fifth Amendment and the appropriate remedy is release.

On April 24 we filed our original Complaint and Petition for Writ of Habeas Corpus along with a motion for temporary restraining order in the United States District Court for the Southern District of Ohio on behalf of three ICE detainees held at the Morrow and Butler county jails. In this case, we alleged that each Petitioner-Plaintiff had a comorbidity (asthma, immunosuppression, and hypertension) that put them at high risk of serious illness or death if they contracted the virus. The TRO was granted on April 27 after an emergency hearing, and all three Petitioner-Plaintiffs were ordered released.

On May 5 we filed an amended petition and complaint with a new TRO, adding 20 new Petitioner-Plaintiffs, this time under a theory of medical negligence that rose to the level of constitutional release, in addition to the risk theory (but still bringing the claims in habeas). The Court denied the new TRO without prejudice on May 7, on evidentiary grounds.

Respondents filed their opposition to the original Writ on May 6, and their Answer, Response, Motion to Dismiss, or Motion for Summary Judgment addressing both Writs as a single document on May 11. On May 14 the Court held an evidentiary preliminary injunction hearing by video to determine whether to release the new Petitioner-Plaintiffs, and whether to continue the release of the original Petitioner-Plaintiffs. After the hearing, on May 14, the Court ordered the release of 11 additional people, finding they were at high risk of serious long term illness or death from COVID-19 because of the jail and ICE's inability to provide them access to the medical care they needed to survive COVID-19. The Court found that our other 7 clients were not at high risk medically and therefore they were not released. Additionally, the Court ordered that two of our original clients, Sidi Njie and Adenis Prieto Refunjol, should stay in the community, but ordered our third original client, Mory Keita, re-detained, finding he had not met his evidentiary burden to prove his medical risk. In the meantime, ICE had administratively released the remaining two of our clients.

On May 27 we moved for reconsideration regarding Mr. Keita. Respondents opposed on May 29. On June 5, the court denied our motion.

On June 25, Mr. Keita was ordered to appear at a show-cause hearing on June 30, if he had not first self-surrendered to ICE. We represented his interests at that hearing and on June 29 we moved to withdraw as his counsel. Our request was granted on July 8. Mr. Keita has now been re-detained in the Butler County Jail.

Also on July 8, the Court set a mediation conference for July 30. On July 13, Respondents filed an interlocutory appeal. However, the parties were able to reach a settlement and submitted a proposed consent order on August 5 which negated the appeal. The Consent Order was entered the next day and we jointly filed a stipulation of voluntary dismissal. The Consent Order's terms protect our clients

from being detained long-term, or indefinitely, to minimize their risk of contracting COVID-19. It provides that ICE cannot re-detain our clients until it has obtained travel documents and a final removal order for them, meaning that their deportation date can be set.

On August 7 we moved to withdraw as counsel for another of our clients, Mr. Ramirez Portillo. The motion was granted on August 11.

Following the entry of the Consent Order, we assisted our remaining clients subject to the Order in complying, including the requirement that they periodically check in with ICE. Many of our clients, due to their circumstances, were ultimately forced to voluntarily surrender to ICE under the terms of the Order. In the course of assisting our clients with this, three of our clients did not make required self-surrenders, and ICE issued Contempt Notices as to them on August 7 and August 24. Despite our best efforts to aid them in compliance, Judge Morrison found all three in contempt on September 3, 2020.

On October 18 we sent letters to all of our clients notifying them that we have terminated our representation of them. However, we continue to monitor compliance with the Consent Order.

On December 9 the Court ordered a status report which the parties jointly filed on December 11. On January 5, 2021, Respondents moved to dismiss Mr. Keita and Mr. Portillo, whom we no longer represent. We did not oppose. The Court granted the motion, ending the active case, but retaining jurisdiction over the Consent Order.

Most recently, Respondents claimed they were able to re-detain another one of our clients, Mr. Njie. He did not appear at the time ICE wanted to re-detain him. On January 7, 2021, Respondents filed a Notice of Contempt as to Mr. Njie. The Court issued a Show Cause Order on January 11, setting an in-person hearing for January 21. On January 13 Respondents moved unsuccessfully to vacate the hearing. Mr. Njie appeared at his January 21 hearing, and is now at home under GPS monitoring.

We continue to work to support our other clients legal needs by, for example, helping them comply with the order and helping them find immigration counsel. At this point, five of our clients remain safe and in the community for the foreseeable future. The rest of the people whom we originally helped free from the horrible conditions at Morrow Jail have either been deported, detained, or are subject to open arrest warrants.

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