

Immigration and Customs Enforcement Records Received Through FOIA Confirm Need for Increased Oversight of Agency's Arbitrary and Unfair Parole Decisions for Asylum Seekers

Records received by Human Rights First from Immigration and Customs Enforcement (ICE) through a Freedom of Information Act (FOIA) [request](#) show that the agency systematically and arbitrarily failed to release detained asylum seekers on parole and set other outrageous conditions for release. The Biden administration should act swiftly to create independent oversight of ICE parole decisions nationally to ensure that eligible asylum seekers are released from detention on parole without unfair requirements that are not necessary to secure their appearance in court for asylum hearings.

Table 1: Parole Grant Rate for Single Adult Asylum Seekers with Positive CFI		
	2017	2018
All	47.7%	59.9%
<i>ICE Field Office</i>		
El Paso	0.8%	33.3%
Philadelphia	1.4%	17.2%
Detroit	3.1%	25.4%
Newark	3.6%	38.2%
Los Angeles	10.0%	18.0%
Salt Lake City	11.1%	8.7%
New Orleans	16.9%	1.6%
Atlanta	19.8%	68.5%
Chicago	27.3%	11.6%
Phoenix	28.9%	43.6%
San Diego	29.2%	55.4%
Seattle	40.0%	49.5%
Buffalo	41.3%	82.1%
Washington	46.6%	31.3%
New York City	57.8%	*
San Antonio	60.3%	86.4%
San Francisco	66.7%	76.3%
Denver	69.3%	83.6%
Houston	78.3%	95.4%
Miami	81.8%	54.8%
St. Paul	*	28.6%
Boston	*	93.0%
Dallas	*	98.1%
Baltimore	*	*
*Fewer than 10 parole decisions.		

Under the 2009 [Parole Directive](#), detained asylum seekers who have passed a credible fear interview (CFI) (meaning an asylum officer has determined their fear of persecution is credible and that they have a significant possibility of receiving full asylum) should be granted parole in the “public interest” and released from detention during the pendency of their asylum claims, if they establish their identity and demonstrate they are not a flight or security risk.

Thousands of Asylum Seekers Denied Release from Detention on Parole

However, the government records received by Human Rights First through FOIA show that between **2017¹ and 2018 ICE denied parole to over 6,000 asylum seekers who had passed a CFI.** The parole grant rate in 2017 was just 47.7 percent and rose only slightly in 2018 to 60 percent. By way of contrast, the parole grant rate nationally was 80.6 percent in early 2011 – based on records ICE accidentally included in its disclosure of the 2017 and 2018 parole logs. Similarly, between 2011 and 2013, the Detroit, El Paso, Los Angeles, Newark, and Philadelphia ICE Field Offices (which have jurisdiction over multiple ICE detention centers) granted parole to more than [92 percent](#) of arriving asylum seekers who passed a CFI.

Whether an asylum seeker is released on parole depends heavily on where in the country the person is detained - with some ICE field offices denying parole in

¹ Records provided by ICE included summary statistics for October 2017 but did not include data by field office for that month. Therefore, information disaggregated by field office reported here do not include the month of October 2017.

nearly all cases (see Table 1). For instance, **in 2017, the El Paso Field Office granted parole to just 0.3 percent of adult asylum seekers who had passed a CFI and the New Orleans Field Office found only 1.6 percent of asylum seekers eligible for parole in 2018.** Asylum seekers detained under the authority of the Dallas Field Office were far more likely to be released on parole with more than 98 percent of requests approved in 2018.

Unjustified, Arbitrary, and Pretextual Parole Denials

The records received by Human Rights First confirm that ICE officers routinely fail to comply with the 2009 Parole Directive, which requires ICE to parole arriving asylum seekers if they (1) establish their identity, (2) are not a flight risk, and (3) do not pose a security threat. In many cases, ICE officers failed to state any basis for denial, simply noting that the asylum seeker was an “enforcement priority,” that there was “no urgent humanitarian need” or “medical necessity” for release, or that there were “limited equities and lack of urgent humanitarian factors.”

The New Orleans Field Office, for instance, indicated that asylum seekers were an “enforcement priority” in 100 percent of its parole denials in 2017 and 2018, often without providing any additional basis for the decision. These denials clearly violate the Parole Directive, which requires parole in the public interest in the absence of the three factors described above.

Even when ICE officers do record a basis for denial of parole, the stated reason is often a pretext to continue detaining the individual. For instance, at least 60 percent of total parole denials nationwide in 2018 were based exclusively on “flight risk.” Some field offices cited flight risk for nearly every parole denial, which strongly indicates that ICE officers are not considering the individual circumstances of each asylum seeker as required by the Parole Directive. The Los Angeles Field Office, for instance, cited flight risk as one of the bases for denial in 92 percent of its parole denials in 2018. The Newark Field Office cited flight risk in 98.9 percent of its parole denials in 2017 and 2018.

Denying parole to asylum seekers because of a perceived flight risk is unnecessary and wasteful, in addition to inhumane: studies have [repeatedly confirmed](#) that the vast majority of non-detained asylum seekers appear for their court hearings. For instance, [96 percent](#) of non-detained immigrants represented by a lawyer attended all their hearings from 2008 to 2018.

In addition, in denying parole based on flight risk, officers frequently used arbitrary and pretextual reasons including that the asylum seeker’s sponsor was a friend, “non-biological relative,” or not “immediate family;” that the sponsor did not have permanent legal status or meet arbitrary income requirements; or that the case was pending before an immigration judge (the posture of virtually all asylum seekers who have passed a credible fear interview and not yet had their case decided). Other arbitrary justifications for denying parole include claims that an asylum seeker is a flight risk due to “issues with the utility bill” and vague conclusions that the “sponsor is questionable.” The Los Angeles Field Office denied parole to multiple asylum seekers in 2017 and 2018 citing attempted entry without inspection as a reason for denying parole. This reasoning effectively penalizes asylum seekers for the manner in which they entered the United States to seek protection, such penalties are prohibited under the 1951 Refugee Convention and its 1967 Protocol and is particularly cruel given that at the time the Trump administration was [limiting](#) the number of asylum seekers permitted to request protection at ports of entry under the [metering](#) policy.

By manufacturing these rigid and inhumane rules for release, field offices disregard the Parole Directive’s requirement that each parole request be considered on a case-by-case basis and that officers determine whether alternatives to detention would eliminate flight risk. In one instance, ICE denied parole to an asylum seeker and noted that “he is diagnosed with schizophrenic,” a highly concerning decision given

the inadequate mental health care in ICE detention centers and likely a violation of federal [protections](#) for persons with disabilities. Additionally, ICE wrongfully denied parole to an asylum seeker who “refused to apply for a new Indian passport.” Requiring asylum seekers to obtain passports from the country where they fear persecution could be used by the government to undermine those individuals’ asylum claims as government attorneys often argue that asylum seekers who obtain passports have and can avail themselves of the protection of that country’s government.

Outrageous, Unaffordable Bonds

The records received by Human Rights First from ICE also reveal that some ICE field offices impose additional and unnecessary requirements on asylum seekers granted parole, including the payment of prohibitively high monetary bonds to be released. Asylum seekers in immigration detention are often indigent and unable to pay even a low bond to be released from detention. Importantly, the 2009 Parole Directive does not require that additional conditions be placed on the asylum seeker beyond establishing their identity and that they pose no flight or security risk for them to be released on parole and requires ICE to consider an individual’s ability to pay monetary bond. ICE’s demands for payment of bond as condition of release on parole often result in asylum seekers being denied release.

The San Diego Field Office imposed astronomically high bond amounts on asylum seekers granted parole including multiple forced to pay \$50,000, \$65,000, and \$75,000 bonds to be released. The total bond amount imposed by the San Diego Field Office on asylum seekers over 2017 and 2018 equaled \$9.7 million. In 2017, 96 percent of asylum seekers granted parole under the San Diego Field Office’s authority were required to post bond with an average bond of nearly \$13,000. In 2018, 95 percent were required to pay bond to be released on parole with an average bond of more than \$16,000. Many of the asylum seekers granted parole were also subjected to intrusive electronic monitoring, such as ankle shackles, according to the parole logs ICE released via FOIA.

Similarly, the San Francisco Field Office nearly always imposed bond on asylum seekers granted parole. All asylum seekers granted parole by the San Francisco Field Office in 2017 were required to pay a monetary bond with an average bond of \$6,700. In 2018, 93 percent of asylum seekers granted parole by the San Francisco Field Office had to pay bond to secure their release with an average bond of \$4,700.

Other ICE field offices also regularly impose bond on asylum seekers granted parole but did not record this information in the parole logs released through the FOIA request.

Suing ICE for Parole Denials

In March 2018, Human Rights First, the American Civil Liberties Union (ACLU), Center for Gender and Refugee Studies, and Covington & Burling LLP filed [litigation](#) to challenge ICE’s extremely high parole denial rates in the Detroit, El Paso, Los Angeles, Newark, and Philadelphia Field Offices. At the beginning of 2017, the parole grant-rate [dropped](#) to zero or near-zero in those field offices. In July 2018, a federal district court [ordered](#) the covered ICE field offices in the *Damus* litigation to conduct case-by-case review of whether asylum seekers should be released on parole. In May 2019, the Southern Poverty Law Center and ACLU of Louisiana filed a separate [suit](#) challenging ICE’s policy of denying nearly all parole requests in the New Orleans Field Office.

Table 2: Parole Grant Rates Pre- and Post-<i>Damus</i> Ruling in Covered Field Offices²			
	Jan – Dec 2017	Jan – June 2018	July 2018 to July 2021
Detroit	3.1%	23.1%	28.0%
El Paso	0.8%	2.4%	80.7%
Los Angeles	10.0%	15.0%	16.5%
Newark	3.6%	34.5%	57.7%
Philadelphia	1.4%	10.2%	40.0%

Following the *Damus* decision, parole rates generally rose in the covered field offices but ICE compliance with the court’s order varied widely (see Table 2) and parole grant rates remain well below the 92 percent grant rate for those offices between 2011 and 2013. As of July 2021, the grant rate across the five covered ICE field offices is 56.1 percent, resulting in the

continued detention of thousands of asylum seekers. **Ninety-six percent of all parole denials were based on flight risk.** The Los Angeles Field Office continued to deny asylum seekers parole at high rates with a grant rate that is virtually unchanged from the first half of 2018 before the *Damus* suit was filed.

Oversight and Reform

The extremely low and disparate parole grant rates across the country, pretextual justifications for parole denials, and imposition of unpayable monetary bonds and invasive electronic monitoring underscore the need for the Biden administration to ensure uniform compliance with and application of the existing Parole Directive. The administration should also initiate crucial reforms to the asylum seeker parole system, including by requiring consistent record keeping on parole determinations, publicly posting parole denial rates by ICE Field Office (and disaggregating the reasons for denials and nationalities of asylum seekers denied parole), and establishing independent monitoring mechanisms.

To view the ICE parole logs Human Rights First received via FOIA, please contact: hrf@westendstrategy.com.

² 2017 and January to June 2018 data drawn from FOIA records; July 2018 to 2021 data drawn from government status reports in *Damus* litigation.