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## **Judge and Jailer**

### **Asylum Seekers Denied Parole in Wake of Trump Executive Order**

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## Introduction

On January 25, 2017, President Donald Trump issued an executive order directing the Department of Homeland Security (DHS) to allocate “all legally available resources” to construct and operate immigration detention facilities and hold immigrants there for the duration of their court proceedings. In the eight months since, Immigration and Customs Enforcement (ICE) has largely refused to release asylum seekers from detention on parole, leaving many locked up in immigration detention facilities and jails.

An asylum seeker who requests protection at a formal U.S. port of entry—either at an airport or along the border—is blocked by regulatory language from an immigration court custody hearing to assess whether or not he or she can be released from detention. Instead, in determining whether to release the asylum seeker on parole, ICE acts as both judge and jailer.

In the Ninth Circuit, these asylum seekers have access to immigration court custody hearings, known as bond hearings, after six months in detention due to a federal appeals court decision. That ruling is slated to be reviewed by the Supreme Court this fall in the case of *Jennings v. Rodriguez*.

ICE does not promptly release statistics relating to the detention of asylum seekers and the parole of those labeled “arriving aliens” because they sought protection at a formal port of entry. However, through research and interviews conducted in late August and September with nonprofit and pro bono attorneys working with asylum seekers held at many of the largest detention facilities across the country, Human Rights First has identified several trends. Human Rights First’s findings include:

- ICE’s 2009 directive on standards for parole of asylum seekers (ICE Asylum Parole Directive) appears to exist merely on paper and not in practice in many detention locations. Although former DHS Secretary John Kelly stated in a February 20 memorandum implementing President Trump’s January 25 order that the parole policy was still “in full force and effect,” an assertion the government repeated to the Supreme Court one day later in a February 21 brief filed in the *Jennings v. Rodriguez* case, pro bono attorneys working at many detention facilities overwhelmingly report that they rarely, if ever, have an arriving asylum seeker client released from detention on parole. This failure to apply the Asylum Parole Directive renders it meaningless and turns the submission of a parole application into a pointless charade.
- Since President Trump’s January 25 executive order, pro bono attorneys working at a number of facilities and jails—including in Illinois, Michigan, Louisiana, New York, the San Francisco Bay Area, and South Texas—report a shift in ICE’s exercise of parole authority. Now arriving asylum seekers held at these facilities are rarely, if ever, released on parole.

For instance, of the 25 asylum seekers represented pro bono by the National Immigrant Justice Center at facilities in the Midwest since the Trump Executive Order was issued in January, not a single one has been released from immigration detention on parole, even though the directive instructs ICE to review each case for potential parole eligibility.

In South Texas, parole went from “rare to virtually non-existent” at one large detention facility. Staff from one nonprofit reported that they could not think of a single arriving asylum seeker held at that facility who had been released on parole in the wake of the executive order. Of the 13 parole requests for asylum seekers submitted after February 2017 by

nonprofit attorneys with the Centro Legal de la Raza in the San Francisco Bay area, only one woman was released from detention on parole.

- At other detention facilities and jails where parole grants were already rare, as Human Rights First documented in 2016, pro bono attorneys report that parole releases continue to be rare to non-existent. Nonprofit attorneys in Arizona report that they continue to see “very few if any” paroles for arriving asylum seekers since the Trump executive order. Nonprofit attorneys at the American Friends Service Committee and Human Rights First report that in practice, there is no parole for arriving asylum seekers detained in New Jersey. Of the 27 arriving asylum seekers represented pro bono by American Friends Service Committee in New Jersey since the January 25 executive order, not one has been released from detention on parole.
- Asylum seekers who are eligible for parole consideration under the 2009 ICE Asylum Parole Directive are often needlessly held in detention by ICE—for many months or longer—despite meeting the relevant release criteria. For instance, one of Human Rights First’s pro bono clients, a gay man who fled persecution in his West African country, was held in a jail in New Jersey for fourteen months, and only released from detention in April 2017 after he was granted asylum. Other examples in this report include: a torture survivor from Burkina Faso detained for seventeen months; a Cuban political opposition activist detained over seven months; a Mexican journalist denied parole despite support from groups that document persecution of journalists; a political activist from Singapore who was detained for over seven months; a Honduran grandmother with two U.S. citizen relatives who was denied parole; and a Venezuelan human rights lawyer

detained nearly six months as of the release of this report.

In the few locations where asylum seekers are sometimes released on parole, these releases appear to be aberrations often driven by bed space needs, local practices, the requirements of legal rulings (such as limitations on detention of families with children under the *Flores* case) or are accompanied by the imposition of punitive measures such as unduly high bonds or painful and stigmatizing ankle bracelets.

U.S. treaty commitments—the Refugee Convention, its Protocol, and the International Covenant on Civil and Political Rights—prohibit detention that is not necessary, disproportionate, and lacks crucial safeguards such as court assessments of continued detention. Not only do these policies and practices violate U.S. human rights and refugee protection commitments, but they also undermine U.S. global leadership on refugee protection and set a poor example for countries around the world struggling to host very large numbers of refugees and other forcibly displaced people.

Additionally, the Trump Administration’s massive over-reliance on detention is extremely costly. DHS requested 2.7 billion dollars to fund an average daily level of 51,379 detention beds for fiscal year 2018. The desire to hold asylum seekers in detention, rather than to employ more cost-effective alternatives, makes clear that these policies are aimed at penalizing those who seek protection in the United States and attempting to deter others from the same.

The United States should, as detailed in the recommendations below, provide prompt court review of immigration detention. The Trump Administration should rescind provisions in executive orders and implementing memoranda that call for the use of immigration detention that violates U.S. refugee protection and human rights

treaty commitments. Congress should take the steps outlined below to greatly reduce unnecessary immigration detention and reject legislative proposals that would make it even more difficult for asylum seekers to be released from detention. DHS and the Department of Justice should revise regulatory language to provide immigration court custody hearings for arriving asylum seekers. ICE must effectively implement the Asylum Parole Directive, releasing those who meet the parole criteria.

The theoretical possibility of parole—especially when it only exists on paper and not in practice—does not negate the need for immigration court custody hearings. Not only are such hearings legally required under U.S. treaties and constitutional protections, but given the long history of failure by U.S. immigration detention authorities to fairly, consistently, and effectively implement parole for asylum seekers, the safeguard of immigration court custody hearings is critical.

## Background: ICE as Judge and Jailer for Arriving Asylum Seekers

In the wake of World War II, the United States helped lead efforts to draft the Convention Relating to the Status of Refugees. Through the Convention's Protocol the United States is legally obligated to treat refugees in accordance with the Convention's protections. Congress enacted into law the Refugee Act of 1980 to set up a formal process for applying for asylum in the United States. The United States is also bound by the International Covenant on Civil and Political Rights (ICCPR), which prohibits the unnecessary, disproportionate or otherwise arbitrary detention of immigrants, and requires prompt court review of detention.

Under provisions of a 1996 immigration law, individuals who arrive at U.S. ports of entry without valid immigration documentation are subjected to a summary deportation process known as “expedited removal,” and “mandatory detention” during this processing. Asylum seekers with credible fears of persecution are not supposed to be deported under that process, but are instead supposed to be referred for assessment of their asylum eligibility. The use of expedited removal has been significantly expanded over the years and is now applied to individuals apprehended within 14 days of crossing and within one hundred miles of the border. President Trump has also called for an additional expansion of the use of expedited removal within the United States. The use of expedited removal has led to the automatic initial detention of many asylum seekers and, along with other factors, a sharp escalation of U.S. immigration detention.

Various immigration agency memoranda issued in the wake of the 1996 expedited removal law explain that “arriving” asylum seekers—those who request protection at formal ports of entry—can be assessed by ICE for parole eligibility after they are determined to have a credible fear of persecution.<sup>1</sup> These criteria have generally included sufficiently establishing identity, demonstrating community ties or lack of flight risk, and posing no danger to the community. In late 2009, ICE issued an updated policy directive outlining in greater detail asylum parole criteria and procedures. Entitled “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture,” the policy directive instructs ICE personnel to parole arriving asylum seekers who have a credible fear of persecution, if an individual’s “identity is sufficiently established, the alien poses neither a flight risk nor a danger to the community, and no additional factors weigh against release.”<sup>2</sup>

The 2009 Asylum Parole Directive was issued in the wake of reports issued by the bipartisan U.S. Commission on International Religious Freedom (USCIRF), Human Rights First, and other groups that had documented the often lengthy, inconsistent, unnecessary, and costly detention of asylum seekers in the United States.<sup>3</sup> USCIRF welcomed the issuance of the Asylum Parole Directive.<sup>4</sup>

As detailed in Human Rights First's July 2016 report "Lifeline on Lockdown," U.S. immigration authorities have a long history of failing to effectively and consistently implement parole for "arriving" asylum seekers, leaving many languishing in immigration jails for months or years.<sup>5</sup>

Other categories of immigrants in removal proceedings do have access to immigration court custody reviews, including asylum seekers who present themselves to or are apprehended by immigration enforcement officers after crossing the border between ports of entry.

But without the safeguard of immigration court custody hearings, arriving asylum seekers are left with having their detaining authority serve as decision-maker in terms of assessing their eligibility for release from detention on parole. Those within the Ninth Circuit's jurisdiction have access to immigration court custody hearings after six months of detention time. The Supreme Court will consider the question of six-month custody hearings this fall in the case of *Jennings v. Rodriguez*.<sup>6</sup>

The lack of effective and fair release processes has a devastating impact on asylum seekers and undermines U.S. global leadership on refugee protection and human rights. One Mexican journalist who sought asylum in the United States last year described the "hell" he endured in U.S. immigration detention in an opinion piece in *The Washington Post*:

*From the first day I crossed the border heading north, I saw discrimination, abuse and humiliation. They transferred me to a privately run detention center called West Texas Detention Facility in the city of Sierra Blanca. There, I experienced the worst days of my life. It is known by the detainees as "el gallinero" ("the henhouse"), because the barracks resemble a stable for livestock. It was designed for about 60 people but houses more than 100, who are exposed to all kinds of diseases and don't have access to adequate medical attention.*

*The henhouse of Sierra Blanca is small, with metal bunks, worn-out rubber mattresses, wooden floors, bathrooms with the walls covered in green and yellow mold, weeds everywhere, and snakes and rats that come in the night. The guards look at the detainees with disgust, and everything we say to them is ignored. Honestly, it is hell.*

*After I had been in Sierra Blanca for a week, one Sunday around 10 p.m., I was transferred to another privately run detention center: Cibola County Correctional Center, in Milan, N.M. The transfer was the worst torture. They had us chained by our feet and hips, with our hands pressed against our chests, without being able to move for more than 26 hours, as if we were dangerous criminals.<sup>7</sup>*

The journalist was denied parole twice despite strong ties to the United States, including a cousin who is a U.S. citizen, as well as the support of groups that monitor the persecution of journalists. Ultimately, these parole denials and the prospect of even more time in U.S. detention facilities prompted him to abandon his request for asylum and return to Mexico, despite the acute and well-documented dangers facing him and other journalists in his home country.

## The Trump Executive Orders: Detention for the Duration of Proceedings

On January 25, 2017 President Trump issued an executive order entitled “Border Security and Immigration Enforcement Improvements.”<sup>8</sup> The executive order directs DHS to “take all appropriate action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico.” It further directs the secretary of homeland security to “immediately take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country to the extent permitted by law” and to “issue new policy guidance to all Department of Homeland Security personnel regarding the appropriate and consistent use of lawful detention authority under the INA [Immigration and Nationality Act], including the termination of the practice commonly known as ‘catch and release.’”<sup>9</sup> With respect to the exercise of parole, the executive order states, in section 11(d), that the secretary should take “appropriate action to ensure that parole authority . . . is exercised . . . only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.”<sup>10</sup>

On February 20, 2017 then-Secretary of Homeland Security John Kelly issued a memorandum to implement President Trump’s January 25 executive order.<sup>11</sup> The February 20 DHS memorandum reiterates the president’s call to detain immigrants for the duration of their immigration proceedings and calls for the issuance or revision of regulations, to the extent that current regulations are inconsistent with the guidance. With respect to ICE parole authority,

the secretary stated in the February 20 memorandum that parole authority should be exercised “sparingly.” Section K of the memorandum specifically states that ICE’s parole directive for asylum seekers who established credible fear remains “in full force and effect.” The effectiveness of the Asylum Parole Directive is described, however, as “pending” the secretary’s further review, the evaluation of the impact of changes made pursuant to the executive order and “additional guidance” from the ICE Director.

In addition, the DHS memorandum states that the parole directive should be implemented “consistent with its plain language,” and that “in every case, the burden to establish that his or her release would neither pose a danger to the community, nor a risk of flight remain on the individual [asylum seeker], and ICE retains ultimate discretion whether it grants parole in a particular case.” The February 20 DHS memorandum also states that an asylum seeker must “affirmatively establish” that he or she meets the requirements for parole, which may signal that DHS plans to move away from assessing whether each asylum seeker who passes the credible fear screening meets the criteria for release. This shift would leave the many asylum seekers who do not have the resources to pay for legal counsel stuck in detention for the duration of their proceedings even if they meet the relevant release criteria.

The administration asserted that its Asylum Parole Directive is still in force in a February 21, 2017 written submission to the Supreme Court in the case of *Jennings v Rodriguez*. The government stated, in a supplemental brief, that: “The government’s policy is to automatically consider parole for arriving aliens found to have a credible fear, and to release the alien if he establishes his identity, demonstrates that he is not a flight risk or danger, and there are no countervailing considerations.” Citing the February 20 DHS memorandum, the brief asserts that “this policy

remains in ‘full force and effect.’”<sup>12</sup> The government has argued, in this case, that the availability of parole renders prolonged detentions constitutional and that parole proceedings are an otherwise adequate substitute for a custody hearing by an immigration judge.<sup>13</sup>

## The Numbers: Escalating Detention and Continuing Data Gaps

In the months since the January 25 executive order, ICE has held large numbers of immigrants and asylum seekers in immigration detention. In April and August of 2017, ICE held a daily average of 40,467 and 38,153 people in immigration detention, respectively.<sup>14</sup> By contrast, in fiscal year 2016, the average daily detention population was 34,376.<sup>15</sup>

Congress enacted legislation that requires ICE to provide data on the number of asylum seekers held in detention, including their average lengths of stay in detention and rates of release.<sup>16</sup> ICE, however, does not complete these reports in a timely manner. The last time ICE provided Congress with the required report was for fiscal year 2014. As detailed in Human Rights First’s July 2016 report, “Lifeline on Lockdown,” these statistical reports are typically difficult for the public to extricate from ICE even through the filing of Freedom of Information Act requests. The statistical information provided in these reports is not well-explained and the data varies from year to year, making detention trends difficult to track and analyze. Moreover, the data often does not fully take into account longer-term detentions, as it only includes detention times as of the time the data is generated.

In the absence of timely and reliable ICE statistics, USCIS data provides some indication of the number of asylum seekers likely taken into

custody through expedited removal. USCIS statistics indicate that 26,980 asylum seekers were referred for credible fear interviews during the five months after the January 25 executive order alone.<sup>17</sup> Additional numbers of asylum seekers were likely sent to immigration detention after they were taken into custody within the United States and put into regular removal proceedings.

About 9902 of the asylum seekers referred for credible fear interviews had initially sought protection at or after arriving at a U.S. port of entry.<sup>18</sup> Of these, about 6922 arriving asylum seekers were determined to meet the credible fear standard in the five months after the January 25 order, meaning that they were eligible to be assessed by ICE—their detaining authority—for parole eligibility under the directive.

## Shifts in Parole Releases in Wake of Trump Order

Since the January 25 executive order and the February 20 DHS implementing memorandum, ICE’s implementation of parole for arriving asylum seekers has shifted in many detention facilities across the country. In these detention locations, eligible asylum seekers were sometimes released from detention on parole. Now they are rarely, if ever, released on parole. For example:<sup>19</sup>

- **Southern California:** Pro bono attorneys assisting asylum seekers detained in the Otay Mesa detention facility in Southern California report that they are no longer seeing any releases of arriving asylum seekers on parole. Instead they report that all of their arriving asylum seeker clients have been denied parole or continue to be detained without being released on parole. These asylum seekers are denied parole even when they have submitted evidence of their identity and have established

family and support networks. In one case, ICE in Southern California denied parole to a grandmother from Honduras, claiming she was a "flight risk," even though her parole application was supported by two U.S.-citizen family members. ICE officers told her non-profit attorney, in the wake of the executive order, that ICE was not releasing anyone on parole now. Pro bono attorneys in San Diego also report that ICE is refusing to set bond for individuals who do have access to immigration court custody determinations.

- **Midwest detention facilities:** Pro bono attorneys working at detention facilities and jails in Illinois, Michigan, and Wisconsin report that ICE shifted its implementation of parole for arriving asylum seekers in the wake of the Trump executive order. Prior to the executive order, the ICE office in Chicago regularly granted parole in cases where an asylum seeker had passed their credible fear interviews and met the other criteria, such as providing documentation of identity and a family member or other community tie who could serve as a sponsor. Pro bono attorneys report that after the executive order, ICE began to categorically deny parole requests or simply did not release asylum seekers on parole, though ICE told attorneys that it had granted a few requests. Local ICE stated that: "there must be no presumption that an individual alien's release would not pose a danger or risk of flight." Of the 25 arriving asylum seekers provided with pro bono counsel through the National Immigrant Justice Center (NIJC) since the executive order was issued in January, not a single one has been released from immigration detention on parole. In five of these cases NIJC pro bono attorneys filed formal parole requests (though the parole directive does not require formal filings and instead instructs ICE to review each case to assess potential parole eligibility). Each
- of these parole requests was denied. Instead these asylum seekers—from Ethiopia, Haiti, Nigeria and Venezuela—were only released after immigration courts ruled they were eligible for asylum.
- **South Texas:** A pro bono attorney who assists many detained asylum seekers held at the Port Isabel Service Processing Center in Port Isabel, Texas reports that since February 2017, parole "has gone from rare to virtually nonexistent." The attorney advised Human Rights First that "[t]he detainees are aware of this [shift in parole] and report that [ICE detention officers] tell them that they are not granting parole." The attorney could not think of a single arriving asylum seeker represented or assisted by her legal office who had been granted parole by ICE in the wake of the executive order. On September 26, 2017, Texas Rio Grande Legal Aid filed a lawsuit on behalf of five individual asylum seekers who have been detained in Texas facilities for periods ranging from five to twenty months after requesting asylum at U.S. ports of entry, passing their credible fear interviews, and filing formal requests for parole with supporting documentation. All were denied.
- **Western New York:** Pro bono attorneys assisting asylum seekers held at the Buffalo Federal Detention Facility in Batavia, New York report a sharp shift in ICE parole implementation in the wake of the January 25 executive order. Prior to the order, arriving asylum seekers who could satisfy the criteria outlined in the parole directive were released from detention on parole unless there was a reason why they did not meet the standards. One attorney reported that some asylum seekers have agreed to accept deportation orders because they can't bear to be held in detention facilities for longer, even in cases where they are terrified of returning. A motion for preliminary injunction, filed on behalf of

asylum seekers in a case in the Western District of New York on September 25, 2017, asserts that asylum seekers have been told that parole is no longer available at the immigration detention facility in Batavia, New York.

According to data provided by the government in that case, parole grants fell sharply after the January 25 executive order, from fifty percent down to about twelve to fourteen percent. In the month after the case was filed, on July 28, parole rates suddenly rose again to about forty-five percent.<sup>20</sup>

- **San Francisco Bay Area:** Pro bono attorneys at Centro Legal de la Raza in the San Francisco Bay area report seeing a significant increase in ICE parole denials and lack of response to parole requests after the issuance of the January 25 executive order and the February DHS implementing memorandum. Asylum seekers in the area are held at several jails, as well as at the 500-bed Mesa Verde facility in Bakersfield. They also report that ICE deportation officers have stopped responding to parole requests in general, and have stopped responding, or rarely respond, to attorney follow up calls regarding parole. Of the 13 parole requests submitted on behalf of arriving asylum seekers after March 1, 2017 by Centro Legal attorneys to ICE officials in San Francisco or Bakersfield, only one woman was granted parole and released from detention. Another asylum seeker was told that she would be released on parole if she could pay a \$9,000 bond, an amount that neither she nor her family could afford to pay. She was only released from detention after she was granted asylum by the immigration court. Of the 11 additional parole requests, five were explicitly denied and five received no response despite significant follow-up. One other parole request was first denied based on an asserted insufficiency of evidence and, after additional evidence was submitted,

the attorneys received no response. In all the cases in which attorneys submitted parole applications, they did so because they believed the asylum seekers satisfied the parole criteria. These asylum seekers came from a number of countries including Eritrea, Guatemala, Mexico, Togo, Pakistan and Venezuela.

- **Los Angeles Area:** Pro bono attorneys assisting asylum seekers and immigrants at the James A. Musick Facility in Irvine report that parole for arriving asylum seekers appears to be “nearly impossible” at that facility. For instance, Public Counsel, a non-profit legal organization in Los Angeles, reports that it only had one arriving asylum seeker held at this facility released from detention on parole in the months since the executive order and the February DHS implementing memorandum were issued.
- **Louisiana:** Following the January 25 executive order, pro bono attorneys assisting asylum seekers held at the LaSalle Detention Facility and the Pine Prairie Correctional Center in Louisiana report that ICE officials told pro bono attorneys that they would be following the February 20 DHS memorandum and as a result would only grant parole to arriving asylum seekers “sparingly.” When asked what constitutes an “urgent humanitarian reason or significant public benefit,” ICE officials advised that they did not believe there was much that would meet that standard now. While asylum seekers were sometimes released from detention on parole in Louisiana prior to these directives, the February 20 memorandum appeared to add an additional—nearly insurmountable—restriction onto parole assessments, even though the 2009 parole memorandum was supposedly still “in full force and effect.”

In some cases asylum seekers or their counsel were advised by ICE that parole requests are

being denied due to the executive order. For example, several asylum seekers who were denied parole by ICE in Chicago were informed that parole denials were the result of the executive order. On these parole denials ICE checked a new box—one that had recently been added to its form parole denial letters—stating that the parole requests were denied due to “Other: Per Executive Order Border Security and Immigration Enforcement Improvements, Section 11(d).” While this ICE office stated that the parole policy for asylum seekers remains in effect “pending further guidance,” the office told attorneys it had “been reminded to apply this policy consistent with its plain language and to ensure the alien is held to the burden of establishing identity and that his release will not pose a danger or risk of flight. There must be no presumption that an individual alien’s release would not pose a danger or risk of flight.”

In Western New York, pro bono attorneys report that some parole denials now, in the wake of the executive order, include a new broad explanation of the reasons for a parole denial described as “[t]here is no significant humanitarian or public benefit to warrant your release on parole.” Some asylum seekers were told that parole was no longer available, according to the federal court complaint filed for asylum seekers at the Batavia detention facility. In Southern California, as noted above, ICE told a pro bono attorney, in the wake of the executive order, that its officers were not releasing anyone on parole.

## Parole Remains Rare to Non-Existent Elsewhere

In parts of the country where parole requests were routinely denied in the wake of the Obama administration’s November 2014 memorandum on the prioritization of border cases, pro bono attorneys who represent asylum seekers report

that their clients continue to be denied parole in the wake of the Trump executive order and the February 20 DHS memorandum.<sup>21</sup> For example:

- **Arizona:** Pro bono attorneys representing asylum seekers held at the Eloy Detention Center in Arizona, which has a bed capacity of over 1550, report that they continue to see “very few, if any” releases on parole for arriving asylum seekers since the Trump order was issued.
- **New Jersey:** Pro bono attorneys representing asylum seekers held in immigration detention facilities and jails in New Jersey report that they have had “absolutely no one” granted parole since January 25, and that “in practice, there is no parole for asylum seekers in New Jersey.” Asylum seekers and immigrants detained in New Jersey are held in the 300-bed Elizabeth Contract Detention Facility, as well as county jails in Essex and Hudson counties. This near-moratorium on parole preceded the executive order, as detailed in Human Rights First’s November 2017 report “Detention of Asylum Seekers in New Jersey.” Of the 27 arriving asylum seekers represented by the American Friends Service Committee (AFSC) in New Jersey since the executive order, not one has been released from detention on parole. All of the 27 individuals had passed their credible fear interviews, and all were supposed to be assessed for potential parole eligibility under the parole directive. In seven cases, AFSC attorneys filed formal parole applications, but none of these parole applications were granted. Similarly, none of Human Rights First’s pro bono asylum clients have been released from detention on parole in New Jersey in the wake of the order. ICE locally also reported in April 2017 that no asylum seekers had been released on parole during the previous four months.

- **Pacific Northwest:** Pro bono attorneys who assist asylum seekers and immigrants held at the Tacoma Northwest Detention Center in Washington, a facility with over 1500 beds, report that ICE generally denies or ignores parole requests for arriving asylum seekers. This parole policy was in place both before and after the executive order. Since January, however, pro bono attorneys assisting asylum seekers at the facility report that they have not had any arriving asylum seeker client released from detention on parole. These parole denials include cases where asylum seekers had passed their credible fear interviews, had identity documentation, and had U.S. citizen siblings or close family.
- **Pearsall, Texas:** Pro bono attorneys who assist asylum seekers at the South Texas Detention Complex in Pearsall, Texas, which has a bed capacity of 1890, report that arriving asylum seekers are rarely released on parole from the Pearsall facility in the wake of the executive order, as they were prior to the executive order. In the experience of non-profit attorneys, arriving asylum seekers are generally not released from this detention facility even when they appear to meet the parole criteria. Of the ten arriving asylum seekers assisted by one non-profit legal office working at this facility for instance, none were released from detention on parole. One woman was told she would be released on parole if she could pay a bond of \$7,500, but remained in detention when she could not afford to pay.

Under the parole directive, ICE officials are instructed to review each case to assess potential eligibility for release. Yet ICE often fails to conduct parole interviews, issue written parole decisions, or provide meaningful explanations for parole denials. While each case should, under the directive, be assessed case by case regardless of

whether a formal parole application is filed or not, in the many detention facilities where parole is rarely, if ever, granted, some attorneys reported that they have largely stopped filing what appear to be essentially pointless applications for parole.

## Parole Based on Bed Space Availability or Other Factors Not in Directive

In some instances where asylum seekers are released on parole, pro bono attorneys have reported that parole was granted at times when the detention facilities were close to full occupancy.<sup>22</sup> This indicates that ICE may have granted parole in order to free up bed space for newly detained individuals. Several transgender women, for example, were released on parole from the Santa Ana City Jail detention facility at the exact same time that ICE was ending its contract with that facility. Asylum seekers who meet the parole criteria have long been denied parole for reasons that have nothing to do with their individual circumstances.<sup>23</sup> For instance, asylum seekers have been denied parole simply because detention bed space is available.<sup>24</sup>

At the T. Don Hutto Residential Center, an immigration detention facility that holds women, asylum-seeking women who appeared to meet the parole criteria were generally denied parole in the six months after the executive order. Then pro bono attorneys learned that arriving asylum seekers who had passed credible fear screenings were suddenly receiving parole assessments and in some cases were released from detention. This aberration appeared to coincide with an increase in the number of women sent to the facility, suggesting that the parole grants may have been prompted by a need to free up bed space at the facility.

In one Florida facility, pro bono attorneys report arriving asylum seekers are assessed for parole eligibility and that some individuals have been released. In some cases, however, asylum seekers remain in detention because ICE is now requiring that they pay bonds of \$15,000 to \$20,000, amounts that are too high for many asylum seekers to afford.

## Detention and Parole of Families

The majority of asylum seeking families taken into DHS custody along the U.S. southern border requested protection after crossing the border. Many of these families fled brutal violence and persecution in the Northern Triangle of Central America. Some family asylum cases originate at formal ports of entry.

Families with children are required, under the *Flores* settlement agreement, to be released from immigration detention within several days.<sup>25</sup> Pro bono attorneys representing families held in immigration detention report that when ICE releases arriving asylum seeker families on parole, it often imposes onerous requirements such as the payment of unduly high bonds or the use of stigmatizing ankle shackles.<sup>26</sup> Pro bono attorneys assisting families detained in Pennsylvania advised that almost all of their clients report that the ankle shackles cause pain and discomfort, are difficult to keep charged, and lead them to be perceived as criminals in public. Some asylum seekers report that employers do not want to hire them because of the ankle shackles. One asylum seeker who was stranded in Florida during Hurricane Irma was afraid to flee because she could not reach ICE to secure permission to leave the state.

## Examples of Asylum Seekers Denied Parole

Asylum seekers are held in immigration detention facilities and jails across the country. The conditions in adult facilities used for civil immigration detention closely resemble those used in criminal correctional facilities. Some are actually jails or correctional facilities. Asylum seekers are made to wear prison uniforms, often have little or no meaningful outdoor access, and have highly restricted movement. Asylum seekers often spend 23 hours a day in one detention unit where they eat, sleep, and watch television.

When they are denied parole—whether through a formal denial or a failure to exercise parole authority—asylum seekers are held for months or longer in these immigration detention facilities and jails. Human Rights First has documented cases of long-term detentions in its prior reports.<sup>27</sup> In the wake of the January 20 executive order, asylum seekers continue to be held in detention for months or more in cases where ICE declines to grant release on parole. For example:<sup>28</sup>

- **A West African asylum seeker targeted for persecution due to his sexual orientation was held in U.S. immigration detention for over fourteen months**, despite having a brother who was a U.S. citizen. An unrepresented West African asylum seeker was held by ICE in the Hudson County Correctional Facility in New Jersey for nearly one year without a parole interview despite repeatedly submitting materials in support of his parole eligibility. After learning of his plight, Human Rights First met with the asylum seeker who had submitted his parole application three times, beginning in early 2016 after he passed his credible fear interview. ICE had never issued a response. Even though his application included his national identity card, his birth certificate, and a sponsor letter from his U.S.

citizen sibling, he remained detained. Human Rights First contacted ICE multiple times to follow up on his pro se parole requests. ICE's reply was that it was reviewing the request and would interview him soon. This refugee was released from detention in April 2017 after he was granted asylum, but only after spending 14 months in immigration detention.

- **Venezuelan human rights lawyer detained for nearly six months.** "Juan" is a Venezuelan human rights lawyer who was a leader of the political opposition party in his country. He was also very active in his Church. Several members of his family were leaders in this party too. Years ago, a government armed group killed his cousin and her husband for their political work with Voluntad Popular. Last year, he and his cousins were threatened by the same group for their work with this political party. Juan's cousins were subsequently tortured, killed and dismembered. The same group recently threatened him, and beat and threatened his sister. Juan fled to the United States with his sister, and they requested protection at a U.S. port of entry in April 2017. While his sister was released from detention, Juan was not granted parole. Instead, he has been held for nearly six months in U.S. immigration detention in conditions that are essentially the same as those in a criminal jail.
- **Togolese asylum seeker with U.S. legal permanent resident brother denied parole, held in detention for over six months,** and only released after granted asylum. Richard fled Togo, an authoritarian regime, after he was severely beaten and imprisoned due to his peaceful actions opposing the government's taking of his land. He requested asylum at a U.S. airport. He was referred into expedited removal and sent to a detention facility in New Jersey. He was determined to have a significant possibility of establishing eligibility for asylum,

meeting the credible fear screening standard. His pro bono attorney at the American Friends Service Committee filed an application for parole, which included evidence of his identity, the fact that he did not present a security or flight risk, and his community ties, including his U.S. legal permanent resident brother. Richard was denied parole a few months after the January 25 executive order even though he appeared to meet the criteria for parole under the parole directive. ICE's parole denial letter failed to give any individualized reasoning for the denial. The officer checked a box indicating that he had failed to establish that he would appear for future hearing dates but gave no reason for this determination. Richard was instead held in detention for more than six months during the course of his immigration proceedings and only released from detention after an immigration judge subsequently ruled that he was a refugee who qualified for asylum under U.S. law.

- **Victim of political persecution from Singapore denied parole, detained for nine months.** After requesting asylum at a U.S. airport, Amos Yee, an 18-year-old blogger and outspoken critic of the government of Singapore, was sent to a U.S. immigration detention under expedited removal after requesting protection at the airport in Chicago. Yee's activism and persecution has been publicly documented by Human Rights Watch and PEN America. Yee's lawyers publicly reported that ICE initially indicated Yee would be released on parole after he passed his credible fear screening. However, after the issuance of President Trump's executive order, ICE advised that Yee would not be released from detention. While an immigration judge ruled that he was eligible for asylum, ICE decided to appeal that decision and refused to release him from immigration detention. He was

held at three different jails in the Midwest during his nine months of U.S. detention and only released in late September after the Board of Immigration Appeals, in a unanimous three-member panel, dismissed ICE's appeal.

- **Torture survivor from Burkina Faso detained for over 17 months**, only released after granted protection by immigration court. Alexandre fled Burkina Faso where he was targeted due to his peaceful participation with a minority political party. He was detained, tortured and interrogated. After Alexandre requested asylum at a U.S. airport he was referred into expedited removal and sent to a detention facility in New Jersey. After his application for protection was initially denied by the immigration judge, his pro bono attorney at the American Friends Service Committee appealed the decision. Alexandre's attorney filed an application for parole shortly after the January 25 executive order, which included evidence of his identity, the fact that he did not present a security or flight risk, and his community ties. That application was denied by ICE, based on a claimed lack of compelling humanitarian factors. Alexandre's attorney reapplied for parole, clearly outlining and attaching the relevant standards under the parole directive and attaching evidence that he met that standard. Alexandre was denied parole a second time. The officer checked a box indicating that he had failed to establish that he would appear for future hearing dates, but gave no reason for this determination. Alexandre was held in detention for almost a year and a half during the course of his immigration proceedings. He was finally released after he received a favorable decision from the Board of Immigration Appeals and was granted protection by the immigration judge.

- **Cuban political opposition activist with family in the United States denied parole,**

**detained over seven months in U.S.**

**immigration detention.** After being arrested, interrogated and incarcerated for about eleven months by the Cuban government for "anti-Cuban" political activities, a political opposition advocate attempted to flee the country, eventually escaping to the United States and requesting asylum at a U.S. port of entry in Texas in January 2017. He was determined to have a credible fear of persecution, but he was denied parole twice by ICE at the Batavia detention facility. He was denied parole in March and again in May 2017, even though he presented proof of his identity, and proof of his U.S. ties which included his U.S. legal permanent resident sister and a U.S. citizen childhood friend. ICE officers at the facility told him that there was no parole available at the Batavia facility. He was only released after he was added as a plaintiff to a federal court lawsuit relating to the lack of parole at the Batavia facility.

- **Gay man who fled persecution denied parole, detained five and a half months** and only released after immigration court granted him asylum. Jean fled Togo where he was targeted due to his sexual orientation. When his relationship with his long-time male partner was discovered, his partner was brutally murdered and Jean narrowly escaped with his life. He requested asylum at a U.S. airport. Jean was referred into expedited removal and sent to a detention facility in New Jersey. He was determined to have a significant possibility of establishing eligibility for asylum, meeting the credible fear screening standard. His pro bono attorney at the American Friends Service Committee filed an application for parole, which included evidence of his identity, the fact that he did not present a security or flight risk, and his community ties. Jean was denied parole several months after the January 25 executive

order even though he appeared to meet the criteria for parole under the parole directive. ICE's parole denial letter failed to give any individualized reasoning for the denial. The officer checked a box indicating that he had failed to establish that he would appear for future hearing dates but gave no reason for this determination. Jean was instead held in detention for a total of five and a half months during the course of his immigration proceedings and only released from detention after an immigration judge ruled that he was a refugee who qualified for asylum under U.S. law.

In areas under the jurisdiction of the Court of Appeals for the Ninth Circuit, arriving asylum seekers have access to immigration court custody hearings, but only after they have been held in immigration detention for six months. The Supreme Court will review this ruling this fall. Through these custody hearings, some asylum seekers have secured release from immigration detention. Without that safeguard many asylum seekers would have been held in immigration detention for much longer. For example:

■ **Haitian asylum seeker detained seven months, not released on parole despite U.S. citizen brother**, only released after immigration court custody hearing pursuant to Rodriguez case. Jean fled Haiti in 2011 after gangs hired by a political party they opposed repeatedly attacked his family. His brother-in-law was killed, his community organization was burned down and gunmen shot at him. He fled initially to Brazil to escape the violence, but in late 2016, came to the United States and presented himself at the U.S. border intending to reunite with his U.S. citizen brother. He also learned that the politician who had ordered the attacks on his family was re-elected and had returned to power. Upon learning this, Jean requested asylum. He was determined to have a credible

fear of persecution on account of his political opinion, but Jean was not subsequently granted parole. Instead, he was held in detention for seven months while his immigration proceedings were pending. Because his case was pending in the Ninth Circuit, Jean had access to an immigration court custody hearing, pursuant to the Rodriguez case. At this hearing, Jean's pro bono attorney from the Northwest Immigrant Rights Project submitted evidence relating to the Haitian elections and Jean's brother's citizenship and address in the United States. Jean was released from detention in May 2017 after the immigration judge ruled he could be released on a \$7,000 bond that his brother was able to save enough money to pay for.

■ **A Haitian asylum seeker with medical problems was held in detention until a six-month hearing**. Lemoine Denera, along with his wife and daughter, arrived in December at the U.S. port of entry at Nogales, Texas. Denera had fled his country years earlier due to political fears and to find work. He was held in detention at the Eloy facility in Arizona for over six months, separated from his wife and infant daughter who had been released from custody. He was not granted parole, however, despite extensive community support and advocacy by attorneys in the United States working with Justice and Democracy in Haiti. Denera suffers from some potentially significant medical problems, including a hernia, hypertension, and a faulty heart valve. He was only released from detention due to an immigration court custody hearing, pursuant to the Rodriguez case, and required to pay a \$15,000 bond. Attorneys at the Florence Project secured pro bono counsel for Denera.<sup>29</sup>

In the areas where six-month custody hearings are not available, asylum seekers—like the asylum seekers profiled above—are at greater

risk of long periods of detention. Local statistics regarding immigration detention in New Jersey indicate that over 160 immigrants and asylum seekers had been held over six months and 56 had been detained for more than one year in New Jersey alone as of April 2017.

## Detention Policies Violate U.S. Human Rights Obligations

The 1951 Convention Relating to the Status of Refugees and its 1961 Protocol prohibit the United States from returning refugees to persecution, and the 1980 Refugee Act set up a formal process for applying for asylum in the United States. Seeking asylum is a legal act and Article 31 of the Refugee Convention prohibits the penalization of asylum seekers on the basis of their “illegal” entry into a country. International law and standards, including the Refugee Convention, recognize that asylum seekers often are not in a position to gather identity documents and seek permission to legally immigrate to the country of asylum—there is no “visa” or immigration document for the purpose of entering a country to seek asylum.

The United States has ratified the International Covenant on Civil and Political Rights (ICCPR) that prohibits arbitrary detentions. Where asylum seekers are initially detained for a limited purpose—such as to verify identity—international standards require that detention be for the shortest time possible, with procedures in place to review custody decisions and to allow for release.<sup>30</sup> Detention beyond such a limited time frame would be “arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.”<sup>31</sup> The use of immigration detention to deter future asylum

seekers or other migrants from entering a country is prohibited.<sup>32</sup>

The ICCPR also requires prompt court review of detention and UNHCR’s 2012 Guidelines on Detention emphasize that detained asylum seekers should “be brought promptly before a judicial or other independent authority to have the detention decision reviewed” within 24 to 48 hours. The U.N. Special Rapporteur on the Human Rights of Migrants concluded that the U.S. detention system lacked safeguards necessary to prevent detention from being arbitrary. In his report, he recommended that DHS and DOJ “revise regulations to make clear that asylum seekers can request [...] custody determinations from immigration judges.”<sup>33</sup>

In a July 2017 report on the use of detention in the United States, the U.N. Working Group on Arbitrary Detention recommended that the United States ensure that a person held in immigration detention has the right to challenge the legality of detention before a court, as well as the right to periodic review of detention. The Working Group recommended that U.S. immigration authorities “give practical effect to the right to seek asylum under international law” and not penalize those who seek to assert this right. The Working Group explained that, under the ICCPR, “individuals held in immigration detention shall be brought promptly before a judicial authority empowered to order their release or to vary the conditions of their release.” This review must include an individualized assessment that considers the individual’s total length of time spent in immigration detention, as well as the availability of alternatives to detention. Furthermore, when detention is ordered, it must be subject to periodic review “to ensure that it is reasonable, necessary, proportional and lawful.”<sup>34</sup>

## Detention Not Necessary in Most Cases, Effective Alternatives Exist

Numerous analyses of government statistics show that immigrants who are not detained overwhelmingly appear for immigration removal hearings, and those who are represented by legal counsel also appear at high rates.<sup>35</sup> The Trump Administration's over-reliance on detention not only violates U.S. legal commitments under human rights and refugee protection treaties, but is also a tremendous waste of taxpayer resources.

The government has many tools at its disposal to manage the migration of asylum seekers and immigrants through a more humane and fiscally responsible course of action. Community-based alternatives to detention programs that use case management systems can ensure that asylum seekers appear for court hearings. These programs also provide necessary social and legal support. Numerous studies and government data have demonstrated that asylum seekers have a high rate of appearance out of detention, despite myths to the contrary.<sup>36</sup> Human Rights First has noted, based on decades of experience providing pro bono representation in asylum matters, that asylum seekers have a strong desire to comply with immigration procedures. Many asylum seekers present themselves to authorities and simply need information related to the process, since they are eager to follow and see their cases through. Unfortunately, in some cases, officials at the border do not provide asylum seekers with the necessary information.<sup>37</sup>

Alternatives are also much less expensive than detention; past studies show that even intensive community-based programs come at only 20 percent of the cost of detention.<sup>38</sup> Detaining individuals costs the government approximately \$126.46 per day, which means that it costs roughly \$23,000 to detain an asylum seeker for

six months, and \$35,000 to detain an asylum seeker for nine months. Detaining families costs the government approximately \$343 per day, per person.<sup>39</sup>

Community-based appearance support programs cost less. A pilot program run by Lutheran Immigrant and Refugee Services (LIRS) cost \$50 per day, per family. For a six-month program, this equals \$9,100.<sup>40</sup> If participants are also enrolled in the ICE-contracted ISAP program, at a cost of \$8.37 per day for the full-service component, the entire program adds up to \$10,623, still far below the cost of detention.<sup>41</sup> When accounting for the agency costs associated with conducting fear interviews and court hearings, the cost savings are even greater.

As detailed in Human Rights First's July 2016 prior report "Lifeline on Lockdown," even when ICE does employ alternatives to detention, it typically relies on onerous or intrusive conditions of release. These include parole conditioned on bond payments and the use of electronic ankle monitors. In some cases, the use of stigmatizing and intrusive ankle bracelets essentially amounts to continuing custody.

## Recommendations

The Trump Administration should take the following steps to assure that asylum seekers are not held in detention arbitrarily, in violation of the Constitution and U.S. treaty commitments under the Refugee Protocol and the ICCPR:

- **DHS and ICE should effectively implement the 2009 parole directive**—*Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* – and release from detention on parole arriving asylum seekers who meet the criteria detailed in the memorandum.

■ **DHS and DOJ should revise regulations to provide immigration court custody hearings for “arriving” asylum seekers.**

DOJ and DHS should revise regulatory language in provisions located mainly at 8 C.F.R. §1003.19(h)(2)(i) and §212.5, as well as § 208.30 and § 235.3, to provide arriving asylum seekers and other immigrants the opportunity to have their custody reviewed in a bond hearing before an immigration court. This reform would give arriving asylum seekers the same access to immigration court custody determination hearings provided to many other immigrants, including asylum seekers who are apprehended or who present themselves after crossing the border, and would help ensure that individuals are not detained unnecessarily for months without having an immigration court assess the need for continued detention.

■ **DHS and DOJ should provide automatic immigration court custody hearings in cases of prolonged detention.**

DHS and DOJ should also provide for automatic bond hearings for all immigrants held in detention for six months under 8 U.S.C. §1231, § 1225(b), § 1226(a), and § 1226(c). This approach would be consistent with rulings of the Courts of Appeals for the Second and Ninth Circuits and is an issue pending before the Supreme Court. Requiring that these custody reviews be conducted automatically ensures that individuals who do not have legal representation will have their custody status reviewed by a judge. The provision of access to a bond hearing for immigrants in detention after six months, however, is not a substitute for prompt court review after initial detention.

■ **EOIR and ICE should instruct immigration judges and ICE officers, respectively, that they must consider ability to pay in cases where bond is required for release.**

EOIR

should instruct immigration judges to (1) impose bond only when release on conditional parole or other less restrictive measures, including reporting requirements, would not mitigate flight risk, and (2) consider a person’s ability to pay in order to avoid keeping individuals in detention based on their economic circumstances.

■ **Congress and DHS should reduce their overreliance on costly immigration detention by eliminating the bed quota approach and instead implementing community-based case management alternatives to detention programs and access to counsel.**

Congress should end its quota approach to detention and increase support for more prudent and cost-effective measures, including: community-based alternatives to detention, legal orientations, and legal counsel. A quota-based approach is inconsistent with U.S. international legal obligations that prohibit arbitrary detention. Community-based alternatives to detention programs, legal information, and legal counsel can all serve to ensure asylum seekers appear for court hearings and provide necessary social and legal support. Many asylum seekers have relatives in the United States with whom they can live. Some may, after an individualized determination, need additional support to ensure their appearance. In these cases, ICE should utilize community-based programs like those operated by leading faith-based groups with expertise in supporting refugees and immigrants. Rather than automatically placing electronic monitoring devices on asylum seekers, ICE should limit the use of these intrusive and stigmatizing devices to rare cases when an individualized assessment using a validated instrument shows that less restrictive measures cannot ensure appearance. The

use of such measures should be regularly reviewed by the court.

- **Congress must ultimately rescind or limit the flawed expedited removal and “mandatory detention” system that is sending so many asylum seekers and immigrants automatically into immigration detention and wasting limited government resources.** Detention should not be the default tool of U.S. migration management, and it certainly should not be automatic for asylum seekers. This flawed approach has caused too many to be sent unnecessarily into immigration detention, and left languishing there for months and even years.
- **DHS and DOJ should provide public statistics.** DHS and DOJ should regularly provide statistics on a range of relevant data, including the number of asylum seekers in detention; the number placed in expedited removal proceedings, reinstatement, or regular removal proceedings; the nature of the proceedings against individuals (e.g., whether charged as an “arriving alien” or present in the United States without being admitted or paroled); representation rates; and rates of release and removal. In addition, ICE should abide by its obligation under the Haitian Refugee Immigration Fairness Act to provide annual reports to Congress on asylum seekers in detention, to release these reports promptly and publicly, and to improve the quality of the data it provides. For example, ICE should clearly articulate the period of time within which data was extracted and according to what criteria. All terms should be clearly defined and all detention and release statistics should be disaggregated by ICE field office, nationality, and other demographic factors to ensure a nondiscriminatory approach to detention and release decisions.

## Endnotes

<sup>1</sup> See, e.g., INS Memorandum, Expedited Removal: Additional Policy Guidance (Dec. 30, 1997) from Michael A. Pearson, Executive Associate Commissioner for Field Operations, Office of Field Operations, to Regional Directors, District Directors, Asylum Office Directors, reproduced in 75 Interpreter Releases 270 (Feb. 23, 1998); INS Memorandum, INS Detention Use Policy, (Oct. 7, 1998) from Michael A. Pearson, Executive Associate Commissioner for Field Operations, reproduced at 75 Interpreter Releases 1505, 1523 (Nov. 2, 1998); ICE Memorandum, Expedited Removal Guidance 3 (Sept. 14, 2004) from Victor X. Cerda, ICE DRO Acting Director; ICE Policy Directive No. 7-1.0, “Parole of Arriving Aliens Found to Have a ‘Credible Fear’” (Nov. 6, 2007); ICE Policy Directive No. 11002.1, “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture,” (Dec. 8, 2009) [hereinafter Asylum Parole Directive].

<sup>2</sup> Asylum Parole Directive, *supra* note 1, § 6.2, 8.3.

<sup>3</sup> See e.g., Human Rights First, Lifeline on Lockdown (2016).

<sup>4</sup> U.S. Commission on International Religious Freedom (USCIRF), *Special Report: Assessing the U.S. Government’s Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms* (Apr. 2013), pp. 1-2, 10.

<sup>5</sup> Lifeline on Lockdown, *supra* note 3.

<sup>6</sup> Judy Rabinovitz & Michael Tan, Locked Up Indefinitely: The Supreme Court Case for Immigrants’ Right to a Bond Hearing Matters Now More Than Ever, *American Civil Liberties Union* (Sept. 26, 2017) (noting that the case will appear before the Supreme Court on October 3, 2017).

<sup>7</sup> Martín Méndez Pineda, “I’m a report in Mexico. My life is in danger. The United States wouldn’t give me asylum.” *Washington Post* (May 25, 2017).

<sup>8</sup> Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017); see also Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

<sup>9</sup> Exec. Order No. 13767, *supra* note 8, at § 5(a), 6.

<sup>10</sup> *Id.* at §11(d).

<sup>11</sup> U.S. Dep’t of Homeland Security, Implementing the President’s Border Security and Immigration Enforcement Improvements Policies (Feb. 20, 2017); see also U.S. Dep’t of Homeland Security, Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017).

<sup>12</sup> Supplemental Reply Brief for Petitioners at 6, *Jennings v. Rodriguez*, No. 15-1204 (U.S. Feb. 21, 2017).

<sup>13</sup> *Id.* at 21.

<sup>14</sup> Libby Rainey, “ICE transfers immigrants held in detention around the country to keep beds filled. Then it releases them, with no help getting home.” *Denver Post* (Sept. 17, 2017).

<sup>15</sup> Geneva Sands, “Immigration-related arrests by ICE increase under President Trump.” *ABC News* (Apr. 17, 2017).

<sup>16</sup> Haitian Refugee Immigration Fairness Act of 1998 (Pub. L. No. 105-277H.R.) § 903.

<sup>17</sup> U.S. Citizenship and Immigration Services, Credible Fear Workload Report Summary, FY 2017.

<sup>18</sup> U.S. Citizenship and Immigration Services, Credible Fear Workload Report Summary, FY 2017 Port of Entry (POE) Caseload.

<sup>19</sup> The information included in this section was gathered by Human Rights First through interviews and communications conducted in late August and September 2017 with non-profit and pro bono attorneys working with asylum seekers in these detention locations.

<sup>20</sup> First Amended Petition for a Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief at 20, *Abdi v. Duke*, No. 17-cv-721 (W.D.N.Y. 2017). According to data provided by the government in this case, in reported cases with parole determinations between December 16 and January 19, parole was granted for asylum seekers detained at Batavia who had passed their credible screenings in fifty percent of cases; between January 20 and July 28 (the date the lawsuit was filed), the parole grant rate plummeted to twelve to fourteen percent; and between July 28 and September 5 it shot back up to forty-five percent.

<sup>21</sup> The information included in this section was gathered by Human Rights First through interviews and communications conducted in late August and September 2017 with non-profit and pro bono attorneys working with asylum seekers in these detention locations.

- <sup>22</sup> The information included in this section was gathered by Human Rights First through interviews and communications conducted in late August and September 2017 with non-profit and pro bono attorneys working with asylum seekers in these detention locations.
- <sup>23</sup> Lifeline on Lockdown, supra note 3, at 19-22.
- <sup>24</sup> See U.S. Commission on International Religious Freedom (USCIRF), *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* (2016), p. 47-48 (noting that parole bond rates reported to be based on availability of detention beds); *c.f.* DHS—Office of Inspector General, *ICE's Release of Immigration Detainees* (Washington, DC: DHS, 2014), OIG-14-116, p. 1-2 (August 2014) (noting hundreds of detainees released in part due to lack of bed space), available at [http://immigrantjustice.org/sites/immigrantjustice.org/files/OIG\\_Report\\_ICEdetainee-release\\_2014\\_08.pdf](http://immigrantjustice.org/sites/immigrantjustice.org/files/OIG_Report_ICEdetainee-release_2014_08.pdf).
- <sup>25</sup> Stipulated Settlement, *Flores v. Reno*, No.CV 85-4544- RJK(Px)(C.D. Cal. 1997); *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016).
- <sup>26</sup> The information included in this section was gathered by Human Rights First through interviews and communications conducted in late August and September 2017 with non-profit and pro bono attorneys working with asylum seekers in these detention locations.
- <sup>27</sup> See *e.g.*, Lifeline on Lockdown, supra note 3; Human Rights First, *Detention of Asylum Seekers in New Jersey* (2016).
- <sup>28</sup> The case examples included in this report were provided to Human Rights First through its own pro bono legal representation project, or by other non-profit legal organizations and pro bono attorneys who represent or assist arriving asylum seekers. In most cases, pseudonyms have been used to safeguard the privacy of the asylum seeker and for the safety of his or her family at home.
- <sup>29</sup> This information was provided by pro bono counsel from The Florence Project; Daniel González, "U.S. accelerates deportation of Haitian migrants." *AZ Central* (Feb. 17, 2017).
- <sup>30</sup> Convention Relating to the Status of Refugees, arts. 39, 26, opened for signature July 28, 1951, 189 U.N.T.S. 150; International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, S. TREATY DOC. NO. 95-20, 999 U.N.T.S. 171 [hereinafter ICCPR]; see also Eleanor Acer, Reaffirming Rights: Human Rights Protections of Migrants, Asylum Seekers, and Refugees in Immigration Detention, *Georgetown Immigration Law Journal* (Vol. 24, 2010) p. 513; International Detention Coalition, *Legal Framework and Standards Relating to the Detention of Refugees, Asylum Seekers and Migrants: A Guide*, (2011).
- <sup>31</sup> Human Rights Comm., General Comment No. 35: Article 9 (Liberty and Security of Person), ¶ 18, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) (citing Human Rights Comm., *Tarlue v. Canada*, Communication No. 1551/2007, at ¶¶ 3.3, 7.6, U.N. Doc. CCPR/C/95/D/1551/2007 (2009)).
- <sup>32</sup> See *e.g.*, Office of the U.N. High Comm'r for Refugees, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, UNHCR, (2012) ("Detention that is imposed in order to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is inconsistent with international norms.").
- <sup>33</sup> U.N. Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante: Mission to the United States of America, A/HRC/7/12/Add.2, para. 123 (March 5, 2008).
- <sup>34</sup> U.N. Human Rights Council, Report of the Working Group on Arbitrary Detention on its visit to the United States of America, A/HRC/36/37/Add.2, para. 26, 92(b), (h) (July 17, 2017).
- <sup>35</sup> See *e.g.*, Lifeline on Lockdown, supra note 3, at 33–34; American Immigration Lawyers Association et al., *The Real Alternatives to Detention* (2017).
- <sup>36</sup> Human Rights First, Factsheet (July 2015), available at <http://www.humanrightsfirst.org/sites/default/files/MythvFact-Immigrant-Families.pdf>; American Immigration Council, *A Humane Approach Can Work: The Effectiveness of Alternatives to Detention for Asylum Seekers* (July 2015), available at <http://immigrationpolicy.org/special-reports/humane-approach-can-work-effectiveness-alternatives-detention-asylum-seekers>
- <sup>37</sup> See *e.g.*, Human Rights First, *Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers* (2017); Human Rights First, *How to Manage the Increase in Families and Protection Requests at the Border* (2014).
- <sup>38</sup> Oren Root, "The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Removal Proceedings," Vera Institute of Justice, April 30, 2000.
- <sup>39</sup> See *e.g.*, Human Rights First, *Family Detention: Still Happening, Still Damaging* (2015).
- <sup>40</sup> Lutheran Immigrant and Refugee Services, *Family Placement Alternatives: Promoting Compliance with Compassion and Stability through Case Management Services* (2016).
- <sup>41</sup> DHS, U.S. Immigration and Customs Enforcement's Alternatives to Detention (Revised) (Feb. 4, 2015), p. 4.