

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

JOSE TORRES-SOTO, on behalf of himself
and those similarly situated,

Plaintiff-Petitioner,

v.

WILLIAM BARR, Attorney General of the
United States, JAMES MCHENRY, Director
of the Executive Office of Immigration
Review, KEVIN MCALEENAN, Acting
Secretary of the Department of Homeland
Security, MARK A. MORGAN, Acting
Director of U.S. Immigration and Customs
Enforcement (ICE), SEAN GALLAGHER,
Director of the ICE Atlanta Field Office, and
PHIL BICKHAM, Warden of Irwin County
Detention Center, in their official capacities
only,

Defendants-Respondents.

Case No. 7:19-CV-00082

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
HABEAS PETITION**

CLASS ACTION

PRELIMINARY STATEMENT

1. The federal government detains thousands of people each month, including asylum seekers, lawful permanent residents, and victims of human trafficking, in two immigration prisons in the Middle District of Georgia: the Irwin County Detention Center and Stewart Detention Center. The government has charged these individuals with violations of civil immigration law and is detaining them pending deportation proceedings. This detention is civil, and not criminal, in nature.

2. Many of these individuals are currently jailed solely because they are poor. Federal immigration officials have determined that certain individuals can safely be released on cash bond,

because they are neither dangerous nor enough of a flight risk to warrant detention. But the officials refuse to take into account individuals' ability to pay when they set bond, and as a result, many individuals remain detained, simply because they cannot afford to pay that bond.

3. Plaintiff Jose Torres-Soto is a father of three U.S. citizen children and one child who has obtained relief under Deferred Action for Childhood Arrivals ("DACA"). He has lived continuously in the United States for seventeen years. An immigration judge has determined that he is eligible for bond and is neither a danger to the community nor a flight risk. However, Mr. Torres-Soto remains detained in Irwin County Detention Center under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a), on a bond that he cannot afford to pay, because the immigration judge set his bond amount without considering his ability to pay. As a result, he is unable to support his family and is severely limited in his ability to assist with litigating his deportation case.

4. This class action challenges Defendants' policies and practices of setting unaffordable bonds for immigrants detained at Irwin County Detention Center and Stewart Detention Center, in violation of the Fifth Amendment's guarantees of due process and equal protection, and the Immigration and Nationality Act. As a matter of policy and practice, when setting bond, federal immigration officials are not required to and do not take into account individual financial circumstances or ability to pay. And these officials consistently fail to release individuals on their own recognizance or to impose alternative non-monetary conditions, such as electronic monitoring or in-person reporting requirements, even where these conditions are equally if not more effective at ensuring that individuals appear for future hearings. As a result, bond is set beyond what many people who have already been found eligible for release can pay, causing them

and 28 U.S.C. § 2241 (habeas corpus). Defendants have waived sovereign immunity pursuant to 5 U.S.C. § 702.

8. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to this action occurred in this District and Division.

PARTIES

9. Plaintiff-Petitioner Jose Torres-Soto is currently detained by U.S. Immigration and Customs Enforcement (ICE) at the Irwin County Detention Center in Ocilla, Georgia pending his immigration removal proceedings.

10. Defendant-Respondent William Barr is sued in his official capacity as the Attorney

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

STATEMENT OF FACTS

Defendants' Policies and Practices of Setting Unaffordable Bond for Civil Immigration Detainees in the Middle District of Georgia.

23. As a matter of policy and practice, immigration judges and ICE officers in the Middle District of Georgia are not required to, and do not consider, an individual's financial circumstances or ability to pay when setting bond amounts pursuant to

28. Immigration judges with jurisdiction over the Middle District of Georgia routinely set bond at amounts that far exceed the minimum bond amount of \$1,500—averaging \$12,031 for detainees at Irwin and \$11,206 for detainee

38. ICE currently detains approximately 2,700 people in the Middle District of Georgia, primarily at two detention facilities: the Irwin County Detention Center and Stewart Detention Center.

Irwin County Detention Center

39. Irwin County Detention Center is a former county jail located in Ocilla, Georgia. Although Irwin County still owns the detention center, it is operated by LaSalle Corrections, a private for-profit company. LaSalle Corrections provides all staff and operational management services for the facility.

40. Irwin County Detention Center houses around 800 individuals. Less than 25% of the people detained at Irwin County Detention Center are represented by an attorney. In 2018, non-detained people were *twice* as likely to have representation in cases pending before the Atlanta Immigration Court, where proceedings for individuals detained at Irwin County Detention Center are held.

41. Individuals detained at Irwin County Detention Center are denied bond at high rates. Nationally, from May 1, 2018 to May 7, 2019, bond was granted in 42% of hearings where the person was bond eligible, whereas at Irwin that number was 26%. Moreover, those who are granted bond are frequently given bonds they cannot afford. During the same period, the average bond at Irwin was \$12,031, and one in four bonds was higher than \$15,000. Additionally, while the median bond nationally was \$8,500, the median bond for Irwin County detainees was 18% higher—\$10,000.

42. Irwin County Detention Center is located approximately 185 miles away from the Atlanta Immigration Court. Bond redetermination hearings are often very short, and the proceedings largely take place off the record. Detainees' lawyers must be physically present in

Atlanta for the bond hearings, but detainees must remain at the detention center and appear via video-conferencing equipment in the courtroom. Because they are not physically present, detainees at Irwin County Detention Center have little interaction with the judge and cannot consult with their lawyers in person during their bond hearings. Although an interpreter is required to be present at the bond hearing, the interpreter will generally translate only the detainee's testimony and any

50. On December 14, 2018, Mr. Torres-Soto was involved in a traffic accident with a police car. The officer arrested him and brought him to the jail in Dalton for failing to yield and driving without a license.

51. In custody, Mr. Torres-Soto learned that there was an ICE hold on him. On or about December 19, 2018, he was picked up by ICE and brought to the detention center in Atlanta, then transferred to the Irwin County Detention Center later that day. Mr. Torres-Soto remained detained for several months. ICE set his bond at \$18,000. However, Mr. Torres-Soto was not aware that he had received a bond from ICE.

52. On May 2—nearly five months after he was brought to Irwin—Mr. Torres-Soto appeared for a master calendar hearing in immigration court before an immigration judge. Because hearings for people detained at Irwin are conducted via video conference, Mr. Torres-Soto could see only the immigration judge during the hearing, and not the government’s attorney. The judge asked Mr. Torres-Soto if he wanted time to meet with an attorney, and Mr. Torres responded that he could not afford one. During the hearing, Mr. Torres-Soto asked if he could be released on bond. He watched as the judge began speaking to someone else in the room who he could not see, but who he believes was the government’s attorney. After this conversation, the judge told him he would grant a bond of \$18,000 but did not provide any explanation as to why he was setting bond at this amount. The translator provided interpretation only when the judge addressed Mr. Torres-Soto directly, so he could not understand what was said between the judge and the person off-screen. The judge did not inquire into Mr. Torres-Soto’s financial circumstances or his ability to

53. Mr. Torres and his family do not have the means to pay this bond. His wife makes roughly \$300 a week as a seamstress, and since his detention, his oldest daughter has begun working at a fast food restaurant after school to help support the family.

54. Because of the Defendants' policy and practice of failing to consider immigration detainees' financial ability to pay a bond, Mr. Torres-Soto will remain detained as he pursues cancellation of removal and will be unable to earn income, provide childcare for his family, or participate fully in the development of his case.

Defendants' Policies and Practices Injure Plaintiff in Myriad Ways.

55. Defendants' policies and practices described above not only result in indigent detainees remaining in prolonged detention at Irwin County Detention Center and Stewart Detention Center, but the continued detention also causes substantial additional harms to Plaintiff and the proposed class members.

56. Because Mr. Torres-Soto and his family lack the resources to pay his \$18,000 bond, he has been detained for over a month since the bond was set—and for over five months in total—and faces the prospect of months or years of additional time in detention until his case completes.

57. The prolonged detention and the conditions at Irwin have caused harm to Mr. Torres-Soto physically and emotionally. Mr. Torres-Soto's family has also suffered emotional distress and financial hardship because of his continued detention.

58. Plaintiff Mr. Torres-Soto's experience is similar to those of other proposed class members. For example, in one case of a detainee

pay did not impact either of those factors. This detainee remained in detention for several months after her bond hearing.

59. Immigration detainees encounter significant difficulties in finding and retaining counsel, especially since many are from the Atlanta area but are detained at a geographically distant facility like Irwin County Detention Center or Stewart Detention Center. According to one study, non-detained individuals are five times more likely to find and retain counsel than those who are detained.⁵

60. A detainee is far more likely to achieve a favorable outcome in her immigration proceedings if she has a lawyer. As the American Bar Association has observed, “the disparity in outcomes of immigration proceedings depending on whether noncitizens are unrepresented or represented is striking.”⁶ One study found not only that “represented detainees were almost seven times more likely than their pro se counterparts to be released from the detention center,” but also that represented detainees won on the merits “in 21% of cases, ten-and-a-half times greater than the 2% rate for their pro se counterparts.”⁷ Because lack of counsel severely hurts a person’s ability to obtain relief in her immigration proceedings, release from detention is often the critical factor in determining whether the person receives due consideration of her merits case and thus whether she is ultimately deported.

61. People who are detained are also hindered from accessing other services that are important to presenting their cases on the merits, such as translation and interpretation services. In

⁵ Eagly & Shafer, *supra*, at 32.

⁶ ABA, Comm’n on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* 5-3 (2010).

⁷ Eagly & Shafer, *supra*, at 9, 70; Cal. Coal. for Universal Representation, *California’s Due Process Crisis: Access to Legal Counsel for Detained Immigrants* 4 (2016).

addition, detention interferes with individuals' ability to obtain documentary evidence, to collect testimonial evidence or other support from family, friends, and co-workers, and to otherwise aid in developing their claims for relief.⁸

62. The harms of prolonged detention go beyond detainees' immigration cases. People in immigration detention are separated from their families, often by large distances, and kept from finding jobs and earning money to support their loved ones. In many cases, detainees are separated from their U.S. citizen children for whom they are the primary earner and caregiver.

63. Further, detainees are forced to endure severe conditions, including forced labor, inadequate medical care, and unhygienic living environments. For example, a 2017 investigation of Irwin found that its housing facilities are "dirty, dusty, and unsanitary," and that individuals at Irwin must endure "moldy infection-riddled bathrooms and unsanitary clothing." Additionally, immigrants detained at Irwin "almost unanimously reported finding objects in the food" and reported "being forced to eat rancid foods."⁹

64. Similarly, people detained at Stewart and their attorneys have reported that the food and water conditions at Stewart are "particularly concerning"; "[i]n addition to food being frequently reported as spoiled or expired, foreign objects, such as hair, plastic, bugs, rocks, a tooth, and mice, were reportedly found repeatedly in the food." The water at Stewart has been described "as green, non-potable, smelling of feces, or completely shut off."¹⁰ The lack of adequate access to medical care, mental health servuTw89 Tc-.0323 Twsilarl-1.1(gra3rim)8.5(gTD08 o.3 TD.0005 Tc.00323 The

who spoke Spanish . . . , thus limiting the ability for detained immigrants and medical staff to communicate in a meaningful way.¹¹

65. Indeed, ICE itself has previously found medical care at these detention centers to be inadequate.¹²

CLASS ACTION ALLEGATIONS

66. Plaintiff seeks to certify a class for declaratory and injunctive relief pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), or, in the alternative, as a representative habeas action pursuant to procedures analogous to Rule 23. The class is defined as: “All individuals who are or will be detained pursuant to 8 U.S.C. § 1226(a) on a monetary bond set by an U.S. Immigration and Customs Enforcement officer and/or an immigration judge in the Middle District of Georgia.”

67.

forward-looking class, with new members joining it on an ongoing basis. Joinder of these unknown future class members is impracticable.

69. Most of the class members are low-income individuals who will likely lack financial resources to bring an independent action or to be joined in this action. Joinder of every member of the class would be impracticable.

70. **Commonality:** Plaintiff raises claims based on questions of law and fact that are common to, and typical of, the putative class members they seek to represent. Questions of law and fact common to the class include:

a. Whether Defendants fail to require that ICE officials and immigration judges consider ability to pay or individual financial circumstances when setting bond pursuant to 8 U.S.C. § 1226(a);

b. Whether Defendants fail to require that ICE officials and immigration judges consider alternative non-monetary conditions of release when setting bond pursuant to 8 U.S.C. § 1226(a);

c. Whether immigration judges with jurisdiction over immigrants detained in the Middle District of Georgia refuse to grant conditional parole to people in detention;

d. Whether immigration judges with jurisdiction over immigrants detained in the Middle District of Georgia fail to make on-the-record findings about the factors they have considered in determining bond;

e. Whether Defendants' policies and practices of setting monetary bond under 8 U.S.C. § 1226(a) without inquiry into and findings concerning a person's ability to pay violate the Fifth Amendment and the Immigration and Nationality Act;

f. Whether Defendants' policies and practices of setting monetary bond under

alternative non-monetary conditions of release when setting bond under § 1226(a). Thus, injunctive and declaratory relief is appropriate and necessary with respect to the class as a whole.

74. **Rule 23(g):** Plaintiff is represented by attorneys from the Southern Poverty Law Center, the American Civil Liberties Union Foundation, and the American Civil Liberties Union Foundation of Georgia experienced in class-action and complex litigation involving constitutional law, civil rights law, and immigration law. Counsel have the resources, expertise, and experience to prosecute this action.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **Fifth Amendment to the Constitution** **(Due Process)**

75. Plaintiff, on behalf of himself and others similarly situated, re-alleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

76. The Fifth Amendment's Due Process Clause provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law."

77. Civil immigration detainees, including P107 Tc.0inees,49s, ex

a monetary bond without determining whether a lower bond amount or alternative non-monetary conditions of release would ensure her future appearance.

80. Defendants violate Plaintiff's due process rights by subjecting him to a system of wealth-based detention in which he remains detained because he cannot afford a monetary amount of bail, without inquiry into or findings concerning his ability to pay, and without a determination and findings concerning whether alternative non-monetary conditions of release would mitigate flight risk.

THIRD CLAIM FOR RELIEF
Immigration and Nationality Act, 8 U.S.C. § 1226(a)
(Failure to Consider Ability to Pay)

85. Plaintiff, on behalf of himself and others similarly situated, re-alleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

86. Under 8 U.S.C. § 1226(a), Defendants are authorized to release civil immigration detainees, including Plaintiff, on a monetary bond of at least \$1,500 or on conditional parole.

87. Section 1226(a), as correctly interpreted, requires that the bond or other conditions of release for detained individuals be reasonable. A reasonable bond or conditions of release cannot be determined without adequately considering detainees' financial circumstances and whether alternative non-monetary conditions of release would mitigate flight risk.

88. Defendants' detention of Plaintiff and the proposed class members under § 1226(a) without such protections violates the Immigration and Nationality Act.

FOURTH CLAIM FOR RELIEF
Immigration and Nationality Act, 8 U.S.C. § 1226(a)
(Conditional Parole)

89. Plaintiff, on behalf of himself and others similarly situated, re-alleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

90. Under 8 U.S.C. § 1226(a), Defendants are authorized to release detained immigrants, including Plaintiff, on a monetary to rele

parole, on the basis that § 1226(a) limits immigration judges to ordering release on a minimum \$1,500 bond.

92. Immigration judges act pursuant to a policy or practice under which only ICE officials, not immigration judges, have the authority to grant conditional parole to individuals detained under § 1226(a).

93. Defendants' policy or practice of detaining Plaintiff and proposed class members without considering their requests for conditional parole at bond redetermination hearings violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court provide the following relief:

- a. Assume jurisdiction over this action;
- b. Certify the class described above under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, represented by Plaintiff;
- c. Declare that Defendants' policies and practices described herein violate Plaintiff's rights under the Fifth Amendment of the United States Constitution and the Immigration and Nationality Act;
- d. Enter an order enjoining Defendants from (i) detaining an individual on a monetary bond or alternative, non-monetary conditions of supervision pursuant to 8 U.S.C. § 1226(a) without an inquiry into and findings on the record that a bond or conditions of supervision are necessary to mitigate flight risk; (ii) detaining individuals on monetary bond without an inquiry into and findings on the record concerning the individual's present ability to pay; (iii) detaining individuals on monetary bond in any amount greater than necessary to mitigate flight risk; (iv) when setting a monetary bond amount above what a person can pay, detaining the person when

alternative non-monetary conditions of supervisi

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