IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Ángel Alejandro Heredia Mons, Etowah County Detention Center, 827 Forrest Avenue, Gadsden, AL 35901;

Roland Nchango Tumenta, Dayana Mena López, Y.A.L., J.M.R., P.S.P., and R.O.P., Pine Prairie ICE Processing Center, 1133 Hampton Dupre Road, Pine Prairie, LA 70576;

Adrián Toledo Flores and Douglas Enrique Puche Moreno, Bossier Medium Security Facility, 2984 Old Plain Dealing Road, Plain Dealing, LA 71064;

M.R.M.H., LaSalle ICE Processing Center, 830 Pine Hill Road, Jena, LA 71342;

F.J.B.H., River Correctional Facility, 26362 LA-15, Ferriday, LA 71334;

Miguel Ángel Giron Martinez, Jackson Parish Correctional Center, 327 Industrial Drive, Jonesboro, LA 71251;

on behalf of themselves and others similarly situated,

Plaintiffs,

v.

Kevin K. McALEENAN, Acting Secretary of the Dep't of Homeland Security, in his official capacity, Washington, DC 20528; Matthew T. ALBENCE, Acting Director for U.S. Immigration and Customs Enforcement, in his official capacity, 500 12th Street, SW, Washington, DC 20536; Nathalie R. ASHER, Acting Executive Associate Director for ICE Enforcement and Removal Operations, in her official capacity 500 12th Street, SW, Washington, DC 20536; and George H. LUND III, Director of the ICE New Orleans Field Office, in his official capacity, c/o Office of the General Counsel Dep't of Homeland Security, Mail Stop 4650, Washington, DC 20528,

Defendants.

Civil Action No. _____

Class Complaint for Injunctive and Declaratory Relief

CLASS COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. This lawsuit is about hundreds of people who lawfully presented at official ports of entry along the Southern U.S. border to claim their right to seek asylum, only to be confined indefinitely in remote immigration jails across the Deep South. They have all demonstrated a credible fear of persecution and are now in removal proceedings before the Executive Office for Immigration Review ("EOIR").

2. Current law denies them the right to petition immigration judges for their release from custody. Instead, they must ask their jailer, the Department of Homeland Security ("DHS"), to grant them release on parole for the duration of their asylum proceedings. Fewer than 10 years ago, DHS released roughly 90 percent of such asylum seekers. Now, release rates have plummeted to the single digits. In no jurisdiction is the release rate lower than in the New Orleans Field Office of U.S. Immigration and Customs Enforcement ("ICE"), where, across the five states under its jurisdiction—pr lihed(d, t)-2(he)-6e noli,e

millions of dollars each month, and causes untold suffering to the men and women who seek legal protection inside the United States.

7. Plaintiffs bring this class action to enjoin a DHS unwritten policy and practice of categorically denying parole to asylum seekers with no individualized review of whether detention is necessary, in violation of DHS's own directive and guidelines.

JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (mandamus); and 28 U.S.C. § 1651 (All Writs Act). Defendants have waived sovereign immunity pursuant to 5 U.S.C. § 702.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because multiple defendants reside in this District; a substantial part of the events or omissions giving rise to this action occurred in this District; and this District is presiding over a related case involving similar questions of law and fact. *Damus v. Nielsen*, 313 F.Supp.3d 317 (D.D.C. 2018).

PARTIES

10. All Plaintiffs presented at official U.S. ports of entry, sought asylum, and demonstrated a credible fear of persecution or torture. All Plaintiffs are pursuing their asylum claims before EOIR. All Plaintiffs are confined under the jurisdiction of the New Orleans ICE Field Office at one of the following immigration jails: the Pine Prairie ICE Processing Center in Pine Prairie, Louisiana ("Pine Prairie"), the LaSalle ICE Processing Center in Jena, Louisiana ("LaSalle"), the River Correctional Center in Ferriday, Louisiana ("River"), the Bossier Medium Security Facility in Plain Dealing, Louisiana ("Bossier"), the Jackson Parish Correctional Center

in Jonesboro, Louisiana ("Jackson"), and the Etowah County Jail in Gadsden, Alabama ("Etowah").

11. Plaintiffs appear in their individual capacity and as representatives of a proposed class, as is further discussed *infra*.

12. Plaintiff Angel Alejandro Heredia Mons fled Cuba with his wife to escape persecution for refusing to participate in political activities of the Communist Party. Both presented at an official U.S. port of entry in Laredo, Texas, in July 2018, and expressed their fear of returning to Cuba and their desire to seek asylum in the United States. DHS separated Mr. Heredia Mons from his wife, confined him at the border, then transferred him to the custody of the New Orleans ICE Field Office. Mr. Heredia Mons was placed in removal proceedings after his wife's positive credible fear finding was linked to his case. He is pursuing his asylum claim before EOIR. He was denied parole despite submitting evidence of his identity, that he does not pose a danger to the public, and that he does not pose a flight risk, because he has a U.S. citizen uncle willing and able to sponsor him. He is currently detained at Etowah.

13. Plaintiff Roland Nchango Tumenta, a member of a Cameroonian opposition party seeking the independence of Southern Cameroon, presented at an official U.S. port of entry in San Ysidro, California, in September 2018. There, he expressed his fear of return and his desire to seek asylum in the United States. DHS confined him at the border, then transferred him to the custody of the New Orleans ICE Field Office. He passed a credible fear interview and is pursuing his asylum claim before EOIR. He was denied parole, despite submitting evidence of his identity, that he does not pose a danger to the public, and that he does not pose a flight risk, because he has a permanent resident uncle willing and able to sponsor him. He is currently detained at Pine Prairie.

14. Plaintiff Dayana (legal name Dairo Mena López), a Cuban political dissident and transgender woman, fled Cuba after police tortured her for her political beliefs and gender identity.

In January 2019, she presented at an official U.S. port of entry in El Paso, Texas, expressed her fear of returning to Cuba, and indicated her wish to seek asylum in the United States. DHS confined her at the border, then transferred her to the custody of the New Orleans ICE Field Office. She passed a credible fear interview and is pursuing her asylum claim before EOIR. She has been denied access to the parole process, despite having evidence that she does not pose a danger to the public and that she does not pose a flight risk, because a U.S. citizen is ready and willing to sponsor her. She is currently detained at Pine Prairie.

15. Plaintiff M.R.M.H. fled Honduras because a Transnational Criminal Organization tortured him, breaking his foot and jaw, and threatened him with death. In December 2018, he presented at an official U.S. port of entry in San Ysidro, California. There, he expressed a fear of returning to Honduras and his desire to seek asylum in the United States. DHS confined him at the border, then transferred him to the custody of the New Orleans ICE Field Office. He passed a credible fear interview and is pursuing his asylum claim before EOIR. He was denied parole five times, despite submitting evidence of his identity, that he does not pose a danger to the public, and that he does not pose a flight risk, because a U.S. citizen is willing and able to sponsor him. He is currently detained at LaSalle.

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because his U.S. citizen sister is ready and willing to sponsor him. P.S.P. is currently detained at Pine Prairie.

17. Plaintiff Y.A.L., a Cuban political dissident, presented at an official U.S. port of entry in Brownsville, Texas, in October 2018. There, he expressed his fear of return to Cuba and

was denied parole despite establishing his identity, that he is not a danger to the public, and that he is not a flight risk, because a U.S. citizen is ready and willing to sponsor him. He is currently detained at Bossier.

20. Plaintiff Adrián Toledo Flores, a Cuban political dissident, presented at an official U.S. port of entry in Brownsville, Texas, in October 2018. There, he expressed a fear of returning to Cuba and a desire to seek asylum in the United States. DHS confined him at the border, then transferred him to the custody of the New Orleans ICE Field Office. He passed a credible fear interview and is pursuing his asylum claim before EOIR. He was denied parole before having the opportunity to submit evidence in support of his parole application. Since then, he has submitted evidence of his identity,

ICE Field Office. He passed a credible fear interview and is pursuing his asylum claim before EOIR. He was denied parole despite submitting evidence that he is neither a danger to the public, nor a flight risk, because his U.S. citizen fiancée is ready and willing to sponsor him. He is currently detained at Pine Prairie.

23. Plaintiff F.J.B.H. fled Honduras with his girlfriend and her son due to persecution by gang members affiliated with the ruling political party. They traveled with the migrant caravan and presented at an official U.S. port of entry in San Ysidro, California, in December 2018. There, F.J.B.H. and his girlfriend expressed a fear of return to Honduras and their desire to seek asylum in the United States. DHS separated him from his family, confined him at the border, then transferred him to the custody of the New Orleans ICE Field Office. He passed a credible fear interview and is pursuing his asylum claim before EOIR. He was denied parole despite submitting evidence of his identity, that he is not a danger to the public, and that he is not a flight risk, because his U.S. citizen aunt and uncle are ready and willing to sponsor him. He is currently detained at River.

24. Defendant Kevin K. McAleenan is sued in his official capacity as the Acting Secretary of the Department of Homeland Security ("DHS"). In this capacity, he directs each of the component agencies within DHS, including U.S. Immigration and Customs Enforcement ("ICE"). Defendant McAleenan is responsible for the administration of immigration laws and policies pursuant to 8 U.S.C. § 1103, including those laws and policies regarding the detention and release on parole of arriving asylum seekers.

25. Defendant Matthew T. Albence is sued in his official capacity as Acting Director of ICE, the sub-agency that operates the government's immigration detention system. In this capacity, Defendant Albence directs the administration of ICE's detention policies and operations,

including those policies and operations regarding the detention and release on parole of arriving asylum seekers.

26. Defendant Nathalie R. Asher is sued in her official capacity as Acting Executive Associate Director of ICE Enforcement and Removal Operations. In this capacity, Defendant

other words, whether her or his fear is credible. Such interviews are called credible fear interviews ("CFIs"). 8 U.S.C. §§ 1225(b)(1)(A)(ii), 1225(b)(1)(B)(v).

30. Once an asylum officer determines a person has a credible fear of persecution, the expedited removal proceeding is terminated, and the person is placed in "full" removal proceedings so an immigration judge can adjudicate her or his asylum claim. 8 U.S.C. § 1229a(a)(1).

31. For purposes of this complaint, persons who presented at ports of entry and were found to have a credible fear are "Arriving Asylum Seekers."

32. By statute, Arriving Asylum Seekers "shall be detained for further consideration of the[ir] application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). The statute "mandates" the detention of Arriving Asylum Seekers "throughout the completion of applicable proceedings," including asylum hearings before immigration judges. *Jennings v. Rodriguez*, 138 S. Ct. 830, 845 (2018).

33. By law, Arriving Asylum Seekers are deprived of the right to petition an immigration judge for their release from custody. 8 C.F.R. § 1003.19(h)(2)(i)(B).

34. Instead, the only administrative avenue for release for Arriving Asylum Seekers throughout the[ir] initial proceedings is

36. The Attorney General delegated this authority to the Secretary of Homeland Security, who in turn has delegated it to DHS's three component agencies: Customs and Border Protection ("CBP"), U.S. Citizenship and Immigration Services ("USCIS"), and Immigration and Customs Enforcement ("ICE"). 8 C.F.R. § 212.5. ICE has parole jurisdiction over persons in removal proceedings.[5]

37. The regulations promulgated to implement the Parole Statute prescribe five categories of noncitizens who qualify for parole for "urgent humanitarian reasons" or "significant public benefit," two of which are most relevant to this case: (1) those with "serious medical conditions for whom continued detention would not be appropriate," and (2) those "whose continued detention is not in the public interest." 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 235.3(c).

38. Shortly after IIRAIRA's enactment, in December 1997, the Immigration and Naturalization Service ("ICE") set forth guidelines for field offices to make parole determinations for Arriving Asylum Seekers, stressing that "[p]arole consideration for detainees who meet the credible fear standard, and accurate statistics on parole, are critical to the success of the expedited removal program."[6]

39. In 2005, an independent government commission found that Arriving Asylum Seekers' chances of winning release on parole varied drastically depending on the jurisdiction in which they were confined.[7] While the Harlingen field office released 97.6 percent of asylum

[5] Memorandum of Agreement Between USCIS, ICE, and CBP for the purpose of Coordinating the Concurrent Exercise by USCIS, ICE, and CBP, of the Secretary's Parole Authority Under INA § 212(d)(5)(A) with Respect to Certain Aliens Located Outside of the United States (September 2018), *available at:* https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf.
[6] U.S. Commission on International Religious Freedom, "Report on Asylum Seekers in Expedited Removal," Vol. II at 97-100 (Feb. 8, 2005) [hereinafter Report on Asylum Seekers in Expedited Removal], *available at*: https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/ERS_RptVolII.pdf.
[7] "Report on Asylum Seekers in Expedited Removal," Vol. I at 22.

seekers before their asylum hearing, the New Orleans field office released just 0.5 percent.[8] The commission recommended that DHS take steps to promote "more consistent implementation of parole criteria."[9]

40. DHS then issued guidance on parole in 2009 to address these concerns ("2009 Parole Directive"). In conformity with the Parole Statute, the 2009 Parole Directive provides that parole is in the "public interest," and should be granted to Arriving Asylum Seekers who establish their identities, pose neither a flight risk nor a danger to the community, and for whom no additional factors weigh against their release.[10]

41. The 2009 Parole Directive's stated purpose "is to ensure transparent, consistent, and considered ICE parole determinations for arriving aliens seeking asylum in the United States."[11] To that end, it instructs ICE Detention and Removal Operations field offices to follow detailed procedures in making parole determinations and establishes reporting requirements "to ensure accountability and compliance with [its] procedures."

42. In particular, the Parole Directive requires:

a. *Automatic consideration for parole upon passing of CFI.*[12]

b. *Timely notification*. Aut22d2(n)-1(s)-l O

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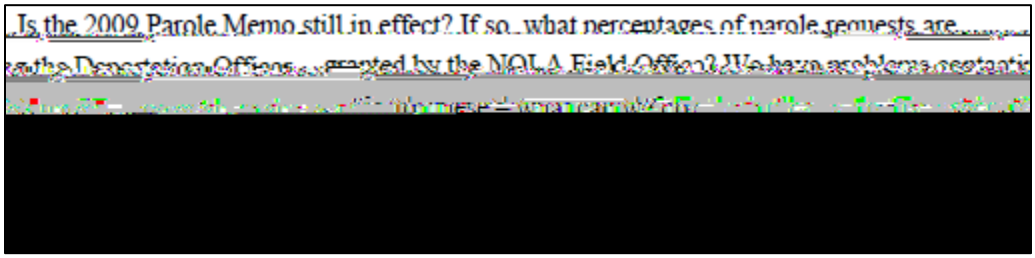
44. I

50. In November 2018, a top-ranking ICE official answered a question from the American Immigration Lawyers Association Midsouth Chapter thusly: [16]



51. Since 2016, parole rates in the New Orleans ICE Field Office have sharply dropped, reflecting DHS' effective rescission of the 2009 Parole Directive in that jurisdiction.

52. From 2016 through 2018, the rate of parole grants in the New Orleans ICE Field Office has dropped by more than 73 points.

53. According to ICE data, in 2016, the New Orleans ICE Field Office granted parole in 75.9 percent of cases.

54. In 2017, the New Orleans ICE Field Office granted parole in only 21.9 percent of cases, a decline of 54 percentage points.

55. In 2018, the New Orleans ICE Field Office granted parole in only 2 out of the 130 cases in which it made determinations, or in fewer than 2 percent of all cases.

56. Since 2016, the rate of cases granted parole in the New Orleans ICE Field Office has decreased from 75.9 to 1.5 percent.

57. The parole grant rate of the New Orleans ICE Field Office in calendar year 2018 was the lowest of any field office in the country.

[16] *Ex. A.*

C. The New Orleans ICE Field Office Engages in Sham Parole Reviews and Blanket Denials of Parole, Causing Plaintiffs and Proposed Class Members Irreparable Harm.

58. Defendants' policy and practice of denying parole in nearly all cases is causing the Plaintiffs and proposed class members numerous irreparable harms, including subjecting them to arbitrary and prolonged detention.

59. Mr. Heredia Mons has been confined by DHS for more than ten months. He fled Cuba because he was persecuted for refusing to participate in political activities. He and his wife sought asylum in Laredo, Texas, in July 2018 and were detained separately. She was confined at the T. Don Hutto Residential Center in Taylor, Texas; he was sent to Bossier. She passed her credible fear interview in early August 2018, and was granted parole on August 24, 2018. She has requested that her asylum case be consolidated with Mr. Heredia Mons's case. ICE continues to detain him.

60. After Mr. Heredia Mons passed his credible fear interview, he received a parole advisal in English, a language he does not speak. The proof of service was dated September 8, 2018. The deadline for him to submit documents was September 4, 2018—four days *before* the date on the proof of service. The advisal promised a parole interview. He never received one.

61. Thereafter, Mr. Heredia Mons submitted documents in support of his parole request that were substantially similar to those his wife had submitted. The documents included: a letter from his sponsor—who is his uncle, as well as the sponsor's proof of U.S. citizenship, address, and income; Mr. Heredia Mons'

flight risk and “exceptional factors,” which the official explained as: “You are an enforcement priority.”

65. In ICE custody, Ms. Mena Lopez has been subjected to prolonged periods of solitary confinement against her will on account of her gender identity. Upon entering the United States at El Paso, Texas, she was placed in isolation because she is trans. After experiencing isolation, she decided to try to pass as a gay man to avoid any future segregation. Upon transfer to Cibola County Correctional Center in Milan, New Mexico, she passed as a gay man and was assigned to the general population. She did not know that it was possible to live alongside other trans women at Cibola. Then, when she was transferred to the Tallahatchie County Correctional Facility in Tutwiler, Mississippi ("Tallahatchie"), to await a credible fear interview, she was again identified as trans and isolated for a month. At that point, she cut her hair in a bid to again pass as a gay man. At Pine Prairie, she was initially placed in the general population. When she disclosed to a psychologist that she is trans, she was placed in isolation for several days. While in isolation, Ms. Mena Lopez was shackled whenever she left her cell, and her access to recreation, the law library, and religious services was restricted.

66. Because of the grueling conditions in isolation, she requested transfer back to the general population, where she now suffers from constant threats, insults, and humiliation. In May 2019, attorneys asked ICE to transfer her to Cibola for placement in its dedicated unit for trans women. That request has gone unanswered. Every day Ms. Mena Lopez is confined compounds the physical, mental, and emotional harm she suffers from confinement as a trans woman and trauma survivor.[19]

[19] *See, e.g.*, Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the U.S.*, at 7-11, 26-27 (2011), *available at:* https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf (noting confinement correlates with feelings of "helplessness and

67. Mr. Toledo Flores has been confined by ICE for over seven months. A pharmacy technician, Mr. Toledo Flores fled Cuba following reprisals for defying orders from Cuban officials to harm clients for political reasons. Specifically, Mr. Toledo Flores refused to withhold prescription medication from a client; in retaliation, Cuban officials interrogated and beat him, fired him from his job, and prevented him from obtaining other pharmacy work. Cuban officials came to his house, threatened him, and pushed his girlfriend, who was pregnant at the time.

68. Mr. Toledo Flores and his girlfriend fled Cuba in October 2018, and sought asylum in the United States. They were detained separately. While Mr. Toledo Flores' girlfriend was released from detention, he was sent to jails in Port Isabel, Texas, and Tallahatchie, Mississippi, where he passed his credible fear interview. Thereafter, Mr. Toledo Flores was served with a parole advisal in English, a language he does not understand. The advisal set a deadline of November 14, 2018 to submit a parole request and supporting documents.

69. While he languished in detention, Mr. Toledo Flores' daughter was born in Florida, in early November 2018.

70. Thereafter, Mr. Toledo Flores was moved to Bossier. A few days after arriving, he received another document in English: a parole denial form letter dated November 14, 2018, the same date that ICE had indicated he would need to submit documents in support of his parole request. He never received a parole interview, and was unable to submit documents before the deadline.

71. Mr. Toledo Flores did not come to understand the contents of the parole advisal and the form letter until after the November 14, 2018 deadline. Nevertheless, on two occasions

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Consequences of Detention for Asylum Seekers at 2 (2003) (finding most detained asylum seekers experienced symptoms of depression or anxiety, and half had symptoms of PTSD).

76. On January 3, 2019, Y.A.L. sought release on parole with the assistance of a lawyer. The request was based on two grounds: the 2009 Parole Directive and urgent humanitarian concerns. The request complied with the requirements of the 2009 Parole Directive and included: a letter of support from his sponsor, his wife, who is a permanent resident; and proof of the address in Miami where, if released, he would live with his wife

83. On April 17, 2019, M.R.M.H. again requested parole on the grounds of urgent humanitarian concerns due to ICE's failure to adapt M.R.M.H.'s diet and medical treatment to prevent future life-threatening emergencies. His attorney for parole proceedings received an email response from Deportation Officer Jacques T. Metoyer on May 2, 2019, stating that M.R.M.H. "is not eligible for release on an Order of Supervision as he is not [*sic*] a final order of removal." In another email received by M.R.M.H.'s attorney on May 20, ICE states, "our agency is going to continue your client's detention without release on OSUP [Order of Supervision]."

84. ICE has failed to provide M.R.M.H. with adequate medical care or a medically appropriate diet, causing significant harm to his health. M.R.M.H. has notified ICE and jail officials several times that he is allergic to certain foods. Yet ICE has failed to ensure that he has access to food that does not provoke potentially life-threatening allergic reactions. As a result, M.R.M.H. has had hives for several months. He has experienced severe breathing problems, including anaphylaxis. He has lost consciousness and been hospitalized on several occasions. A physician who conducted an independent medical evaluation of M.R.M.H. in April 2019, found he needed allergy testing, a special diet, immediate access to an epinephrine pen, and x-rays of his foot and chest. Another physician who reviewed M.R.M.H.'s medical records found he "is at extremely high risk of dying in ICE custody from a preventable condition."

85. As a trauma survivor, M.R.M.H.'s ongoing confinement in a prison-like setting has exacerbated his psychological symptoms. He is exhibiting signs of post-traumatic stress disorder,

85.

86. Mr. Puche Moreno, has been confined by DHS for more than eight months. In Venezuela, he was an active member of an opposition party seeking to oust embattled President Nicolás Maduro. Because of his political work, he was kidnapped and assaulted by agents of the ruling party. He fled after learni

Moreno submitted a fourth parole request. The request, based on changed circumstances, contained news articles about the humanitarian crisis in Venezuela, the cessation of flight operations, and the move by U.S. lawmakers to secure Temporary Protected Status for Venezuelans. Despite the proof of cessation of air traffic between the U.S. and Venezuela, ICE again denied parole.

90. Mr. Puche Moreno's prolonged detention has meant many painful days without any communication with his family. When he was forced to flee Venezuela, he had to leave his wife of less than one month. From detention, communication is costly, and Mr. Puche Moreno can only speak with her a couple of times a month. Without access to parole, he has been unable to work to support his family, who have struggled to pay the thousands of dollars in attorneys' fees required to pursue his asylum claim. In addition, Mr. Puche Moreno suffers from hyperinsulinism, which he has been unable to manage due to lack of control over his diet inpe2(i)-2(on in [(I)23(8or c)6(l-2(a)4(n

accusation of prostitution against P.S.P., who is gay. All his life, he has faced discrimination for his Afro-Latino roots and sexual orientation.

97. J.M.R. has been confined by DHS for more than ten months. A political dissident in Cuba, J.M.R. refused to enlist in the military as required. For that, Cuban authorities appeared at a soccer field where he was playing, beat him with a baton, pulled him off the field, and jailed and interrogated him. Because he refused to

himself *pro se* at his asylum hearing. His confinement also restricted his ability to represent himself at his asylum hearing by limiting his access to relevant evidence and information. At Pine Prairie, he failed to receive a package of documents mailed by his uncle to support his asylum claim, and he had limited access to legal materials.

101. R.O.P has been confined by ICE for more than ten months. He fled Cuba because government agents were demanding that he harm patients for political reasons. A physician at a state hospital, he was pressured to withhold life-saving treatment from a patient who was a nationally recognized political dissident. When R.O.P. confronted state authorities about the unethical conduct at the hospital, state authorities began to retaliate against him.

102. R.O.P. fled Cuba to seek asylum in the United States. He was detained for about a

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108. The following day, on January 18, 2019, F.J.B.H. was served with a parole denial letter. Because he does not understand English, he did not realize he had been denied parole on

127. Recently, ICE added capacity to confine about 600 people at River in Louisiana.

128. Recently, ICE added capacity to confine up to 1,000 people at the Richwood Correctional Center[22] in Monroe, Louisiana.

CAUSES OF ACTION

First Claim
(Administrative Procedure Act)
Unlawful Failure to Follow and/or Effective Rescission of the ICE Parole Directive

129. Plaintiffs hereby reallege and incorporate by reference the foregoing paragraphs.

130. The 2009 Parole Directive is a final agency action.

131. The 2009 Parole Directive remains in effect. Accordingly, DHS is bound by its terms, and its provisions must be applied to Arriving Asylum Seekers who receive positive credible fear determinations.

132. Despite that, the New Orleans ICE Field Office has taken the position that the 2009 Parole Directive is no longer in effect.

133. Defendants' policy and practice of ignoring the Parole Directive is arbitrary, capricious, and contrary to law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

Second Claim
(Administrative Procedure Act – Violation of the Immigration and Nationality Act and Implementing Regulations)
Failure to Provide Individualized Determinations of Flight Risk and Danger

[22] KNOE News, "More than a thousand migrant detainees from the border to be housed at the Richwood Correctional Facility," (April 4, 2019), *available at*: https://www.knoe.com/content/news/More-than-a-thousand-migrant-detainees-from-the-border-to-be-housed-at-the-Richwood-Correctional-Facility--508150181.html; Noah Lanard, "Louisiana Decided to Curb Mass Incarceration. Then ICE Showed Up." Mother Jones (May 1, 2019), *available at*: https://www.motherjones.com/politics/2019/05/louisiana-decided-to-curb-mass-incarceration-then-ice-showed-up/.

134. Plaintiffs hereby reallege and incorporate by reference the foregoing paragraphs.

135. The INA and its implementing regulations prohibit DHS from subjecting asylum seekers to long-term civil immigration detention absent an individualized determination that the individual poses a flight risk or is a danger to the community.

136. Defendants are failing to provide individualized determinations, instead issuing denials on a categorical basis to nearly all Arriving Asylum Seekers.

137. Defendants' categorical detention of Plaintiffs and those similarly situated, without any individualized review of flight risk or danger to the community, violates the INA and its implementing regulations.

Third Claim
(Due Process Clause of the Fifth Amendment to the United States Constitution)
Failure to Provide Individualized Determinations of Flight Risk and Danger

138. Plaintiffs hereby reallege and incorporate by reference the foregoing paragraphs.

139. Arriving Asylum Seekers are "persons" within the meaning of the Due Process Clause.

140. Accordingly, Arriving Asylum Seekers may not be deprived of liberty without due process of law.

141. Defendants are failing to provide Asylum Seekers with individualized determinations regarding release from confinement.

142. Defendants' failure to provide such individual review infringes on Arriving Asylum Seekers' liberty interests without due process of law, as required by the Fifth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1.

Dated: May 30, 2019

Respectfully submitted,

//s// Melissa Crow

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