



For Immediate Release

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FOIA Litigation Uncovers 2008 Memorandum of Agreement Regarding DHS' Parole Authority

New York and Boston, August 17, 2011 – For several years, advocates have struggled with how to return deported clients to the United States clients after a federal court or immigration court invalidates their removal orders. A major obstacle has been DHS's lack of any guidance on even the basic question of which agency bears responsibility for handling these matters. Now, DHS finally has made public a Memorandum of Agreement (MOA) between U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP), which sheds some light on what successful litigants and their attorneys can expect from DHS.

In response to litigation brought by the New York University Immigrant Rights Clinic on behalf of the National Immigration Project, the ACLU, the Immigrant Defense Project, the Post-Deportation Human Rights Project at Boston College, and Professor Rachel Rosenbloom, DHS has made the MOA public. The case is *National Immigration Project v. DHS*, No. 11-CV-3235 (S.D.N.Y., May 12, 2011). Until last week, when the MOA was posted to ICE's website, the government had not provided any guidance regarding the components of the government that were responsible for returning successful litigants, despite numerous requests by attorneys and having faced contempt motions. Instead, ICE, CIS, CBP and the Department of State engaged in an ongoing game of "not it", whereby each entity pushes off responsibility for considering return requests onto another. The MOA makes clear that ICE is the entity responsible for considering these requests.

According to the MOA, ICE is the component of DHS responsible for considering a parole requests made by a noncitizen "in removal proceedings . . . regardless of whether [he or she] is

within or outside of the U.S.” MOA, Addendum 2. While advocates welcome the additional transparency the release of the MOA provides, the DHS parole policy will strand most litigants abroad because it depends entirely on a favorable exercise of ICE discretion, which, in turn, does not require that ICE respect that a court has said that the noncitizen won her or his case. Parole also does not provide an adequate solution for specific groups of individuals, for example deported lawful permanent residents who win termination of their removal proceedings.

“We believe that people should be returned to the status they were in prior to their unlawful deportation so, unless the person was a parolee at the time of the deportation, entering as a parolee may create significant problems, for example, it may negatively impact the charges they face and their eligibility for relief,” said Trina Realmuto of the National Immigration Project.

“Individuals who have prevailed on a federal appeal or have successfully reopened their cases following their deportation – often after a recognition that their deportation was wrongful – should be returned quickly and should be restored to their previous immigration status,” said Jessica Chicco of the Post-Deportation Human Rights Project.

Unfortunately, there is no evidence of any internal guidance that instructs agency personnel about the existence of the MOA or their responsibilities in implementing its provision. The MOA itself does not provide guidance on where to direct litigation-related parole requests within ICE and does not provide any standards under which ICE adjudicates such requests. It does, however, provide the address of the enforcement branch parole office which is ultimately responsible for adjudicating the requests.

Northeastern University School of Law Professor Rachel Rosenbloom stated, “I have seen numerous cases in which longtime U.S. residents have been separated from their families for years due to erroneous removal orders. When our government makes a mistake in deporting someone, it should bring that person back as quickly as possible, not set up roadblocks to their return.”

Plaintiffs would like to hear about any experiences practitioners previously have had, or have in the future, with using parole as a tool for returning clients who have won their cases in immigration or federal court. Please send experiences via email to Trina Realmuto, Staff Attorney, National Immigration Project at: trina@nationalimmigrationproject.org.

The Memorandum is located here:

<http://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf>

and

http://www.nationalimmigrationproject.org/press_releases/FOIA.2011.Parole.Authority.MOA.9-2008.pdf

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