PRACTICE ADVISORY
Seeking Release of Clients Detained in Virginia Who Have Won Fear-Based Relief Under *Rodriguez Guerra v. Perry* (E.D. Va.) Settlement [1]

July 29, 2024

I. Introduction

The National Immigration Project, Amica Center (formerly CAIR Coalition), and the ACLU of Virginia sued the Washington Field Office of Immigration and Customs Enforcement (ICE) on behalf of nine individuals whom ICE arbitrarily detained—and in one case, continues to arbitrarily detain—for months after they won immigration relief protecting them from deportation to their countries of origin where they face persecution, torture, or death.[2] The case, *Rodriguez Guerra v. Perry*, No. 1:23-cv-1151 (E.D. Va.), was brought in the U.S. District Court for the Easter District of Virginia on behalf of a class of noncitizens detained after winning fear-based relief within the jurisdiction of the Washington Field Office (WAS ICE), namely within the Farmville Detention Center and Caroline Detention Facility in Virginia.

On July 29, 2024, the parties submitted a settlement agreement for Court approval. *See* Attachment A. Some of the terms of the agreement go into effect before the Court approves the class settlement. This practice advisory describes the settlement terms and provides tips to attorneys representing class members and detained noncitizens who benefit from this settlement.

II. Background

A long-standing ICE policy, referred to as Directive 16004.1 and reiterated several times since the first issuance,[3] favors the prompt release of noncitizens granted fear-based relief from

[1] Publication of the National Immigration Project (NIPNLG), 2023. This practice advisory is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). The advisory is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client's case. Counsel should independently confirm whether the law has changed since the date of this publication. The authors of this practice advisory are Yulie Landan, Justice Catalyst Fellow at NIPNLG, Amber Qureshi, Staff Attorney at NIPNLG, Sophia Gregg, Immigrants' Rights Attorney at the ACLU of Virginia, and Austin Rose, Senior Attorney, Immigration Impact Lab, Amica Center for Immigrant Rights (formerly CAIR Coalition).

[2] *See Rodriguez Guerra et al. v. Perry et al.*, https://www.acluva.org/en/cases/rodriguez-guerra-et-al-v-perry-et-al.

[3] There have been four iterations of ICE's policy since 2000, each time reiterating and elaborating on a policy favoring release of noncitizens granted relief from removal, including those with final grants of withholding of removal and CAT relief. See Message from Tae Johnson, ICE Acting Dir., REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed (Jun. 7, 2021) ("2021 Memo"); Message from Gary Mead, ICE ERO Executive Assoc. Dir., Reminder on Detention Policy Where an Immigration Judge Has Granted Asylum, Withholding of Removal, or CAT (Mar. 6, 2012); Memorandum from Michael Garcia, ICE Ass't Sec'y, Detention Policy Where an Immigration Judge Has Granted Asylum and ICE Has Appealed (Feb. 9, 2004); Memorandum from Bo Cooper, INS General Counsel, Detention and Release During the Removal Period of Aliens Granted Withholding or Deferral of Removal (Apr. 21, 2000), all available at https://www.acluva.org/sites/default/files/field_documents/all_ice_policies_on_post-relief_release_2000-20211.pdf.

removal, including asylum, withholding of removal, and relief under the Convention Against Torture (CAT).[4]

Pursuant to Directive 16004.1, detained individuals who have won fear-based relief in front of an Immigration Judge should be released "absent exceptional circumstances, such as when the noncitizen presents a national security threat or a danger to the community, or any legal requirement to detain[.]"[5] The policy states that "[i]n considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determination."[6]

For several years, WAS ICE was not providing detained noncitizens who won fear-based relief with individualized custody reviews pursuant to Directive 16004.1. The National Immigration Project, Amica Center, and ACLU of Virginia initiated the *Rodriguez Guerra v. Perry* lawsuit alleging that WAS ICE was failing to follow Directive 16004.1 and ICE's own policies and sought class-wide declaratory relief on behalf of noncitizens who remained in detention following a grant of fear-based relief. Plaintiffs sought individualized habeas relief under *Zadvydas v. Davis*, 533 U.S. 678 (2001) for release of the named plaintiffs from detention, and class-wide relief pursuant to *Accardi v. Shaughnessy*, 347 U.S. 260 (1954) for ICE's failure to follow their own policy.

On April 26, 2024, the U.S. District Court for the Eastern District of Virginia certified the following class: "All persons who, now or at any time in the future, are held in civil immigration detention within the area of responsibility of WAS ICE and who have a grant of asylum, INA withholding, or CAT relief from an Immigration Judge that is either final or pending ICE's appeal."[7] The parties engaged in extensive discovery and depositions during which the government admitted that WAS ICE was not following the directive. On July 29, 2024, the parties executed a settlement agreement which is pending court approval.

III. The Settlement Terms

The settlement agreement has two different phases of relief, and the phases cover different categories of detained individuals.

Stage 1 (Present – December 31, 2024): Covers ALL Detained Individuals Who Have Won Asylum, Withholding, or CAT, Regardless of Whether DHS Appeals the Grant

Who gets a custody review under Directive 16004.1 in this stage?

In the first stage, from the present through December 31, 2024, all detained individuals who have won fear-based relief are entitled to a custody review under Directive 16004.1. If your

[4] *See also* Amica Center, ACLU of Virginia, and National Immigration Project, Continued Detention of Noncitizens Who Win Immigration Relief (Feb. 2024), https://amicacenter.org/app/uploads/2024/07/Continued-Detention-Brief-Amica-Version.pdf.
[5] 2021 Memo, *supra* note 4.
[6] *Id.*
[7] *See* Order Certifying Class, *Rodriguez Guerra v. Perry et al.*, No. 1:23-cv-1151, Dkt. 65 (Apr. 26, 2024), https://www.acluva.org/sites/default/files/field_documents/order_certifying_class.pdf.

client has won asylum, withholding of removal, or CAT protection, regardless of whether DHS has appealed that grant, your client must get an individual custody review under the policy.

What is the timing of the custody review in this stage?

If your client is already a class member, they must receive this review within 10 business days of the settlement agreement's execution, July 29, 2024. For others, the review must take place within **10 business days** from when OPLA receives the Immigration Judge's order granting the noncitizen asylum, withholding of removal, or CAT relief.

Stage 2 (January 1, 2025 – June 1, 2026): Covers Only Noncitizens Where OPLA Has Approved an Appeal of the Grant of Relief

Who gets a custody review under Directive 16004.1 in this stage?

From January 1, 2025, until June 1, 2026, detained noncitizens will be entitled to an individual custody review pursuant to Directive 16004.1 *only where OPLA has decided to appeal* the Immigration Judge's grant of fear-based relief to the Board of Immigration Appeals (BIA). At this stage, detained noncitizens who win a grant of fear-based relief and where OPLA decides *not* to appeal the grant are no longer entitled to this individualized custody review pursuant to Directive 16004.1.[8] The same exceptional circumstances standard from Stage 1 continues to apply in Stage 2.

What is the timing of the custody review in this stage?

The review will take place within **7 business days** of OPLA deciding to appeal the grant of relief. OPLA's decision to appeal should be made within 14 days of the Immigration Judge's order granting relief. Please note that the decision whether to appeal is distinct from, and will likely be made earlier than, when OPLA *files* a notice of appeal to the BIA, typically 30 days after the grant of relief. We recommend that you reach out to OPLA as soon as your client receives the relief grant to determine whether they intend to appeal and follow up if you do not hear back within 14 days.

The Standard for the Custody Reviews Under Directive 16004.1

In both stages, when conducting a review under Directive 16004.1, the WAS ICE Field Office Director must determine whether there are exceptional circumstances to continue detention.[9] The Field Office Director's decision should be guided by the policy's guidance: "[i]n considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and

[8] If you are representing a client who has a final grant of relief and they are no longer covered by the settlement agreement, there remain avenues to advocate for their release through the post-order custody review process. *See* Attachment B, Austin Rose, American Immigration Lawyers Association, Practice Pointer: Continued Detention of Non-Citizens Who Won Immigration Relief.

[9] If jurisdiction over your client's custody determinations has moved to ICE Headquarter (ICE HQ), see *infra* Custody Reviews Under Directive 16004.1 When ICE HQ Has Jurisdiction.

circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determinations."

Notice Regarding Custody Reviews Under Directive 16004.1

ICE will notify class members that they will receive a custody review pursuant to Directive 16004.1. In **Stage 1**, ICE must notify the noncitizen after OPLA receives the Immigration Judge's grant of relief. In **Stage 2**, ICE will notify the noncitizen after OPLA-WAS has decided to notice an appeal of the grant of relief. ICE, however, may conduct the custody review within the prescribed timeframe—within 10 business days of the grant of relief in stage 1, or 7 business days of the decision to appeal the grant—irrespective of when notice is provided to the noncitizen.

The notice to the noncitizen will describe the standard of review and factors used for the custody review under Directive 16004.1 and will include class counsel's contact information. The notice does not entitle the noncitizen to submit any evidence to ICE, but advocates may nevertheless submit evidence.[10]

Noncitizens and their clients, if represented, will receive written notice of the result of the custody determination under Directive 16004.1.

Custody Reviews Under Directive 16004.1 When ICE HQ Has Jurisdiction

Federal regulations may vest authority over a detained noncitizen's custody status with ICE HQ, such as if the noncitizen remains detained after the 90-day removal period.[11] When ICE HQ has jurisdiction over the noncitizen's custody, WAS ICE will continue to make an initial custody determination under Directive 16004.1 as described in Stage 1 or Stage 2 of the settlement agreement. The Field Office Director will provide ICE HQ's Removals and International Operations Division (RIO) with a written determination of the custody review. ICE HQ RIO must then make a final determination regarding the noncitizen's custody status within **10 business days** of receiving WAS ICE's recommendation. In making this final custody determination, ICE HQ will apply the same exceptional circumstances standard and factors as described above, and it will consider the field office director's recommendation.

IV. Practice Tips

Timing of Submitting Release Requests Under the *Rodriguez Guerra v. Perry* Settlement

The settlement and Directive 16004.1 do not entitle detained noncitizens to submit evidence to ICE under a specific procedure or timeline to aid in the custody determination. However, we recommend that advocates submit evidence of positive equities in a timely manner so that the ICE field office has additional evidence on hand when making the 16004.1 custody determination. Note that while the settlement includes the time limits referenced above, WAS

[10] *See infra* section IV. Practice Tips.
[11] *See* 8 C.F.R. § 241.4.

ICE may conduct these reviews earlier than the deadline, and so it is important the evidence be submitted as soon as possible.

Contents of Release Requests Under the *Rodriguez Guerra v. Perry* Settlement

We recommend that counsel submit a release request letter with exhibits. In this letter, counsel should delineate why the noncitizen should be released: (1) that there are no exceptional circumstances to continue their detention and (2) that there is no legal requirement to detain. Two sample letters are included in this practice advisory, one for when custody remains with the field office, and the second for when jurisdiction rests with ICE HQ. *See* Attachment C.

Exceptional Circumstances Under Directive 16004.1

The standard of review here is the same for all individuals impacted by the settlement agreement, in both stages of the agreement. "In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determinations."

If your client has no criminal history, highlight that fact. If your client does have convictions or pending charges, submit individualized evidence to counteract the severeness of the crime, such as showing the lack of recency of any criminal activity; the lack of any injury to a victim or damage to property resulting from the criminal activity; that the offense was treated as minor by the criminal adjudicative body, for example that it was classified as a "petty" offense, misdemeanor, or that the client was not sentenced to any jail time; or any post-release plan that shows, for example, acceptance into a residential alcohol treatment program in the case of a client with a DUI.[12]

Practitioners should also submit any evidence of rehabilitation or plans for rehabilitation upon release, such as completion of alcohol or substance abuse classes and documentation of mental health counseling.[13]

Lastly, we recommend that practitioners include information about where the noncitizen will live upon release, who they might live with, whether they may have a job lined up, and any other information that shows the noncitizen will be released into a stable environment. While the policy does not delineate flight risk as an "exceptional circumstance," demonstrating these ties may mitigate concerns about perceived danger. A letter of support from a sponsor or family member may be included as an exhibit. Practitioners may also wish to include a declaration from their client with the release request.[14]

No Legal Requirement to Detain Under Directive 16004.1

[12] For additional practice tips on how to mitigate convictions, see the National Immigration Project's practice advisory regarding obtaining release from immigration detention. National Immigration Project, *A Guide to Obtaining Release from Immigration Detention* at 66–72 (May 28, 2024), https://nipnlg.org/work/resources/guide-obtaining-release-immigration-detention. While this guide primarily focuses on bond, which has a different standard than the review pursuant to review under Directive 16004.1, it has information on how to respond to arguments that a detained noncitizen poses a "danger to the community."

[13] *See id.* at 53–57.

[14] *See id.* at 57–58 (Practice Tip on Developing an Effective Declaration).

There are two legal requirements to detain that ICE may identify. First is INA 236(c), also found at 8 U.S.C. 1226(c). If you client is in removal proceedings under INA 240 (in other words, not in withholding-only proceedings) and has a criminal conviction that triggers one of the grounds of inadmissibility or deportability listed in INA 236(c), then they are mandatorily detained and will continue to be subject to mandatory detention if ICE appeals a decision granting them relief. If there is any doubt as to whether your client is subject to mandatory detention, you should make the argument within the release request that they are not mandatorily detained.

The second possible "legal requirement to detain" that ICE may identify is under INA 241 or 8 U.S.C. § 1231. When a noncitizen is granted withholding of removal or CAT protection and ICE does not appeal, they have a final removal order and their detention is therefore governed by section 241 of the INA, also found at 8 U.S.C. § 1231. The only legal requirements to detain pursuant to this section is during the 90-day removal period if the noncitizen has been found inadmissible under 8 U.S.C. § 1182(a)(2) (criminal grounds) or 8 U.S.C. § 1182(a)(3)(b) (security grounds) or found deportable under 8 U.S.C. § 1227(a)(2) (criminal grounds) or 8 U.S.C. § 1227(a)(4)(B) (security grounds).[15] If your client has not been charged with the criminal or inadmissibility grounds referenced in those provisions, or if they have already passed the 90-day removal period, there is no legal requirement to continue their detention.

The release request letter and exhibits should be submitted to the Field Office Director and the Deputy Field Office Directors of WAS-ERO, with OPLA-WAS Chief Counsel copied as well. If ICE HQ has jurisdiction over the noncitizen's custody, we recommend also submitting the information to the Unit Chief at ICE HQ RIO.

If you have any questions concerning this settlement or the review to which your detained client is entitled, please reach out to class counsel Austin Rose at Austin.rose@amicacenter.org.

[15] *See id.* at 16–17 (describing the inadmissibility and deportability grounds that trigger mandatory detention).

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ROBERTO CARLOS RODRIGUEZ GUERRA, *et al.*, *on behalf of themselves and all others similarly situated*,	)	
Plaintiffs,	)	Case No. 1:23-cv-1151 (MSN/LRV)
v.	)	
PAUL PERRY, WARDEN, CAROLINE DETENTION FACILITY, *et al.*,	)	
Defendants.	)	

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Named Plaintiffs Roberto Carlos Rodriguez Guerra, Mariano Cabrera Rosagel, Wilmer Delgado Posada, Yexon Lopez Madrid, Rene Perla Vasquez, Naga Ramesh Bollina, Tamer Alisaoud Thalji, Denis Melendez Mejia, and Edgardo Vasquez Castaneda, on behalf of themselves and all class members, (collectively, "Plaintiffs") and Federal Defendants Liana Castano, in her official capacity as the Field Office Director of the U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), Washington Field Office,[1] Alejandro Mayorkas, in his official capacity as Secretary of Homeland Security ("DHS"), and Merrick Garland, in his official capacity as Attorney General of the United States, by and through their counsel. This Agreement is effective

[1] Liana Castano, Washington Field Office Director, Enforcement and Removal Operations, is substituted for Russell Hott, who formerly held that position and is named in the Third Amended Complaint. *See* Fed. R. Civ. P. 25(d).

as of the date it is executed by all Parties and upon final approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

RECITALS

I. Background

Plaintiffs filed an initial habeas petition and civil complaint in this case (hereinafter "the Action") on August 29, 2023, and the final Third Amended Complaint on April 1, 2024. Plaintiffs are nine noncitizens who have been granted certain forms of immigration-related relief from removal (asylum, withholding of removal under the Immigration and Nationality Act, or protection under the Convention Against Torture) (hereinafter "order of protection") by an Immigration Judge ("IJ"), and who were at one time detained by the ICE Washington Field Office ("WAS-ERO"), a component of DHS. In their Third Amended Complaint, Plaintiffs presented claims on behalf of themselves and others similarly situated, seeking Article III judicial review under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A), and the Due Process Clause of the Federal Constitution. Specifically, Plaintiffs allege that WAS-ERO violated the APA and Plaintiffs' and putative class members' due process rights by "continuing to detain Plaintiffs and putative class members after they [had been] granted immigration relief [...]", without conducting an "individualized custody review" of certain specific detained noncitizens to determine "whether exceptional circumstances warrant[ed] their continued detention," contrary to ICE policy. Third Am. Compl. (Dkt. 52) ¶¶ 210, 212. Plaintiffs seek only declaratory relief on behalf of the class, and also ask that the Court "[r]eview Plaintiffs' custody under the standard articulated in the ICE Policy and order their release under that standard, if appropriate." *Id.* at 48-49.

At issue in this case is ICE Directive 16004.1, titled "Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed," and issued in 2004 by then-

Assistant Secretary Michael Garcia (Ex. 1). The ICE Directive explains that "it is ICE policy to favor release of aliens who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain." The then-Acting Director of ICE issued an update to ICE Directive 16004.1 in 2021, titled "Reminder: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed" (hereinafter, together with ICE Directive 16004.1, "the Policy"). The update states in relevant part,

> [A]bsent exceptional circumstances, such as when the noncitizen presents a national security threat or a danger to the community, or any legal requirement to detain, noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released pending the outcome of any DHS appeal of that decision.
>
> In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determination.

II. Procedural History

Federal Defendants answered the (then-operative) Second Amended Complaint on January 4, 2024. *See* Answer (Dkt. 29). In response, the Court issued its standard scheduling order on January 9, 2024. Order (Dkt. 30). The Order directed the parties to submit a joint proposed discovery plan. *Id.* In the joint proposed discovery plan, Federal Defendants sought leave from the Court to file an administrative record before any extra-record discovery could begin. The Court agreed with Federal Defendants' position and ordered Federal Defendants to produce an administrative record on or before March 18, 2024, which Federal Defendants did. Rule 16(b) Order (Dkt. 38).

After Federal Defendants filed the administrative record, the parties agreed that limited supplementation of the record was appropriate (Dkt. 50). Federal Defendants agreed to produce email communications and other documents related to Plaintiffs' custody and the Policy, as well as to a series of depositions of ICE personnel. The formal supplementation period closed on May 10, 2024. *See* Order (Dkt. 30); Rule 16(b) Order (Dkt. 38). After the end of the formal supplementation period, Plaintiffs filed their Third Amended Complaint (Dkt. 52), which is described above, and governed the case until its completion through this settlement agreement.

On April 2, 2024, before the depositions began, Plaintiffs moved to certify a class under Federal Rule of Civil Procedure 23(a) and 23(b)(1) or (b)(2).

On April 26, 2024, pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, the Court granted the motion and certified the following class: "[a]ll persons who, now or at any time in the future, are held in civil immigration detention within the area of responsibility of WAS ICE and who have a grant of asylum, INA withholding, or CAT relief from an Immigration Judge that is either final or pending ICE's appeal." Order (Dkt. 65) at 2.

III. Settlement

Federal Defendants deny any and all liability of any kind to the Plaintiffs or the Class Members. Federal Defendants further make no admission that any Class Member suffered any harm, let alone harm from the actions of Defendants. Federal Defendants and the Plaintiffs (hereinafter collectively "the Parties"), however, have concluded that further litigation would be protracted and expensive for all the Parties. After considering these factors, as well as the risks of further litigation, the Parties agreed to settle in the manner and upon the terms set forth in this Agreement. It is the Parties' express intent to end this case in its entirety, including any and all remaining claims in this case, through this Agreement.

The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement after extensive arms-length negotiations, including through a formal settlement conference with the Honorable Lindsey R. Vaala, which took place on June 10, 2024, and June 13, 2024.

Considering the benefits that Plaintiffs and the Class Members will receive from settlement of the Action and the risks of litigation, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and in the best interests of Plaintiffs and the Class Members. Plaintiffs have agreed that Federal Defendants shall be released from all claims pursuant to the terms and provisions of this Agreement and have agreed to the dismissal with prejudice of this Action, as defined in Section 10 of the "Terms of Settlement" below.

TERMS OF SETTLEMENT

NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, subject to the final approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Parties from the Agreement, that this Agreement constitutes a full, fair, and complete settlement of Counts II-III of the Action, which shall be forever released, barred, and dismissed with prejudice, upon and subject to the following terms and conditions:

1. **Custody Reviews Pursuant to the Policy.**

A. Phase 1

i. The Parties agree that, through and including September 3, 2024, or the date the Court enters final approval of this agreement pursuant to Rule 23(a), whichever is earlier (hereinafter "Phase 1"), all noncitizens in the custody of WAS-ERO who have been granted an

order of protection will receive a custody review pursuant to the Policy, regardless of whether the ICE Office of the Principal Legal Advisor Washington Field Location ("OPLA-WAS") has decided to authorize an appeal of the order of protection.

During this custody review, ICE will determine whether exceptional circumstances justify the noncitizen's continued detention. In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determinations.

ii. The WAS-ERO Field Office Director ("FOD") will conduct the review set forth in Section 1(A)(i). If federal regulations vest authority over a noncitizen's custody status with ICE Headquarters, the following additional procedures will apply: (a) the FOD will submit a written recommendation to ICE Headquarters' Removals and International Operations Division ("HQ-RIO") regarding whether to continue the noncitizen's detention; (b) The Unit Chief, HQ-RIO will make a final determination regarding the noncitizen's continued detention within 10 business days of receiving the FOD's recommendation; and (c) HQ-RIO will apply the same exceptional circumstances standard set forth in Section 1(A)(i), giving consideration to the FOD's recommendation.

iii. Phase 1 review will be conducted by the FOD for noncitizens currently in the class on or before 10 business days after the settlement agreement is executed. For noncitizens who have not yet received an order of protection, but who receive an order of protection during the period

set forth in Section 1(A)(i), the review will be conducted on or before 10 business days from the date the order of protection is served on OPLA-WAS.

iv. Named Plaintiffs Edgardo Vasquez Castaneda and Rene Perla Vasquez have submitted evidence for consideration during the review set forth in Section 1(A)(i) within five business days of June 27, 2024, the date the parties reached an agreement in principle. Such evidence was submitted directly to WAS-ERO and OPLA-WAS. ICE will consider any information timely submitted by Class Counsel in making the custody decisions.

B. Phase 1a

i. The parties agree that beginning on the earlier of September 4, 2024, or the day after the final settlement agreement is approved by the Court, and ending on December 31, 2024 (hereinafter "Phase 1a"), all noncitizens in the custody of WAS-ERO who have received an order of protection from an IJ will receive a custody review pursuant to the Policy, regardless of whether OPLA-WAS management officials have decided to authorize an appeal of the order of protection.

During that review, ICE will determine whether exceptional circumstances justify the noncitizen's continued detention. In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determinations.

ii. The FOD will conduct the review set forth in Section 1(B)(i). If federal regulations vest authority over a noncitizen's custody status with ICE Headquarters, the following additional procedures will apply: (a) the FOD will submit a written recommendation to HQ-RIO regarding

whether to continue the noncitizen's detention; (b) The Unit Chief, HQ-RIO will make a final determination regarding the noncitizen's continued detention within 10 business days of receiving the FOD's recommendation; and (c) HQ-RIO will apply the same exceptional circumstances standard set forth in Section 1(B)(i), giving consideration to the FOD's recommendation.

iii. The review during Phase 1a will be conducted by the FOD on or before 10 business days from the date OPLA-WAS is served with the order of protection.

C. Phase 2

i. The parties agree that from January 1, 2025, through and including June 1, 2026 (hereinafter "Phase 2"), any noncitizen detained in the custody of WAS-ERO who has received an order of protection from an IJ, and OPLA-WAS management has decided to authorize an appeal of the order of protection, will receive a custody review pursuant to the Policy.

During that review, ICE will determine whether exceptional circumstances justify the noncitizen's continued detention. In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determinations.

ii. The FOD will conduct the review set forth in Section 1(C)(i). If federal regulations vest authority over a noncitizen's custody status with ICE Headquarters, the following additional procedures will apply: (a) the FOD will submit a written recommendation to HQ-RIO regarding whether to continue the noncitizen's detention; (b) The Unit Chief, HQ-RIO will make a final determination regarding the noncitizen's continued detention within 10 business days of receiving

the FOD's recommendation; and (c) HQ-RIO will apply the same exceptional circumstances standard set forth in Section 1(C)(i), giving consideration to the FOD's recommendation.

iii. The review during Phase 2 will be conducted by the FOD on or before 7 business days from the date OPLA-WAS management approves an appeal. OPLA-WAS management will endeavor to render such a decision within 14 days of being served with the order of protection.

2. Notice to Noncitizens of Eligibility for Review.

A. Phase 1

Pursuant to this Settlement Agreement, during Phase 1 there will be no notice to noncitizens that a review will be conducted under the Policy.

B. Phase 1a

i. During Phase 1a, after OPLA-WAS receives an order of protection regarding a noncitizen, ICE will provide a written notice to the noncitizen, and, if applicable, their counsel, that a review of their custody status will be conducted pursuant to this Settlement Agreement. The notice will describe the standard and factors that will be considered during the review and will include Class Counsel's contact information. This language will provide: "Absent exceptional circumstances, such as when the noncitizen presents a national security threat or a danger to the community, or any legal requirement to detain, noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released pending the outcome of any DHS appeal of that decision. In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be

considered in making such determination." *See* Ex. 2 (Notice). The notice will not entitle the noncitizen to submit any information to be considered in the review or to otherwise participate in the review process, nor will the notice invite the noncitizen to do so. ICE retains the discretion to conduct the review required during Phase 1a at any time before the expiration of the 10-business-day deadline found in Section 1(B)(iii), irrespective of when this notice is transmitted to the noncitizen.

ii. Within 7 business days of the start of Phase 1a, ICE will post a notice in dormitories, including restrictive housing units, housing detained noncitizens at the Caroline Detention Facility and Immigration Centers of America – Farmville Detention Facility, and on electronic tablets available to detainees regarding the class action in both English and Spanish, which will include Class Counsel's contact information *See* Exhibit 3 (Notice).

iii. During Phase 1a, consistent with guidelines governing the Legal Orientation Provider ("LOP"), Amica Center for Immigrant Rights can distribute materials about the case to noncitizens in detention at the Caroline Detention Facility and Immigration Centers of America – Farmville Detention Facility.

C. <u>Phase 2</u>

i. During Phase 2, after OPLA-WAS management decides to notice an appeal of a grant of protection, ICE will notify the noncitizen who received the grant of protection, and, if applicable, their counsel, that a review will be conducted pursuant to this settlement agreement. The notice will describe the standard and factors that will be considered and will include Class Counsel's contact information. This language will provide: "Absent exceptional circumstances, such as when the noncitizen presents a national security threat or a danger to the community, or

any legal requirement to detain, noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released pending the outcome of any DHS appeal of that decision. In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determination." The notice will not entitle the noncitizen to submit any information to be considered in the review or to otherwise participate in the review process, nor will the notice invite the noncitizen to do so. ICE retains the discretion to conduct the review at any time before the expiration of the 7-business-day deadline, irrespective of when this notice is transmitted to the noncitizen.

ii. Before Phase 2 commences, ICE will post a revised notice in dormitories, including restrictive housing units, housing detained noncitizens at the Caroline Detention Facility and Immigration Centers of America – Farmville Detention Facility, and on electronic tablets available to detainees regarding the class action in both English and Spanish, which will include Class Counsel's contact information. This notice will specify that Directive 16004.1 reviews are available only when OPLA-WAS management has approved an appeal of a grant of protection.

iii. During Phase 2, consistent with guidelines governing the LOP, Amica Center for Immigrant Rights can distribute materials about the case to noncitizens in detention at the Caroline Detention Facility and Immigration Centers of America – Farmville Detention Facility.

3. Documentation of Results of Review.

The parties agree that in all phases of this settlement agreement, WAS-ERO will document internally the fact that a new custody determination occurred, and the results of that new custody determination, in writing. WAS-ERO will communicate the results of the custody review pursuant to the ICE Policy in writing to the noncitizen and, if applicable, their counsel. ICE will have exclusive control over the form and contents of the letter and the internal written documentation.

4. Reporting.

A. Phase 1

i. On July 10, August 1, and September 3, 2024, ICE will provide Class Counsel with statistical updates listing the noncitizens who were eligible for the reviews set forth in Section 1(A)(i) (*i.e.*, reviews during Phase 1), which noncitizens received those reviews, and the results of the reviews. These statistical updates will include the name, A number, and country of origin of all noncitizens listed.

B. Phase 1a and Phase 2

i. On the first business day of the month, ICE will provide Class Counsel with statistical updates listing the number of noncitizens who were eligible for the reviews set forth in Sections 1(B)(i) and 1(C)(i) (*i.e.*, reviews during Phases 1a and 2), the number of noncitizens that received those reviews, and the results of the reviews. These statistical updates will not include the name, A number, and country of origin of the noncitizens. The last statistical update required under this Agreement is due June 1, 2026.

5. Dispute Resolution Procedures.

Up to and including June 1, 2026, Plaintiffs will notify Defendants in writing if they believe ICE has not conducted a review required by Sections 1(A)(i), 1(B)(i), or 1(C)(i) or have not provided a statistical update as described in Section 4. The Parties will meet and confer within 14 calendar days to resolve any compliance disputes.

Should the Parties fail to resolve the written dispute above concerning an allegation that ICE has not conducted a review required by Sections 1(A)(i), 1(B)(i), or 1(C)(i) or provided a statistical update required under Section 4, Plaintiffs may file an application with the Court, no later than June 20, 2026, for enforcement of this agreement regarding the alleged failure to conduct a review or provide a statistical update required under the tiered stages of relief above. Resolution of any such dispute shall be governed by the standard principles of contract interpretation.

6. Term of Agreement.

Notwithstanding any future release or removal of any or all Plaintiffs, this Settlement Agreement shall remain in effect until June 1, 2026.

7. Attorney's Fees and Costs.

A. ICE will remit the amount of $140,000 to Plaintiffs, representing a settlement of Plaintiffs' request for attorney's fees and costs on Counts II and III of their Third Amended Complaint pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). Plaintiffs represent that their claims for attorney's fees, litigation costs, and other expenses have been assigned to their counsel, and Federal Defendants accept the assignment and waive any applicable provisions of the Anti-Assignment Act, 31 U.S.C. § 3727. Each Plaintiff's attorney's fees will be offset by any outstanding federal debt that the Plaintiff may have so that the amount paid will be

the balance of attorney's fees agreed to remaining after subtracting the amount of the Plaintiff's outstanding federal debt. Should any Plaintiff's outstanding federal debt exceed the amount of the fees agreed upon herein, then the agreed amount will be used to offset that Plaintiff's federal debt and no fees award shall be paid to that Plaintiff. If a Plaintiff has no outstanding federal debt, then Federal Defendants will honor any assignment of the fee award that the Plaintiff has made to counsel and make the check for fees payable to Plaintiff's counsel. If Plaintiff has outstanding federal debt that does not exceed the cost of the award, then Federal Defendants will honor any assignment of the fee award and make the check payable to Plaintiff's counsel after subtracting the amount of that Plaintiff's outstanding federal debt. The payment of costs will be made by wire transfer following the execution of this Agreement and following receipt of required payment information from Plaintiffs' counsel.

B. This payment shall constitute a full and comprehensive settlement of any fees and costs Plaintiffs have incurred concerning Counts II-III of this Action, without any further litigation under EAJA.

8. No Admission of Liability or Wrongdoing.

This Agreement is not, is in no way intended to be, and should not be construed as, an admission of liability, fault or wrongdoing on the part of the Federal Defendants, their agents, servants, or employees, and it is specifically denied that they are liable to Plaintiffs. This Agreement shall not be offered or received against the Federal Defendants as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Federal Defendants of the truth of any fact alleged by the Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of

any defense that has been or could have been asserted in the Action, or of any liability, negligence, fault, or wrongdoing of the Federal Defendants; or any admission by the Federal Defendants of any violations of, or failure to comply with, the Constitution, laws or regulations; and shall not be offered or received against the Federal Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, nor shall it create any substantive rights or causes of action against any of the parties to this Agreement, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, Federal Defendants may refer to it and rely upon it to effectuate the liability protection granted them hereunder.

9. Court Approval.

This Agreement is subject to and contingent upon Court approval under Rule 23(e) of the Federal Rules of Civil Procedure. In the interim between the Agreement's execution and Court's approval, Federal Defendants are bound by the Agreement's terms and the Agreement can be enforced pursuant to the Dispute Resolution Procedures described in Section 5.

10. Stipulation with Prejudice.

No later than 7 days after the Court enters final approval of the class settlement, the parties will file a joint stipulation of dismissal, with prejudice, of the entire case pursuant to Fed. R. Civ. P. 41.

11. No Assignment.

Plaintiffs represent and warrant that they are the sole and lawful owners of all rights, title, and interests in and to every claim and other matter which Plaintiffs purport to release herein, and

that they have not heretofore assigned or transferred, or purported or attempted to assign or transfer to any person or entity any claims or other matters herein released. Plaintiffs shall indemnify Federal Defendants, their current and former employees, and any of Federal Defendants' predecessors or successors, whether in their official or individual capacities, against, and defend and hold harmless from, any claims arising out of or relating to any such assignment or transfer of any claims or other matters released herein.

12. Merger Clause.

This Agreement contains the entire agreement between the Parties hereto, and Plaintiffs acknowledge and agree that no promise or representation not contained in this agreement has been made to them, and they acknowledge and represent that this Agreement contains the entire understanding between the Parties and contains all terms and conditions pertaining to the compromise and settlement of the disputes referenced herein. No statement, remark, agreement, or understanding, oral or written, that is not contained herein shall be recognized or enforced; nor does this Agreement reflect any agreed-upon purpose other than the desire of the Parties to reach a full and final conclusion of the litigation and to resolve that suit without the time and expense of further litigation.

13. Amendments.

This Agreement cannot be modified or amended except by an instrument in writing, agreed to and signed by the Parties, through counsel, nor shall any provision hereof be waived other than by a written waiver, signed by the Parties, through counsel.

14. Consultation with Counsel.

Plaintiffs and Federal Defendants acknowledge that they have discussed this Agreement with their respective counsel, who have explained these documents to them, and that they understand all of the terms and conditions of this Agreement. Plaintiffs and Federal Defendants further acknowledge that they have read this Agreement, understand the contents thereof, and execute this Agreement of their own free act and deed. The undersigned represent that they are fully authorized to enter into this agreement.

15. Rules of Construction.

A. This Agreement shall be considered a jointly drafted agreement and shall not be construed against any party as the drafter.

B. This Agreement shall be construed in a manner to ensure its consistency with federal law. Nothing contained in this Agreement shall impose upon Federal Defendants any duty, obligation, or requirement, the performance of which would be inconsistent with federal statutes, rules, or regulations in effect at the time of such performance.

C. The headings in this Agreement are for the convenience of the Parties only and shall not limit, expand, modify, or aid in the interpretation or construction of this Agreement.

16. Full Authority to Sign.

Each person signing this Agreement represents and warrants that he or she has full authority to execute the Agreement on behalf of himself or herself, or on behalf of the party or entity on whose behalf he or she signs this Agreement.

17. Execution in Counterparts.

This Settlement Agreement may be executed and delivered in counterparts. Each counterpart, when executed, shall be considered one and the same instrument, which shall comprise the Settlement Agreement, which takes effect on the date of execution.

18. Place of Performance

This agreement was entered into in the Commonwealth of Virginia, and the place of performance is deemed to be the Commonwealth of Virginia.

19. Time for Compliance

The dates described herein refer to calendar days, unless otherwise stated. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

SEEN AND AGREED TO:

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Pro Bono Counsel for Petitioner

DATE: 7/29/2024

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Counsel for Federal Defendants

DATE: 7/26/2024

ATTACHMENT B

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Practice Pointer: Continued Detention of Non-Citizens Who Won Immigration Relief

AILA Doc. No. 23102500 | Dated October 25, 2023

ICE Detention of Clients Who Won Withholding of Removal or CAT Relief

Please fill out this survey for each non-citizen client (if multiple clients, submit multiple responses) who is/was detained for any period of time past an IJ grant of withholding of removal or CAT relief since the beginning of 2022. All information is anonymized (no names or A numbers). The data will be used to support ongoing litigation. If you wish to share additional information beyond the survey questions or have questions about how to assist your clients in this situation, please email CAIR Coalition attorney Austin Rose, **austin.rose@caircoalition.org**.

COMPLETE SURVEY

A concerning trend has developed in the last several years: ICE often continues to detain non-citizens for months after they won fear-based relief in immigration court preventing deportation to their home country. ICE holds these non-citizens while it purportedly—but rarely, if ever, successfully—attempts to deport them to alternative countries.

This practice pointer summarizes ICE's policy and trends with respect to post-relief detention, provides guidance to attorneys with clients in this situation, and describes the ongoing efforts to address this issue through litigation.

What Is ICE Doing?

When an Immigration Judge (IJ) grants a non-citizen withholding of removal (withholding) or relief under the Convention Against Torture (CAT relief), the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country for which the non-citizen demonstrated a sufficient risk of persecution or torture. If neither party appeals this decision, or if an appeal is later dismissed by the Board of Immigration Appeals, the relief grant and accompanying relief grant become final, and the non-citizen's detention becomes governed by the post-order detention statute, 8 U.S.C. § 1231.[1]

The statute authorizes ICE to detain non-citizens with a final removal order for the 90-day "removal period," and it separately lays out criteria for ICE's removal efforts to alternative countries. 8 U.S.C.

§ 1231(a)-(b). However, the statute does not *require* ICE to detain non-citizens for the full 90 days, especially those who have a final grant of withholding or CAT relief and no reasonable prospect of third country removal. Indeed, **long-standing ICE policy** favors the prompt release of non-citizens granted withholding or CAT relief, barring "exceptional circumstances." Furthermore, settled Supreme Court precedent requires ICE to release non-citizens from custody when their removal is not "reasonably foreseeable." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Still, in many jurisdictions across the country (for instance, Virginia, Pennsylvania, and California), ICE field offices appear to be contradicting the national policy and interpreting the statutory scheme differently. The apparent practice of these ICE offices is to hold all non-citizens for at least 90 days after they win withholding or CAT. After the 90-day removal period lapses, the ICE field office conducts a standard post-order custody review pursuant to 8 C.F.R. § 241.4, at which it decides whether to release or hold the non-citizen for up to 90 more days. At no point does it appear that these ICE offices are conducting an individualized review under the "exceptional circumstances" standard articulated in the national policy. The result is that non-citizens granted withholding or CAT relief remain needlessly detained for three to six additional months.

What Can You Do to Advocate for Your Clients in This Situation?

If this happens to your client, you can take the following steps to push for your client's release:

Contact your client's Deportation Officer early and often

As soon as your client's removal order and relief grant become final, contact your client's Deportation Officer (DO) to request your client's immediate release. If the DO responds that ICE will continue to detain your client for 90 days while it pursues third country removal, ask to which countries ICE is seeking removal and point out, if true, that your client lacks a connection to any other country. Additionally, ask for the date of your client's 90-day custody review. In a recent ICE Committee liaison engagement, **AILA has pressed ICE to provide advance notification to counsel of upcoming 90-day custody reviews**. In response, ICE stated that they notify non-citizens directly of their custody reviews. While the burden should not be on detained non-citizen clients to alert their counsel, it may be prudent to ask your client if they have received any such notification.

Submit a release request citing to ICE policy and regulations

If your client remains detained, submit a release request to the ICE field office between two and two-and-a-half months into the 90-day removal period (that is, a month to two weeks before the 90-day custody review). Send the release request to the Deportation Officer and ask that they forward it to ICE field office leadership, or include supervisory officers directly in the email. The request should cite to the ICE policies favoring release of non-citizens granted withholding or CAT relief, and explicitly argue that there are no "exceptional circumstances" warranting your client's continued detention. The request should also argue, in the alternative, that your client is not a danger to the community or a flight risk under 8 C.F.R. § 241.4 and that your client's removal is not reasonably foreseeable under 8 C.F.R. § 241.13.

Consider filing a federal habeas petition

If your client remains detained for more than 90 days after their withholding or CAT relief grant

became final (or, in the case of someone described in *supra* note 1, immediately after their relief grant becomes final), you can file a habeas petition in federal court challenging your client's continued detention. The primary argument is that your client's removal is not reasonably foreseeable under *Zadvydas*. Filing a habeas petition of this type will likely to prompt your client's release, but you should be prepared to litigate the issue. For support with this type of litigation, please contact Austin Rose, Senior Attorney with CAIR Coalition's Immigration Impact Lab (**austin.rose@caircoalition.org**).

What are Advocates Doing to Address This Issue and How Can You Support Our Efforts?

Advocates across the country are increasingly filing individual habeas petitions challenging the detention of clients in this posture. Additionally, CAIR Coalition, the National Immigration Project of the National Lawyers Guild, and the ACLU of Virginia are **litigating a class action case** in Virginia federal court. They argue that ICE field offices are arbitrarily violating their own national policy by detaining non-citizens granted withholding or CAT relief for at least 90 days without individualized review. To support this litigation, please fill out this **survey** if you currently have, or had in the last two years, a client detained for any period past a grant of withholding or CAT relief.

With Special Thanks to Austin Rose of the Capital Area Immigrants' Rights (CAIR) Coalition for his authorship of this practice alert.

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[1] If your client already had a final removal order upon entering detention and/or they were previously deported and ICE reinstated their removal order, their detention is governed by 8 U.S.C. § 1231 from the outset of their detention. Thus, by the time they are granted withholding or CAT relief, they have likely already surpassed the 90-day removal period.

Cite as AILA Doc. No. 23102500.

ATTACHMENT C

Field Office Director Liana Castano
Washington ICE Field Office

RE: [redacted]
A [redacted]
Caroline Detention Center

Release Request under ICE Directive 16004.1

Pursuant to the settlement agreement in *Rodriguez Guerra v. Perry,* 1:23-cv-1151 (E.D. Va. 2024), [redacted] is entitled to a custody review under ICE Directive 16004.1 because he won fear-based relief. Specifically, he was granted asylum in [redacted] but remains detained. Under the ICE directive, the Washington ICE Field Office Director must release [redacted] from custody unless there are "exceptional circumstances" justifying his continued detention or a "legal requirement to detain" him. Neither exists here, and [redacted] should therefore be released from ICE custody.

1. **There are no "exceptional circumstances" justifying [redacted]'s continued detention.**

ICE Directive 16004.1 describes "exceptional circumstances" as "national security threat or danger to the community." The 2021 policy update states: "In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determinations." Under this standard, [redacted] is evidently not a national security threat, and neither does he pose an exceptional danger to the community.

[redacted] has a limited criminal history and *no criminal convictions* except for traffic citations. In [redacted] he was arrested for driving under the influence and possession of a small amount of drugs. These charges are still pending in criminal court because [redacted] was detained by ICE following the incident and has therefore been unable to appear to defend himself against the charges. Ex. 1, Declaration of [redacted] and Certificates; Ex. 2, Criminal Dispositions. Other charges have been dismissed. For example, [redacted] was charged with [redacted] in [redacted], stemming from a dispute with his partner [redacted]. But those charges were not prosecuted, and instead the court imposed a period of temporary separation with which [redacted] complied. Ex. 1; Ex. 2. [redacted] has since reconciled with [redacted], who does not view him as dangerous to her or her family. Ex. 3, Declaration of [redacted].

[redacted]'s release plan mitigates any concerns with his past criminal history. He plans to attend Alcoholics Anonymous upon release to continue maintaining his sobriety, after

more than one year sober in which he has attended classes on alcohol abuse and anger management. Ex. 1. Furthermore, upon release, [redacted] will live with his father in [redacted], [redacted], Ex. 4, Declaration of [redacted], close to but separate from his partner so that he can support her and their children while continuing the separation that has been helpful for their relationship. Ex. 1; Ex. 2. [redacted] looks forward to helping his son [redacted] get back on his feet, including by helping him return to his job with [redacted]'s landscaping company and attending their Christian church together. Ex. 4. A comprehensive post-release plan, with a list of services [redacted] plans to utilize, is attached. Ex. 5, Post-Release Plan.

[redacted] is a hardworking, family-oriented man who is crucial support system for his partner, young children, and aging father. [redacted] has one biological child and cares for his partner's two other children as his own. Ex. 1. His biological child, [redacted], is nearly [redacted] years old and has a serious stomach condition that requires frequent hospital visits and medical bills. Ex. 3. The family relies on Medicaid, but it is often not enough because [redacted] must stay at home with the kids and does not work. *Id*. [redacted]'s father also needs support with his business because he is aging and not able to work as much as he once did. Ex. 1.

2. There is no "legal requirement to detain" [redacted].

[redacted] is indisputably detained under 8 U.S.C. § 1226(a) (INA 236(a)) and his detention is discretionary. Ex. 6, Notice to Appear. Therefore, ICE is not legally required to detain him. The Washington ICE Field Office Director has the unilateral authority to release [redacted] from custody. Given that there are no exceptional circumstances justifying his continued detention, he must be released.

[redacted]

Austin Rose
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Amica Center for Immigrant Rights

Exhibit List

Ex. 1 Declaration of [redacted] and Certificates

Ex. 2 Criminal Dispositions

Ex. 3 Declaration of [redacted]

Ex. 4 Declaration of [redacted]

Ex. 5 Post-Release Plan

Ex. 6 Notice to Appear

Field Office Director Liana Castano
ICE Washington Field Office

Removal and International Operations Division
ICE Headquarters

RE: _____
A _____
_____ Detention Center

Release Request under ICE Directive 16004.1

Pursuant to the settlement agreement in *Rodriguez Guerra v. Perry,* 1:23-cv-1151 (E.D. Va. 2024), Mr. _____ is entitled to a custody review under ICE Directive 16004.1 because he won fear-based relief. Specifically, he was granted deferral of removal under the Convention Against Torture (CAT) in _____ but remains detained. Under the directive, ICE must release Mr. _____ from custody unless there are "exceptional circumstances" justifying his continued detention or a "legal requirement to detain" him. Neither exists here, and _____ should therefore be released from ICE custody.

1. **There are no "exceptional circumstances" justifying Mr. _____ continued detention.**

ICE Directive 16004.1 describes "exceptional circumstances" as "national security threat or danger to the community." The 2021 policy update states: "In considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determinations." Under this standard, Mr. _____ is evidently not a national security threat, and neither does he pose an exceptional danger to the community.

Mr. _____ has no criminal history in the United States, apart from 2007 and 2017 traffic citations. Ex. 10……..

Mr. _____ is amenable to any and all conditions imposed on his release, including check-ins, ankle monitors, or other alternatives to detention. He has a strong support system that will ensure his compliance. He will return to live with his U.S. citizen wife……

While there are no "exceptional circumstances" justifying Mr. _____ continued detention, there are exceptional circumstances *necessitating his release*. He suffers from high blood pressure and thrombocytopenia, a condition manifesting a low blood platelet count…..

2. There is no "legal requirement to detain" Mr. _____.

Mr. _____ is indisputably detained under 8 U.S.C. § 1231(a)(6) (INA 241(a)(6)) and his detention is discretionary. Therefore, ICE is not legally required to detain him. Given that there are no exceptional circumstances justifying his continued detention, he must be released. The Washington Field Office Director should make a release recommendation to ICE HQ RIO, which should order Mr. ____ release.

_____
[Signature block]