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, v. PAUL PERRY, WARDEN, CAROLINE DETENTION FACILITY, *et al.*, Defendants.	)	Case No. 1:23-cv-1151 (MSN/LRV)

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. <u>Phase 1a</u>

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. <u>Phase 1</u>

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. <u>Phase 1a</u>

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. Phase 2

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.

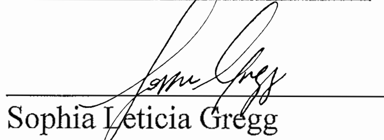
18. Place of Performance

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

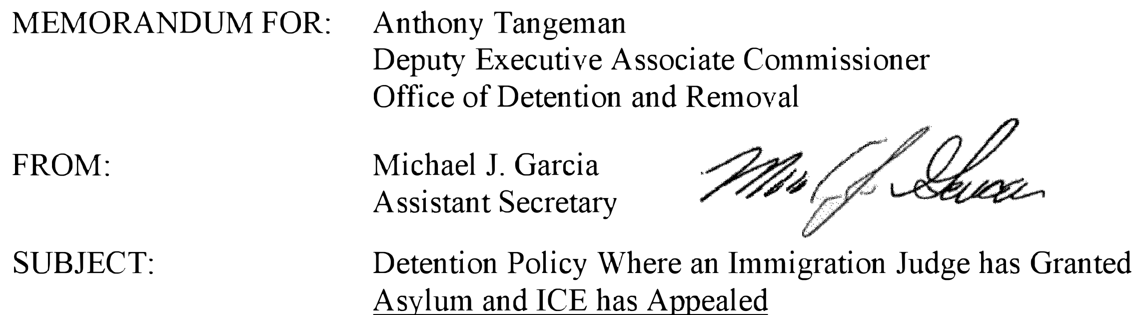
Exhibit 1

Office of the Assistant Secretary

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

FEB 9 2004



MEMORANDUM FOR: Anthony Tangeman
Deputy Executive Associate Commissioner
Office of Detention and Removal

FROM: Michael J. Garcia
Assistant Secretary

SUBJECT: Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed

This memorandum reiterates the U.S. Immigration and Customs Enforcement (ICE) policy where the immigration court has granted asylum (or other protection relief, such as withholding of removal or protection under the Convention Against Torture) and ICE has entered an appeal of the decision which is pending before the Board of Immigration Appeals.

In general, 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.

For cases where a bond has been required but not posted, the bond should be reviewed following an immigration judge's grant of asylum so that an alien can be released in accordance with this ICE policy. Arriving aliens should be considered for parole.

In all cases, the Field Office Director must approve a decision to keep an alien granted protection relief in custody pending appeal, in consultation with the Chief Counsel. This review cannot be delegated beyond the Field Office Director or anyone acting in that capacity.

If you have any questions regarding this memorandum, please contact your local Chief Counsel.

cc: ACC

From: ICE Office of the Director
Subject: REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed
Date: Monday, June 7, 2021 9:43:03 AM

A Message from Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement

To All ICE Employees

June 04, 2021

REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed

On February 9, 2004, then-Assistant Secretary Michael J. Garcia issued U.S. Immigration and Customs Enforcement (ICE) Directive 16004.1, Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed, establishing ICE policy favoring a noncitizen's release in instances in which ICE has appealed the decision of an immigration judge granting asylum, withholding of removal, or protection pursuant to the regulations implementing the Convention Against Torture (CAT protection). I am issuing this reminder to ensure that ICE personnel remain cognizant of and continue to follow this Directive, which supports our commitment to ensuring that our limited detention resources are utilized appropriately.

Pursuant to this longstanding policy, 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.

Consistent with Office of the Principal Legal Advisor (OPLA) policy implementing ICE Directive 16004.1, OPLA attorneys are reminded that, in any detained case in which a noncitizen is granted asylum, withholding of removal, or CAT protection but DHS intends to appeal, Enforcement and Removal Operations (ERO) must be immediately advised of the protection grant so that the noncitizen may be immediately considered for release.

In instances in which a bond was set but not posted by the noncitizen, ERO should conduct a custody redetermination; additionally, "arriving aliens" should be considered for parole. Field Office Director approval is required to continue detention for those affected noncitizens, and such decisions must be made in consultation with the local OPLA Field Location and appropriately documented.

Questions regarding ICE policy on this issue should be directed to the Office of Policy and Planning at PII @ice.dhs.gov through the chain of command and Directorate or Program Office leadership. Please note, however, that case-specific questions should be addressed by Directorate or Program Office leadership.

Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Exhibit 2

NOTICE

You are being provided this notice because you **may** be a class member in *Rodriguez-Guerra v. Perry*, 23-1151 (E.D. Va. filed Aug. 29. 2023), which deals with continued detention of noncitizens after they have been granted asylum, statutory withholding of removal, or Convention Against Torture (CAT) protection, during any DHS appeal and the removal perio d, within the ERO Washington Area of Responsibility.

If you are a class member and have not already had a custody review within the terms of ICE Directive 16004.1, *Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed* (Feb. 9, 2004), you are entitled to such a review, which will be conducted by ERO. In conducting its review, ERO will consider the following:

> 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.

Section 292 of the Immigration and Nationality Act, 8 U.S.C. § 1362, provides that, "[i]n any removal proceedings before [the Executive Office for Immigration Review,] the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as [the noncitizen] shall choose." You might already have immigration counsel you know how to contact. Counsel for *Rodriguez-Guerra v. Perry*, 23-1151 is Austin Rose. They may be reached at 202-788-2509 or austin.rose@amicacenter.org.

Exhibit 3

Class Action Notice

Rodriguez-Guerra v. Perry, 23-cv-1151 (E.D. Va. filed Aug. 29, 2023)

DOES THIS CLASS ACTION NOTICE APPLY TO ME?

This notice applies to you if you are a class member in the *Rodriguez-Guerra v. Perry*, 23-1151 (E.D. Va. filed Aug. 29. 2023) lawsuit. You **may** be a class member in this class action if you are in ICE custody within the ERO Washington Area of Responsibility and an immigration judge granted you asylum, withholding of removal under the Immigration and Nationality Act, or relief under the Convention Against Torture (CAT).

WHAT IS THIS LAWSUIT ABOUT?

This lawsuit deals with continued detention of noncitizens after they have been granted asylum, statutory withholding of removal, or CAT protection, during any DHS appeal and the removal period, within the ERO Washington Area of Responsibility.

WHAT HAPPENS NOW?

If you are a class member and have not already had a custody review within the terms of ICE Directive 16004.1, *Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed* (Feb. 9, 2004), you are entitled to such a review, which will be conducted by ERO.

HOW DO I GET MORE INFORMATION?

This is a summary notice only.

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You may contact your attorney or counsel in this lawsuit for more information. Counsel for *Rodriguez-Guerra v. Perry*, 23-1151 is Austin Rose. They may be reached at 202-788-2509 or austin.rose@amicacenter.org.

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This settlement agreement is pending approval by the Court. You have the right to object to the settlement agreement on or before August 30, 2024. 8 U.S.C. Fed. R. Civ. P. 23(e) ("Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.").