

## Taking the Fight for Asylum Seekers to Court

### The Trump Administration's Parole Denials of Asylum Seekers

This year the Trump Administration is engaging in an unprecedented assault on asylum seekers and refugees. From the refugee ban to fear-mongering over MS-13, turning back asylum seekers at our border, and rescinding protections for Americans brought to this country as children, the administration is pursuing an agenda written by hard-line immigration extremists in the White House and in Congress.

In response, we're taking the fight for asylum seekers to court.

Human Rights First, along with the American Civil Liberties Union (ACLU), the Center for Gender and Refugee Studies, and Covington & Burling, has [filed a class action lawsuit](#) in support of asylum seekers who are held in jails and immigration detention facilities without individualized assessments of their eligibility for release on parole.

#### Background

Our lawsuit challenges the Trump Administration's policy of illegally and unconstitutionally failing to provide detained asylum seekers a meaningful opportunity to have their eligibility for release on parole assessed. In 2010, a U.S. Immigration and Customs Enforcement (ICE) [parole directive](#) went into effect. It provides that arriving asylum seekers "whose continued detention is not in the public interest" should generally be released on parole. Additionally, under the directive, detention is deemed to be generally not in the public interest if the asylum seeker passes a credible fear screening interview, establishes her identity, and poses no flight risk or danger to the community. Furthermore, absent unusual circumstances, a detained asylum

seeker who meets these standards should be released on parole.

ICE's blanket detention policies have faced legal challenges before. In late 2014, the ACLU challenged the government's use of detention to deter future asylum seekers from seeking protection in the United States in [R.I.L.R. v. Johnson](#). In response, ICE issued a new policy stating that it will not consider deterrence in deciding whether to detain asylum seeking families. Despite this policy, ICE continues to use deterrence as a factor in its parole determinations in at least five field office districts across the country, thereby holding asylum seekers in long-term and prolonged detention.

Last month, the Supreme Court held in [Jennings v. Rodriguez](#) that the Immigration and Nationality Act (INA) does not guarantee bond hearings for arriving asylum seekers held in prolonged detention. The Court remanded the case back to the Ninth Circuit to determine whether the Constitution requires those bond hearings. While the government claimed during both oral arguments and in briefings that release on parole remains an option, it is not true in practice. Instead, ICE denies parole to an average of 96 percent of arriving asylum seekers in at least five field office districts.

Beyond the violations of U.S. law raised in the lawsuit, these detention policies and practices also violate U.S. legal obligations under the Refugee Protocol and the International Convention on Civil and Political Rights, which prohibit detention that is unnecessary, disproportionate, or otherwise arbitrary, such as where other measures can satisfy governmental objectives.

## Parole Process

Arriving asylum seekers who request protection at a formal U.S. point of entry are generally sent to immigration detention centers and jails, but are technically eligible for parole consideration. After arrival, they undergo initial security screenings. While held in immigration detention, these asylum seekers also undergo a credible fear interview, during which an asylum officer from U.S. Citizenship and Immigration Services (USCIS) determines whether there is a significant possibility that the asylum seeker will be able to demonstrate eligibility for asylum. An arriving asylum seeker who passes the credible fear screening either remains in detention or can be released on parole while waiting for their asylum request to be reviewed by an immigration judge, which typically takes several months.

Once an asylum seeker passes her credible fear interview, she should receive a Parole Advisal and Scheduling Notification with the date of her parole interview and the deadline for submitting documents to support their parole application. This document should be provided in a language that the asylum seeker understands. While the form is often, but not always, provided, it sometimes has an incorrect interview date and often is not in a language the asylum seeker understands. Typically, interpretation services are not provided.

Within seven days of a positive credible fear finding, an officer from the ICE field office *must* interview the asylum seeker to determine her eligibility for parole. In reality, these interviews often do not take place.

The parole directive also requires each parole determination to be “based on the facts of the individual alien’s case.” In the five field office districts at issue in this lawsuit, asylum seekers usually receive boilerplate denial letters lacking any individualized consideration. The most common justification for denial is that the asylum seeker poses a flight risk—even when the asylum seeker has submitted extensive evidence of community ties and proof of identity, including family members who provide proof of their willingness and ability to financially support the asylum seeker.

ICE’s arbitrary, boilerplate denial of parole to asylum seekers who have demonstrated their eligibility violates the agency’s own regulations and the Constitution.

## Detention

Detained asylum seekers face daunting obstacles to winning asylum. Only 14 percent of detained immigrants are able to secure legal representation, while 69 percent of those released on parole have counsel. Immigrants with counsel are 15 times more likely to win their asylum cases than those who proceed without counsel. This significant disparity in representation rates is caused by factors such as the remote location of many detention facilities, the lack of pro bono attorneys serving these remote facilities, barriers to communication with and access to legal counsel, and difficulties affording private counsel while in detention.

Detention also has a long-lasting and detrimental impact on asylum seekers, as medical and mental health experts widely recognize. ICE detains individuals in conditions that are not appropriate for civil immigration law detainees, often holding them in actual correctional facilities and jails. Asylum seekers already exhibit high levels of depression, anxiety, and Post-Traumatic Stress Disorder due to trauma experienced in their home countries and while on their journeys to the United States. Detention exacerbates these health problems, which worsen the longer asylum seekers are held. Several detention facilities also fail to provide adequate medical and mental health care.

## Our Case

Human Rights First—with our co-counsel, the ACLU, Covington & Burling, and the Center for Gender and Refugee Studies—is filing suit in the U.S. District Court for the District of Columbia to challenge the widespread denial of parole in at least five ICE field office districts nationwide. In these five districts, statistics show that ICE is ignoring the 2010 parole directive since early 2017, denying parole to 96 percent of arriving asylum seekers on average.

This near blanket policy of denial, combined with the lack of individualized determinations, violates the Administrative Procedure Act (APA), the Immigration and Nationality Act (INA), and the Constitution. The lawsuit includes claims under the APA, the INA, and the Constitution. The former ask ICE to follow the administrative guidance that the agency itself set forth, rather than ignore its directive and increase detention to deter and punish asylum seekers. The latter, a constitutional Due Process claim, is based on the lack of individualized consideration in parole determinations.

## Plaintiffs

Our plaintiffs in this class action lawsuit include:

**Abelardo Asensio Callol** is seeking asylum in the United States after fleeing persecution at the hands of the Cuban government. Callol refused to attend a rally held in memory of Fidel Castro. He was then removed from his position as a project manager for a specialized computer services company belonging to the Ministry of Tourism, and government officers came to his home accusing him of various crimes and of holding anti-government opinions. Fearing for his life, He presented himself to immigration officers at a U.S. port of entry in Hidalgo, Texas in December 2017 and was subsequently sent to immigration detention. An asylum officer found that Callol had a credible fear of persecution and referred him for removal proceedings in immigration court. ICE denied Callol parole without ever interviewing him. He submitted five requests to ICE in order to submit additional documentation confirming his identity, that he is not a flight risk, and that he has sponsors with whom he can live. ICE has not responded to any of his requests. Callol has been detained for over three months at the York County Prison in Pennsylvania.

**Alexi Ismael Montes Castro** is seeking asylum in the United States after fleeing persecution on account of his sexual orientation. Castro fled Honduras after being harassed, assaulted, and threatened at gunpoint because he is gay. Fearing for his life, he presented himself to immigration officers at a port of entry in Eagle Pass, Texas and

sought asylum in November 2017. An asylum officer found that Castro had a credible fear of persecution and referred him for removal proceedings in immigration court. Castro was not aware he could request release on parole until he received a boilerplate letter in January 2018, denying him parole pursuant to the ICE deterrence policy. ICE never interviewed him to determine his eligibility for parole. It denied Castro parole even though he provided the government with his birth certificate and explained that he had a relative in Virginia willing to provide him housing and support in the course of requesting asylum. Castro has been detained for over four months at the York County Prison in Pennsylvania.