



WRITTEN STATEMENT OF

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For a Hearing on

The Expansion and Troubling Use of ICE Detention

House Judiciary Committee

Subcommittee on Immigration and Citizenship

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Members of the Committee,

Thank you for the opportunity to address you today. My name is Jorge L. Barón and I serve as the executive director of the Northwest Immigrant Rights Project (NWIRP). NWIRP is a nationally-recognized legal services organization founded in 1984. Each year, NWIRP provides direct legal assistance in immigration matters to over 20,000 low-income people from over 160 countries, speaking over 70 different languages and dialects. NWIRP also strives to protect the rights of immigrants through impact litigation, public policy work, and community education. NWIRP serves the community from four offices in Washington State in Seattle, Granger, Tacoma, and Wenatchee.

I commend the committee for focusing its attention on the troubling and massive expansion of the immigration detention system. The Northwest Immigrant Rights Project has been providing legal assistance to individuals enduring immigration detention for over three decades and we have seen first-hand how this system has grown and how it has harmed the people detained, their families, and their communities.

As you will hear today from directly-impacted community members and policy experts, the United States should be working toward dismantling the immigration detention system, for a long list of reasons. The system today results in: the widespread separation of families, which traumatizes children and communities;¹ the mistreatment of individuals held at detention centers, including inadequate medical care;² a lack of accountability by private prison corporations that now detain most of the people in the immigration detention system;³ repeated violations of labor rights;⁴ sexual assault of LGBTQ individuals and others;⁵ additional barriers to individuals obtaining legal representation in immigration proceedings;⁶ and other troubling violations of basic human and constitutional rights.⁷ Yet, despite the well-documented problems with the immigration detention system, it continues to grow at an alarming rate.

In the United States, liberty is the default. Our legal system protects people against the deprivation of their liberty except in certain circumstances and then only with due process protections. But in the enforcement of our immigration laws, these principles are being turned on their head, with detention becoming the rule and liberty the exception. This trend has been building for the past three decades, but the Trump Administration's actions are dramatically

expanding both the immigration detention system and its negative impact on people and communities.

I will focus my remarks today on the Administration's actions to undermine the already-limited mechanisms that have allowed individuals to seek release from the immigration detention system. Specifically I will focus on the Administration's moves to curtail the ability of immigrants in detention to seek release on bond and the Administration's attempts to dramatically reduce the number of asylum seekers released through parole.

The Trump Administration's Attack on the Right to Bond Hearings

Despite problematic restrictions on this right, thousands of immigrants each year have been able to seek release from detention by asking an immigration judge to release them on bond. However, the Trump Administration is currently attempting to end the ability of any recently-arrived asylum seeker to have access to bond hearings.

In order to illustrate the troubling changes the Administration is pursuing, I would like to share with the committee the story of one of our clients, Yolany Padilla. Ms. Padilla arrived in the United States in May 2018 with her six-year-old son. Ms. Padilla intended to seek asylum and turned herself in to Border Patrol agents at the southern border. A few hours after Ms. Padilla and her son were taken into custody by Border Patrol, Ms. Padilla's son was forcibly separated from her without explanation.

Ms. Padilla was then taken to a detention center in Texas and later transferred to the Federal Detention Center in SeaTac, Washington, a Bureau of Prisons institution that Immigration and Customs Enforcement (ICE) used for several months in 2018 to detain asylum seekers. Weeks went by and Ms. Padilla remained detained, without a hearing, without a credible fear interview that would initiate the asylum process, and—most importantly to Ms. Padilla—without any contact with her son. Ms. Padilla was not alone. NWIRP learned that there were more than 200 asylum seekers at the federal prison in SeaTac who were detained for several weeks without any action on their cases. Our staff contacted local ICE officials but received no substantive response to our queries on when the asylum process would begin in these cases. It appeared that these people, who merely sought to exercise the right to seek

asylum provided for by U.S. law and our international humanitarian obligations, could be detained indefinitely.

We therefore sought the assistance of the courts. We filed a federal habeas corpus petition on behalf of Ms. Padilla and several other women who had been detained without any action on their cases. We argued that under U.S. law the government was required to give Ms. Padilla and the other asylum seekers credible fear interviews and then bond hearings in a timely manner and with adequate procedural protections. Shortly after the filing of the federal case, Ms. Padilla was given a credible fear interview and a bond hearing, at which an immigration judge granted Ms. Padilla a bond. That was critical, because she was able to post the bond and she was reunited with her son after weeks of separation.

However, we recognized that thousands of other asylum seekers nationwide were in the same situation as Ms. Padilla was. Therefore, U.S. District Judge Marsha Pechman approved our request to continue the case as a class action and Ms. Padilla and a few others now represent a nationwide class of asylum seekers. Earlier this year, Judge Pechman ordered the federal government to ensure that asylum seekers in Ms. Padilla's position get a prompt bond hearing, within seven days of requesting one, and also required that the government bear the burden of showing why an individual should be detained.⁸

For a country founded on the principle of limited government power, these requirements are pretty basic. Remarkably, the Trump Administration's response was to declare flatly that detained asylum seekers who had already passed a credible fear interview simply were not entitled to be released on bond—ever. Just two weeks after Judge Pechman's ruling, Attorney General Barr issued a ruling so stating in *Matter of M-S-*, in which he purported to re-interpret a provision of immigration law that had long been found to allow for bond hearings for most asylum seekers.⁹ According to Attorney General Barr, the only recourse for asylum seekers pursuing release from detention is to seek parole from ICE. But as I will explain next the Trump Administration has drastically restricted parole for detained immigrants. So the Trump Administration's proposed approach is clear: asylum seekers will be detained, indefinitely.

We believe that Attorney General Barr's ruling in Matter of M-S- is contrary to both the immigration statute and constitutional due process requirements. And in July, Judge Pechman agreed that Attorney General Barr's decision in Matter of M-S- could not stand and that asylum seekers found to have a credible fear of persecution are "constitutionally entitled to a bond hearing before a neutral decision maker."¹⁰ However, the Administration has appealed Judge Pechman's ruling to the Ninth Circuit Court of Appeals and while we're confident of our legal position, we are deeply concerned about the impact that a ruling to uphold Matter of M-S- would have on thousands of asylum-seekers across the country. Because even under the current system of bond hearings, which Judge Pechman found to lack critical due process protections, approximately half of the asylum seekers who seek release from detention are ultimately granted release on bond. In other words, despite the fact that the current system unlawfully places the burden on the asylum seeker to prove they should be released and lacks other procedural safeguards, immigration judges still find that half of asylum seekers eligible for a bond hearing do not pose a risk of flight or a danger to the community and should be released on bond. And yet, the Administration demands that those thousands of individuals who currently can avail themselves of a restrictive system should also remain in detention for the entirety of their cases, subject only to its own unreviewable discretion.

The Administration's policy to restrict access to bond hearings even further is particularly concerning given that approximately two-thirds of the individuals in ICE detention today were transferred by Customs and Border Protection (CBP) and most of these individuals are seeking asylum protection. If Matter of M-S- is upheld, such an outcome could serve as a springboard for an even further expansion of the immigration detention system, unless Congress takes firm and clear action to the contrary.

The Trump Administration's Attempts to All But Eliminate Release on Parole

For some detained asylum seekers (namely those who presented themselves at a port of entry), parole is currently the only mechanism to obtain release from immigration detention. Yet the Trump Administration has dramatically reduced the ability of these asylum seekers to gain release through parole.

Under the Trump Administration, the rate at which ICE has granted parole to arriving asylum seekers has dropped to zero or close to zero in some parts of the country. An analysis conducted by the ACLU and its partners of five ICE field offices in 2017 found that less than 4 percent of parole requests by asylum seekers were approved, even though 92 percent of such requests at those same offices had been approved in the 2011-2013 period.¹¹ The New Orleans field office of ICE granted parole in only two out of 130 cases in 2018 and none so far in 2019.¹² All of this despite the fact that ICE contends that it continues to abide by a 2009 policy directive that provided guidance on the exercise of discretion that had led to a much larger percentage of asylum seekers to be released from immigration custody.

ICE's virtual elimination of parole as a mechanism to release asylum seekers is being challenged through litigation by the ACLU, the Center for Gender and Refugee Studies, Human Rights First, the Southern Poverty Law Center, and their partners. Federal District Judge James Boasberg here in Washington, D.C. found that "the dramatic departure in parole-grant rates [had] not been explained in any way" by the government.¹³ Judge Boasberg has therefore granted preliminary injunctions, including one earlier this month, to prevent a number of ICE field offices from denying parole without conducting an individualized determination of flight risk and danger to the community.¹⁴ However, reports from the field indicate that even these judicial orders have not put a stop to ICE's unlawful practices.

In our own region of Washington State, our staff have also found dramatic changes that have made release on parole significantly more difficult under this Administration. Frequently, requests for parole are simply ignored, despite multiple attempts at communication with local ICE officials. And our staff report parole denials in cases that present compelling circumstances for release and that would have been approved in prior years. As just one example of the restrictive nature of ICE's new practice, NWIRP is currently representing a young man who arrived to the United States as an unaccompanied child and was initially placed with the Office of Refugee Resettlement (ORR). He remained in ORR custody until the day he turned 18, when he was transferred to the Northwest Detention Center, where he has spent 18 months in detention all while awaiting a decision on his asylum application from U.S. Citizenship and Immigration Services (USCIS). ICE has twice denied our requests on his behalf for parole and he

remains locked up as of this moment, despite his significant ties to the community, his not being a danger to the community, and his having no control over when USCIS will resolve his case.

Congress Must Act

When I describe to people not familiar with the immigration detention system the actions the Administration is taking to dramatically alter the legal landscape and to increase the number of people being detained, I am asked how it is possible for the Administration to make such changes unilaterally. The answer of course is that it can only do so if Congress fails in its obligation to conduct appropriate oversight and assert control over the budget of these agencies. We believe that the Administration could not pursue the policy changes embodied in the Matter of M-S- decision and the virtual elimination of release on parole were it not for the perceived acquiescence of Congress in these actions. Specifically, the fact that ICE continues to exceed year after year the budget limitations imposed by Congress sends a message to the Administration that Congress has effectively abdicated its responsibilities under Article I, Section 9, clause 7 of the Constitution.¹⁵

As the executive director of NWIRP, I therefore join communities and organizations around the country in calling on Congress to move forcefully away from the widespread incarceration of immigrants. As immediate steps, we urge Congress to:

- Pass into law H.R. 2415, the Dignity for Detained Immigrants Act, which addresses some of the most urgent problems in the immigration detention system. In particular, this bill would:
 - Restore a presumption of release from detention and ensure every immigrant in detention has access to a bond hearing;
 - End the use of private contractors in the immigration detention system; and
 - Create an enforceable set of standards for immigration detention centers.
- Reduce funding for ICE detention and invest in community-based alternatives to detention programs;

- Create a robust and effective accountability system that addresses the violations in the immigration detention system as we transition away from the incarceration of immigrants.

As I close my testimony, I ask you to consider the over 50,000 community members who are unnecessarily incarcerated at this moment, including over 1,500 in my home state of Washington, and the tens of thousands of children, spouses, extended families and others who are suffering because of the separation that immigration detention causes. I ask you to address this humanitarian crisis of our own making and ensure that our country closes this tragic chapter of our history.

¹ See, e.g., Alan Gomez, USA Today, “Government watchdog: Separated migrant children suffered PTSD, other mental trauma,” September 4, 2019, available at: <https://www.usatoday.com/story/news/nation/2019/09/04/separated-migrant-children-suffered-ptsd-trauma-report-says/2209669001/>; American Immigration Council, *U.S. Citizen Children Impacted by Immigration Enforcement*, May 23, 2018, available at: <https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement>.

² See, e.g., *Fraihat et al v. U.S. ICE et al*, Complaint for Declaratory and Injunctive Relief for Violations of Due Process Clause of the Fifth Amendment and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, et. seq. Case No. 19-cv-01546 (U.S. District Court Central District of California Eastern Division - Riverside), available at: https://www.splcenter.org/sites/default/files/e-filed_-_fraihat_v_ice_complaint_to_file_8_19.pdf; Human Rights Watch et al., *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigrant Detention*, June 2018, available at: <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>; Freedom For Immigrants, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, (May 2017), available at: <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

³³ See, e.g. DHS Office of Inspector General, *OIG-18-67: ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, June 2018, available at: <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>; American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, *Fatal Neglect: How ICE Inspections Ignore Deaths in Detention*, (February 2016), available at: <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>.

⁴⁴⁴ See, e.g., Washington State Office of the Attorney General, *AG Ferguson Sues Operator of the Northwest Detention Center for Wage Violations*, September 20, 2017, available at: <https://www.atg.wa.gov/news/news-releases/ag-ferguson-sues-operator-northwest-detention-center-wage-violations>; Catherine E. Scholchet, CNN, “Lawsuit Alleges ‘Forced Labor’ in Immigration Detention,” April 17, 2018, available at: <https://www.cnn.com/2018/04/17/us/immigrant-detention-forced-labor-lawsuit/index.html>.

⁵ See, e.g. Center for American Progress, *ICE’s Rejection of Its Own Rules is Placing LGBT Immigrants at Severe Risk of Sexual Abuse*, May 2018, available at: <https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>; Safia Samee Ali, NBC News, “Sexual Assaults in Immigration Detention Rarely Get Investigated, Group Says,” April 12, 2017, available at: <https://www.nbcnews.com/news/us->

[news/sexual-assaults-immigration-detention-centers-don-t-get-investigated-says-n745616](https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/); Alice Speri, The Intercept, “Detained, Then Violated: 1,224 Complaints Reveal a Staggering Pattern of Sexual Abuse in Immigration Detention,” April 11, 2018, available at: <https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/>.

⁶ Ingrid Eagly & Steven Shafer, American Immigration Council, *Access to Counsel in Immigration Court*, September 28, 2016, p. 5, available at: <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court> (noting that “Detained immigrants—held in prisons, jails, and detention centers across the country—were the least likely of all immigrants to be represented.”).

⁷ See, e.g., Department of Homeland Security Office of the Inspector General, Concerns About ICE Detainee Treatment and Care at Four Detention Facilities OIG 19-47, June 3, 2019, available at: <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

⁸ *Padilla v. ICE*, Order Granting Preliminary Injunction, Case No. C-18-928 MJP, Western District of Washington at Seattle, available at: <https://www.nwirp.org/wp-content/uploads/2019/04/110-order-granting-PI.pdf>.

⁹ *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019)

¹⁰ *Padilla v. ICE*, Order on Motions re Preliminary Injunction, Case No. C18-928 MJP, Western District of Washington at Seattle, p. 20, available at: <https://www.nwirp.org/wp-content/uploads/2019/07/149-order-on-mx-re-PI.pdf>. The *Padilla* class is currently represented by NWIRP, the American Immigration Council, and the ACLU.

¹¹ *Damus v. Nielsen*, Complaint, Case No. 18-578 (JEB), U.S. District Court for the District of Columbia, available at: <https://www.aclu.org/legal-document/damus-v-nielsen-complaint>

¹² Southern Poverty Law Center, *Judge Blocks ICE from Denying Parole to Asylum-Seekers*, available at: <https://www.splcenter.org/news/2019/09/05/judge-blocks-ice-denying-parole-asylum-seekers>

¹³ *Damus v. Nielsen*, Memorandum Opinion, Case No. 18-578 (JEB), U.S. District Court for the District of Columbia, p. 32, available at: <https://www.aclu.org/legal-document/memorandum-opinion-granting-preliminary-injunction>

¹⁴ *Id.*; *Mons v. McAleenan*, Order Granting Preliminary Injunction, Case No. 19-1593 (JEB), U.S. District Court for the District of Columbia, available at: https://www.splcenter.org/sites/default/files/0033_09-05-2019_order_granting_22_motion_for_preliminary_injunction_granting_15_motion_for_class_certification.pdf.

¹⁵ U.S. Constitution, Art. I, Sec. 9, cl. 7 (“No money shall be drawn from the treasury, but in consequence of appropriations made by law”).