July 19, 2023

Thomas Giles
Los Angeles Field Office Director
U.S. Immigration and Customs Enforcement
300 North Los Angeles Street, Room 7631
Los Angeles, CA 90012

CC: The Honorable Alejandro Mayorkas, Secretary of Homeland Security
Royce Murray, Counselor to Secretary
Deborah Fleischaker, ICE Chief of Staff

Via email

Re: Urgent Civil Rights Situation of Detained Mauritanian Asylum Seekers at Desert View Annex

Dear Field Office Director Giles:

The undersigned civil and immigrants' rights groups are reaching out about an extremely concerning situation at the Desert View Annex that has recently come to our attention. As of today, over 100 Mauritanian asylum seekers are being detained at the facility based solely on their inability to post a $5,000 bond—an amount that appears to have been set arbitrarily by ICE without any consideration of their individual circumstances, including ability to pay, or the availability of alternatives to detention that would allay any risk of flight. In addition, because ICE and EOIR will not provide these asylum seekers with appropriate language services, they will face overwhelming obstacles to preparing and presenting their asylum cases, as well as a prolonged period of detention. This will come at considerable cost to the government and the asylum applicants. Those who forego their right to an interpreter in their preferred language will risk losing their asylum cases due to the government's failure to provide adequate interpretation. Because these asylum seekers pose no danger or risk of flight, and because their continued detention serves no legitimate purpose, **we demand the Field Office immediately release them on parole under reasonable conditions of supervision in lieu of monetary bond.**

The vast majority of these detained asylum seekers are Black Mauritanians. They primarily speak Pulaar Mauritanian, Soninke or Hassānīya—languages that are rarely accommodated by DHS and DOJ. Moreover, many of them are not literate in any language because those languages are not taught in schools in Mauritania and most are not given the opportunity to attend school. They were all placed directly in Section 240 removal proceedings instead of expedited removal, it appears,

because of the government's failure to communicate with them in their native languages. Had they been provided credible fear interviews with adequate interpretation, they would have benefited from ICE's 2009 Parole Directive creating a presumption of release for those who pass a credible fear screening[1]—something which is a near certainty for these asylum seekers, given the appalling human rights situation that caused them to flee their home country. It is widely documented that Black Mauritanians face horrifying violence, enslavement and even death due to wide-spread race- and ethnicity-based human rights abuses, state-sponsored violence, and forced statelessness in Mauritania.[2]

Instead, in what appears to have been a categorical decision, without any consideration of their individual circumstances, ICE has conditioned the release of nearly all of these asylum seekers on payment of $5,000 bond each—an amount that very few can afford. This blanket monetary condition is irrational, unfair, and violates ICE's obligations under the parole statute and the Constitution.[3] ICE's failure to even consider each asylum seeker's ability to pay such a bond or the availability of alternatives to detention (such as reporting requirements or electronic monitoring) is directly contrary to the principles articulated by the Ninth Circuit in *Hernandez v. Sessions*, which affirmed an injunction requiring immigration judges conducting bond hearings to consider an individual's financial circumstances and alternative release conditions. 872 F.3d 976, 1000 (9th Cir. 2017). In doing so, the Ninth Circuit concluded that "[a] bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests." *Id*. at 991. Because the Mauritanian asylum seekers cannot afford the monetary bond the Field Office has demanded for their release, they will needlessly remain in detention for months, and possibly years, as they attempt to present their claims for asylum in immigration courts and, if necessary, on appeal.

The plight of these asylum seekers is exacerbated by both ICE's and EOIR's failure to meet their language needs. The government must provide noncitizens with limited English proficiency (LEP) with interpretation in their preferred language.[4] However, the immigration courts routinely fail to provide them with necessary interpreters in their native languages, including Pulaar Mauritanian or Soninke. Already, multiple individuals' initial court hearings have been delayed because the immigration courts procured interpreters in the Pulaar language from Guinea, which they did not

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[1] U.S. Immigr. & Customs Enf't, Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (issued Dec. 8, 2009), https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf.

[2] *See, e.g.*, U.S. Dep't of State, Mauritania 2022 Human Rights Report, at 1–2, 17–21 (2023), https://www.state.gov/wp-content/uploads/2023/02/415610_MAURITANIA-2022-HUMAN-RIGHTS-REPORT.pdf; *see also* Ltr. to President Biden & Secretary Alejandro Mayorkas, Re: Urgent Request for New 18-Month Designation of TPS or DED for Mauritania (July 14, 2022), https://refugees.org/wp-content/uploads/2022/07/NGO-Sign-On-Letter-to-the-Admin-re_-TPS-for-Mauritania.pdf.

[3] *Nadarajah v. Gonzales*, 443 F.3d 1069, 1082–84 (9th Cir. 2006) (requiring parole decision to be based on "facially legitimate and bona fide" reasons reflecting the individual's circumstances); *see also Marczak v. Greene*, 971 F.2d 510, 518 (10th Cir. 1992); *Sierra v. INS*, 258 F.3d 1213, 1219 (10th Cir. 2001).

[4] *See, e.g.*, Exec. Off. for Immigr. Rev., DM 23-2, Language Access in Immigration Court (June 6, 2023), https://www.justice.gov/eoir/book/file/1586686/download; U.S. Immigr. & Customs Enf't, Performance-Based National Detention Standards 2011, at 421–22 (rev. 2016), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf; U.S. Immigr. & Customs Enf't, 2019 National Detention Standards for Non-Dedicated Facilities, at ii–iii (rev. 2019), https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf.

understand. And despite detention standards requiring ICE to provide language services to LEP detainees, the agency provides virtually no language services for the detained Mauritanian asylum seekers, preventing them from working on their asylum applications and participating in their removal proceedings. Thus, these detained asylum seekers are in an untenable position: They must choose between presenting their life-or-death claims in a language in which they are not competent or seeking continuances (which may be denied) until an appropriate interpreter can be found. We have learned that multiple individuals have been forced to move forward in their immigration proceedings in French because of the immigration court's failure to provide Pulaar Mauritanian interpretation—a violation of their Due Process and statutory rights to a fair and adequate hearing.[5] The government has essentially forced these asylum seekers to choose between prejudicing their claims or extending their detention, where they lack the language services they need to prepare their applications for relief. Either scenario is likely to lead to wrongful orders of removal.

For all these reasons, at a minimum, we demand that the government release the Mauritanian asylum seekers immediately on parole, with reasonable conditions of supervision as deemed necessary. Moreover, DHS and DOJ should give each individual the opportunity to administratively close their cases until such time as the immigration courts can guarantee them a fair hearing, with competent interpreters in their preferred language. Alternatively, DHS should give each individual the opportunity to have their notices to appear dismissed and allow them to pursue applications for asylum affirmatively.

We welcome the opportunity to discuss this situation over the next few days but are willing to move forward with alternative options if we do not hear back by end of Friday, July 21, 2023. Please contact Michael Kaufman at MKaufman@aclusocal.org or 213-977-5232 should you wish to discuss this letter.

Sincerely,

American Civil Liberties Union Foundation, Immigrants' Rights Project
American Civil Liberties Union Foundation of Southern California
Clergy & Laity United for Economic Justice
Haitian Bridge Alliance
Immigrant Defenders Law Center
Public Counsel

[5] *B.C. v. Att'y Gen*., 12 F.4th 306, 314 (3rd Cir. 2021) (citing, inter alia, *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000) ("It is long-settled that a competent translation is fundamental to a full and fair hearing. If a [noncitizen] does not speak English, deportation proceedings must be translated into a language the [noncitizen] understands." (cleaned up)), and *Matter of Tomas*, 19 I&N Dec. 464, 465 (BIA 1987) ("The presence of a competent interpreter is important to the fundamental fairness of a hearing, if the [noncitizen] cannot speak English fluently.")).