LEGAL DEPARTMENT
IMMIGRANTS'
RIGHTS PROJECT

BY EMAIL May 11, 2015

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AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS'
RIGHTS PROJECT

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Re: *RILR v. Johnson*, No. 1:15-cv-00011-JEB (D.D.C.)

Concern about U.S. Immigration and Customs Enforcement (ICE) setting excessively high bonds for class members

Dear Leon:

On behalf of plaintiffs' counsel, I am writing to alert you to our concerns that U.S. Immigration and Customs Enforcement (ICE) is not making appropriate individualized custody determinations for the class members in *RILR v. Johnson*, No. 1:15-cv-00011-JEB (D.D.C.). As you are aware, the preliminary injunction issued by Judge Boasberg on February 20, 2015 prohibits ICE from using generalized deterrence as a factor in making custody determinations for class members. Although ICE now sets bonds in nearly all cases rather than issuing "no bond" custody determinations as it did previously, we are nonetheless concerned that ICE is setting bonds at prohibitively high levels that class members are unable to afford, and that those bonds are not based on an individualized and accurate consideration of legitimate factors.

We are writing to you now in light of the meet and confer to resolve the litigation in *Flores v. Holder*, No. 85-4544-DMG (C.D. Cal.), which we understand is taking place this week. We recently reviewed the transcript of the hearing before Judge Gee on April 24, 2015, and were concerned about the government's statements that all of the women who are currently detained in family detention—including *RILR* class members—need to be detained because they are either subject to "mandatory" detention or pose flight risks, thereby suggesting that compliance with the *Flores* Settlement Agreement would require separation of children from their mothers, rather than release of children with their mothers. *See* Hrg. Tr. at 12-13, 18-19, Flores v. Holder, No. 85-4544-DMG (C.D. Cal. Apr. 24, 2015).1

1The ACLU will be writing to you separately about our concerns that ICE's policy of

We could not disagree with this position more strongly. As set forth herein, we have reason to believe that ICE's custody determinations and the high bonds it is currently setting for our class members do not accurately reflect the flight risk they pose. We therefore hope that this will not prove an obstacle to the government resolving the *Flores* litigation by agreeing to prompt release of mothers with their children.

Since the district court entered its preliminary injunction, we are informed by counsel representing class members in their individual asylum cases that ICE has generally set bonds for class members that range between $7,500 and $20,000. This range is practically indistinguishable from a flat no-bond policy, since class members are all indigent or low-income asylum seekers, and few if any families can afford to post this amount. At the Karnes facility, for example, ICE uniformly sets bonds at *either* $7,500 *or* $10,000, with the lower amount reserved for those who have family members with whom they can reside and, who therefore presumably, present the lowest flight risk. ICE does not appear even to consider the threshold question—whether the asylum-seeking mothers and children in question pose a flight risk or danger to the community that would justify requiring *any* bond. *See* 8 U.S.C. § 1226(a)(2). Indeed, plaintiffs' counsel are not aware of even one instance in which ICE has ordered the release of a class member on her own recognizance in its initial custody determination.

We have strong reason to believe that ICE's custody determinations are not based on a meaningful, individualized, or accurate assessment of flight risk or other appropriate factors. Indeed, in virtually all cases of which we are aware, Immigration Judges (IJs) are lowering the bonds set by ICE and, in some cases, even ordering noncitizens released on recognizance. ICE is not appealing these reduced bond amounts to the Board of Immigration Appeals (BIA), suggesting that ICE does not in fact believe that class members present a significant flight risk or other risk that would justify detaining them. Nonetheless, ICE continues to set prohibitively high bonds for class members.

ICE's current practice is thus in some ways indistinguishable from the one that prompted our lawsuit -- in that class members are forced to spend additional weeks in detention while they wait for a bond hearing before an IJ. This time that asylum-seeking families are forced to spend in detention is the

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subjecting women with reinstated orders of removal – who are not currently members of the RILR class – to mandatory detention, often for prolonged periods of time while they pursue their applications for withholding of removal, violates the immigration statute and also raises serious due process concerns.

direct result of ICE setting bonds that are not based on flight risk or other appropriate factors. Given the harmful effects of detention on our class members—and particularly those who are children—such extended and unnecessary detention is of serious concern.[2]

We welcome an opportunity to discuss these issues with your further.

Sincerely,

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Judy Rabinovitz
Deputy Director, and
Director of Detention and Federal Enforcement Programs
ACLU Immigrants' Rights Project

[2] *See generally*, Declaration of Dr. Luis Zayas, dated Apr. 13, 2015, *available at* https://www.aclu.org/sites/default/files/field_document/38_2015.4.17_declaration_of_luis_zayas.pdf; Declaration of Dr. Luis Zayas, dated Dec. 10, 2014, *available at* https://www.aclu.org/sites/default/files/field_document/2015.01.08_009_amended_pi_motion_with_exhibits.pdf; Declaration of Laurie Cook Heffron, LMSW, dated Apr. 13, 2015, https://www.aclu.org/sites/default/files/field_document/38_2015.4.17_declaration_of_lauri_heffron.pdf.