UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Maria Sandra RIVERA, on behalf of herself as an individual and on behalf of others similarly situated, Plaintiff-Petitioner, v. Eric H. HOLDER, Jr., Attorney General of the United States; Juan P. OSUNA, Director, Executive Office for Immigration Review, United States Department of Justice; Jeh JOHNSON, Secretary of Homeland Security; Thomas S. WINKOWSKI, Principal Deputy Assistant Secretary for United States Immigration and Customs Enforcement; Nathalie R. ASHER, Director, Seattle Field Office of United States Immigration and Customs Enforcement; Lowell CLARK, Warden, Northwest Detention Center; and the UNITED STATES OF AMERICA, Defendants-Respondents.	Civil Action No. COMPLAINT—CLASS ACTION

INTRODUCTION

1. Plaintiff-Petitioner Maria Sandra Rivera and the class she proposes to represent ("Plaintiffs") are currently being held in immigration detention under the Immigration and

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Nationality Act ("INA") § 236(a), 8 U.S.C. § 1226(a). Section 1226(a), which generally governs the detention of individuals pending resolution of their removal cases, expressly authorizes the Attorney General to exercise discretion to release a noncitizen on a "bond of at least $1,500 . . . *or* . . . conditional parole," which includes release on the condition that the noncitizen appear in court for any subsequent removal hearings and whatever other non-money conditions of supervision the agency may deem necessary in order to ensure her appearance. 8 U.S.C. § 1226(a)(2) (emphasis added). Yet despite this plain language, the Seattle and Tacoma Immigration Courts currently maintain a policy and practice of uniformly denying requests for "conditional parole"—or, as it has been historically described, release on recognizance—on the grounds that § 1226(a) and its implementing regulations do *not* authorize Immigration Judges to order release on conditional parole, but rather restrict judges to ordering an individual's release on at least a minimum bond of $1,500.

2. The result of this policy is that Immigration Judges require individuals such as Ms. Rivera to post bond even after determining that neither danger nor flight risk require their detention. Thus, indigent or low-income individuals like Ms. Rivera who are deemed suitable for release, but cannot post bond, routinely suffer continued and unnecessary detention, or, if it is even possible, are forced to strain personal, family, and community resources in order to gain their release.

3. Plaintiffs' detention without the opportunity to seek release on conditional parole from the Immigration Judge unquestionably violates the INA. The government's policy of precluding such requests violates both the plain language and purpose of the statute, which confers broad discretion on the Attorney General to order the release of noncitizens where their detention is not warranted; radically departs from case law recognizing that release on

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recognizance is available in immigration custody proceedings; and raises serious due process concerns. Plaintiffs thus request that this Court declare that § 1226(a) authorizes Immigration Judges to order release on conditional parole and issue an injunction requiring the government to provide Plaintiffs with individualized bond hearings in which the Immigration Judge must consider requests for such release.

PARTIES

4. Plaintiff-Petitioner Maria Sandra Rivera is a native and citizen of Honduras who is presently detained at the Northwest Detention Center in Tacoma, Washington. She is seeking asylum, withholding of removal, and protection under the Convention Against Torture based on the severe physical, sexual, and verbal abuse she suffered at the hands of her former partner in Honduras.

5. Defendant-Respondent Eric Holder is the Attorney General of the United States and the most senior official in the U.S. Department of Justice. He has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the immigration courts and the Board of Immigration Appeals ("BIA"), which are administered by the Executive Office for Immigration Review ("EOIR"). He is named in his official capacity.

6. Defendant-Respondent Juan P. Osuna is the Director of EOIR, an agency within the U.S. Department of Justice responsible for the immigration courts and the BIA. He is named in his official capacity.

7. Defendant-Respondent Jeh Johnson is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Secretary Johnson is a legal

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custodian of Plaintiff-Petitioner Rivera and other members of the proposed class ("Plaintiffs"). He is named in his official capacity.

8. Defendant-Respondent Thomas S. Winkowski is the Principal Deputy Assistant Secretary for U.S. Immigration and Customs Enforcement ("ICE"). ICE is responsible for apprehension, detention, and removal of noncitizens from the United States. Assistant Secretary Winkowski is a legal custodian of the Plaintiffs. He is named in his official capacity.

9. Defendant-Respondent Nathalie R. Asher is the Field Office Director for the Seattle Field Office of ICE, a component of DHS. Director Asher has custody of the Plaintiffs and is named in her official capacity.

10. Defendant-Respondent Lowell Clark is the warden of the Northwest Detention Center, operated by the GEO Group, Inc., under contract with DHS. Defendant Clark has custody of the Plaintiffs and is named in his official capacity.

11. Defendant-Respondent the United States of America includes all government agencies and departments responsible for the implementation of the INA and detention of Plaintiffs.

JURISDICTION AND VENUE

12. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1361, 1651, 2241 and 5 U.S.C. § 702.

13. Plaintiffs-Petitioners ("Plaintiffs") seek declaratory and injunctive relief pursuant to 28 U.S.C. § 2202.

14. Venue is proper in the Western District of Washington under 28 U.S.C. §§ 1391(e) and 1402 because the Plaintiffs are detained in this District and the United States government is a Defendant.

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LEGAL BACKGROUND

15. 8 U.S.C. § 1226(a) generally governs the detention of individuals whom the government seeks to remove from the United States during the pendency of their removal cases. It provides in pertinent part that, pending a decision on removal,

> the Attorney General--
> (1) may continue to detain the arrested alien; and
> (2) may release the alien on—
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; *or* (B) *conditional parole*;

Id. (emphasis added). Thus, the plain language of § 1226(a) clearly authorizes the Attorney General to grant release on "conditional parole" as an alternative to release on a minimum $1,500 bond.

16. Yet despite this plain language granting the Attorney General—and, by extension, Immigration Judge as his agent—the authority to grant release on conditional parole, Immigration Judges in the Seattle and Tacoma Immigration Courts have adopted a policy of uniformly denying all requests for conditional parole on the grounds that § 1226(a) restricts them to ordering an individual released on a minimum $1,500 bond.

17. The Seattle and Tacoma immigration courts' policy, and similar policies at other immigration courts, appear to stem, in part, from a series of single-member BIA decisions, dating from 2004 onward, that conclude, without analysis, that the statute and/or regulations prohibit Immigration Judges from ordering release on conditional parole. *See, e.g*., *In re Gregg*, 2004 WL 2374493, at *1 (BIA Aug. 3, 2004) (concluding, without analysis, that INA § 236(a) "clearly" limits the Attorney General to ordering release on a minimum $1,500 bond and that 8 C.F.R. § 1236.1(d) precludes Immigration Judge from releasing noncitizen without monetary bond); *In re Suero-Santana*, 2007 WL 1153879, at *1 (BIA Mar. 26, 2007) (same).

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18. The policy is also reflected in the Executive Office of Immigration Review ("EOIR") Immigration Judge Benchbook. Ex. A (EOIR Immigration Judge Benchbook, Bond/Custody at 3 (Aug. 2014), *available at* http://www.justice.gov/eoir/vll/benchbook/tools/Bond_Guide.pdf). That document, which is an authoritative reference guide for Immigration Judges across the country, including in the Seattle and Tacoma Immigration Courts, instructs that "[f]or non-mandatory custody aliens, Immigration Judges can: (1) continue to detain; or (2) release on bond of not less than $1,500.00. INA § 236(a). Note: Immigration Judges do *not* have authority to consider or review DHS parole decisions." *Id*. (emphasis added). *See also* Ex. B (EOIR, Immigration Judge Benchbook, Ch.3, I.E (Oct. 2001)) (same).

19. However, this policy of refusing to consider requests for conditional parole is inconsistent with the plain language of both § 1226(a) and the implementing regulations and represents a radical departure from the history of agency practice under the INA, which has long provided for the Immigration Judge's authority to order release on conditional parole as an alternative to release on money bond.

20. Prior to 2003, detention authority under § 1226(a) was exercised by the Immigration and Naturalization Service ("INS"), a component of the Department of Justice. The INS ceased to exist in 2003, and most of its law enforcement functions were transferred to the Department of Homeland Security ("DHS") and its sub-agency, Immigration and Customs Enforcement ("ICE"). *See* Homeland Security Act ("HSA") of 2002, Pub. L. No. 107-296, §§ 441, 471, 6 U.S.C. §§ 251, 291 (2010); *Morales–Izquierdo v. Gonzales*, 486 F.3d 484, 489 n.7 (9th Cir. 2007) (en banc).

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21. Under current law, the Secretary of the DHS now shares the Attorney General's authority under § 1226(a) to detain or release noncitizens during removal proceedings. *See* HSA of 2002, Pub. L. No. 107-296, § 441. Pursuant to the implementing regulations, DHS makes the initial determination, upon the noncitizen's arrest, as to whether a noncitizen will remain in custody. *See* 8 C.F.R. § 1236.1(c)(8) (granting DHS officers discretion to "release an alien . . . under the conditions at [INA §] 236(a)(2)"). The noncitizen may then seek a redetermination of that custody determination from the Immigration Judge. 8 C.F.R. § 1236.1(d) (providing that "[a]fter an initial custody determination . . . the respondent may, at any time before [he receives a final removal order], request amelioration of the conditions under which he or she may be released" from the Immigration Judge); 8 C.F.R. § 1003.19(a) ("Custody and bond determinations made by the service pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge . . . .").

22. "Release on recognizance" is a form of "conditional parole" within the meaning of § 1226(a). "Parole" is undisputedly a form of "release," and "recognizance" is "conditional" because it imposes requirements on the noncitizen—at a minimum, that she appear in immigration court for her removal proceedings in addition to obeying whatever other conditions of supervision the agency deems necessary to ensure her appearance. *See, e.g.*, *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (noting that "[i]t is apparent that the INS used the phrase 'release on recognizance' as another name for 'conditional parole' under [§ 1226(a)]"); *Cruz-Miguel v. Holder*, 650 F.3d 189, 192 (2d Cir. 2011) ("[Petitioner] was released therefrom on his 'own recognizance' pursuant to 8 U.S.C. § 1226 . . . . All parties appear to agree that petitioners were released on 'conditional parole.'"); *Delgado-Sobalvarro v. Attorney General of U.S.*, 625 F.3d 782, 784 (3d Cir. 2010); *Matter of Aguilar-Aquino*, 24 I. &. N. Dec.

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747, 748 (BIA 2009) (noting that noncitizen released by DHS under § 1226(a) had been "released on his own recognizance"); Black's Law Dictionary 1386 (9th ed. 2009) (defining recognizance as "[a] bond or obligation, made in court, by which a person promises to perform some act or observe some *condition*, such as to appear when called, to pay a debt, or to keep the peace" (emphasis added)); *id*. at 1227 (defining "parole" as a form of release).

23. Thus, § 1226(a) empowers both DHS and the Immigration Judge to order an individual released on her own recognizance pursuant to their authority to grant "conditional parole."

24. This principle is also reflected in § 1226(a)'s implementing regulations and related agency guidance. Regulations and agency guidance describing DHS's authority over the initial custody determination construe "conditional parole" to refer to release on recognizance as an alternative to release on money bond. *See* 8 C.F.R. § 287.3 (directing DHS to determine promptly whether noncitizens subject to a warrantless arrest "will be continued in custody or released on bond *or recognizance*" (emphasis added)); *id*. § 1236.3(b) (providing for the release of "[j]uveniles for whom bond has been posted, for whom parole has been authorized, *or who have been ordered released on recognizance*" (emphasis added)). *See also* Ex. C (Memorandum from Gus P. Coldebella, DHS Office of General Counsel, Clarification of the Relation Between Release Under Section 236 and Parole Under Section 212(d)(5) of the Immigration and Nationality Act (Sept. 28, 2007) ("Coldebella Mem."), at 3 n.3 (defining "parole" in § 1226(a)(2) as "the release of a deportable alien from INS custody without bail")).

25. Indeed, DHS routinely exercises its authority to grant "conditional parole" under § 1226(a) by releasing noncitizens on their own recognizance. *See, e.g.*, Ex. D (INS Form 1-220A, Order of Release on Recognizance) (stating that "[i]n accordance with Section 236 of the

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[INA] . . . you are being released on your own recognizance," and requiring, among other things, that the noncitizen "report for any interview or hearing as directed by the Immigration and Naturalization Service or the Executive Office for Immigration Review," "surrender for removal from the United States if so ordered," periodically report to the immigration authorities, obtain permission from those authorities before changing her place of residence, and assist the immigration authorities in obtaining travel documents).

26. Similarly, the regulations governing custody redetermination hearings recognize the Immigration Judge's authority to grant release on conditional parole as an alternative to release on money bond. *See* 8 C.F.R. § 1236.1(d) (empowering the Immigration Judge to determine whether to "to detain the alien in custody, release the alien, and determine the amount of bond, *if any*, under which the respondent may be released) (emphasis added). *See also* 8 C.F.R. § 1236.3(b) (referring to the release of "[j]uveniles . . . who have been ordered released on recognizance," including those ordered released by the Immigration Judge)).

27. The Immigration Judge's authority to grant an individual released on her own recognizance also has been acknowledged by the Board of Immigration Appeals ("BIA"), *see, e.g.*, *In re Joseph*, 22 I. & N. Dec. 799, 800, 809 (BIA 1999) (upholding the Immigration Judge's order releasing individual on his own recognizance after determining that he was properly considered for release under § 1226(a)), and by EOIR. *See* EOIR, Review of Custody Determinations, 66 Fed. Reg. 54,909, 54,910 (Oct. 31, 2001) (explaining that, in making a custody redetermination, "[t]he immigration judge may . . . reduce the required bond amount, *release the alien on his or her own recognizance*, or make such other custody decision as the immigration judge finds warranted" (emphasis added)).

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28. Thus, immigration courts have regularly exercised their statutory authority to release individuals on their own recognizance under § 1226(a) and its implementing regulations. *See* Amnesty Int'l, *Jailed Without Justice: Immigration Detention in the USA* 18 (2009), *available at* http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf (reporting based on government records that Immigration Judges nationwide released 2,442 people on their own recognizance in 2006 and 3,066 people in 2007).

29. Indeed, the practice of releasing individuals without bond as conditional parole (i.e., release on recognizance) has a long history in the immigration system. For more than sixty years, Congress has consistently provided the Attorney General—and the former INS and Immigration Judges as his agents by delegation—the authority to order release on conditional parole as an alternative to release on monetary bond. *See* Internal Security Act of 1950, Pub. L. No. 831, § 23(a), 64 Stat. 1010, 1011 (providing that the "alien may, in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General; *or (3) be released on conditional parole*" (emphasis added)); Immigration and Nationality Act of 1952, Pub. L. No. 414, § 242(a), 66 Stat. 208, 209 (1952) (same).[1] *See also Matter of Andrade*, 19 I. & N. Dec. 488, 489-90 (BIA 1987) (reviewing an Immigration Judge's grant of release on recognizance and reversing based on the individual facts of the case); *Matter of Patel*, 15 I. & N. Dec. 666, 667 (BIA 1976) (ordering, under former INA § 242(a), that the "respondent shall be released from custody on his own recognizance");.

[1] *See also* Ex. 3 (Coldebella Mem.), at 3 n.3 (noting that the 1950 Act "provided for the release from INS custody without bond of a deportable alien and termed it 'conditional parole,'" and that the 1952 Act, like the 1950 Act, allowed a "deportable alien [to] be released on 'conditional parole' pending a final determination on deportability").

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30. By providing for the same authority in § 1226(a), Congress similarly empowered both DHS and Immigration Judges—who now share authority over detention under the statute, *see supra*, ¶ 20—to order release on conditional parole as an alternative to release on money bond. *See* 8 U.S.C. § 1226(a).

31. Likewise, for five decades, agency regulations have implemented the statute by expressly providing the Attorney General's agents with authority to release individuals without bond. These included both the former INS District Director—the predecessor to ICE Field Office Director—who preciously made the initial custody determination, as the well as the Immigration Judge and its predecessor officials reviewing that determination. *See, e.g.*, Orders to Show Cause and Warrants of Arrest, 28 Fed. Reg. 8279, 8280 (Feb. 28, 1963) (codified at 8 C.F.R. pt. 242) ("a district director . . . may exercise the authority contained in section 242 of the Act to continue or detain an alien in, or release him from, custody, to determine whether an alien shall be released under bond, and the amount thereof, if any"); 8 C.F.R. § 242.2(b) (1970) (same, for the "[t]he special inquiry officer," the predecessor officer to the Immigration Judge); 8 C.F.R. § 242.2(b) (1983) (same, for the Immigration Judge); *compare* 8 C.F.R. § 1236.1(d)(1) (current regulation).

32. Thus, Immigration Judges routinely granted release on recognizance under the 1952 Act and its implementing regulations. *See* Janet A. Gilboy, *Setting Bail in Deportation Cases*, 24 San Diego L. Rev. 347, 370 (1987) (noting based on study of Chicago's immigration courts that approximately one-sixth of detained immigrants who challenged their custody statuses in immigration court were successful in obtaining release on recognizance).

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33. Similarly, current regulations empower both DHS and the Immigration Judge to order release on recognizance as an alternative to release on money bond. *See also supra*, ¶¶ 23, 25.

34. Moreover, this longstanding authority is consistent with both the overall purpose of the modern detention statute and the "broad discretion" that § 1226(a) vests in the Attorney General to decide whether to detain or release a noncitizen in removal proceedings. *See In re Guerra*, 24 I. & N. Dec. 37, 39 (BIA 2006). The statute confers broad authority on the Attorney General to determine whether continued detention serves the purposes of the statute in each individual case, or whether release conditions are adequate to address the government's concerns.

35. The purposes of immigration detention pending removal are twofold: to protect the community from danger and to guard against flight risk. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *See also Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1979) (noting that "[a]n alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk" (citation omitted)). *Accord Matter of Andrade*, 19 I. & N. Dec. at 489.

36. Release on recognizance, as an alternative to monetary bond, is essential to effectuating the statutory authority of Immigration Judges and ensuring that immigration detention is serving its purposes in every case. Without this form of release, individuals whom the Attorney General determines to pose no flight risk or danger whatsoever may nonetheless remain detained simply because they cannot post a minimum $1,500 bond.

37. Indeed, if the statute were somehow read to limit Immigration Judges to ordering release on a minimum $1,500 bond, despite its plain language, this would raise serious due

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process concerns, as it would deprive individuals who do not pose a danger or significant flight risk of their liberty solely because of their lack of financial resources. Immigration Judges must be allowed to exercise their conditional parole authority so as to prevent "poverty [from] be[ing] an absolute obstacle [to] release." *Leslie v. Holder*, 865 F. Supp. 2d 627, 641 (M.D. Pa. 2012). *Cf. Shokeh v. Thompson*, 369 F.3d 865, 872 (5th Cir. 2004), *vacated on other grounds*, 375 F.3d 351 (5th Cir. 2004) (holding that "a bond that has the effect of preventing an immigrant's release because of inability to pay and that results in potentially permanent detention is presumptively unreasonable" (internal quotation marks omitted)).

38. The ability of Immigration Judges to order individuals released on recognizance is especially critical because of their role, as neutral decision-makers, in reviewing DHS custody determinations and serving as an essential check on DHS's prosecutorial decision-making with respect to individuals' physical liberty. Barring Immigration Judges from exercising conditional parole authority thus raises serious due process concerns by compromising the ability of the immigration courts to engage in full and fair review of DHS custody determinations. If the immigration courts are unable to order release on recognizance, they cannot fully and effectively review DHS's custody decisions, including DHS's own denials of release on recognizance.

39. In addition, public policy concerns weigh strongly in favor of permitting Immigration Judges to order release on recognizance in appropriate cases. By definition, a detention system that requires individuals to post a minimum $1,500 bond has a disparate impact on indigent and low-income individuals, who become vulnerable to unnecessary detention based merely on their lack of economic resources. Detention imposes tremendous costs on such individuals, who are hindered from accessing counsel and participating effectively in their removal defense, and face serious economic consequences from imprisonment.

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40. Detention also imposes significant costs on society. These include the massive financial burdens on U.S. taxpayers in funding immigration detention, as well as the economic, social, and other costs borne by the communities and families of detainees, including many U.S. citizen children of detainees.

41. Such costs are particularly unjustifiable where detention results from the individual's lack of resources to allay risk of flight, as opposed to a determination that the person in custody presents a danger to the community.

42. In sum, Defendants' policy of limiting Immigration Judges to ordering release on a minimum $1,500 bond is contrary to the plain language of the statute and regulations—which expressly contemplate release on conditional parole as an alternative to monetary bond and empower Immigration Judges to order such release as agents of the Attorney General—the statutory and regulatory history; published decisions from the BIA and the federal courts; and the history of agency practice over custody determinations. Moreover, Defendants' policy raises serious constitutional concerns.

43. Indeed, the government itself has previously conceded that nothing precludes immigration courts from granting release on recognizance or conditional parole under § 1226(a). *See* Ex. E (DHS Br. on Appeal at 1 n.1, In re Pangan, A087 269 297 (BIA Dec. 29, 2011) (noting that "[t]he Department of Homeland Security is not aware of any authority that precludes an Immigration Judge from releasing a respondent on conditional parole under INA § 236(a)(2)(B), if the circumstances warrant release without bond")). *See also* Ex. F (Deposition of Thomas Y.K. Fong 209:16-210:6, Rodriguez v. Robbins, No. CV 07-3239 (C.D. Cal. Feb. 28, 2012)) (Assistant Chief Immigration Judge describing training for Immigration Judges at Los Angeles

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Immigration Court and noting that "all [judges] know" that "[i]f you set a bond dollar amount, it has to be a minimum 1500 or it is released without bond").

FACTUAL ALLEGATIONS

44. Plaintiff-Petitioner Maria Sandra Rivera is a native of Honduras who fled Honduras seeking to escape the persecution and torture inflicted by her partner. She entered the United States on May 29, 2014, and was taken into ICE custody that same day. She was then transferred to the Northwest Detention Center in Tacoma, Washington.

45. Ms. Rivera is eligible for asylum, withholding of removal, and relief under the Convention Against Torture due to her membership in the social group of Honduran women who are viewed as property, and forced to remain in domestic relationships. In Honduras, Ms. Rivera was repeatedly raped and beaten by her former partner of over twenty-five years, suffering severe physical, sexual, and verbal abuse.

46. On June 17, 2014, Ms. Rivera passed a credible fear interview with an asylum officer and was referred to the Tacoma Immigration Court to pursue her application for asylum proceedings in removal proceedings before an Immigration Judge.

47. On September 17, 2014, Ms. Rivera filed her Form I-589, Application for Asylum and Withholding of Removal in immigration court. Her asylum hearing will take place on October 28, 2014.

48. On June 23, 2014, finding that she posed no danger to the community and that any flight risk would adequately be addressed by bond, ICE set an initial bond for Ms. Rivera of $7,500.

49. On August 26, 2014, Ms. Rivera requested a bond redetermination at a hearing before Immigration Judge John C. Odell in Tacoma, Washington. Ms. Rivera asked that the

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judge release her on her own recognizance pursuant to the Attorney General's authority under § 1226(a) to release her on conditional parole. Ms. Rivera argued that a money bond was unnecessary in her case given that she posed no significant flight risk and no danger to the community. Moreover, she explained that she did not have the resources to pay even a minimum $1,500 bond.

50. As evidence that she was not a flight risk or a danger to the community, Ms. Rivera demonstrated that she had no criminal record, had a prima facie claim for asylum, and presented letters from friends stating that she would be allowed to stay with them if released and that they would provide transportation to future hearings in immigration court.

51. The Immigration Judge stated that he did not have authority under § 1226(a) to release Ms. Rivera on conditional parole and denied her request. Instead, after determining that she did not present a danger and was a limited flight risk based on her lack of ties to the country, he simply lowered Ms. Rivera's bond to $3,500.

52. To date, Ms. Rivera has been unable to post bond. Although Ms. Rivera has friends and extended family members in the United States, none of these individuals have been able to borrow sufficient funds to pay her bond.

53. Ms. Rivera has now been detained in ICE custody for over four months while pursuing her asylum claim.

CLASS ACTION ALLEGATIONS

54. Plaintiff-Petitioner Rivera brings this action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b) on behalf of herself and all other persons similarly situated ("Plaintiffs"). The proposed class is defined as follows:

> All individuals who are or will be subject to detention under 8 U.S.C. § 1226(a), and who are eligible for bond, whose custody

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proceedings are subject to the jurisdiction of the Seattle and Tacoma Immigration Courts.

55. The requirements of Rule 23(a)(1) are met in this case because the class is so numerous that joinder of all members is impracticable. The information provided by Plaintiffs demonstrate that on any given month there are generally over 500 persons detained under 8 U.S.C. § 1226(a), who thus satisfy the class definition, and that many more individuals will become class members in the future.

56. Moreover, Plaintiffs are detained pending removal proceedings, and thus their detention will end upon the conclusion of their removal cases. The inherently transitory state of the proposed class members further demonstrates that joinder is impracticable.

57. The proposed class meets the commonality requirements of Federal Rule of Civil Procedure 23(a)(2) because all proposed class members are subject to the same policy: namely, the Seattle and Tacoma Immigration Courts' blanket denial of requests for release on conditional parole based on the view that § 1226(a) restricts Immigration Judges to ordering an individual released on a minimum $1,500 bond. This is a legal determination that is made by the Defendants and applies to all members of the proposed class.

58. The proposed class meets the typicality requirements of Federal Rule of Civil Procedure 23(a)(3) because the claims of the representative party are typical of the claims of the class. Ms. Rivera and the class of individuals she seeks to represent have all been detained under § 1226(a) without an adequate bond hearing where they may be considered for release on conditional parole, as the statute requires. Ms. Rivera and the proposed class challenge their detention in the absence of that opportunity as violating the statute. The legal claims raised by Ms. Rivera are identical to the class claims.

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59. The proposed class meets the requirements of Federal Rule of Civil Procedure 23(a)(4) on adequacy of representation. Ms. Rivera seeks the same relief as the other members of the class—namely, an opportunity to be considered for conditional parole—and she does not have any interests adverse to those of the class as a whole.

60. In addition, the proposed class is represented by counsel from the American Civil Liberties Union Immigrants' Rights Project, the American Civil Liberties Union of Washington Foundation, and the Northwest Immigrant Rights Project. Counsel has extensive experience litigating class action lawsuits, including lawsuits on behalf of immigration detainees.

61. Finally, the proposed class satisfies Federal Rule of Civil Procedure 23(b)(2) because the immigration authorities have acted on grounds generally applicable to the class in applying an erroneous interpretation of § 1226(a) to members of the proposed class. Thus, final injunctive and declaratory relief is appropriate with respect to the class as a whole. *Cf. Rodriguez v. Hayes*, 591 F.3d 1105, 1119-20 (9th Cir. 2010) (8 U.S.C. § 1252(f) does not bar declaratory relief or injunctive relief where, as here, "Petitioner . . . does not seek to enjoin the operation of the immigration detention statutes, but to enjoin conduct it asserts is not authorized by the statutes.").

62. All class members are subject to irreparable injury, because absent an order from this Court, they are or will be detained absent a proper bond hearing in which Immigration Judges consider their eligibility for conditional parole, as required by § 1226(a)(2).

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CLAIMS FOR RELIEF

VIOLATION OF 8 U.S.C. § 1226

63. The foregoing allegations are realleged and incorporated herein.

64. 8 U.S.C. § 1226(a) authorizes Defendants-Respondents ("Defendants") to release noncitizens who are detained during the course of their removal proceedings, including Plaintiff-Petitioner Rivera and proposed class members ("Plaintiffs"), on a minimum $1,500 bond or on conditional parole.

65. However, Immigration Judges in the Seattle and Tacoma Immigration Courts uniformly deny all requests for conditional parole, without considering the individual's eligibility for conditional parole, on the grounds that § 1226(a) restricts Immigration Judges to ordering an individual's release on a minimum $1,500 bond.

66. Defendants' policy and practice of detaining class members without considering requests for conditional parole violates 8 U.S.C. § 1226, and is therefore unlawful.

REQUEST FOR RELIEF

Plaintiffs-Petitioners ("Plaintiffs") ask this Court to grant the following relief:

1. Certify this case as a class action lawsuit, as proposed herein, appoint Ms. Rivera as class representative, and appointed the undersigned counsel as class counsel;

2. Declare Defendant-Respondents' ("Defendants") policy and practice, as described in this Complaint, of construing 8 U.S.C. § 1226(a) to restrict Immigration Judges to ordering individuals released on a minimum $1,500 bond and to prohibit them from ordering individuals released on conditional parole to violate the Immigration and Nationality Act;

3. Order the Defendants to cease and desist construing 8 U.S.C. § 1226(a) to prohibit Immigration Judges from ordering release on conditional parole; refusing to hear Plaintiffs'

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requests that the Immigration Judge grant them release on conditional parole; failing to consider Plaintiffs' eligibility for conditional parole during bond hearings; and failing to order such release where appropriate;

4. Order the Defendants to provide individualized bond hearings to Plaintiffs where the Immigration Judge has the authority under § 1226(a) to consider requests for conditional parole;

5. Grant Ms. Rivera's writ of habeas corpus and order her a bond hearing where the Immigration Judge considers her request for conditional parole.

6. Grant an award of attorneys' fees and costs;

7. Grant such other relief as may be just and reasonable.

DATED this 16th day of October, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. I further certify that copies of the same will be served, via United States Postal Service, Certified Mail, Return Receipt Requested, to the following on October 17, 2014:

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Washington, DC 20528

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Thomas Winkowski
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c/o Annette Hayes
Acting U.S. Attorney for W.D. Washington
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Dated: October 16, 2014, at Seattle, Washington.

/s/ Sarah Dunne
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