



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HANAD ABDI and JOHAN BARRIOS RAMOS,

Petitioners,

v.

DECISION AND ORDER

1:17-CV-0721 EAW

ELAINE DUKE, in her official capacity as Acting Secretary of U.S. Department of Homeland Security; THOMAS BROPHY, in his official capacity as Acting Director of Buffalo Field Office of Immigration and Customs Enforcement; JEFFREY SEARLS, in his official Capacity as Acting Administrator of the Buffalo Federal Detention Facility; and JEFFERSON SESSIONS, in his official capacity as Attorney General of the United States,

Respondents.

INTRODUCTION

Petitioners Hanad Abdi and Johan Barrios Ramos (collectively, “Petitioners”) came to the United States seeking asylum. The federal government has determined that they are likely to win the right to remain in the United States due to a credible fear of returning to their homelands because of a significant possibility of persecution or torture in those countries. Upon their arrival at the U.S. border, they were taken into custody, transported to the Buffalo Federal Detention Facility in Batavia, New York, and held without parole or a bond hearing for more than nine months. Petitioners seek relief on behalf of themselves individually and on behalf of the putative class members of similarly situated asylum-seekers being held in Batavia.

Respondents moved to dismiss this lawsuit pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), contending that the Court lacks subject matter jurisdiction over the claims and that Petitioners have failed to state a viable claim for relief. (Dkt. 27). Petitioners oppose dismissal and seek a preliminary injunction on behalf of themselves and the members of the putative class. (Dkt. 38). While acknowledging that the ultimate parole decision is a discretionary determination not subject to judicial review, Petitioners seek preliminary injunctive relief requiring procedural safeguards when adjudicating parole. Petitioners also seek preliminary injunctive relief requiring individualized bond hearings for any detention that lasts longer than six months.

Because this Court has subject matter jurisdiction over the claims and Petitioners have stated valid claims, the Court denies Respondents' motion to dismiss. (Dkt. 27). In addition, because irreparable harm has been established, and there is a likelihood of success with respect to the claims in this litigation, the Court grants the preliminary injunctive relief sought by Petitioners. (Dkt. 38). Respondents must comply with their internal directive concerning parole hearings—an internal directive that Respondents recently embraced before the Supreme Court, telling the Justices that it remained in full force and effect. Moreover, after six months of detention, Respondents must provide individualized bond hearings and establish by clear and convincing evidence that an asylum-seeker is a flight risk or a danger to the community to justify continued detention.

Although the grant of preliminary injunctive relief will alter the status of the parties—it means that asylum-seekers being detained in Batavia will be afforded certain procedural protections—the relief is nonetheless warranted because to act otherwise would

mean that these individuals would be detained without any appropriate process. Although the Court recognizes that the law in this area is evolving, and the legal landscape could change in the future, the continued detention of these asylum-seekers who have passed credible fear interviews, without being afforded minimal procedural protections, would result in extreme or very serious irreparable damage. As a result, for the reasons discussed further below, Petitioners' motion for a preliminary injunction (Dkt. 38) is granted.

FACTUAL BACKGROUND

Petitioner Hanad Abdi ("Abdi") is a 26-year-old native of Somalia. (Dkt. 38-5 at ¶¶ 1-2). He and his family are members of a minority tribe in Somalia. (*Id.* at ¶ 5). After rival tribal members killed his father, they captured Abdi and beat him. (*Id.* at ¶¶ 7-10). Abdi managed to escape and fled his home country in June 2016. (*Id.* at ¶¶ 10, 15). After an arduous journey through more than ten countries, Abdi arrived at the southern U.S. border on October 12, 2016, seeking asylum. (*Id.* at ¶¶ 15-17). After two weeks at a detention center in Texas, he was transferred to the Buffalo Federal Detention Facility in Batavia, New York, on or about October 26, 2016. (*Id.* at ¶ 18). The officer who interviewed Abdi in connection with his request for asylum determined that "[t]here is a significant possibility that the assertions underlying the applicant's claim [for asylum] could be found credible in a . . . hearing," and asylum proceedings have been scheduled before an immigration judge. (*Id.* at ¶¶ 19-22, Ex. A & B). However, his requests for parole were repeatedly denied until August 16, 2017, when Abdi was released on parole after commencement of this litigation. (Dkt. 38-3 at ¶¶ 16-17; Dkt. 38-5 at ¶¶ 23-35). Abdi

has subsequently been informed that his parole was revoked, but he remains out of custody. (*Id.* at ¶ 17).

Johan Barrios Ramos (“Barrios Ramos”) is a 40-year-old native and citizen of Cuba who was involved with political opposition and human rights work in his native country. (Dkt. 38-4 at ¶¶ 1, 2, 4). For 11 months, he was imprisoned in Cuba for his political activities. (*Id.* at ¶ 5). He fled Cuba in December 2016, and arrived in Mexico by raft. (*Id.* at ¶¶ 9, 10). He traveled to the U.S.-Mexico border, arriving on January 14, 2017, and sought asylum in the United States. (*Id.* at ¶¶ 10-11). He passed his credible fear interview (i.e., the process through which a preliminary determination is made that an asylum-seeker has a viable claim for asylum), and asylum proceedings have been scheduled. (*Id.* at ¶¶ 11, 17). However, his requests for parole were repeatedly denied with no explanation (*id.* at ¶¶ 11-15)—that is, until after commencement of this litigation, when Barrios Ramos was paroled on September 14, 2017 (Dkt. 38-3 at ¶ 18).

In addition to Abdi and Barrios Ramos, Petitioners have submitted declarations from 23 similarly situated individuals who have all sought asylum in this country, have passed their credible fear interviews, and who were detained for many months (and in some cases over a year) at the Buffalo Federal Detention Facility without parole or a bond hearing. (See Dkt. 38-6 (Abdirashid Musa, detained since January 2017); Dkt. 38-7 (Muktar Mohamed, detained in January 2017, but released in September 2017 (Dkt. 51-1 at 6-7)); Dkt. 38-8 (Koffi Sewoul, detained since May 2017); Dkt. 38-9 (Joseph Baptiste, detained in November 2016, but released in September 2017 (Dkt. 51-1 at 7)); Dkt. 38-10 (Dieusaveur Flezinord, detained since December 2016); Dkt. 38-11 (Saikou Touray,

detained in January 2017, but released in October 2017 (Dkt. 51-1 at 96-97)); Dkt. 38-12 (Salad Suraw Abdi, detained since January 2017); Dkt. 38-13 (Muhamed Ahmed Hirsi, detained since September 2016); Dkt. 38-14 (Ahmed Mohamed Ahmed, detained since January 2017); Dkt. 38-15 (Abdirahman Elmi Nor, detained since January 2017); Dkt. 38-16 (Dayron Hernandez Gutierrez, detained in February 2017, but released in September 2017 (Dkt. 51-1 at 6)); Dkt. 51-1 at 11 (Kazeem Akinpelu Azeez, detained since January 2017); *id.* at 19 (Mamadou Barry, detained since November 2016); *id.* at 29 (Abdimalik Mohamed, detained since December 2016); *id.* at 35 (Niang Abdou Lahad, detained since October 2016); *id.* at 46 (Mamadou Diallo, detained since January 2017); *id.* at 51 (Jacob Akwotark Baye, detained since October 2016); *id.* at 59 (Ismail Noor Mohamed, detained since September 2016); *id.* at 70 (Yacob Abraham Weldegiorgis, detained since June 2017); *id.* at 86 (Denel Thomas, detained since December 2016); *id.* at 117 (Abraham Hagos Gashne, detained since June 2017); *id.* at 124 (Abraham Zerom Weldemikael, detained since June 2017); *id.* at 131 (Bereket Araya Ghidewon, detained since October 2016)).

These asylum-seekers are detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). An individual detained under § 1225(b) can be paroled “into the United States temporarily” by the Attorney General “in his discretion.” 8 U.S.C. § 1182(d)(5)(A). A 2009 directive issued by Immigration and Customs Enforcement (“ICE”) (“the ICE Directive” or “the Directive”) sets forth certain procedures that must be utilized when evaluating parole requests. (Dkt. 38-3 at 8-17); ICE Directive No. 11002.1: *Parole of Arriving Aliens Found*

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