UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HANAD ABDI and JOHAN BARRIOS RAMOS, on behalf of himself and all others similarly situated, Petitioners, v. 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.	Case No. 17-cv-721 (EAW)

MEMORANDUM OF LAW IN SUPPORT OF THE PETITIONERS' MOTION FOR A PRELIMINARY INJUNCTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Rules, and Regulations

Miscellaneous

INTRODUCTION

The petitioners—asylum-seekers held at the Federal Detention Facility at Batavia who fled dangerous conditions in their home countries and who the Government has found have a significant possibility of winning asylum in the United States—seek preliminary injunctive relief to remedy the Government's unlawful practices of summarily denying them parole and of refusing to provide them with bond hearings within six months of detention. As a result of these violations, the petitioners are suffering irreparable harm, both by their prolonged and unlawful detention and by their inability to prepare adequately for their upcoming asylum hearings, the outcomes of which could have life-altering consequences for them.

The Government's unlawful practices are apparent from the record accompanying the petitioners' motion, a record that includes data showing that the parole grant rate dropped precipitously and to a very low level after the inauguration of President Trump, statements by Batavia officials that parole under the Trump administration had essentially ended, and declarations by thirteen current or former class members and four immigration attorneys who regularly represent detainees at Batavia detailing the myriad ways in which the Government disregarded its own parole policies after the arrival of the new administration. Beyond the parole violations, the record further establishes that the Government refuses to give the petitioners—including those detained for prolonged periods—bond hearings.

The Government's summary denial of parole and failure to provide bond hearings to asylum-seekers at Batavia violates the Constitution, the Immigration and Naturalization Act, and a binding Immigration and Customs Enforcement parole directive that the Government has represented to the Supreme Court is in full effect. To remedy these violations, the petitioners seek preliminary injunctive relief ordering the Government to adjudicate or, where appropriate,

readjudicate parole applications for all petitioners in conformance with its legal obligations and to provide bond hearings to all petitioners who have been detained for more than six months. The petitioners do not seek the release of any individual or review of any discretionary decision to grant or deny parole; rather they seek only an order mandating that the Government abide by its non-discretionary duty to provide fair process required by law.

FACTUAL AND LEGAL BACKGROUND

The petitioners are nationals of countries like Somalia, Gambia, and Haiti, who fled persecution and violence in their home countries, voluntarily presented themselves at the U.S. border, and requested asylum. *See, e.g.*, Musa Decl.; Touray Decl.; Flezinord Decl. After interviewing all of them within days of arrival in what is known as a "credible fear interview," the Government concluded they were likely to face a "significant possibility" of persecution or torture in their home country. 8 U.S.C. §§ 1225(b)(1)(B)(ii), (v).

As arriving asylum-seekers who passed credible fear interviews, the petitioners are detained inside the U.S. while they pursue asylum in full immigration proceedings. 8 U.S.C. § 1225(b)(1)(B)(ii). But under a provision of the Immigration and Naturalization Act codified at section 1225(b), they are subject to mandatory detention during those proceedings, even though many of the petitioners have close family ties to American citizens or Lawful Permanent Residents with whom they could stay while they pursue relief. *See, e.g.*, Musa Decl. ¶ 4; Flezinord Decl. ¶ 5; Baptiste Decl. ¶ 2; Sewoul Decl. ¶ 4; Touray Decl. ¶ 4; Nor Decl. ¶ 3. At least thirty-two of these asylum-seekers remain detained as of September 5, 2017 (the most recent date for which the Government provided discharge information). *See* Shames Decl. ¶11.[1]

[1] It is possible that there are significantly more arriving asylum-seekers detained at Batavia. The data the Government provided only includes those detainees who have already been provided a parole adjudication and so would not include arriving asylum-seekers who have not received a

I. Denial of Bond Hearings

Although a number of immigration detention schemes under the INA have been interpreted to require bond hearings, the Government takes the position that detainees held pursuant to section 1225(b), like the petitioners, are categorically ineligible for bond hearings no matter how long their detention lasts. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). Indeed, the Government is currently pressing this position before the Supreme Court in *Jennings v. Rodriguez*, after having lost the argument before the only circuit to consider the question. Gov. Suppl. Reply Br. at 6-7, *Jennings v. Rodriguez*, No. 15-1204, 2017 WL 727754 (Feb. 21, 2017) (attached as Ex. C. to Austin Decl.).

The categorical denial of bond hearings, combined with the routine denial of parole described below, results in the prolonged detention of petitioners without any meaningful form of custody review. Initial rulings in asylum cases for those held at Batavia usually take more than six months, and appeals to the Board of Immigration Appeals can last several months more. *See* Doebler Decl. ¶¶ 5-6; Borowski Decl. ¶ 7. The combination of the Government's failure to provide bond hearings and parole and the backlog at the Batavia immigration court means that virtually every class member suffers, or will suffer, prolonged detention. According to the data supplied by the Government, at least eighteen petitioners who were detained at Batavia as of September 5, 2017, had been in detention for over six months. Shames Decl. ¶ 11.

II. Denial of Fair Parole Process

The denial of bond hearings has left parole as the only release option for petitioners. Under 8 U.S.C. § 1182(d)(5)(A), parole is available to arriving asylum-seekers so long as there is

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parole determination. *See* S. Abdi Decl. ¶ 5 (parole never adjudicated). The experiences of putative class members and the Government's own data also indicate that the delay between a credible fear interview and a parole adjudication is often significant. *See, e.g.*, Nor Decl. ¶¶ 2, 4 (passed credible fear interview in February and received parole denial in May).

an "urgent humanitarian reason" or "significant public benefit," and a regulation provides that those categories apply to asylum-seekers "whose continued detention is not in the public interest," 8 C.F.R. § 212.5(b)(5). A 2009 directive issued by Immigration and Customs Enforcement, whose stated purpose is to "ensure transparent, consistent, and considered ICE parole determinations for arriving aliens seeking asylum," interprets the regulation's "public interest" standard. Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009) ("Parole Directive") (attached as Exhibit A to Austin Decl.) ¶ 1. Specifically, it provides that

> [e]ach alien's eligibility for parole should be considered and analyzed on its own merits. . . . However, when an arriving alien found to have a credible fear establishes to the satisfaction of [ICE] his or her identity and that he or she presents neither a flight risk nor danger to the community, [ICE] should . . . parole the alien on the basis that his or her continued detention is not in the public interest . . . . [absent] exceptional, overriding factors.

Id. ¶¶ 6.2, 8.3. The Directive also contains a series of procedural protections, including notice, translation services, an opportunity to present evidence, an automatic interview, a reasoned adjudication, and opportunity for reconsideration in the event of a negative outcome, all of which are designed to ensure that the parole process is procedurally fair. *See id.* ¶¶ 6.1, 8.2, 8.4.

In *Jennings*, the Government has invoked the 2009 Parole Directive in support of its claim that any concerns about the lack of bond hearings under section 1225(b) are mitigated by the availability of parole. *See* Gov. Suppl. Reply Br., *Jennings* at 6. As described in the Government's brief, the Government's policy under the Directive is to "automatically consider parole for arriving aliens found to have a credible fear, and release the alien if he establishes his identity, demonstrates that he is not a flight risk or danger, and there are no countervailing considerations." *Id.* at 6 (citing Parole Directive). The Government's brief goes on to laud the various nondiscretionary procedural protections in the Directive, saying it "call[s] for far more

than checking a box on a form, with no hearing, no record and no appeal. . . . [i]t provides notice to the alien, an interview, the opportunity to respond and present evidence, a custody determination by an officer who did not conduct the credible-fear screening, supervisory review, and further parole consideration based upon changed circumstances or new evidence." *Id.* at 6-7 (citation and internal quotations omitted).

Despite the Government's representations in *Jennings*, the evidence submitted by the petitioners in support of this motion—including the data supplied by the Government, statements made by Batavia officials to petitioners and to their lawyers, and detailed information about the experiences of a significant number of class members—establishes that, after the inauguration of the President in late January 2017, the Government implemented a broad practice of summarily denying parole to asylum-seekers without following the procedural protections of the Parole Directive. The data the Government voluntarily supplied to petitioners' counsel earlier this month, which purports to record all parole determinations reported by ICE in their monthly parole reports for January through August of this year, reveals a dramatic shift in parole practices after the inauguration in late January and once again after petitioners filed this suit at the end of July. *See* Shames Decl. ¶ 6. Specifically, the data set shows that, in reported cases with determinations between December 16 and January 19, parole was granted in 50% of cases; that between January 20 and July 28 (the date this lawsuit was filed), the parole grant rate plummeted to 12-14%; and finally that between July 28 and September 5 it shot back up to 45%. *Id.*[2]

[2] In support of its pending motion to dismiss, the Government submitted a declaration representing that the parole rate was 28% between January 1 and August 28. *See* Thomas Brophy Decl. ¶ 4 (Sep. 12, 2017) (ECF 27-2). This aggregation masks what is important about the Government's data: the parole rate dropped precipitously to a very low level after the inauguration then rebounded to pre-inauguration levels after the filing of this suit.

Statements made by federal officers at Batavia to detainees and their attorneys confirm what the Government's own data set shows. Petitioner Hanad Abdi's deportation officer, Officer Muehlig, told him that "everything changed" in January and that parole has "all stopped" under the new administration. H. Abdi Decl. ¶ 36. When he passed his credible fear interview in February, petitioner Johan Barrios Ramos was told that parole was no longer available; his deportation officer, Officer Ensminger, later told him that there was a "one-in-a-million" chance of being granted parole at Batavia. Barrios Ramos Decl. ¶¶ 11, 15. Other class members report similar conversations with officers. *See* S. Abdi Decl. ¶ 3 (stating that Officer Ensminger told him around March that parole does not exist and is "closed"); Hernandez Decl. ¶ 8 (noting that several Cuban detainees were told by Officer Ensminger that there was no more parole); Hirsi Decl. ¶ 5 (stating that Officer McCarten told him after the election that the "new government is not giving parole so forget about parole"); Musa Decl. ¶ 7 (reporting that Officer Ensminger told him that "because of the new government, parole was not likely to be possible"). Immigration lawyers report that, while their asylum-seeker clients were routinely paroled from Batavia in the past, that practice has all but stopped in 2017. *See* Doebler Decl. ¶ 4; Borowski Decl. ¶ 4.[3]

That ICE officials at Batavia abandoned individualized parole decision making is further confirmed by the petitioners' experiences, as detailed in declarations from thirteen current and former class members and as reflected in documents recording the dispositions of their parole requests, which are attached to their declarations. *See* Barrios Ramos Decl.; H. Abdi Decl.; Musa Decl.; Mohamed Decl.; Sewoul Decl.; Baptiste Decl.; Flezinord Decl.; Touray Decl.; S. Abdi Decl.; Hirsi Decl.; Ahmed Decl.; Nor Decl.; Hernandez Decl. Those experiences and documents, which are discussed in detail later in this memorandum, *see infra* Sections I, III.A, reveal

[3] As a preliminary injunction proceeding is less formal than a trial, this Court may consider hearsay evidence at this stage. *See Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010).

systemic disregard for the procedural and substantive standards governing every step of the parole process, from the failure to provide required notifications and instructions regarding the availability of parole, to the failure to conduct prompt parole interviews, to the failure to provide language assistance to the significant number of arriving asylum-speakers who do not speak English, to, finally, the issuance of parole denials that contain no explanations for the disposition and no indication of what, if anything, detainees can do to have the agency reconsider its decision.

The dramatic change at Batavia aligns with President Trump's actions and statements about parole for asylum-seekers. In a January Executive Order on immigration, he called for an "end [to] the abuse of parole and asylum provisions." Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 30, 2017) (attached as Ex. D to Austin Decl.). Describing asylum-seekers as "bad" people, the President has stated, "I hate taking these people . . . I guarantee you they are bad. That is why they are in prison right now."[4]

ARGUMENT

The petitioners seek preliminary injunctive relief requiring the Government to adjudicate—or readjudicate—their parole and to conduct bond hearings.[5] To obtain a preliminary injunction, the petitioners must make a "strong showing" of irreparable harm in the absence of preliminary relief, must demonstrate a "clear or substantial" likelihood of success on the merits, and must show that the balance of equities tips in their favor and the injunction is in the public interest. *See New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 650 (2d Cir. 2015)

[4] *See* Greg Miller, WASHINGTON POST, *Trump Urged Mexican President to End His Public Defiance on Border Wall, Transcript Shows*, *available at* http://wapo.st/2jJCQ4b (Aug. 3, 2017).
[5] As set forth in their Proposed Order, the petitioners seek readjudication only after the full set of protections required under the Parole Directive has been accorded each class member.

(citations and internal quotation marks omitted). On the record before this Court, the petitioners satisfy these standards.[6]

I. UNLAWFUL DETENTION INFLICTS IRREPARABLE HARM ON THE PETITIONERS.

As this Court has recognized, a showing of irreparable harm is "[t]he most important prerequisite to issuing a preliminary injunction." *Veramark Techs., Inc. v. Bouk*, 10 F. Supp. 3d 395, 400 (W.D.N.Y. 2014) (Wolford, J.). Irreparable harm must not just be possible; it must be likely. *Id.* Here, the asylum-seeker petitioners plainly are suffering severe and irreparable harm stemming from their ongoing and prolonged detention at Batavia.

Constitutional violations by definition qualify as irreparable harm. *See, e.g., Bery v. City of New York*, 97 F.3d 689, 693-94 (2d Cir. 1996). The Supreme Court has made clear, in a case arising from habeas petitions brought by immigrant detainees, that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Unconstitutional physical detention, in particular, is classic irreparable harm. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1144-45 (9th Cir. 2013) [hereinafter *Rodriguez I*] (holding that unconstitutional detention of asylum-seekers detained pursuant to section 1225(b) is irreparable harm for preliminary injunction).

[6] If the Court has not yet decided the petitioners' pending motion for class certification (ECF. No. 19) by the time this motion is decided, the Court "may conditionally certify the class or otherwise award a broad preliminary injunction, without a formal class ruling, under its general equity powers." *Stroucher v. Shah*, 891 F. Supp. 2d 504, 517 (S.D.N.Y. 2012) (citation and internal quotations omitted). The Court may rely on evidence of likely harm to putative class members in deciding this motion. *See LaForest v. Former Clean Air Holding Co., Inc.*, 376 F.3d 48, 56 (2d Cir. 2004) (holding "that the district court did not abuse its discretion in relying on [six affidavits from putative class members] in concluding that the then-putative class suffered irreparable harm warranting a preliminary injunction").

Compounding this irreparable harm is the fact that many petitioners faced torture and persecution in their home countries—including, in some cases, incarceration—and suffer debilitating mental health consequences caused by the reactivation of trauma in ICE detention; others face worsening medical conditions due to inadequate treatment in detention, and still others suffer irreparable harm due to separation from their families. *See, e.g.*, H. Abdi Decl. ¶¶ 37-38 (deterioration of mental health because debilitating anxiety and depression went untreated at Batavia); Nor Decl. ¶ 5 (hospitalization for acute abdominal pain as a result of untreated hernia); Baptiste Decl. ¶ 2 (missing the birth of his U.S.-citizen daughter in July).[7] Such harms, flowing from the "effects of [a prisoner's] confinement," serve as "an independent basis" for a finding of irreparable harm. *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (citing allegations of "headaches, hair loss, rashes, and an inability to walk without difficulty").[8]

Finally, the petitioners' ongoing detention is inflicting irreparable harm by seriously impairing their ability to prepare for their asylum hearings and thus increasing the prospect they will be sent back to persecution or worse. *See* Transcript of Oral Decision at 5-6, 13, *Celestin v. Decker*, 17-cv-2419 (S.D.N.Y. Jun. 14, 2017) (Abrams, J.) (attached as Ex. L to Austin Decl.) (releasing asylum-seeker petitioner and finding he would suffer irreparable injury if required to proceed with his asylum hearing while detained); *accord Barker v. Wingo*, 407 U.S. 514, 533

[7] *See also* Barrios Ramos Decl. ¶ 16 (reactivation of PTSD and anxiety resulting from his incarceration in Cuba); Touray Decl. ¶ 2 (lack of adequate care for perforated, infected ear drum causing pain and risk of deafness); Flezinord Decl. ¶ 3. (having difficulty eating or sleeping since his mother passed away in April, after he was unable to speak with her on the phone from detention).

[8] Numerous studies document the adverse mental health impact of detention on asylum-seekers, who are likely to have suffered trauma pre-detention. *See* Katy Robjant, Rita Hassan & Cornelius Katona, *Mental Health Implications of Detaining Asylum Seekers: Systematic Review*, 194 BRIT. J. PSYCHIATRY 306 (2009), *available at* http://bit.ly/2xFo3wx (reviewing ten studies on detained asylum-seekers in the U.S., U.K., and Australia). Significantly, the adverse effects of prolonged detention remain even after release, negatively impacting asylum-seekers years later. *Id.* at 310.

(1972) (in the context of pre-trial detention noting that a detained defendant "is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense"). This impairment is particularly acute where, as here, the evidence and witnesses are in a foreign country and where detainees are not guaranteed appointed counsel and often have to present their asylum cases *pro se*. Were they not incarcerated, the petitioners in this case could strengthen their asylum claims by tracking down documents and witnesses in their home countries, vastly improving the chances for success at their asylum hearings. *See, e.g.*, Hernandez Decl. ¶ 10; S. Abdi Decl. ¶ 8; Flezinord Decl. ¶ 8; Hirsi Decl. ¶ 9; McLean Decl. ¶¶ 11-12.[9] Instead, in detention, petitioners working full-time earn one dollar a day and must pay over $5—their weekly salary—for a two-minute international phone call. Mohamed Decl. ¶ 11. The high cost of international phone calls, lack of internet access, and difficulty reaching witnesses in countries without consistent electricity or phone access can make the presentation of a well-documented and substantiated asylum case all but impossible. *See* Ahmed Decl. ¶ 6.

II. THE PETITIONERS ARE SUBSTANTIALLY LIKELY TO PREVAIL ON THEIR BOND CLAIM.

Under the reasoning of the Second Circuit's seminal decision in *Lora v. Shanahan*, all class members who have been detained for six months or more are entitled to bond hearings. *See* 804 F.3d 601, 616 (2d Cir. 2015), *petition for cert. filed*, 84 U.S.L.W. 3562 (U.S. Mar. 25, 2016) (No. 15-1205), *cross-petition for cert. denied*, 136 S. Ct. 2496 (2016). The Government does not dispute that this Court has jurisdiction to adjudicate the petitioners' bond claim. *See* Gov't Mot.

[9] One study that tracked success rates for non-citizens in immigration court found that an immigrant's chances of prevailing nearly doubled when they had been released prior to their hearings. *See* Ingrid Eagly and Steven Shafer, American Immigration Council, *Access to Counsel in Immigration Court* 19 (2016), *available at* http://bit.ly/2wiRroI (finding immigrants represented by counsel who were released from detention had a success rate of 39%, while individuals represented by counsel but never released had only a 21% success rate).

Dismiss (ECF No. 27-1) at 13 (Sept. 12, 2017) (asserting Court lacks jurisdiction over petitioners' parole claim but making no such assertion with respect to bond claim). The petitioners, at least eighteen of whom had been detained for six months or more as of September 5, Shames Decl. ¶ 11, are entitled to preliminary injunctive relief requiring the Government to provide bond hearings immediately.[10]

In *Lora*, the Second Circuit held that criminally convicted immigrants detained pursuant to 8 U.S.C. § 1226(c)—a statute that, like the detention statute at issue here, mandates indefinite detention on its face—are entitled to a bond hearing within the first six months of their incarceration. 804 F.3d at 616. The Second Circuit "conclude[d] that in order to avoid serious constitutional concerns, section 1226(c) must be read as including an implicit temporal limitation" that is "some reasonable limit on the amount of time that an individual can be detained without a bail hearing." *Id.* at 614 (internal quotation omitted). In so holding, the Second Circuit chose to "apply a bright-line rule to cases of mandatory detention where the Government's statutory mandatory detention authority under Section 1226(c) . . . [is] limited to a six-month period, subject to a finding of flight risk or dangerousness." *Id.* (alteration in original) (internal quotations and citation omitted).

The Second Circuit has not yet considered whether *Lora*'s six-month bond-hearing requirement for those held under section 1226(c) likewise applies to those detained under section 1225(b), the provision under which the asylum-seeker petitioners are detained. The one Court of Appeals to have decided that issue is the Ninth Circuit, which held that those detained under section 1225(b) also are entitled to bond hearings within six months and did so in a ruling upon

[10] In such *Lora* bond hearings, the Government bears the burden of justifying detention by clear and convincing evidence. *Lora*, 804 F.3d at 616.

which the Second Circuit heavily relied in *Lora*. *See Rodriguez I*, 715 F.3d at 1139-44; *Lora*, 804 F.3d at 614-16 (discussing *Rodriguez I*).[11]

The Ninth Circuit based its analysis on two fundamental propositions established by Supreme Court precedent: (1) in those instances where immigrant detainees have due process rights, the Due Process Clause limits how long the Government can detain them without an opportunity to seek release; and (2) when some immigrant detainees covered by a statutory provision are entitled to constitutional protections, all immigrant detainees covered by the same provision must be accorded the same rights, even if they themselves may not be able to invoke the constitutional protections on their own. *See Rodriguez I*, 715 F.3d at 1136-39 (discussing Supreme Court decisions recognizing temporal limits on detention of immigration detainees who have due process rights); *id*. at 1139-44 (discussing Supreme Court precedent, particularly *Clark v. Martinez*, 543 U.S. 371 (2005), establishing that protections afforded some encompassed within statutory immigration provision must be extended to all persons covered by that provision, regardless of their independent entitlement to constitutional rights). In light of these propositions, the Ninth Circuit concluded that the temporal limits on detention of those held under section 1226(c)—which the Second Circuit adopted in *Lora*—similarly apply to all persons held under section 1225(b). This conclusion followed from the fact that section 1225(b) authorizes detention of some persons who indisputably have robust due process rights—namely Lawful Permanent Residents detained upon re-entry—meaning that, pursuant to *Clark*, all persons detained under section 1225(b) likewise are entitled to bond hearings. *See Rodriguez I*,

[11] A subsequent Ninth Circuit ruling in this case affirming the earlier holding is currently pending before the Supreme Court. *See Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), *cert. granted sub nom. Jennings v. Rodriguez*, 84 U.S.L.W 3683 (U.S. June 20, 2016) (No. 15-1204). This is the case in which the Government has represented that the lack of bond hearings is of little concern because of the purported availability of parole.

715 F.3d at 1139-44 (affirming preliminary injunction ordering bond hearings for class of detainees held under section 1225(b)).

The petitioners submit that this Court should adopt the Ninth Circuit's approach and apply the holding of *Lora* to section 1225(b) detention and to the petitioners. Not only is the Ninth Circuit's analysis persuasive on its own, it comes in a case the Second Circuit expressly endorsed and relied upon when it held in *Lora* that the Government must provide six-month bond hearings for those detained under 1226(c). *See Lora*, 804 F.3d at 614-16.

At the District Court level, neither this Court nor any other court in the Western District apparently has addressed the issue of bond hearings under 1225(b) post-*Lora*.[12] In the Southern District of New York, however, as one Southern District judge has observed, "[t]here is an emerging consensus among courts in [the Southern D]istrict that due process requires that individuals detained pursuant to section 1225(b) be provided an individualized bond hearing within six months of their detention." *Galo-Espinal*, No. 17-cv-3492, slip op. at 3-4 (Hellerstein, J.) (collecting cases). And as part of that emerging consensus, many courts in the Southern

[12] In its motion to dismiss, the Government relegates *Lora* to a single footnote and relies almost exclusively on pre-*Lora* case law. *See* Gov't Mot. Dismiss at 14, n. 5. Of the two cases the Government cites in its motion to dismiss that were decided post-*Lora*, *Cardona v. Nalls-Castillo*, 177 F. Supp. 3d 815 (S.D.N.Y. 2016), and *Perez v. Aviles*, 188 F. Supp. 3d 328 (S.D.N.Y. 2016), one Southern District judge has remarked, "[t]he statutory and constitutional analysis in both of these opinions [] was cursory, and neither opinion meaningfully considered relevant Supreme Court jurisprudence." *Galo-Espinal v. Decker*, No. 17-cv-3492, slip op. at 4 (S.D.N.Y. June 30, 2017), *appeal docketed*, No. 17-2691 (2d Cir. Aug. 28, 2017) (attached as Ex. E to Austin Decl). Though decided after *Lora*, *Perez* relied almost exclusively on case law pre-dating *Lora* and failed to heed the Second Circuit's rejection of a case-by-case analysis for what detention length violates due process. *Perez*, 188 F. Supp. 3d at 332–33 (detention length not unreasonable given lack of "unreasonable delay" by DHS); *see also Viknesrajah v. Koson*, No. 09-cv-6442, 2011 WL 147901, at *6 (W.D.N.Y. Jan. 18, 2011) (same); *cf. Lora*, 804 F.3d at 615 ("[T]he pervasive inconsistency and confusion exhibited by district courts in this Circuit when asked to apply a reasonableness test on a case-by-case basis weighs, in our view, in favor of adopting an approach that affords more certainty and predictability."). Finally, these cases all assumed the continued availability of parole, which numerous petitioners in this case have been told either does not exist or is not available to them.

District have adopted the *Rodriguez-Lora* approach and held that asylum-seekers held under section 1225(b), like the petitioners, are entitled to *Lora* bond hearings. *See, e.g., Jacques v. Decker*, 17-cv-2040 (S.D.N.Y. Aug. 24, 2017) (Failla, J.) (attached as Ex. F to Austin Decl); *Sammy v. Decker*, No. 17-cv-2615 (S.D.N.Y. May 25, 2017) (Engelmayer, J.), *appeal docketed*, No. 17-2260 (2d Cir. July 21, 2017) (attached as Ex. G to Austin Decl); *Francois v. Decker*, No. 17-cv-5809 (S.D.N.Y. Aug. 16, 2017) (Engelmayer, J.) (attached as Ex. H to Austin Decl); *Nord v. Decker*, No. 17-cv-3679 (S.D.N.Y. Aug. 23, 2017) (Broderick, J.) (attached as Ex. I to Austin Decl); *Clerjuste v. Decker*, No. 17-cv-4252 (S.D.N.Y. Aug. 12, 2017) (Broderick, J.) (attached as Ex. J to Austin Decl); *Celestin v. Decker*, No. 17-cv-2419 (S.D.N.Y. Apr. 17, 2017) (Abrams, J.), *appeal docketed*, No. 17-1895 (2d Cir. June 15, 2017) (attached as Ex. K to Austin Decl); *see also Saleem v. Shanahan*, No. 16-cv-808, 2016 WL 4435246, at *3 (S.D.N.Y. Aug. 22, 2016) (ordering a bond hearing for a non-LPR subjected to prolonged detention under 1225(b)) (Abrams, J.), *appeal docketed*, No. 16-3587 (2d Cir. Oct. 21, 2016).[13] The petitioners respectfully submit that this Court should do the same.

III. THE PETITIONERS ARE SUBSTANTIALLY LIKELY TO PREVAIL ON THEIR PAROLE CLAIMS.

The petitioners also seek preliminary injunctive relief on behalf of at least thirty-two asylum-seeker petitioners detained at Batavia and improperly denied a fair opportunity for parole. Beyond bond hearings for those petitioners whose detention exceeds six months, all

[13] Courts in the Southern District also have routinely held that Lawful Permanent Residents held under section 1225(b) are entitled to six-month bond hearings. *See, e.g.*, *Gutierrez Arias v. Aviles*, No. 15-cv-9249, 2016 WL 3906738, at *4 (S.D.N.Y. July 14, 2016) (Abrams, J.), *appeal docketed*, No. 16-3186 (2d Cir. Sept. 12, 2016); *Morris v. Decker*, No. 17-cv-02224, 2017 WL 1968314, at *4 (S.D.N.Y. May 11, 2017) (Caproni, J.), *appeal docketed*, No. 17-2121 (2d Cir. July 7, 2017); *Heredia v. Shanahan*, No. 16-cv-2024, 2017 WL 1169645, at *5 (S.D.N.Y. Mar. 28, 2017) (Wood, J.), *appeal docketed*, No. 17-1720 (2d Cir. May 26, 2017); *Ricketts v. Simonse*, No. 16-cv-6662, 2016 WL 7335675, at *4 (S.D.N.Y. Dec. 16, 2016) (Schofield, J.).

petitioners must receive parole decisions that conform to the Parole Directive. This requirement stems from two long-standing Second Circuit precedents: the first requires agencies to adhere to their stated policies and the second requires parole decisions that are facially legitimate and bona fide. The record before this Court plainly establishes that the Government has failed to meet either standard.

A. The Government's Parole Determinations Violate Due Process Because They Do Not Comply with the 2009 Parole Directive.

The Government's failure to comply with the 2009 Parole Directive entitles the plaintiffs to relief. Based on its ruling in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), the Supreme Court long ago recognized that internal directives of federal agencies can create enforceable rights. *See Vitarelli v. Seaton*, 359 U.S. 535, 539-40 (1959) (vacating the dismissal of employee because agency failed to "conform to the procedural standards" of an internal departmental order); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (striking down Bureau of Indian Affairs denial of funds to Indian applicant because denial did not comply with procedures set forth in its Indian Affairs Manual). In *Morton*, the Court explained that it was "[p]articularly" necessary to hold the Bureau to its own policies, as "the [agency] has continually represented to Congress" that applicants like the plaintiff were eligible for funds, reinforcing "the legitimate expectation of these needy Indians" that funds would be available. *Id.* at 236.

Echoing this point, the Second Circuit has explained in the immigration context that the so-called "*Accardi* doctrine" "is premised on fundamental notions of fair play underlying the concept of due process." *Montilla v. I.N.S.*, 926 F.2d 162, 167 (2d Cir. 1991). And the Circuit has held in several cases that the *Accardi* doctrine renders enforceable internal agency directives like the Parole Directive. *See Smith v. Resor*, 406 F.2d 141, 145-47 (2d Cir. 1969) (staying military call-up determination that violated Army Bulletin, ordering court to direct the Army to

follow its own policy in readjudicating the issue, and noting that Bulletin procedure "cannot be ignored . . . even where discretionary decisions are involved"); *Blassingame v. Sec'y of the Navy*, 866 F.2d 556, 560 (2d Cir. 1989) (vacating dishonorable discharge and ordering further agency proceedings in compliance with Marine Corps Separation Manual procedures).

In a case remarkably similar to this one, a judge in the Southern District of New York, citing *Morton* and *Montilla*, struck down the parole denial of an asylum-seeker because the Government failed to "adhere to its internal directives" laid out in a memorandum entitled "Parole Project for Asylum Seekers." *Zhang v. Slattery*, 840 F. Supp. 292, 295 (S.D.N.Y. 1994). The court held that the memo established both "a procedure which must be complied with" and "uniform criteria under which certain detainees may be paroled." *Id.* The court found it particularly persuasive that the denial letter did "not reflect that the criteria described" in the memorandum had been considered and that there was "no indication . . . that the Parole Project procedures were followed." *Id.*; *see also Noorani v. Smith*, 810 F. Supp. 280, 282 (W.D. Wash. 1993) (enforcing same "Parole Project for Asylum Seekers" criteria).[14]

[14] In its motion to dismiss, the Government ignores this entire line of cases to argue the Parole Directive lacks the force of law. Gov't Mot. Dismiss at 8-9 (citing *Schweiker v. Hansen*, 450 U.S. 785, 789 (1981)). Unlike *Morton* and the present case, *Schweiker* did not involve agency guidance written with the purpose of safeguarding individual rights but rather a "13-volume handbook" for internal Social Security Administration use. *Id.* But it is precisely in contexts "where a petitioner's rights are 'affected'" that the Second Circuit has recognized the *Accardi* doctrine's "continued vitality" even while acknowledging that Supreme Court "cases are not uniform" regarding agency guidance that does not affect individual rights. *Montilla*, 926 F.2d at 167 (citing *Morton*, 415 U.S. at 235); *see also Salazar v. King*, 822 F.3d 61, 76 (2d Cir. 2016) (relying on, *inter alia*, "Dear Colleague Letter" guidance to establish Department of Education responsibilities with respect to the rights of student loan recipients). The Government also misleadingly cites *Cruz-Miguel v. Holder* for the proposition that memoranda and a manual concerning parole are not "binding agency authority." Gov't Mot. Dismiss at 9. The Government ignores that in *Cruz-Miguel* the court simply held that such agency guidance is "unworthy of *Chevron*-style deference." 650 F.3d 189, 200 (2d Cir. 2011). As such, the court was under no obligation to defer to the agency. The Second Circuit had no occasion in that case to opine on

Despite the Government's legal obligation to adhere to the 2009 Parole Directive, the record before this Court establishes a breakdown at every step of the parole process at Batavia, from the notification stage, where detainees languished without receiving required instructions and interviews or were told that parole was unavailable or "closed," to the adjudication stage, where ICE officers ignored stated criteria for approval and failed to provide adequate explanations for denials. That breakdown is also evidenced by the precipitous drop in grants of parole after January 20, 2017, Shames Decl. ¶ 6, and the repeated statements by deportation officers that parole policy had changed, *see supra* at 6. The petitioners' supporting exhibits detail at least six ways in which ICE at Batavia is violating the Parole Directive.

(1) Notification of Parole Process: Paragraph 6.1 of the Parole Directive requires that ICE "provide…[a] *Parole Advisal and Scheduling Notification*." Importantly, this document alerts detainees to the availability of parole and to the process through which parole may be sought. Here, the record shows that eight of thirteen petitioners who provided declarations were not given the Parole Advisal and Notification Forms, leaving them uncertain whether parole was available and what documents were needed to request it. S. Abdi ¶¶ 2-3; Baptiste Decl. ¶ 3; Barrios Ramos Decl. ¶ 12; Musa Decl. ¶ 4; Touray Decl. ¶¶ 3-4; Mohamed Decl. ¶5; Touray Decl. ¶3; Nor Decl. ¶¶2-3; Ahmed Decl. ¶2.

(2) Translation of Parole Instructions*:* Paragraphs 6.1 and 8.1 of the Parole Directive require ICE to explain the contents of notifications to asylum-seekers in a language they understand, through an interpreter if necessary. Here, the record shows that of the few detainees who received formal notification of parole, non-English speakers did not receive it in languages they understood. *See, e.g.*, Flezinord Decl ¶ 4; Sewoul Decl. ¶ 3.

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whether an agency itself is obligated to adhere to its own guidance in a context where there is no question that guidance is consistent with the statutory scheme.

(3) Timely Parole Interviews*:* Crucial to providing asylum-seekers a viable opportunity for release is conducting a prompt in-person interview at which their eligibility for parole and requirements to obtain parole are explained and evaluated. Paragraph 8.2 of the Directive requires that, "no later than seven days following a finding that an arriving alien has a credible fear, a[n ICE] officer familiar with the requirements of this directive and corresponding legal authorities must conduct an interview with the alien to assess his or her eligibility for parole." Here, the Government's own data show that a full 81 percent of detainees whose parole determinations were made between January 20 and July 28 did not get a parole interview within seven days of passing their CFI. Shames Decl. ¶ 14. Several detainees believe they did not get interviewed for parole at all. Baptiste Decl. ¶ 5; Barrios Ramos Decl. ¶ 12; Flezinord Decl ¶ 5; M. Mohamed Decl. ¶ 9; Musa Decl. ¶ 6. Despite the Government's representation to the Supreme Court that asylum-seekers are considered for parole automatically, Gov. Suppl. Reply Br, *Jennings* at 6, some detainees appear to have never been considered for parole at all, or if they were, they were never informed of the results of their parole determinations, *see* Ahmed Decl. ¶¶ 2-3; S. Abdi Decl. ¶ 4-5.

(4) Written Explanation for Parole Decisions*:* Paragraph 6.5 of the Parole Directive requires that ICE "provide every alien subject to this directive with written notification of the parole decision, including a brief explanation for the reasons for any decision to deny parole." Here, the record shows that almost every class member received no explanation and instead was provided a two-sentence form denial that simply stated: "After a careful review of the evidence you submitted and the immigration file, your request for parole is

denied."[15] *See* Baptiste Decl. ¶ 6; Barrios Ramos Decl. ¶¶ 13-14; Flezinord Decl. ¶ 6; Hirsi Decl. ¶ 8; M. Mohamed Decl. ¶ 8; Musa Decl. ¶ 8; Nor Decl. ¶ 4; Touray Decl. ¶ 4; *see also* Supp. Borowski Decl. ¶¶ 3-5 (lawyer declaration attaching denials received by three other arriving asylum-seekers who are no longer at Batavia because their asylum cases have since resolved). Predictably, this left nearly every class member interviewed with no idea why he was denied parole or what he could do to remedy the problem.

(5) Notice of Supplemental Information and Possibility of Reconsideration: Paragraphs 6.5 and 8.2. of the Parole Directive require that ICE inform detainees that they may request redetermination of their parole applications if their circumstances change or if they are able to gather additional documentation. Paragraph 8.4 instructs ICE officers to explain to detainees what supplemental information, if any, would satisfy ICE. Here, the form denials petitioners received do not explain what supplemental information, if any, would satisfy ICE, nor do the denials explain that reconsideration of a denial is possible. Indeed, Mr. Abdi and Mr. Barrios Ramos, the named petitioners in this case, were not advised of what additional documents they needed to provide to obtain parole until after this lawsuit was filed. When they were finally told, both wasted no time in sending ICE the requested documents. Austin Decl. ¶¶ 17, 19.

[15] Two individuals received a checkbox form with boxes checked indicating the grounds for denial. *See* Hernandez Decl. ¶ 7; Sewoul Decl. ¶ 5. (Petitioner Abdi also received such a checkbox denial form in early January 2017 when he initially applied for parole. H. Abdi Decl. ¶¶ 27-30). In Mr. Hernandez's case, none of the checkboxes for identity, flight risk or danger to the community was marked. Instead, the box labeled "additional exceptional, overriding factors" is checked, below which the letter states, "[y]ou do not meet the criteria of urgent humanitarian or significant public benefit." Hernandez Decl. ¶ 7. In Mr. Sewoul's case, every category was checked, and his form, like Mr. Hernandez's, also includes the statement "[n]o significant humanitarian reason or public benefit exists to grant parole." Sewoul Decl. ¶ 5.

(6) Criteria to Consider in Evaluating Parole Requests*:* Most critically, ICE has abandoned the presumption in favor of release on parole, where certain criteria are met. Paragraphs 6.2 and 8.3 of the Parole Directive state that, "when an arriving alien found to have a credible fear establishes to the satisfaction of [ICE] his or her identity and that he or she presents neither a flight risk nor danger to the community, [ICE] should . . . parole the alien on the basis that his or her continued detention is not in the public interest," absent "exceptional, overriding factors." Here ICE's own data show that the agency was not applying the directive's criteria; in over 60% of parole decisions made between January 20 and July 28, the only reasons provided are no "humanitarian issue" and/or no "public interest," with no mention of identity, flight risk, or danger. *See* Shames Decl. ¶ 15.

These pervasive violations of the Parole Directive leave detainees confused about whether parole is available, what documents ICE requires, the timing of parole adjudications, what supplemental information is required in the event of a denial, and whether reconsideration is possible. Two class member examples highlight the predicament in which many detainees at Batavia find themselves. Saikou Touray, a 28-year-old citizen of Gambia, passed a credible fear interview in February 2017 but received no written notification that he was eligible for parole or guidance on how to apply. Touray Decl. ¶ 3. Mr. Touray's family in New York was eager to take him in and to help him obtain specialized care for his left ear, which has a perforated and infected eardrum, causing Mr. Touray pain and hearing loss. *Id.* ¶ 2. Yet due to the lack of guidance on parole, Mr. Touray languished at Batavia for months before even learning that he was eligible to request release. Once he did, two months after passing his credible fear interview, he still had not been interviewed about his request and was never informed why his request—which included a copy of his passport, his U.S.-citizen cousin's passport, and proof that he

would live with his cousin in New York City if released—was summarily denied a few weeks later. *Id.* ¶ 4. Despite repeated entreaties to his deportation officer and his fear that he may go deaf if he remains in custody, Mr. Touray has never been informed that he can seek reconsideration of the denial. *Id.* ¶ 5.

Abdirahim Nor, a 23-year-old citizen of Somalia, passed his credible fear interview in February but was never informed that he could apply for parole or what documents he needed to do so. Nor Decl. ¶ 2. In the absence of any material translated into Somali, he struggled to communicate with his deportation officer. *Id.*. ¶ 3. Despite filing proof of his identity and where he would live if released, with his Lawful Permanent Resident aunt in Nebraska, Mr. Nor was denied parole with no explanation. *Id.* ¶¶ 3-4. Because the denial was in English, he relied on a fellow detainee to "explain[] it to [him] using sign language." *Id.* ¶ 4. His health has deteriorated in detention, and he fears that at his asylum hearing on Sep. 27, 2017, his asylum claim will be denied because he has been unable to obtain the necessary evidence while in detention. *Id.* ¶ 6.

The evidence in this case leaves no doubt that ICE has abandoned adherence to the Parole Directive at Batavia, in violation of the petitioners' rights under *Accardi*. Moreover, the *Accardi* violations here are particularly egregious because, as in *Morton*, the agency has "continually represented" to the other branches of government and the public that its directive remains in effect, creating a "legitimate expectation" of compliance for those to whom it applies. *Morton*, 415 U.S. at 236. After President Trump was sworn in, his then-Secretary for Homeland Security stated that the Parole Directive remains in "full force and effect" under the present administration. Memorandum for John Kelly, Sec'y, Dep't of Homeland Sec., *Implementing the President's Border Security and Immigration Enforcement Improvement Policies* (Feb. 20, 2017) (attached as Ex. B to Austin Decl.) at 9. And, as noted, the Government in ongoing litigation at

the Supreme Court regarding the availability of bond hearings for arriving asylum-seekers has repeatedly referred to the parole policy set forth in the Parole Directive as providing robust procedural protections that vitiate the need for this group of detainees to be provided bond hearings.

B. The Government's Parole Determinations Violate Due Process Because They Are Not Facially Legitimate And Bona Fide.

A related but independent basis for relief for the petitioners arises out of long-standing Second Circuit law recognizing that due process requires that decisions denying parole to asylum-seekers must be facially legitimate and bona fide. The record before this Court demonstrates that the parole denials here are not facially legitimate and bona fide because the Government departed without explanation from its established policies—namely, the Parole Directive, which requires, among other things, an individualized assessment of each application.

Thirty-five years ago, in *Bertrand v. Sava*, the Second Circuit adjudicated a class action brought by asylum-seekers challenging denial of their applications for parole. *See* 684 F.2d 204, 212 (2d Cir. 1982). Relying on the Supreme Court's ruling in *Kleindienst v. Mandel*, the Second Circuit recognized in *Bertrand* that judicial review of parole denials is limited but nonetheless held that a court reviewing such denials should evaluate whether the Government has a "facially legitimate and bona fide reason" for its decision. *See id.* at 212 (quoting *Mandel*, 408 U.S. 753, 770 (1972)). The court explained that under this standard the Government, in exercising its discretion under the parole statute, "may not . . . depart without rational explanation from established policies." *Id.* Interpreting *Bertrand* in cases where detainees have alleged non-adherence to an internal parole guidance document similar to the Parole Directive, courts have held that parole denials that fail to "reflect that the INS adhered to the directives in the Parole Project Memorandum . . . did not set forth a facially legitimate, bona fide reason for denying

parole." *Zhang*, 840 F.Supp. at 296; *see also Noorani*, 810 F.Supp. at 282 (holding that a "facially legitimate and bona fide" parole denial must "state the reasons for denial in terms of the criteria enunciated in the policy").

Applying the same *Bertand* standard to the case before this Court, the petitioners' parole denials are plainly invalid because they depart from clear agency policy with no explanation. The Parole Directive requires individualized assessments of parole applications, proper notice, timely adjudication, translation, and reasoned denials explaining any deficiencies and how they might be cured. *See supra* Section III.A. As discussed at length in the previous section, the petitioners experienced drastic departures from every one of these procedural guarantees, *see id.*, including when they received form denial letters that failed to reflect any individualized assessment in conformance with the Directive, *see Zhang*, 840 F.Supp. at 296; *Noorani*, 810 F.Supp. at 282. And the data provided by the Government, showing that parole grant rates at Batavia plummeted immediately after the inauguration of the President, similarly support the petitioners' argument that parole practices at Batavia departed radically from the existing policy.

Related case law interpreting *Bertrand* in instances in which asylum-seekers did not claim a deviation from a specific policy like the Parole Directive is also instructive, because even in such instances courts have recognized that the Government must, at a minimum, identify an *actual reason* for a parole denial that reflects some individualized assessment. *See Marczak v. Greene*, 971 F.2d 510, 516-18 (10th Cir. 1992) (discussing *Mandel* and *Bertrand* and holding that immigration authorities are required "to have articulated *some* individualized facially legitimate and bona fide reason for denying parole") (emphasis in original); *Mejia-Ruiz v. I.N.S.*, 871 F. Supp. 159, 165 (E.D.N.Y. 1994) (in construing *Bertrand*, noting that "a decision denying parole should contain, at a minimum, sufficient information supporting the denial as to permit a

reasoned evaluation of whether an abuse of discretion has occurred"); *Li v. Greene*, 767 F. Supp. 1087, 1090-91 (D. Colo. 1991) (holding that the conclusory statement "that release of the aliens is not in the public benefit" is not facially legitimate and bona fide and invalidating parole denials on that basis). These cases are in keeping with the Second Circuit's explanation in *Bertrand* that proof adduced by asylum-seekers that the Government's discretion "was not exercised or was exercised irrationally" would be sufficient to overcome any presumption of legitimacy to parole decision-making. *Bertrand*, 684 F.2d at 213. Here, the Government has made no effort to sufficiently explain parole denials at Batavia or the dramatic reduction in the parole rate post-inauguration, making it impossible to determine whether these denials reflect individualized assessments or constitute an abuse of discretion. *See* discussion *supra* at 3-7.[16]

IV. THE PETITIONERS SATISFY THE REMAINING ELEMENTS FOR A PRELIMINARY INJUNCTION.

The balance of equities and the public interest are also decidedly in the petitioners' favor. With respect to any harm to the Government, as the Ninth Circuit noted in *Rodriguez I* when it affirmed the preliminary injunction requiring bond hearings within six months, the Government

[16] Under *Bertand*, any effort by the Government in its opposition to the preliminary injunction motion to adduce new evidence of purported actual and legitimate reasons for parole denials would require the Court to examine the bona fides of those reasons in light of the strong proof presented by the petitioners. *See also Kerry v. Din*, 135 S. Ct 2128, 2141 (2015) (Kennedy, J., concurring in judgment) (explaining that *Mandel* standard allows courts to "look behind" a challenged agency decision when plaintiffs can make an "affirmative showing of bad faith" that is "plausibly alleged with sufficient particularity"); *see also Am. Acad. of Religion v. Napolitano*, 573 F.3d 115, 137 (explaining that a court may "look behind" otherwise discretionary immigration decisions when "a well-supported allegation of bad faith . . . would render the decision not bona fide"). It also would be consistent with this Court's own recognition that, while parole decisions "must be viewed at the outset as presumptively legitimate and bona fide," that presumption ceases to apply when there is "strong proof to the contrary." *Altagarcia v. Sessions*, 6:16-cv-06647, 2017 WL 908211, at *2 (W.D.N.Y. Mar. 7, 2017) (Wolford, J.) (internal quotations omitted).

"cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute to avoid constitutional concerns." 715 F.3d at 1127. Moreover, the petitioners seek only fair opportunities for bond and parole, not actual release, which negates any claim of meaningful harm to the Government.

As for the public-interest prong of the preliminary injunction analysis, the Ninth Circuit's ruling in *Rodriguez I* is likewise instructive, as it expressly holds that a court order requiring the Government to provide fair process to immigration detainees is plainly in the public interest. *See id*. That is all the more so in this case, which involves asylum-seekers fleeing persecution and violence who the Government itself has concluded have a significant possibility of winning asylum and a Parole Directive the Government has trumpeted as being in full force and effect.

CONCLUSION

For the foregoing reasons, the petitioners respectfully request that this Court provisionally certify the class and grant a preliminary injunction.

Respectfully Submitted,

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