



2 December 2019

Juan L. Acosta
Acting Field Office Director, U.S. Immigration Customs Enforcement



Wayne Cox
Assistant Field Office Director, U.S. Immigration and Customs Enforcement



William Jepson
Assistant Field Office Director, U.S. Immigration and Customs Enforcement



RE: Release of protesting Cuban asylum seekers

Dear Acting Field Office Director Acosta, Assistant Field Office Director Cox, and Assistant Field Office Director Jepson:

We write to you calling for the release of 22 Cuban asylum seekers, on their own recognizance, from U.S. Immigration and Customs Enforcement (ICE) detention (see Table 1 below). All of these men passed their credible fear interviews and none are subject to mandatory detention. Under 8 U.S.C. §1226(a)(2)(A) you have the power to free these men. The following letter explains reasons why you should do so.

These men are not detention priorities: As per the first page of the Performance Based National Detention Standards “ICE detains people for no purpose other than to secure their presence both for immigration proceedings and their removal, with a special focus on those who represent a risk to public safety, or for whom detention is mandatory by law.”¹ These men

¹ ICE, “Performance Based National Detention Standards 2011,” i.

are seeking humanitarian relief. They are highly motivated to attend their asylum hearings or participate fully in the appeal process when necessary. Many of the men have close or extended family members present in the US. All of the men have ties to the community. Actively pursuing relief with ties to the community, these asylum seekers are not flight risks.

According to agency protocols and detention standards, ICE is supposed to focus on detaining individuals who present a national security risk.² These Cuban asylum seekers are fleeing persecution from a dictatorship that has a well-documented history of oppressing political opponents and is a long-standing enemy of the United States. These Cuban men, many persecuted for espousing and advocating for the kinds of freedoms for which the US is internationally known, pose no risk to our national security. Rather, for upholding values of freedom and free speech, these men are promoting US values. They are seekers of humanitarian relief, and based on existing ICE detention guidelines, fall into the lowest priority category of persons to detain.

These men were exposed to punitive treatment: Dr. Dora Shriro, the former Director of the Office of Detention Policy and Planning, noted “immigration detention is not punishment” yet “ICE relies primarily on correctional incarceration standards designed for pre-trial felons and on correctional principles of care, custody, and control.”³ For peacefully protesting their detention, many of the men were punished with prolonged solitary or repeated threats of solitary. The detention centers involved were recently and repeatedly cited for improper and unnecessarily punitive use of solitary.⁴ Unfortunately, the overzealous use of solitary will not solve the protests; it will only exacerbate them. These men do not deserve to be punished given that they are seeking asylum, have credible fear, and experienced past persecution. They should be released to lawfully pursue relief free from detention.

Detaining these men is not an efficient use of agency resources: ICE resources are limited, detention is expensive, and ICE is presently seeking additional funding to secure more bed space. Releasing individuals who are low priority for detention, pose no national security risk, and are seeking humanitarian relief for which they are not motivated to abscond constitutes a simple and cost-effective way to address the non-violent protests by asylum seekers.

Detaining asylum seekers has lasting negative mental health consequences: Robust and detailed research demonstrates conclusively that detaining previously persecuted individuals results in significant and lasting negative mental health consequences.⁵ Detained asylum

² Johnson, “Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants”; Kelly, “Enforcement of the Immigration Laws to Serve the National Interest”; ICE, “Performance Based National Detention Standards 2011.”

³ Schriro, “Immigration Detention Overview and Recommendations,” 3–4.

⁴ DHS OIG, “Concerns about ICE Detainee Treatment and Care at Detention Facilities”; ODO, “Office of Detention Oversight Compliance Inspection, Cibola County Detention Center, January 9-11, 2018.”

⁵ Ryan, Kelly, and Kelly, “Mental Health Among Persons Awaiting an Asylum Outcome in Western Countries”; Silove, Steel, and Watters, “Policies of Deterrence and the Mental Health of Asylum Seekers”; Steel and Silove, “The Mental Health Implications of Detaining Asylum Seekers.”; Filges et al., “The Impact of Detention on the

seekers have greatly elevated levels of mental distress, anxiety, and post-traumatic stress disorder. Detention is retraumatizing resulting in prolonged and profound states of depression and despondence that extend well past the period of detention. Many of the men we spoke to, individuals we are requesting you release, have significant and obvious signs of past physical abuse. In the form of large scars, poorly healed wounds, and damaged joints these men show clear and visible signs of trauma on their bodies. As these individuals constitute the lowest priority category for detention there is no need to subject them to the known negative mental health consequences that arise from detaining an individual who experienced past trauma.

These men fear not only for their lives but prolonged torture: These asylum seekers are fleeing a dictatorial government that they viscerally fear will torture them upon return to Cuba. These men expressed to us that they are prepared to face death to gain their freedom here. Some of the men reported that if they are not successful in gaining their freedom, they are resolved and prepared to die in custody to end their suffering rather than be returned to a place where they see torture as both inevitable and prolonged. We do not want to see anyone die in ICE detention. Detaining people ready to die for their freedom, or to end their lives to avoid torture, greatly increases the risks that individuals will take extreme action. As these men are detained at ICE's discretion, under 8 U.S.C. §1226(a)(2)(A), you hold the power to grant that freedom which will deescalate the situation.

Releasing these men is an opportunity for ICE to demonstrate good faith: ICE has come under tremendous public scrutiny for the unnecessary detention of asylum seekers. Releasing these men who constitute the lowest priority for detention, do not pose a security risk, and are traumatized by the experience of detention would be a tangible sign of good faith to the public. This is an opportunity for ICE to demonstrate it is capable of enforcement restraint and will abide by its own long-standing detention priorities—which do not include these men.

All of these men engaged in a protest to seek their release, and there are myriad objective reasons to grant this request. There are multiple policy and financial reasons to grant release. There are multiple health related reasons to grant release. There are several public relations reasons to grant release. As these men are neither security nor flight risks, we hope that you will take proactive steps to deescalate and resolve an inflammatory and potentially fatal situation by granting the release of these men while they continue to lawfully pursue their asylum claims.

Sincerely,

Advocate Visitors with Immigrants in Detention (AVID)
Detained Migrant Solidarity Committee (DMSC)
Santa Fe Dreamers Project
American Civil Liberties Union of New Mexico (ACLU-NM)
El Paso Immigration Coalition

cc:

Senator Tom Udall
Senator Martin Heinrich
Representative Xochitl Torres-Small
Governor Michelle Lujan Grisham
Attorney General Hector Balderas

Table 1 Redacted

Table 1. List of Cuban asylum seekers for which we are requesting release on their own cognizance.

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