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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

NY ICE Facility Forced To Hear Asylum-Seekers' Parole Cases

By **Steven Trader**

Law360, New York (November 20, 2017, 5:25 PM EST) -- A New York federal judge on Friday ordered an Immigration and Customs Enforcement detention facility in upstate New York to end its alleged practice of keeping asylum-seekers locked up without the opportunity for release on parole or bond while awaiting their hearings.

Rather than dismiss the case as the federal government had requested, U.S. District Judge Elizabeth Wolford instead granted the proposed class of detainees' motion for a preliminary injunction, which requires the Batavia, New York-based Buffalo Federal Detention Facility to immediately adjudicate, or readjudicate, the groups' parole applications under the guidance of a 2009 ICE directive that lays out the procedures for evaluating parole requests.

The injunction also ordered immigration officials at the facility to conduct bond hearings for individuals who have been detained at the Buffalo facility for six months or longer.

"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," Judge Wolford wrote Friday.

The 2009 ICE directive allows asylum-seekers who can claim a credible fear of returning to their country of origin and who present neither a flight risk nor danger to the community to attain parole. Under the directive, an asylum-seeker must be provided written notice of the parole process in a language that they understand, and must be provided an explanation of the parole decision and the opportunity to contest it.

The proposed class of asylum-seekers detained at Buffalo — led by a Somali asylum-seeker who sued in July — have contended that federal immigration officials at the facility effectively stopped granting parole in late January after Donald Trump was elected president, "leaving dozens of people who fled violence and persecution to languish in jail," the group has said.

"People who came to the U.S. border seeking only refuge will no longer suffer indefinite confinement in New York's largest immigration detention facility," New York Civil Liberties Union legal director Christopher Dunn, an attorney for the detainees, said in a statement. "Asylum-seekers deserve, and will now get, the chance to be with loved ones while awaiting

their asylum hearings. This win is a strong rebuke to the Trump administration's campaign against immigrants."

The government had sought dismissal of the lawsuit on the grounds that the federal court lacked jurisdiction, arguing that the 2009 directive wasn't binding, that parole decisions are discretionary and not subject to judicial review, and that the detainees had failed to state a claim for relief.

Judge Wolford was unpersuaded though, and concluded instead that the group had suffered, and would continue to suffer, irreparable harms from their prolonged detention, including not being able to adequately prepare for their asylum hearings.

The injunction was also warranted in light of the detainees' claims that they suffered various physical and psychological impairments from their prolonged confinement, and that certain detainees who'd been denied parole had not been given an adequate explanation for it, the judge said.

Immigration officials offered a different version of how parole cases were being handled at the facility, but the judge said Friday that they don't deny that the 2009 ICE directive wasn't being followed.

"In fact, respondents' position is that the directive is not legally binding," Judge Wolford wrote. "Nor do respondents contradict the diminished mental and physical health of the putative class members, or the negative impact that detention has on the ability to prepare for asylum proceedings."

A representative for the U.S. Department of Justice declined to comment.

The immigrants are represented by Aadithi Padmanabhan, Paige Austin, Robert Hodgson and Christopher T. Dunn of the New York Civil Liberties Union, and Mariko Hirose of the International Refugee Assistance Project.

The government is represented by Stacey Ilene Young and Tashiba Monique Peoples.

The case is Hanad Abdi et al. v. Elaine Duke et al., case number 1:17-cv-00721, in the U.S. District Court for the Western District of New York.

--Additional reporting by Nicole Narea. Editing by Adam LoBelia.