

WALLED IN: Immigration Detentions Are Way Up Under Trump

by James Goodman

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In December 2016, the twenty-nine-year-old from the Gambia made it to the Texas border with Mexico, where he sought asylum. He ended up in the Buffalo Federal Detention Facility in the town of Batavia in upstate New York. He was confined for about nine months.

Although Touray passed his initial screening that showed he had a “credible fear” of being harmed if deported, he was on his own when it came to getting out. “I was not told anything about parole, nor was I given any paperwork telling me how to apply,” says Touray in an affidavit that is part of a federal court filing.

Under President Donald Trump, the number of people held in immigration detention facilities is mushrooming. The total averaged 38,106 people per day for the fiscal year that ended September 30—well above the 34,376 daily average for the fiscal year before he took office. And the Department of Homeland Security has called for enlarging the nation’s detention capacity to 51,379 daily, although Congress is expected to approve a lower number.

Increased immigration enforcement continues to loom high on the Trump agenda, as he pushed for a wall and enhanced border security at the outset of negotiations in January for reviving the Deferred Action for Childhood Arrivals (DACA) program. And Trump has been ending the Temporary Protected Status program, most recently for about 200,000 Salvadorans living in the United States.

Touray, in his affidavit, tells of not knowing where to turn to get out of detention—even though he could establish his identity with a copy of his Gambian passport and had a cousin to stay with in New York City.

So long as he could establish his identity and show that he was neither a flight risk nor a danger, Touray should have been allowed to be free, especially because he has serious ear problems.

In fact, a 2009 directive from U.S. Immigration and Customs Enforcement (ICE) specifically allows arriving asylum seekers who have passed the “credible fear” screening to be paroled while their cases are pending. It even has a special provision for those with serious medical conditions.

Yet Touray says his deportation officer told him he had “only a small chance” of receiving parole. His initial parole request was denied last April in a two-sentence letter—not saying why—from Thomas Brophy, then the acting director of ICE’s field office in Buffalo.

Touray provided medical records about his ear problems but again ran into difficulties, because his deportation officer, who was supposed to help, wouldn’t get a needed report from the detention facility’s medical department, according to his affidavit.

It was not until October that Touray secured parole. He is currently staying with family members in New York City while he awaits his asylum hearing, likely this fall.

Touray’s ordeal is discussed in one of the many affidavits filed in a court case that, in November, prompted U.S. District Judge Elizabeth Wolford, in Rochester, New York, to issue a preliminary injunction that should give asylum seekers at this facility a fairer shake.

The underlying lawsuit was filed in late July by the New York Civil Liberties Union and the International Refugee Assistance Project. It was later expanded to include all arriving asylum seekers at Batavia who have passed the “credible fear” screening and have not been granted parole or have been detained for more than six months without a bond hearing.

“We saw parole rates drop dramatically for arriving asylum seekers at Batavia since the beginning of the Trump presidency,” says Mariko Hirose, litigation director for the International Refugee Assistance Project. “This has resulted in many people who are unnecessarily detained and kept away from their families and friends for lengthy periods.”

Although Touray’s deportation officer denies saying there was “only a small chance” of getting parole, other detainees tell in affidavits of hearing comments of this sort from deportation officers and encountering difficulties, such as not being told what they need to provide for parole and not receiving instructions translated into a language they can understand.

Wolford's ruling points to a problem well beyond Batavia—the routine denial of parole for those seeking asylum. Although parole has never been easy to attain, it has become even more out of reach under Trump, who has made cracking down on immigrants a centerpiece of his domestic agenda.

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And these denials are helping fuel Trump's detention boom.

“What we are seeing is a rapid expansion of the size of the system, deteriorating conditions for the people who are held inside, and increasing opaqueness,” says Mary Small, policy director of Detention Watch Network, a national coalition challenging immigration detention and deportation abuses. As a result, “it is increasingly difficult for the American public to know what's happening inside immigration detention.”

The Batavia lawsuit provides a window into one of the more than 200 detention facilities used by ICE. It concerns the thousands of people, often in dire straits, who have made it to our borders seeking safe haven before getting stuck in detention.

Wolford's injunction ordered Buffalo ICE officials to follow the standards set forth in the 2009 parole directive, and she is requiring bond hearings for asylum seekers at Batavia covered by the directive and detained for more than six months. The judge was troubled—and ordered immediate corrective action—because ICE didn't appear bound by its own directive about parole procedures and standards.

The 2009 directive says parole can be given to new arrivals seeking asylum for “urgent humanitarian reasons” or “significant public benefit” to those “whose continued detention is not in the public interest.” It is generally considered in the public interest, according to the directive, to parole those who provide evidence of their identity and are not a danger to the community nor a flight risk.

Curiously, parole approvals at the Batavia facility went up after the lawsuit was filed on July 28. Of the twenty parole determinations made between July 29 and September 5, nine resulted in releases—including that of Hanad Abdi, who fled the violence in Somalia and was the plaintiff in the original lawsuit.

Brophy, the former acting director of ICE's Buffalo field office (and now its deputy director), described in a court filing a “new level of scrutiny” for parole requests that “falls within the spirit” of the 2009 directive.

Wolford didn't see it that way, in ordering immediate changes. She said "the directive is being violated and . . . asylum seekers are being held for longer than six months without individualized bond hearings."

Moreover, she stated, "The prolonged nature of these detentions has limited the detainees' capacity to contact friends and family in their native countries. The restrictions have hampered the detainees' preparation for upcoming asylum hearings, which undermines the very purpose of providing asylum-seekers a hearing."

Trump's January 25, 2017, executive order, one of his first official acts in office, put the priority on detention by telling then-Homeland Security Secretary John Kelly to "allocate all legally available resources" for detention near the Mexican border. That was followed by Kelly's February 20 memorandum, saying parole in asylum cases should be used "sparingly."

And sparingly it has been used.

Of the Batavia facility's forty-four asylum seekers who had their parole requests decided between January 20 and late July of last year, just six—14 percent—were granted release, according to a court filing from the New York Civil Liberties Union. Not only did this mark a sharp decrease from the 50 percent parole approval rate from mid-December until Trump's Inauguration, but immigration lawyers were left in the dark. The two-sentence denial letters didn't provide a clue to what the government's "careful review" of parole requests found lacking.

"What we are seeing more than anything is long-term detention," says Olga Byrne, senior associate for refugee protection at Human Rights First, a New York City-based advocacy group. "Parole has all but come to halt."

In a September report, "Judge and Jailer: Asylum Seekers Denied Parole in Wake of Trump Executive Order," Human Rights First says immigration lawyers around the nation "overwhelmingly report that they rarely, if ever, have an arriving asylum-seeker client released from detention on parole," since Trump's January executive order.

These prolonged detentions for asylum seekers have helped fuel a 42 percent increase in arrests of immigrants inside the nation's borders from the start of the Trump Administration to the end of the fiscal year, compared with the same time frame the year before. Now almost any undocumented immigrant can end up in detention and be deported.

It remains unclear how much the Trump Administration plans to continue to increase the use of detention. But ICE is seeking five new sites within 180 miles of Chicago, Detroit, St. Paul, and Salt Lake City, along with another in south Texas, to detain 4,000 people.

“In recent months, the administration has doubled down on the detention of vulnerable individuals, engaging in the prolonged detention of asylum seekers without any individualized determination of community safety or flight risk,” says an October letter of protest from the ACLU and other immigrant rights’ advocacy groups.

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Meanwhile, asylum requests are piling up, while approvals become harder to come by. According to the Executive Office for Immigration Review, 85,970 asylum requests were received by immigration courts for the first nine months of the past fiscal year, far more than the 65,218 received for the entire previous fiscal year.

But the approval rate has dropped from 55.5 percent in fiscal year 2012 to 43.5 percent in fiscal year 2016 to 38.2 percent last fiscal year, according to the Transactional Records Access Clearinghouse at Syracuse University. Asylum requests in immigration courts continue to climb largely because of the growing number of people contesting deportation.

On top of that, the Trump Administration sharply decreased the number of refugees admitted to the United States to about half of the 110,000 ceiling that President Barack Obama set for the past fiscal year, and lowered the ceiling to 45,000 for the new year.

There is also growing evidence of asylum seekers—especially from Guatemala, Honduras, and El Salvador—being turned away at the U.S.-Mexican border without any opportunity to argue their case.

“They are turned back to face complete uncertainty and violence along the Mexican border—without any institutional support or shelter,” says Daniella Burgi-Palomino, senior associate for the Latin America Working Group, devoted to advocacy and education.

A May letter signed by forty members of Congress to Kelly at Homeland Security urged an investigation, following repeated reports of such turn-backs. And it says: “If accurate, many children and families fleeing violence and persecution may have unlawfully been denied humanitarian legal protection.”

Immigration officials—key players in Trump’s detainment and deportation dragnet—are erecting new hurdles for asylum every step of the way. Again, the experience at the Batavia facility, as highlighted by filings in the lawsuit, is illuminating.

They show that then-acting director Brophy started steering down a Trumpian path even before Trump took office. Brophy, in a court filing, said his push for stricter scrutiny of parole requests at the Batavia facility was prompted by a November 28, 2016, incident at Ohio State University. A Somali national, who was a legal permanent resident, drove a vehicle into a crowd and attacked people with a butcher knife, injuring eleven.

But that event had nothing to do with detainees at Batavia.

Brophy said he believed Homeland Security “should not be satisfied that someone’s identity has been established when we are not able to properly authenticate a photocopy” and that “an original birth certificate should not suffice as a stand-alone benchmark for proof of identity.” Yet, as Wolford said in her order, the 2009 parole directive clearly provides for alternatives to government-issued identification and contains no language requiring original documents.

Asylum is supposed to make the United States a safe haven for those fleeing persecution, but the Trumpian mindset thinks only of detention and deportation.

Another recent lawsuit, filed in federal court in Washington, D.C., contests parole practices by ICE officials in Texas. It was brought by Texas RioGrande Legal Aid on behalf of five asylum seekers who found their parole requests to be a ticket to prolonged detention.

On another front, Trump’s Immigration Principles and Policies—his initial bargaining chip for renewal of DACA—calls for tightening asylum standards and expanding the use of expedited removals, which kick out undocumented arrivals at the border and other points of entry.

And Homeland Security’s Asylum Division has revised its training of officers to “shift away from giving the benefit of the doubt to applicants,” according to the Tahirih Justice Center. The nonprofit group works with immigrants fleeing violence and says these revisions will lead officers to believe their initial “credible fear” determinations should be the full and final review instead of leaving that decision to immigration judges.

At the Batavia facility, “denial” became the operative word.

Asylum seeker Abdi, in his affidavit, tells of the clan violence in Somalia that resulted in his father being murdered and him being beaten and held captive, until he escaped. He began a long journey that ended in October 2016 at the U.S southern border with Mexico, where he requested asylum and was placed in the Batavia facility.

But while he had passed his “credible fear” interview, Abdi’s attempts at parole proved unsuccessful until after the lawsuit was filed. His immigration lawyer, Siana McLean, tells how the Batavia facility headed in a different direction under Trump.

“There was a significant and sharp change in parole decisions under Trump,” says McLean, noting that ICE officials became more demanding in what they wanted and denials were common.

The Trump Administration, in a court filing in the Batavia case, has downplayed the 2009 parole directive, arguing that it shouldn’t interfere with its exercise of parole, even to the point of saying in court that the judge doesn’t have the authority to determine whether ICE officials are complying with the directive because parole is discretionary.

At the same time, in a pending Supreme Court case, the administration has pointed to the availability of parole to bolster its argument that bond hearings are not needed for new arrivals, which include asylum seekers.

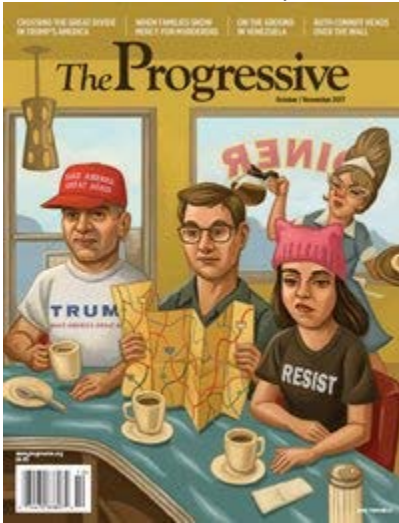
One of the plaintiffs in the Texas case filed by Texas RioGrande Legal Aid is a Guatemalan woman who fled her homeland with her eight-year-old daughter. A car accident in northern Mexico left the girl dead and her mother severely injured, in need of a walker. Her first attempt to cross the border into Texas was rebuffed by U.S. officials, according to the lawsuit. Last February, she crossed again, this time accompanied by human rights monitors and attorneys, and was able to make her asylum claim. But she nonetheless ended up in Port Isabel Detention Center in Texas. Her parole requests, the lawsuit says, were denied, even though she provided substantial documentation from family and friends willing to sponsor her.

Kelly’s call for parole to be used “sparingly” seems to have taken hold. And while the injunction issued by Wolford for the Batavia facility has forced ICE to change its practices in western New York, there’s no indication it’s happening elsewhere.

Asylum has become a dirty word for Trump, who can only think of a “big beautiful wall” as asylum seekers, denied parole, become part of ICE’s growing population in detention centers.

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