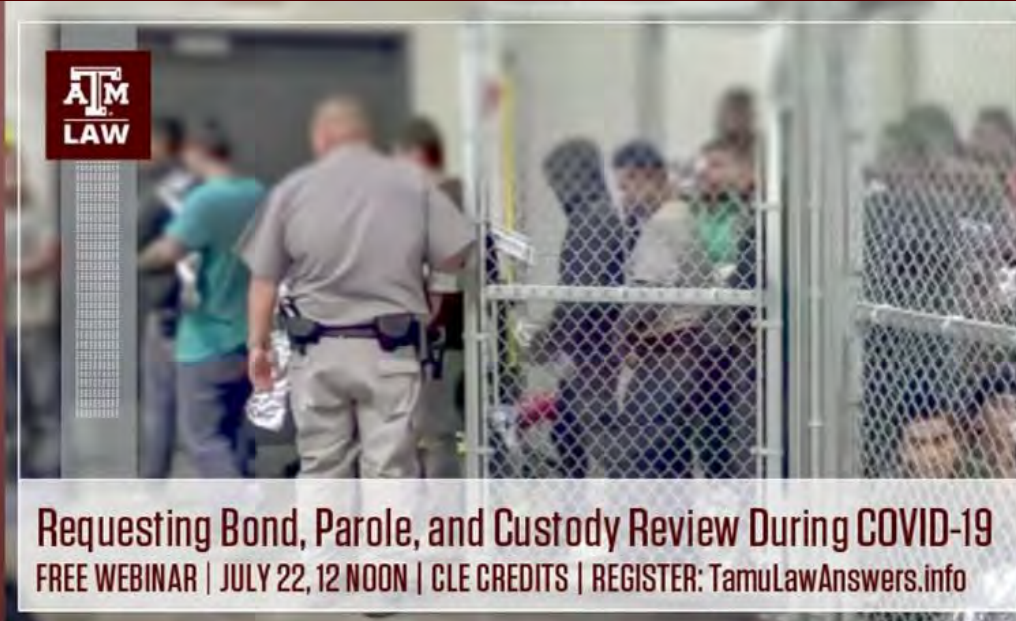




# TAMULawAnswers.info Webinar Series



## *Panelists:*

**Denise Gilman**, Clinical Professor of Law, University of Texas at Austin

**Sara Ramey**, Executive Director, Migrant Center for Human Rights

**Laura Rivera**, Director, Southern Poverty Law Center's Southeast Immigrant Freedom Initiative

**Erica Schommer**, Clinical Professor of Law, St. Mary's University School of Law

**Fatma Marouf** (moderator), Professor of Law and Immigrant Rights Clinic Director, Texas A&M University School of Law





**SOUTHEAST IMMIGRANT FREEDOM INITIATIVE**

CLE - Release during COVID  
July 22, 2020



# SIFI | Louisiana and Georgia



Pine Prairie ICE  
Processing Center  
POPULATION ~800



LaSalle Detention Center  
POPULATION ~1200



Stewart Detention Center  
POPULATION ~2000



Irwin Detention Center  
POPULATION ~800



Folkston ICE  
Processing Center  
POPULATION ~1100



# Louisiana | ICE detention expansion





# Litigation | *Heredia-Mons v. McAleenan*

District of Columbia, Case 1:19-cv-01593-JEB

- Defendant - New Orleans ICE Field Office
  - NOLA ICE jdx - Louisiana, Mississippi, Tennessee, Alabama, Arkansas
- Challenging systematic denials of parole to arriving asylum seekers in violation of 2009 Parole Directive
- Provisional class – presented @ POE + sought asylum + passed CFI + denied parole by NOLA ICE
- Since September 2019, NOLA ICE ordered to not deny parole to any class member absent “individualized determination” “based on the specific facts of each provisional class member’s case” and conforming to Directive.



# Litigation | *Heredia-Mons v. McAleenan*

District of Columbia, Case 1:19-cv-01593-JEB

Parole Determination Rates

2016 - 75.5% **granted**

2017 – 82% **denied**

2018 – 98.5% denied

January-September 2019 – 100% denied

September 2019-March 2020 – 13% granted



## Post-Injunction Count and Percentage of Parole Decisions 9/5/19–5/15/20

Year	Month	Count			Percent		
		Granted	Denied	Not Reported	Granted	Denied	Not Reported
Detainees Seeking Parole for First Time							
Total		49	648	0	7.0%	93.0%	0.0%
2019	September	3	186	0	1.6%	98.4%	0.0%
2019	October	5	132	0	3.6%	96.4%	0.0%
2019	November	4	92	0	4.2%	95.8%	0.0%
2019	December	4	56	0	6.7%	93.3%	0.0%
2020	January	4	41	0	8.9%	91.1%	0.0%
2020	February	15	60	0	20.0%	80.0%	0.0%
2020	March	11	53	0	17.2%	82.8%	0.0%
2020	April 15	3	28	0	9.7%	90.3%	0.0%
Detainees Seeking Redetermination							
Total		381	1387	2	21.5%	78.4%	0.1%
2019	September	0	1	0	0.0%	100.0%	0.0%
2019	October	0	68	0	0.0%	100.0%	0.0%
2019	November	5	271	0	1.8%	98.2%	0.0%
2019	December	1	110	0	0.9%	99.1%	0.0%
2020	January	28	173	0	13.9%	86.1%	0.0%
2020	February	114	263	1	30.2%	69.6%	0.3%
2020	March	85	238	0	26.3%	73.7%	0.0%
2020	April	113	193	1	36.8%	62.9%	0.3%
2020	May 15	35	70	0	33.3%	66.7%	0.0%

Source: Declaration of Jacques Metoyer, December 6, 2019; Declaration of Jacques Metoyer, December 23, 2019; Declaration of Jacques Metoyer, January 29, 2020; Declaration of Jacques Metoyer, February 24, 2020; Declaration of Jacques Metoyer, March 24, 2020; Declaration of Jacques Metoyer, April 23; Declaration of Jacques Metoyer, May 21, 2020 ("Metoyer Declarations")

Note: Exhibit A of the Metoyer Declarations contains information from detainees previously denied parole and seeking redetermination. Exhibit B contains information from detainees seeking parole determination for the first time. Duplicate determinations across Metoyer Declarations have been removed from the counts. Parole decisions appear for June 6, 2019, and August 8, 2019, in Exhibit B of the Metoyer Declarations. A parole decision appears in Exhibit A of the Metoyer Declarations for January 12, 2019 in the January 29, 2020, Metoyer Declaration. These determinations were reported outside of the date range indicated by the Metoyer Declarations (Exhibit A: 10/14/19–5/17/20; Exhibit B: 9/5/19–4/15/20) and were excluded from the counts.

## Post-Injunction Use of Flight Risk for Redetermination Denials 9/12/19—5/15/20

	Counts			Percentage of Total Denials		
	2019	2020	Total	2019	2020	Total
Flight Risk	455	893	1348	100.0%	95.8%	97.2%
Identity Not Established	-	25	25	-	2.7%	1.8%
Danger to the Community	-	6	6	-	0.6%	0.4%
No Reason Given	-	8	8	-	0.9%	0.6%
<b>Total Denials</b>	<b>455</b>	<b>932</b>	<b>1387</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: Declaration of Jacques Metoyer, December 8, 2019; Declaration of Jacques Metoyer, December 23, 2019; Declaration of Jacques Metoyer, January 29, 2020; Declaration of Jacques Metoyer, February 24, 2020; Declaration of Jacques Metoyer, March 24, 2020; Declaration of Jacques Metoyer, April 23, 2020; Declaration of Jacques Metoyer, May 21, 2020 ("Metoyer Declarations")

Note: Exh bit A of the Metoyer Declarations contain information from detainees previously denied parole and seeking redetermination. Duplicate determinations across Metoyer Declarations have been removed from the counts. The Metoyer Declarations claim to cover 10/14/19 to 5/17/20, however redeterminations range from 9/12/19 to 5/15/20.



# Litigation | *Abiala v. Barr*

Middle District of Georgia, Case No. 7:19-cv-00082-HL

- Defendants – Attorney General, ICE agency leadership in DC and Georgia, wardens of Irwin County and Stewart detention centers
- Challenging failure of EOIR's Atlanta Immigration Court + ICE officials to consider detained migrant's ability to afford bond amounts in making custody (re)determinations
- Not a class action
- Since March 2020, decision pending on motion to dismiss



# Average Bond Amounts

Snapshot in 2019 (outdated)

Stewart Detention Center: \$10,098.55  
Folkston Processing Center: \$21,119.95  
LaSalle Detention Facility: \$8,290.98  
Atlanta City Detention Center: \$11,573.43



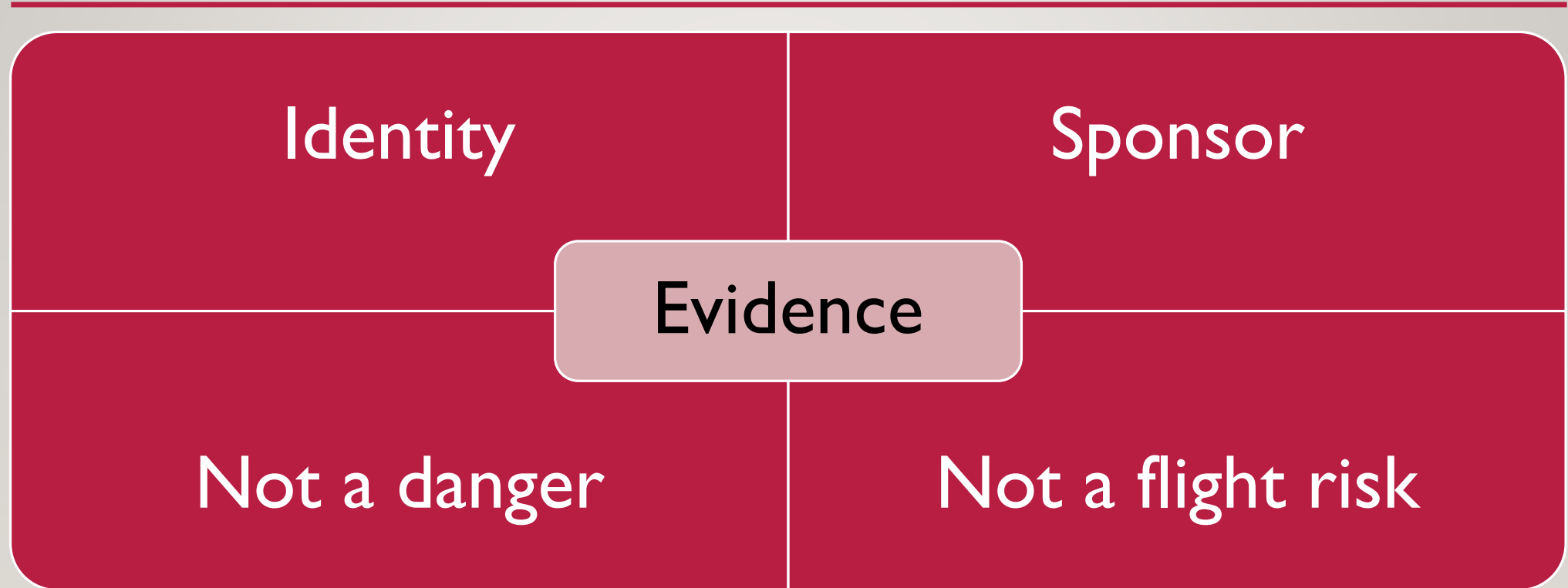
# AUTHORITY FOR PAROLE

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- 8 CFR § 212.5(b)
- 8 CFR § 1003.19(h)(2)(ii)
- INA § 236(a)(2)(B)
- INA § 236(c)(2)



# ESSENTIALS FOR PAROLE REQUESTS







# Requesting Release During COVID-19



# ASYLUM BAN 2.0 / Transit Ban (Joint Interim Final Rule July 16, 2019):

## 8 CFR 208.13(c)(4)

*Additional limitation on eligibility for asylum.* Notwithstanding the provisions of [§ 208.15](#), any [alien](#) who enters, attempts to enter, or arrives in the [United States](#) across the southern land border on or after July 16, 2019, after transiting through at least one country outside the [alien's](#) country of citizenship, nationality, or last lawful habitual residence en route to the [United States](#), shall be found ineligible for asylum unless:

- ▶ (i) The [alien](#) demonstrates that he or she applied for protection from persecution or torture in at least one country outside the [alien's](#) country of citizenship, nationality, or last lawful habitual residence through which the [alien](#) transited en route to the [United States](#), and the [alien](#) received a final judgment denying the [alien](#) protection in such country;
- ▶ (ii) The [alien](#) **demonstrates that he or she satisfies the definition of “victim of a severe [form of trafficking in persons](#)” provided in [8 CFR 214.11](#)**; or
- ▶ (iii) The only countries through which the [alien](#) transited en route to the [United States](#) were, at the time of the transit, not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

# ASYLUM BAN 2.0 / Transit Ban (Joint Interim Final Rule July 16, 2019):

## Impact on the Ground:

- ▶ Rejected at CFI / IJ Review - Request for Reconsideration
- ▶ No release under CFI parole memo - Request for Reconsideration
- ▶ Loss of protection at merits due to 10% / 50% standards - Motion to Reconsider or Reopen

## Cases:

- ▶ East Bay Sanctuary Covenant v. Barr (9th Cir. July 6, 2020)
  - ▶ **Injunction for “arbitrary”:** <https://www.aclu.org/legal-document/order-east-bay-v-barr>
  - ▶ Stayed by Supreme Court
- ▶ **Capital Area Immigrants’ Rights Coalition v. Trump (District Court for the District of Columbia June 30, 2020)**
  - ▶ **Summary Judgement Order vacating Rule for “unlawfully dispensed” with Notice and Comment:** <https://www.humanrightsfirst.org/sites/default/files/CAIR%20Coalition%20Order%5B3%5D.pdf>
  - ▶ Court opinion: <https://www.humanrightsfirst.org/sites/default/files/CAIR%20Coalition%20Opinion%20%281%29.pdf>



# Working with Medical Experts

- What kind of evaluation?
  - Physical
  - Psychological - Does the stress impact the physical issues?
    - Exacerbating condition
    - Creating condition
  - Public interest / humanitarian family factors
- Evaluating and Setting Up the Case
  - **Get a copy of the facility's medical report**
    - Pro se or attorney request (HIPAA)
    - 10 days
  - Get a detailed declaration on medical issue and detention challenges - ask about hygiene, social distancing, quarantine, how is ICE / facility handling things (solitary confinement) etc.



# Working with Medical Experts

- Process with Medical Experts
  - Send summary, then if case is placed, send medical report and declaration (some providers may be able / want to speak with the individual)
  - Give provider templates / guidance e.g. tie to CDC risk factors and site relevant sources
  - **Let the provider know you'd like to review a final draft to ensure that the format and contents will read well to ICE - discuss any differences**
  - Set deadlines together
  - **Include provider's CV (summary of qualifications should be in intro)**
  - Tell the provider the result
- Other Considerations
  - ICE relies on their doctors so set up realistic expectations
  - Email / hand-deliver with stamps / mail with packet - **but don't wait!**
  - Provide client two copies (one extra so they can give to ICE) and explain to them what is in the report (or get translated)



# Ethical Issues to Working with Detained Clients

- Advise clients of visitation policy (dorm on lockdown?)
- Set up a phone plan - regular or per call (duty of communication and to lower stress)
- Have method to receive timely updates
- Extent of representation for contract
  - Informed consent advisals
  - Congress / Press
- Explain televideo hearings



# Thank you

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[admin@migrantcenter.org](mailto:admin@migrantcenter.org)

Photos: Tent Courts in Laredo





# APPREHENSION AND INITIATION OF IMMIGRATION COURT DEPORTATION PROCEEDINGS

Expedited Removal or  
Reinstatement of Removal -  
**Detained** during credible fear or reasonable  
fear screening

Apprehended by DHS  
within the  
United States

Favorable credible or  
reasonable fear

## CURRENT PRE-TRIAL CUSTODY PROCESS

“Arriving” and reinstatement  
after favorable credible or  
reasonable fear

DHS  
denies  
release  
**Detained**

DHS grants release  
on parole or  
supervision (often  
with bond)  
**Released**

**Others**

DHS orders  
detention or  
imposes  
bond client  
cannot pay

DHS orders  
release (often  
with bond)  
**Released**

**Mandatory  
detention  
(crimes)**

**Detained**  
Release possible  
in DHS  
discretion; IJ  
decides if  
mandatory  
detention  
applies

### CUSTODY REDETERMINATION HEARING BY IMMIGRATION COURT

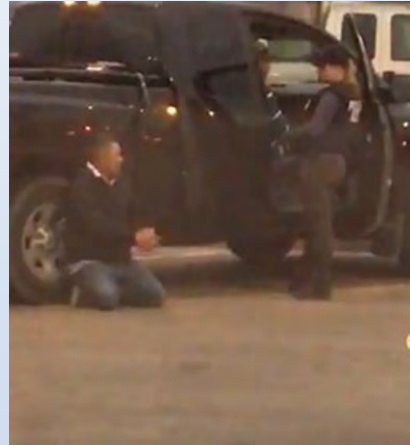
Bond set/reset –  
**Detained**  
(unless and until bond paid)

Decision to  
continue detention  
–  
**Detained**

Recognizance/  
conditional  
parole  
–  
**Released**

**CUSTODY APPEAL TO BOARD OF IMMIGRATION APPEALS**  
appeal by migrant or by DHS  
(with likely continued detention throughout appeal)

# Interior Apprehension





# Border Apprehensions



## 8 CFR 1236.1(c)(8)

Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an [alien](#) not described in section 236(c)(1) of the [Act](#). . . provided that

**the [alien](#) must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [alien](#) is likely to appear for any future proceeding.**



(d) *Appeals from custody decisions -*

(1) *Application to immigration judge.*

After an initial custody determination . . .

the [respondent](#) may, at any time before an order under [8 CFR part 1240](#) becomes final, request amelioration of the conditions under which he or she may be released.

Prior to such final order, . . . , the [immigration judge](#) is authorized to exercise the authority in section 236 of the [Act](#) . . . to detain the [alien](#) in custody, release the [alien](#), and determine the amount of bond, if any, under which the [respondent](#) may be released