From: Jon M Gurule <Jon.V.Gurule@dhs.dhs.gov>
Sent: Thursday, October 01, 2015 5:12 PM
To: Rice, David D
Ccs: Rapp, Marc A; Coddillo-Pereira, Elizabeth; Arnao, John; Suttorp, Scott
Subject: FW: CRCL complaints Mr. Barahona and Mr. Fugon request immediate release from detention

FW: CRCL complaints Mr. Barahona and Mr. Fugon request immediate release from detention

Data,

As we talked about earlier today, CRCL has completed their investigation and we can proceed with this case. Please review the attached stay of removal request and all attached documentation and adjudicate accordingly. If you need any further information to make a decision, please feel free to reach out to their attorney and let them know you are reviewing the stay request.

After you have made your decision, please forward all documentation to me and I will be making a proactive referral through the ERO PD mailbox for documentation purposes and for a second FOD PD opinion to the current FOD PD reviewing official (FOD DAI) for her opinion.

I've also attached the email referred to below to consolidate all information into one email.

Please do not take any until we can fully vet these cases and you hear back from HQ. Please let me know if you have any questions or comments.

Thanks,
Jon

From: Coddillo-Pereira, Elizabeth
Sent: Thursday, October 01, 2015 5:08 PM
To: Gurule, Jon M
Subject: FW: CRCL complaints Mr. Barahona and Mr. Fugon request immediate release from detention

Jon, information that I received from CRCL and I will send you a second email shortly. Liz

From: Mack, Megan
Sent: Friday, September 25, 2015 1:59 PM
To: Coddillo-Pereira, Elizabeth
Cc: Kesler, Tamara
Subject: FW: CRCL complaints Mr. Barahona and Mr. Fugon request immediate release from detention

Hi Liz,
Here is what we recently received. Copying Tamara as I am out today.
Best wishes.
From: Megan H. Mack, Officer
Office for Civil Rights and Civil Liberties
Department of Homeland Security

To: Debra Fishmaker

Subject: Request for Immediate Release

The Department of Homeland Security (DHS) would like to request the immediate release of Mr. Barahona and Mr. Pugon. Both individuals have been detained for more than 100 days in ICE detention. We urge that both individuals be released immediately into alternatives to detention.

The experience of Mr. Barahona and Mr. Pugon for the past 100 days is no way to treat civil rights complainants and clearly deter future complainants from reporting civil rights abuses to your office. As I raised in our conversation, I am further concerned about the deteriorating physical and psychological health of Mr. Barahona due to continued detention in La Salle. We urge that prosecutorial discretion be exercised immediately so that complainants can engage in their civil rights activity in dignity.

I look forward to our next conversation. Best,

Julie Mack

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From: Yilong "Julie" Mao
Staff Attorney
New Orleans Workers' Center for Racial Justice
National Guestworker Alliance
217 N. Prier St.
New Orleans, LA 70112
(504) 399-5165 (office)
(504) 399-5205 (fax)

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From: Elizabeth Cerdillo-Perera <Elizabeth.Cerdillo-Perera@ice.dhs.gov>

Subject: New Orleans follow up

To: Jon A. Kiley, John C. Bono, Debra Fishmaker

Dear Sarah,

As I mentioned on our call today, CRCL conducted an on-site investigation in New Orleans last month on a number of complaints we had received involving ICE. We are still writing up our investigation report, but I'm pleased to let you know that by and large our team came away with a very favorable assessment of the field office. While we will have some recommendations, they will have more to do with national ICE policy issues than with local problems.

Turning to the cases I mentioned to you on the phone today, we received a complaint alleging race/ethnic profiling by local law enforcement. We are pursuing this investigation.

Jen & I went to see the phones at the ICE detainer, and we talked with several of the individuals being held in detention pending removal. This email summarizes our findings and conclusions because we'd like to address the situation quickly, but we can follow up with further information if you have questions about our position.

Facts

At approximately 5 am on May 29, 2015, Gustavo Barahona-Sanchez (#A09402990) and Jose Adam Furgon-Caraballo (#A02125739), along with three other men, were standing and parked outside a Motel 6 in Lake Charles, Louisiana. Two officers from the New Orleans Police Department (NOPD) conducted a stop of the five men. Mr. Barahona-Sanchez and Mr. Furgon-Caraballo allege that the officers approached them, saying "show me your papers." One officer allegedly stated that they were going to check if they're legal or illegal. The four men presented their passports as identification documents and Mr. Barahona-Sanchez asserted that he presented a New Orleans Worker's Center for Racial Justice Identification card.

At the motel, an NOPD officer contacted the Lake Charles Border Patrol Station for assistance. The officer informed a Border Patrol agent that they were holding five subjects on lodging charges, that each presented a Honduran passport as identification, and that each passport was believed to be fake. (While Mr. Barahona-Sanchez asserts he presented a NWCRU Identification card, the NOPD stated each presented a passport.) More NOPD vehicles arrived and all five subjects were apprehended and taken to the NOPD station.

Two Border Patrol agents conducted the NPO station, whose subjects had been held in holding cells for approximately an hour. The agents determined the documents presented to be valid, but found no
visas in them. The agents proceeded to conduct immigration interviews, and determined that all five had entered the United States without inspection. The men were taken into custody and transported to the Lake Charles Border Patrol Station and held for approximately two hours. Each was processed and three were released. Mr. Barahona-Sanchez and Mr. Fugon-Cano were each issued a reinstatement of Prior Order of Removal, and transported to ICE’s South Louisiana Correctional Center in Basile, Louisiana.

None of the five was cited or charged by the NLPD with any offense. Mr. Barahona-Sanchez and Mr. Fugon-Cano remain in detention by virtue of a Z-hold requested by CRCL to enable our investigation.

Concern

CRCL has significant concerns with the actions of local law enforcement in this matter.

The men appear to have been arrested, transported, and detained for an extended period of time, without any local law enforcement interest in charging them with a crime, solely for an immigration status check; and it seems clear that NLPD’s interest in the immigration status of the men was based on their ethnicity and the way they were awaiting pickup for a job. We believe it is imperative that the Department, ICE, and CBP work to avoid becoming a conduit, or an incentive, for improper profiling by local law enforcement.

Detention based on ethnic appearance is not a legitimate use of an LEA’s arrest authority, and so not an appropriate form of police custody for Border Patrol or ICE to use as a foundation for an enforcement action in the absence of extraordinary circumstances, or a confirmed threat. While you may know something relevant that we don’t, it does not appear that these Priority 3 or 2(c) individuals present a particular public safety, border, or security threat.

It would be a very different situation, in our view, if the subjects had been arrested by the NLPD, charged with an offense, and the NLPD had then requested ICE conduct an immigration status check (as contemplated by the Secretary’s November 20, 2014 memo). Then a transfer from legitimate police custody would be consistent with ICE policy, unless there was a clear indication that the state custody was wrongful. But here the only basis for the local arrest and detention seems to have been to give Border Patrol an opportunity to run an immigration investigation. This is not a practice the Department wishes to endorse or facilitate. To be clear, CRCL does not believe that ICE officers or Border Patrol personnel engaged in misconduct in accepting the Border Patrol transfer of the individuals, but the cases are now nonetheless ICE’s responsibility to resolve.

Consistent with then-Director Morton’s June 17, 2011, memorandum “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs,” CRCL requests that ICE strongly consider exercising substantive prosecutorial discretion in the cases of these two subjects, to avoid furthering the improper actions of NLPD in bringing them into ICE’s custody. We would ask that you consider both releasing them from custody and seeking closure of their removal actions.

Again, please contact me if you have any questions. Thank you.

Best wishes,
Megan

Megan H. Mack
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
202-357-1212 (office)
202-580-5665 (Blackberry)
FYSA

From: Gurule, Jon M  
Sent: Thursday, October 01, 2015 9:12 PM  
To: Rivera, David D  
Cc: Rapp, Marc A; Cedillo-Pereira, Elizabeth; Amaya, John; Sutterfield, Scott L  
Subject: FW: CRCL complainants Mr. Barahona and Mr. Fugon request immediate release from detention

Dave,

As we talked about earlier today, CRCL has completed their investigation and we can proceed with this case. Please review the attached stay of removal request and all attached documentation and adjudicate accordingly. If you need any further information to make a decision, please feel free to reach out to their attorney and let them know you are reviewing the stay request.

After you have made your decision, please forward all documentation to me and I will be making a proactive referral through the ERO PD mailbox (for documentation purposes and for a second FOD opinion) to the current FOD PD reviewing official (FOD DAL) for her opinion.

I’ve also attached the email referred to below to consolidate all information into one email.

Please do not take any until we can fully vet these cases and you hear back from HQ. Please let me know if you have any questions or comments.

Thanks,

Jon

From: Cedillo-Pereira, Elizabeth  
Sent: Thursday, October 01, 2015 5:08 PM  
To: Gurule, Jon M  
Subject: FW: CRCL complainants Mr. Barahona and Mr. Fugon request immediate release from detention

Jon, information that I received from CRCL and I will send you a second email shortly. Liz

From: Mack, Megan  
Sent: Friday, September 25, 2015 1:59 PM  
To: Cedillo-Pereira, Elizabeth  
Cc: Kessler, Tamara  
Subject: Fw: CRCL complainants Mr. Barahona and Mr. Fugon request immediate release from detention

Hi Liz,

Here is what we recently received. Copying Tamara as I am out today.

Best wishes,

Megan

Megan H. Mack, Officer  
Office for Civil Rights and Civil Liberties  
Department of Homeland Security

From: Fleischaker, Deborah  
Sent: Wednesday, September 23, 2015 03:28 PM  
To: Mack, Megan; Kessler, Tamara; Shuchart, Scott; Frozvi, Nadia; Salvador-Dunn, Dana; McKenney, William  
Subject: FW: CRCL complainants Mr. Barahona and Mr. Fugon request immediate release from detention

The NOWCRU pd request just arrived.

From: Julie Mao  
Sent: Wednesday, September 23, 2015 3:13 PM
To: Fleischaker, Deborah  
Cc: Jolene Elberth  
Subject: re: CRCL complainants Mr. Barahona and Mr. Fugon request immediate release from detention

Deborah,

Thanks for the conversation. Attached are the new requests for prosecutorial discretion that our organizations filed on September 9th for Mr. Barahona and Mr. Fugon. Both individuals have been detained for more than 100 days in ICE detention. We urge that both individuals are released immediately into alternatives to detention.

The experience of Mr. Barahona and Mr. Fugon for the past 100 days is no way to treat civil rights complainants and clearly deters future complainants from reporting civil rights abuse to your office. As I raised in our conversation, I am further concerned about the deteriorating physical and psychological health particularly of Mr. Barahona due to continued detention in La Salle. We urge that prosecutorial discretion be exercised immediately so that complainants can engage in their civil rights activity in dignity.

I look forward to our next conversation. Best,

Julie

Yibong "Julie" Mao  
Staff Attorney  
New Orleans Workers' Center for Racial Justice  
National Guestworker Alliance  
217 N. Prieur St.  
New Orleans, LA 70112  
(504) 309-5165 (office)  
(504) 309-5205 (fax)

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Privacy Waiv...pdf (276 KB)   Fugon: Cano...df (261 KB)   Barahona-5...pdf (312 KB)   Jose A FUGO...pdf (1.2 MB)   Gustavo RA...pdf (5.1 MB)   Mail Attach...t. eml (22 KB)
Dear Sarah,

As I mentioned on our call today, CRCL conducted an on-site investigation in New Orleans last month on a number of complaints we had received involving ICE. We are still writing up our investigation report, but I'm pleased to let you know that by and large our team came away with a very favorable assessment of the field office. While we will have some recommendations, they will have more to do with national ICE policy issues than with local problems.

Turning to the cases I mentioned to you on the phone today, we received a complaint alleging racial/ethnic profiling by local law enforcement that, through the involvement of Border Patrol, resulted in two noncitizens being in detention pending removal. This email summarizes our findings and conclusions because we'd like to address the situation quickly, but we can follow up with further information if you have questions about our position.

**Facts**

At approximately 5 am on May 29, 2015, Gustavo Barahona-Sanchez (A098 402 900) and Jose Adan Fugon-Cano (A200 125 739), along with three other men, were standing and parked outside a Motel 6 in Leesville, Louisiana. Two officers from the New Iberia Police Department (NLPD) conducted a stop of the five men. Mr. Barahona-Sanchez and Mr. Fugon-Cano allege that the officers approached them, saying “show me your papers.” One officer allegedly stated that they “were going to check if [they’re] legal or illegals.” Four men presented their passports as identification documents and Mr. Barahona-Sanchez asserted that he presented a New Orleans Worker's Center for Racial Justice identification card.

At the motel, an NLPD officer contacted the Lake Charles Border Patrol Station for assistance. The officer informed a Border Patrol agent that they were holding five subjects on loitering charges, that each presented a Honduran passport as identification, and that each passport was believed to be fake. (While Mr. Barahona-Sanchez asserts he presented a NOWCRU identification card, the NLPD stated each presented a passport.) More NLPD vehicles arrived and all five subjects were apprehended and taken to the NLPD station.

Two Border Patrol agents responded to the NLPD station, where the subjects had been in holding cells for approximately an hour. The agents determined the passports presented to be valid, but found no visas in them. The agents proceeded to conduct immigration interviews, and determined that all five had entered the United States without inspection. The men were taken into custody and transported to the Lake Charles Border Patrol Station and held for approximately two hours. Each was processed and three were released. Mr. Barahona-Sanchez and Mr. Fugon-Cano were each issued a Reinstatement of Prior Order of Removal, and transported to ICE’s South Louisiana Correctional Center in Basile, Louisiana.

None of the five was cited or charged by the NLPD with any offense. Mr. Barahona-Sanchez and Mr. Fugon-Cano remain in detention by virtue of a Z-hold requested by CRCL to enable our investigation.

**Concern**

CRCL has significant concerns with the actions of local law enforcement in this matter.

The men appear to have been arrested, transported, and detained for an extended period of time, without any local law enforcement interest in charging them with a crime, solely for an immigration status check; and it seems clear that NLPD’s interest in the immigration status of the men was based on their ethnicity and the way they were awaiting pickup for a job. We believe it is imperative that the Department, ICE, and CBP work to avoid becoming a conduit, or an incentive, for improper profiling by local law enforcement.

Detention based on ethnic appearance is not a legitimate use of an LEA’s arrest authority, and so not an appropriate form of police custody for Border Patrol or ICE to use as a foundation for an enforcement action in the absence of extraordinary circumstances, or a confirmed threat. While you may know something relevant that we don’t, it does not appear that these Priority 3 or 2(c) individuals present a particular public safety, border, or security threat.
It would be a very different situation, in our view, if the subjects had been arrested by the NLPD, charged with an offense, and the NLPD had then requested ICE conduct an immigration status check (as contemplated by the Secretary’s November 20, 2014 memo). Then a transfer from legitimate police custody would be consistent with ICE policy, unless there was a clear indication that the state custody was wrongful. But here the only basis for the local arrest and detention seems to have been to give Border Patrol an opportunity to run an immigration investigation. This is not a practice the Department wishes to endorse or facilitate. To be clear, CRCL does not believe that ICE officers or Border Patrol personnel engaged in misconduct in accepting the Border Patrol transfer of the individuals, but the cases are now nonetheless ICE’s responsibility to resolve.

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Again, please contact me if you have any questions. Thank you.

Best wishes,
Megan

Megan H. Mack
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
202-357-1232 (office)
202-580-5686 (blackberry)