



Migrant Center for Human Rights

Protecting the Persecuted

For Immediate Release

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PRESS RELEASE

San Antonio, Texas (July 31, 2018): **ICE Refuses to Release Moms Forcibly Separated from their Children**

The Migrant Center for Human Rights calls for the immediate release of mothers Josefina Ortiz and Vivian. Josefina was forcibly separated from her three-year-old son when she presented herself and her son at the bridge on December 29, 2017 [close to seven months ago]. Vivian was forcibly separated from her three-year-old son when she presented herself and her son at the bridge on April 25, 2018 [over three months ago]. **Both mothers have passed credible fear interviews, proving to an Asylum Officer that they have a significant chance of winning their case.**

On July 31, 2018 counsel received a decision from ICE denying release to Josefina Ortiz without any explanation. Without a clear understanding of the reasons for the denial, it is difficult to file a request for reconsideration with ICE with any chance of success. There are no appeal rights and no judicial review in these cases.

This lack of transparency in government operations, paired with the lack of judicial review, means that there is no accountability to the public [who pay approximately 90.00 USD a day to detain these mothers], much less to the asylum seekers who struggle to understand why they need to be locked up as if they were criminals. The 5th and 14th Amendments to the U.S. Constitution state that no person should be deprived of liberty “without due process of law”.

ICE itself, in a 2009 Memorandum that is still active in law if not in practice [see *Damus v. Nielsen*], recognized that it is in the public interest to parole asylum seekers after they prove to an asylum officer that they have a significant possibility of winning their cases. ICE is supposed to deny release only when there is: lack of identity evidence, flight risk, danger to the community, or lack of a stable place to live upon release. ICE has discretion in making its decisions.

ICE stated on July 20 to the press that they must remain in detention because they have prior deportation orders, even though they have shown that they are not a flight risk nor a danger to the community. Neither mother has any criminal history. And both mothers presented themselves at the bridge as the Trump Administration wants, and otherwise have complied with the laws here in

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the U.S. They have valid claims for asylum and family legally here in Texas willing to support them while they pursue their immigration cases. The Migrant Center will also be able to continue Josefina's asylum case with her from outside detention as she will be scheduled in San Antonio.

Not providing asylum seekers a meaningful opportunity to seek their liberty simply because they presented themselves to immigration at the border is unjust and a violation of due process. Furthermore, asylum seekers have a better chance of success outside of detention. Between 2011 and 2016, 50.2 percent of non-detained asylum seekers won their cases while, at the detention center where these mothers are detained in Pearsall, Texas, only 21.9 percent of asylum seekers won their cases.

ICE is taking the position that it doesn't need to reunite mothers with their children where the children have been previously released from ORR shelters. If their children were still in ORR custody, ICE wouldn't care about their prior deportation orders and would reunify them per the district court's preliminary injunction [we've seen this happen with another of our cases].

So Josefina and Vivian are forced to remain locked up and separated from their children simply because their children have been reunited with other family members. We all know that nothing replaces a mother in a young child's life. And mothers also have rights to be able to be with and care for their children which the government is blatantly ignoring. ICE forcibly separated them and must take responsibility and immediately remedy the harm it continues to cause every day they remain apart from their young sons.

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A petition to free Josefina can be found here:

http://petitions.moveon.org/sign/free-josefina-ortiz?source=c.em.cp&r_by=19975828

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The Migrant Center for Human Rights works with detained asylum seekers in the San Antonio area. We provide legal information and legal services, as well as advocate for their rights through policy advocacy, litigation and community outreach.

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Josefina presented herself at the bridge with her 3-year-old adopted son on December 29, 2017 . They were forcibly separated and her son remained in ORR custody until he was allowed to leave to join his sister in Austin. ICE refused to release Josefina on two occasions because she has an in absentia deportation order from 2004 [at which time she had already left the U.S. voluntarily] and because she had claimed that her son was hers biologically [she adopted him two hours after he was born as his mother didn't want him and views him as her son in every way; she was also afraid that immigration would take him away from her]. She presented multiple testimony letters and photos proving their relationship to ICE, all to no avail. There are no allegations of smuggling and her son is living with her daughter after a detailed ORR reunification screening. Josefina has no criminal record and passed her asylum interview and is scheduled for an asylum hearing on September 5, 2018. Due to the fact that Jeff Sessions limited protection for asylum seekers, she may need to take her case up on appeal, leaving her detained and separated from her son for possibly another 6 months. She is not a danger to the community nor a flight risk. Her son recently turned 4 and didn't understand why his mom couldn't be there with him. Media waiver on file; no full name or face.

Josefina's Daughter Writes -

1. When my mother and my three-year-old brother came to the U.S. on December 29, 2017 they were separated by immigration. They came to the bridge to ask for protection in the U.S. but immigration separated them because my brother is adopted and my mom didn't have formal adoption paperwork.
2. Immigration called me and asked me if my brother was my mom's son and I told them that yes, she's the only mother he's ever known. They said, but mam, if he's not her biological son, we will have to take him away. I told them, please don't, he's never been separated from his mom, she adopted him the same day he was born. But immigration separated them anyways.
3. Her son was sent to a children's shelter. My mom and I had no idea where he was for about 12 days. Immigration didn't tell us anything. I drove from Austin to San Antonio and went around to different non-profit groups until one of them was able to find my brother.
4. I went to visit my brother. He was not doing well. Immigration finally released my brother to live with me on January 30. When immigration released my brother he didn't want to eat. It took me a while to get him to start eating again. I'd have to promise him toys. My brother cried a lot for his mom and says that she is lying to him because when they talk on the phone she says that she'll see him soon but she's still in detention now seven months later, so he thinks she's lying.
5. My mom tried to get out of detention but immigration said they needed more evidence that she was really his mom. So we hired an attorney and gathered a lot of testimony letters from family and friends, medical documents, and photos of them together. Immigration still said no, because she's not his biological mom and she never formally adopted him. My mom also has a prior deportation order for not going to court but she didn't know about the hearing and anyways was already back in Honduras.
6. My brother doesn't think that our mom loves him anymore. He turned 4 years old and wanted her to give him a cake but she couldn't be there for his birthday.
7. My mom is suffering a lot in detention, especially being separated from my brother and knowing that he misses her and needs her.



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Vivian and her three-year-old son came to the US on April 25, 2018, trying to follow the proper legal procedure for coming to the US. They were separated and her son was in ORR custody until June 7, 2018. He is now with family in Houston but misses his mom a lot. His family has been buying him lots of toys to stop him from crying all the time. Vivian passed her asylum interview but was denied her release due to a prior deportation order from 2016. Media waiver on file; no full name or face.

Vivian's Aunt Writes -

1. On April 25, 2018 my 25-year-old niece Vivian, came to the United States with her three-year-old son to seek protection.
2. Immigration separated them and Vivian didn't know where her son was taken until the shelter case worker called me and then I was able to give Vivian his number. It was about a month before Vivian was able to talk to her son.
3. Her son was kept at a children's shelter alone for over a month, until June 7, 2018, when he was released to live with me. It was a lot of work getting him out and even after I had my fingerprints taken we had to wait 18 days before he was released. He was well cared for at the shelter but he misses his mom a lot. He often asks, where is my mom? And he cries for her.
4. They've never been separated before. My niece is an excellent woman and an excellent mother. She's never committed any crimes.
5. She's stressed; like any mother she is worried. She never imagined this would happen. I think that separating them is a form of punishment. Her son only speaks a few words because he is still young but he loves his mom and asks about her. He tells me, you're not my mom, she's called Vivian.
6. Vivian was told that she couldn't be released from detention to be with her three-year-old son because she had a previous deportation order. Her and her son had tried coming to the U.S. once before but she's not a criminal.
7. It is difficult to take care of her son because I have to work harder and then pay more for the babysitter. I can't get after him about anything to discipline him as I would my son because then he starts crying. He's so sad. I buy him toys to try to make him happy and I tell him that I love him a lot, that I understand that this situation is difficult.
8. Vivian tells him that she's working to be able to buy him presents. She doesn't want him to know that she is in detention because she doesn't want him to have a bad image since he is afraid of anyone in a uniform. They've been separated now for close to three months.