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February 12, 2021

Dear Field Office Director Gregory Archambeault, Assistant Officer in Charge Mark Paramo, Warden Christopher LaRose, Assistant Warden Joe Roemmich, and Officer for Civil Rights and Civil Liberties Culliton-Gonzalez:

Freedom for Immigrants is submitting this complaint regarding Mr. Okunlola Oluwaseun Kolawole, a person in Immigration and Customs Enforcement (ICE) detention at Otay Mesa Detention Center, San Diego, CA. The complaint outlines violations of Mr. Kolawole's civil rights by obstructing his access to due process and his release from immigration detention, and of the interim civil enforcement guidelines laid out on January 20, 2021.

Mr. Kolawole was granted parole with a \$10,000 bond by ICE in October of 2020. However, ICE has since repeatedly refused to accept the payment of the bond under various pretexts, despite good faith efforts by Mr. Kolawole to resolve the issue and multiple attempts by his attorney to communicate with his Deportation Officer (DO). There are significant concerns that this denial of release is potentially motivated by discrimination of his race and nationality, which would be in direct violation of Mr. Kolawole's civil rights. Given that Mr. Kolawole is engaged to be married to a U.S. citizen with whom he has two young US born children, this continual detention is placing a severe financial and emotional hardship upon the family and placing him at high risk to contract COVID-19 due to the outbreak in the detention center. Further, Mr. Kolawole is not a priority for enforcement under the guidelines laid out in the January 20, 2021 memorandum, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, and therefore should be released as part of efforts to reduce the population at the Otay Mesa Detention Center due to COVID-19. We request an investigation into the actual reason Mr. Kolawole has been denied release to date, as well as a reinstatement of parole and granting of his bond request in order to rejoin his family.

### **Obstruction of Release on Bond**

The following events laid forth within this civil rights complaint raise significant concerns that Mr. Kolawole, a black migrant from Nigeria, is facing the obstruction of his release based on his race and nationality. According to CRCL's mandate, allegations of discrimination based on race, ethnicity, national origin, religion, sex, sexual orientation, gender identity, or disability which occur in ICE custody must be investigated. Given the ongoing, clear attempts to block the release of Mr. Kolawole based on continually shifting and contradictory pretexts, Freedom for Immigrants expresses grave concerns this discrimination is the true reason behind his deportation officers' obstruction of release.

Okunlola Oluwaseun Kolawole [REDACTED] was stopped by Border Patrol on [REDACTED], 2020, while driving Uber close to the US/Mexico border. He believes that he was racially profiled due to his appearance and strong Nigerian accent. Despite the fact that his immigration case had been closed by an immigration judge under prosecutorial discretion, he was detained and transferred to ICE detention at Otay Mesa Detention Center, likely a result of shifting enforcement priorities under the Trump administration.

Mr. Kolawole states that throughout the subsequent six months that he has spent in detention at Otay Mesa Detention Center, he has felt that he and other black immigrants in the detention center have been singled out for prejudicial treatment, not only by staff but also by ICE deportation officers. His requests to speak to his deportation officer are frequently delayed or even ignored altogether, and when he is able to communicate with ICE, he is treated in a

dismissive manner. According to the American Bar Association's Human Rights Magazine<sup>1</sup>, "Statistics from the Department of Homeland Security demonstrate that at the intersection of immigration and race, immigrants of African descent are more likely to be detained and deported than other immigrants." Both Mr. Kolawole's initial detainment, and the subsequent obstruction of his release appear to be part of a pattern and practice of ICE's disparate treatment of black African migrants in their custody.

On August 26, he submitted his first written request for parole to his ICE deportation officer. Two months later, on Tuesday, October 27, 2020, Assistant Officer in Charge Janina S. Estudillo at Otay Mesa Detention Center granted him parole, with a bond of \$10,000.

On Thursday, November 12, 2020, I attempted to post bond for Mr. Kolawole at the ICE ERO office in Los Angeles, CA. I had in my possession a completed bond worksheet for Mr. Kolawole, proof of identification as obligor, and a cashier's check made out to U.S. Immigration and Customs Enforcement in the amount of \$10,000. This was the first of 9 obstructed attempts at posting bond which took place between this initial attempt and the present date.

After hours of waiting, the Los Angeles ICE bond officer eventually told me that the "Deportation Officer at Otay Mesa" had rejected the request because Mr. Kolawole "had not complied with the conditions of his custody review." Upon asking for more specific details regarding the rejection, the officer told me they could not provide that information and recommended that I have Mr. Kolawole's attorney follow up with the Deportation Officer (DO). That same day, the attorney of record for Mr. Kolawole, Rayana Thomas, made several attempts to reach his DO by phone, but received no answer or response to her voicemails. (No email or direct telephone line has been provided to Mrs. Thomas at any point during this process despite her requests.)

On the parole order, ICE states that Mr. Kolawole must turn in his passport. However, the Nigerian Consulate requires its citizens to present themselves in person at a Consulate office, a requirement with which Mr. Kolawole obviously cannot comply while still in detention. Because his Nigerian birth certificate contains his biographical information and an attached photograph, his fiance obtained that document from his family in Nigeria in order to present it as proof of Mr. Kolawole's identity. ICE verbally assented that the document would be acceptable proof of identity in lieu of the passport.

On Thursday, December 3, I went again to the Los Angeles ICE ERO office, with all the previous documents, as well as the original birth certificate for Mr. Kolawole, and once again was rejected when I attempted to post the bond for Mr. Kolawole. The Los Angeles ICE bond

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<sup>1</sup> American Bar Association. *Immigration and Blackness: What's Race Got To Do With It?* Human Rights Magazine Vol. 44, No 1: [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/black-to-the-future/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future/)

officer stated that they could not accept the birth certificate, and that his fiance would need to present the document at the detention center directly.

On that same date, DO Martinez called Mr. Kolawole's fiance, Kelsey [REDACTED], and instructed her to give him the birth certificate. On Monday, December 7, Ms. [REDACTED] presented herself at Otay Mesa Detention Center and was received by DO Blanco, who approved the document and stated that he would accept the payment of the bond that same week. Neither DO Martinez nor DO Blanco was willing to provide a receipt for the document.

On Wednesday, December 9, I went for a third time to the Los Angeles ICE ERO office, and for the third time was rejected when I attempted to post the bond for Mr. Kolawole. The reason I was given for the rejection was that it was "too close to his hearing date." Mr. Kolawole's individual hearing was scheduled for Thursday, December 10. Freedom for Immigrants has on multiple occasions posted bonds for individuals with court hearings scheduled for the next day, and they have been accepted, including those of individuals detained at Otay Mesa Detention Center. Furthermore, ICE's own stated policies<sup>2</sup> do not specify that a bond cannot be processed before the date of an EOIR hearing. (In the absence of clear, written guidelines around bond on the part of ICE, many nonprofit organizations have been forced to create their own resources based on experiences with posting bond<sup>3</sup>.)

I returned to the Los Angeles ERO office that same week on Friday, December 11, after Mr. Kolawole's individual hearing had been postponed until January due to illness. His bond was rejected once again; this time the stated reason was that he had "not properly proven his identity", despite the fact that DO Blanco had accepted the birth certificate as sufficient proof of identity on Monday of that same week. On this, as on all the past occasions, Mrs. Thomas then attempted to reach DO Blanco by phone in order to resolve the issue, but he did not return her calls or respond to her voicemails.

On Thursday, December 17 and again on Monday, December 21, I attempted for a fifth and sixth occasion to post bond for Mr. Kolawole at the Los Angeles ERO office and was rejected on the grounds that he "had not properly established his identity and was considered a flight risk." Mrs. Thomas, as before, attempted again to communicate with Mr. Kolawole's DO, but received no response. She was unable to leave voice messages because the voicemail was full.

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<sup>2</sup>U.S. Immigration and Customs Enforcement: Enforcement and Removal Operations Bond Management Handbook

<https://www.aila.org/File/Related/16051730f.pdf>

<sup>3</sup> Florence Immigrant and Refugee Rights Project: All About Bond

<https://www.justice.gov/sites/default/files/eoir/legacy/2013/01/22/Bonds%20-%20English%20%2811%29.pdf>

On multiple past occasions, Mr. Kolawole had also followed up on the bond rejections by providing a written request to see his DO. Whenever he spoke to DO Martinez, he stated to him that his attorney was trying to reach the DO. DO Martinez responded each time in a dismissive manner, stating that Mrs. Thomas should just try again to reach him.

Sometime between the end of December 2020 and the beginning of January 2021, Mr. Kolawole once again asked to speak to his DO. When DO Martinez came to his pod at Otay Mesa Detention Center, Mr. Kolawole asked why his release was being blocked. DO Martinez stated that it was because his trial was pending on January 19th, and that he should try again to post the bond after the trial. This reason is completely different to the reason provided to Freedom for Immigrants during attempts to post the bond.

After this, Mrs. Thomas then attempted again to reach the DO for Mr. Kolawole in order to confirm what the real reason was for the rejection of the bond payment. She again received no response. Mrs. Thomas even reached out to the DHS trial attorney to request her support in making contact with the DO. The DHS trial attorney responded that it was not within her jurisdiction.

With Mr. Kolawole's individual hearing coming up the following week, I made a seventh attempt to post bond for him at the Los Angeles ERO ICE office on Thursday, January 14. It was rejected again, and as on previous occasions, they refused to provide any details as to what was needed to resolve the issue and enable him to be bonded out.

Mr. Kolawole's case was denied and Mrs. Thomas filed a BIA appeal on his behalf. Following the advice DO Martinez gave to Mr. Kolawole to try again after the trial, on Thursday, February 4, Freedom for Immigrants employee Christina Mansfield attempted to post bond for Mr. Kolawole at the ICE ERO office in San Francisco, CA. As I had done on past occasions, Ms. Mansfield had in her possession the completed bond worksheet for Mr. Kolawole, proof of identification as obligor, and a cashier's check made out to U.S. Immigration and Customs Enforcement in the amount of \$10,000.

For an eighth time, Mr. Kolawole's bond was rejected by ICE. The officer in San Francisco provided the same reason as on some past occasions, that it was rejected on the grounds that Mr. Kolawole had not sufficiently proven his identity.

That evening, Mr. Kolawole approached DO Martinez once again to ask how he could resolve the matter. DO Martinez stated that a nonprofit organization could not post his bond and that his fiance would need to be the obligor, a claim that is invalid, considering that Freedom for Immigrants has paid over 140 bonds in the past year alone utilizing our designated bond funds, as have other non-profit organizations nationally. No such requirements have been laid out

within ICE policy in terms of payment of bonds. On Tuesday, February 9, Mr. Kolawole inquired again about his bond and mentioned that his attorney has been trying for months to reach him unsuccessfully, to which he replied that she should email him rather than calling. Mr. Kolawole requested his email address, but DO Martinez would not provide it.

On Thursday, February 11, 2021, Ms. Mansfield made a final attempt on behalf of our organization to pay Mr. Kolawole's bond at the ICE ERO office in San Francisco. The bond was rejected, this time on the grounds that ICE had revoked his parole grant, and that there was no bond order in the system. No explanation was provided regarding the reasons for this revocation.

Mrs. Thomas has tried to reach Mr. Kolawole's DO for months in order to work with him to resolve the matter and successfully pay the bond. Receptionists at the Otay Mesa Detention Center have recommended that she try to call during different shifts, which she has done, reaching out in the morning, afternoon, and even late evening, but to no avail. She has been unable to obtain a valid email address at which to contact him. She has never been given clarity as to who the assigned Deportation Officer in Mr. Kolawole's case is.

Between the complete lack of communication on the part of ICE and the arbitrary pretexts for refusing the payment of a bond they themselves set, it appears that ICE is attempting to obstruct his release and keep him in detention as long as possible, due to prejudice of his race and nationality.

### **Interim Civil Enforcement Guidelines**

In his memorandum<sup>4</sup> dated January 20, 2021, Acting Department of Homeland Security Secretary David Pekoske states:

*Due to limited resources, DHS cannot respond to all immigration violations or remove all persons unlawfully in the United States. Rather, DHS must implement civil immigration enforcement based on sensible priorities and changing circumstances. DHS's civil immigration enforcement priorities are protecting national security, border security, and public safety. The review directed in section A will enable the development, issuance, and implementation of detailed revised enforcement priorities. In the interim and pending completion of that review, the Department's priorities shall be:*

*1. **National security.** Individuals who have engaged in or are suspected of terrorism or espionage, or whose apprehension, arrest and/or custody is otherwise necessary to protect the national security of the United States.*

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<sup>4</sup> [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf)

2. **Border security.** *Individuals apprehended at the border or ports of entry while attempting to unlawfully enter the United States on or after November 1, 2020, or who were not physically present in the United States before November 1, 2020.*

3. **Public safety.** *Individuals incarcerated within federal, state, and local prisons and jails released on or after the issuance of this memorandum who have been convicted of an “aggravated felony,” as that term is defined in section 101(a) (43) of the Immigration and Nationality Act at the time of conviction, and are determined to pose a threat to public safety.*

Okunlola Kolawole’s case clearly does not fit within these guidelines. In fact, on the contrary, his case presents a strong humanitarian basis for immediate release. His fiance, Kelsey [REDACTED], is a US citizen and mother of his two US born children. Ms [REDACTED] is a registered nurse who works long hours and puts herself at risk treating COVID-19 patients in San Diego, and badly needs the support of her partner. In addition, Mr. Kolawole’s life is in danger due to the ongoing COVID-19 pandemic outbreaks inside the Otay Mesa Detention Center.

Mr. Kolawole would qualify to seek permanent resident status if he could marry his fiance, but ICE has rejected his attempts to conduct the marriage inside the detention facility and has obstructed his release on bond that would enable the couple to marry elsewhere. Because of this obstruction, he has lost his case for immigration relief and is now on appeal before the Board of Immigration Appeals (BIA).

U.S. Congressman Scott Peters of the 52nd Congressional District has made several attempts to intervene on behalf of Okunlola Kolawole, but has not had success in obtaining a response from ICE either. The lack of response or willingness to communicate by ICE is deeply troubling.

We request an investigation into the obstruction by ICE of Mr. Kolawole’s release and subsequent violation of DHS interim civil enforcement guidelines. Given the urgency of this matter, we request that **ICE ERO respond to our concerns in writing within two business days.** We look forward to your timely response.

Sincerely,



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