



FREEDOM FOR IMMIGRANTS

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March 14, 2022

Dear Officer in Charge Dobson, Assistant Officer in Charge Paramo, and Officer Culliton-González:

Freedom for Immigrants (“FFI”) submits this complaint on behalf of Mr. Erik Mercado Arechiga (A#: 075-486-845), a person in Immigration and Customs Enforcement (“ICE”) detention at Otay Mesa Detention Center (“Otay Mesa”) in San Diego, CA. The complaint outlines violations of Mr. Mercado’s civil rights through the **obstruction of his release on a previously set ICE bond from immigration detention in retaliation for his advocacy regarding the conditions inside the facility.**

We have been in regular communication with Mr. Mercado Arechiga since August 2020. Through our free and unmonitored hotline, **Mr. Mercado Arechiga has worked with FFI to file several complaints** to the Department of Homeland Security Office for Civil Rights and Civil Liberties (“CRCL”) regarding conditions and abuses inside detention. These complaints have reflected concerns both at Otay Mesa as well as Imperial Regional Detention Facility in Calexico, CA, to and from which Mr. Mercado Arechiga has been transferred by ICE without explanation, also presumably in retaliation for his advocacy. Some examples of Mr. Mercado Arechiga’s CRCL complaints include but are not limited to the following:

- January 15, 2021: *Medical Neglect and COVID-19 Negligence at Otay Mesa Detention Center Reported by Erik Mercado Arechiga (A# 075-486-845)*
- February 19, 2021: *Excessive Use of Solitary Confinement and Officers Destroying Legal Documents Reported By Erik Mercado Arechiga (A# 075-486-845)*

- May 14, 2021: *Horrible Conditions at Imperial Regional Detention Facility (Calexico, CA) reported by Erik Mercado Arechiga (A# 075-486-845)*

On December 13, 2021, Mr. Mercado Arechiga was finally granted a \$30,000 bond by ICE, which had been approved by ICE Assistant Field Office Director Janina Estudillo. Understandably, it took several weeks for Mr. Mercado Arechiga's family and community to raise the funds for such a high bond amount.

On January 20, 2022, Jennaya Dunlap, Immigrant Detention Bond Fund Coordinator for FFI, went to the Los Angeles ICE ERO Field Office to post the \$30,000 bond for Mr. Mercado Arechiga. After several hours of Ms. Dunlap waiting at the bond office after submitting the proper paperwork, ICE staff informed Ms. Dunlap that she would not likely be permitted to post bond for Mr. Mercado Arechiga due to him allegedly being a "person of special interest." Neither Mr. Mercado Arechiga nor his attorney Niels Frenzen had been notified of any change in his bond status by ICE prior to Ms. Dunlap attempting to post bond.

Eventually ICE staff informed Ms. Dunlap that the bond had been denied because the Otay Mesa ICE staff had never responded to the request, despite a total of six hours that had passed since the submission of the request.

Due to the confusion and stress of finding out that her son would in fact not be returning home to her that day after years of separation, Mr. Mercado Arechiga's elderly mother, Berta Mercado, suffered a stroke the following day.

It was not until several days later that Mr. Mercado Arechiga's Deportation Officer ("DO"), Officer Rosendo Martinez, finally informed Mr. Mercado Arechiga that the bond previously set by ICE had been revoked, allegedly due to the "possible existence of an outstanding warrant in Mexico."

This does not seem reasonable as DHS officials have already expressed on the record that they lack confidence in the relevance of such an outstanding warrant to Mr. Mercado Arechiga's case.

In advance of Mr. Mercado Arechiga's Immigration Court hearing on December 17, 2020, Assistant Chief Counsel at the San Diego Otay Mesa DHS Office of the Principal Legal Advisor, Carl Balediata, had filed a Pre-Hearing Statement advising Immigration Judge Samantha Begovich that "the Department based on further research is now withdrawing the Serious Non-Political Crime Bar claim made at the last master calendar hearing date." This claim, which had been based on a warrant issued in Mexico, was presumably withdrawn by DHS upon their realization that **Mr. Mercado was in fact probably in the United States on the date of the crime in Mexico for which he is allegedly a "person of interest."**

On January 29, 2022, Mr. Mercado's attorney Niels Frenzen wrote to Officer Martinez to request that the \$30,000 bond previously set by ICE be reinstated in light of this fact: "Since ICE, based on the Department's own investigation or research, withdrew its allegations based on this warrant, I ask that ICE not rely on the warrant for the purpose of the bond and that Mr. Mercado Arechiga be permitted to post the previously set bond."

On February 28, 2022, Ms. Dunlap went to the Los Angeles ICE ERO office again to attempt to post the \$30,000 bond for Mr. Mercado Arechiga. After another several hours of waiting, she was denied the ability to post the bond once again after ICE staff in San Diego responded to the Los Angeles staff stating, simply, "ALIEN NOT BONDABLE." What the phrase "not bondable" means, and why and how an individual for whom a bond has officially been set can shortly thereafter become "not bondable", is not clear.

In light of the facts above, it seems evident that **ICE staff made the decision to revoke Mr. Mercado Arechiga's \$30,000 bond in retaliation for his longstanding advocacy efforts in collaboration with FFI**, a decision that potentially was even made on the day that FFI staff first attempted to post Mr. Mercado Arechiga's bond.

Concerningly, this is not the first time that ICE staff have attempted to hinder FFI's efforts to post bonds that have been set for people whom we support detained at Otay Mesa.

Approximately one year ago, on February 12, 2021, FFI filed a complaint to the DHS Office for Civil Rights and Civil Liberties regarding ICE's repeated refusals to permit us to post a \$10,000 bond for [REDACTED] (A#: [REDACTED]), who had also been detained at Otay Mesa.

On October 27, 2020, [REDACTED] was granted a bond of \$10,000 by ICE. On November 12, 2020, **FFI staff made the first of ten attempts over four months to post bond for [REDACTED] at the Los Angeles ICE ERO office.** Each time FFI attempted to post [REDACTED] bond, ICE staff offered inaccurate and/or conflicting information as to why we were not permitted to post his bond.

Notably, the DO who was in charge of [REDACTED] case is Officer Martinez, the same DO who is now in charge of Mr. Mercado's case. It is also worth noting that after Freedom for Immigrants' eighth attempt to post bond for [REDACTED] on February 4, 2021, [REDACTED] had approached DO Martinez to ask how the matter could be resolved. **DO Martinez lied to [REDACTED] and told him that a nonprofit organization could not post his bond,** a claim that is clearly inaccurate, considering that FFI has posted hundreds of immigration bonds, as have many other non-profit organizations.

On February 11, 2021, during the ninth attempt by FFI staff to post [REDACTED] bond, the bond was rejected yet again, but for the first time FFI staff were given the explanation that

ICE had recently revoked [REDACTED] bond and that there was now no bond order in the system. No explanation was provided regarding the reasons for this revocation.

After FFI filed the February 12, 2021 CRCL complaint raising our concerns regarding the injustices and lack of transparency rampant throughout this process, [REDACTED] was informed the following day by ICE that his \$10,000 bond had just been reinstated. On February 16, 2021, FFI was finally able to successfully post [REDACTED] bond - our tenth attempt to do so.

It is unspeakably cruel and psychologically torturous to those in detention and their loved ones for ICE staff to revoke bonds without notification or explanation. It is also an inarguable violation of civil rights and civil liberties for ICE to take such actions in retaliation for people inside speaking up about the conditions they are experiencing. The San Diego ICE ERO office has demonstrated a pattern and practice of enacting this particularly vicious harm.

We thus request an immediate investigation by CRCL into the San Diego ICE ERO office's obstruction of Mr. Mercado Arechiga's release on bond in retaliation for his advocacy efforts in collaboration with FFI. We also demand that ICE ERO reinstate Mr. Mercado Arechiga's bond as soon as possible so that he may return home to support his elderly parents, whose physical and mental health continue to be negatively impacted by his absence. We look forward to your timely response by March 25, 2022.

Sincerely,



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