

## ACCESS TO COUNSEL FACTUAL DEVELOPMENT GUIDELINES

Working in coordination with the ACLU and the rest of the *Darweesh* legal team from the E.D.N.Y. case, we are exploring legal options to secure access to counsel for those immigrants detained as a result of Trump's executive order targeting Muslims and other refugees, we are asking for your help in gathering and documenting critical facts.

In response to reports that CBP continues to defy the nationwide stay of Trump's executive order targeting Muslims and other refugees, we are asking for your immediate help in gathering and documenting critical facts related to CBP's noncompliance. We are aiming to obtain declarations of individuals who did **not have access to counsel**, and as a result, may have been **pressured or coerced** into withdrawing their applications for admission, OR **removed or nearly removed** in violation of the E.D.N.Y. order.

### WHO TO TALK TO:

- *Family & friends* of people currently detained under the Executive Order
- *Released individuals* who were detained under the Executive Order
- *Returned individuals* who were detained under the Executive Order and withdrew applications for admission or were otherwise returned.

### WHAT WE WANT TO KNOW:

- *Overview summary of situation* –Please collect overview information pertaining:
  - Family and detainee names, identifying and contact information.
  - Detainee's immigration status (refugee, LPR, student visa, etc.)
  - Whether person is still detained, has been released, or has been returned to their country of birth or country of departed (if returned when exactly).
  - Trip abroad – length, place, purpose, etc.
  - Prior U.S. residence – length and nature of any prior residence.
  - Length of detention –we need to know the date and time they arrived and were detained, and the date and time of your information gathering.
  - Equities pertaining to family in U.S. (including immigration status of family), work, health issue, and other special hardships or positive equities.
- *Access to counsel & family*
  - Did the detainee have access to a phone? Their own cell or CBP phone?
  - Contact with *family members*? Did the detainee ask to call or speak with a family member? Were the allowed and able to make contact? If so, we need to know what they were told.
  - Contact with *attorney*? Did the detainee ask to call or speak with an attorney? Were the allowed and able to make contact? If so, we need to know what they were told.
  - Did an *attorney* or *family member* ask CBP to speak with their detained loved one/client? If so we need to know what attorney/family member was told, who the attorney/family member spoke to, and if they were ultimately permitted to speak to the detainee.

- Coercion or undue pressure – We need clear, detailed examples of what a detainee was asked or pressured to do.

Additionally, relevant facts to determining whether there was coercion of undue pressure should be gathered, and include:

- Aggressive questioning
  - Threats of any kind
  - Harsh detention conditions
  - Lack of access to water, food or restrooms
  - Show or use of force or restraints
  - Health issues or particular hardships of continued detention
- Other compelling factors of detainees
    - Education level
    - Limited English proficiency
    - English illiteracy
    - Cognitive or mental health limitations
    - Physical health limitations
    - Young or old age

#### **HOW TO SHARE INFORMATION:**

*The following information should be sent to Jackie Pearce at the Cardozo Immigration Justice Clinic (jacqueline.pearce@yu.edu)*

- Send write-up - Please share write-ups of any interviews (including you name, affiliation and contact information).
- Detainee declarations - If possible, please draft and execute declarations on behalf of the individuals you speak with. Individuals signing declarations should know that these may be used in court filing to vindicate the right to counsel for individuals held under the Executive Order. Please note that if the individual is fearful of using their real name, we are able to use alternatives (such as using a pseudonym or redaction).
- Attorney declarations - Lawyers are encouraged to draft attorney affirmations regarding their inability to access clients and other instances of CBP non-compliance of which they have knowledge.
- Sample declaration – Sample declaration are available upon request from Jackie Pearce.