

Class Action Lawsuit Forces Policy Change to Protect Detained Immigrants with Serious Mental Disabilities

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LOS ANGELES – Class Counsel appointed by the United States District Court in the *Franco v. Holder* case today issued the following statement regarding the U.S. Immigration and Customs Enforcement and the Executive Office for Immigration Review's announcement of new policies for detainees with mental illnesses:

Today's two announcements by the U.S. Immigration and Customs Enforcement ("ICE") and the Executive Office for Immigration Review ("EOIR") are notable for the fact that these changes have only come on the eve of entry of Permanent Injunctive Relief in a lawsuit pending in the United States District Court for the Central District of California entitled *Franco v. Holder*, 2:10-cv-02211. In that case, on March 22, 2013, United States District Court Judge Dolly Gee announced in a tentative opinion that she intended to enter a permanent injunction ordering extensive relief against ICE and EOIR related to their treatment of detained immigrants.

The ACLU Foundation of Southern California, Public Counsel, the Northwest Immigrant Rights Project, Mental Health Advocacy Services, the ACLU Immigrants' Rights Project and Sullivan & Cromwell LLP all represent the class of detained immigrants who have brought the *Franco* action.

"While we welcome the announcement that ICE and EOIR will develop policies to provide basic procedural protections to a class of vulnerable immigration detainees," said Hector Villagra, executive director of the ACLU of Southern California (ACLU/SC), "we are troubled that it took the threat of an imminent injunction for the government to even recognize that detainees with serious mental disabilities are being denied their basic rights. We are also troubled that even after several lead plaintiffs have won rulings from the district court establishing the right to legal representation, the best that ICE and EOIR can announce is their hope to implement procedures by the end of the year."

"It is a shame that ICE and EOIR are taking these moves only because of the threat of an immediate and permanent injunction against their mistreatment of detained immigrants," said Michael H. Steinberg of Sullivan & Cromwell LLP, co-lead counsel. "For years, the government denied that there was any problem. It is only too bad that they acknowledge the problem just before the Court enters an injunction."

The two announcements also underscore the failure of ICE's and EOIR's current systems. As one example, the ICE policy memo acknowledges that facilities run by ICE still "have not yet begun" implementing basic screening procedures. Moreover, for non-ICE contract facilities where thousands of detainees are held, ICE has not even begun to develop procedures to identify detainees with mental disabilities.

"ICE's policy announcement contains stunning admissions about their failure to take actions for the past three years," said Talia Inlander of Public Counsel, one of class counsel. "The Government's announcement only underscores that they simply do not have the ability to identify those detainees suffering from serious mental illnesses, and their policy announcements only confirm the lack of protections in place for mentally ill

detainees."

"While these policy announcements must obviously be placed into context of the ongoing litigation, it is encouraging that finally all sides seem to acknowledge that persons with severe disabilities need legal representation to have any chance at a fair hearing, as well as other protections to avoid prolonged detention in these civil matters," said Matt Adams, with Northwest Immigrant Rights Project.

"After spending three years litigating against basic protections for immigrants with serious mental disabilities, the government has finally recognized that its prior policies were inadequate." said Judy Rabinovitz, deputy director of the ACLU Immigrants' Rights Project. "These policy changes – even if implemented – do not go far enough to guarantee a right to appointed legal counsel for those who cannot represent themselves due to a serious mental illness."

For more information about *Franco-Gonzalez v. Holder*: www.aclu-sc.org/franco/

For the ACLU's framework on federal immigration reform: www.aclu.org/immigrants-rights/aclu-framework-immigration-reform/

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