

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SOLANGE FERNANDEZ MEDINA,	)	
as next friend on behalf of	)	
	)	
FRANYER JOSE MONTES FERNANDEZ	)	
	)	
<i>Petitioner,</i>	)	Civil Action No. 3:25-cv-37
	)	
v.	)	
	)	
KRISTI NOEM, in her official capacity as	)	DHS File No. A 
Secretary of the Department of Homeland Security,	)	
	)	
PAMELA BONDI, in her official capacity	)	ORAL ARGUMENT REQUESTED
as Attorney General of the United States,	)	
	)	
MARY DE ANDA-YBARRA, in her official	)	
capacity as Field Office Director for	)	
U.S. Immigration and Customs Enforcement,	)	
El Paso Field Office	)	
	)	
ANGEL GARITE, in his official capacity as	)	
Assistant Field Office Director, U.S. Immigration	)	
and Customs Enforcement, El Paso Field Office	)	
	)	
	)	
<i>Respondents.</i>	)	

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Petitioner, through undersigned counsel, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner is acting here as next friend on behalf of her adult son, Franyer José Montes Fernández (“Mr. Montes”), a Venezuelan national who disappeared from Immigration and Customs Enforcement (“ICE”) custody at the El Paso Service Processing Center (“EPPC”) on the night of Thursday, February 7, 2025, when he was reportedly removed from his quarters at that facility. His family has not heard from him since, ICE has failed to produce him for legal visitation, and ICE continues to provide contradictory and incomplete information as to his whereabouts.

2. On Friday evening, in response to a written request from counsel seeking clarification of Mr. Montes’ whereabouts and access to him for a legal visit, an ICE supervisor in El Paso told counsel that Mr. Montes had been transferred to Miami. This officer was unable to provide Mr. Montes’s place of detention, and ICE’s Online Detainee Location System (“ODLS”) showed that he was still detained at the EPPC, a situation that continued through the weekend. On Monday morning, February 10, the detainee locator was updated to list Mr. Montes’s as being in ICE custody with no location listed, although the locator continues to refer the viewer to the El Paso office of ICE Enforcement and Removal Operations for more information about the case. The ICE Miami Field Office has not responded to voicemail from counsel.

3. Mr. Montes has been under a final order of removal since May 29, 2024; this petition is not a challenge to that order. Rather, Mr. Montes’s mother seeks through this petition to find out where ICE is detaining her son, and to have him made available for a legal visit.

4. Ms. Fernandez respectfully requests that this Court order Respondents to produce Mr. Montes and allow undersigned counsel access to meet with him.

II. CUSTODY

5. ICE acknowledges that Petitioner's son is in the physical custody of ICE, which is a sub-agency of the U.S. Department of Homeland Security. He is currently being held at an unknown location; his last known place of custody was the EPPC in El Paso, Texas. Petitioner is under the direct control of Respondents.

III. PARTIES

6. Petitioner, Solange Fernández Medina, is a citizen and resident of Venezuela and the mother of Franyer José Montes Fernández. She is filing this petition as next friend on his behalf.

7. Mr. Montes, Ms. Fernández's son whose rights this petition seeks to vindicate, is also a citizen of Venezuela, currently detained by ICE, whose last known place of detention was the EPPC in El Paso, Texas.

8. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). She is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA") and oversees Immigration and Customs Enforcement ("ICE"). She has custodial authority over Petitioner. She is sued in her official capacity.

9. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103. Respondent Bondi is sued in her official capacity to the extent that 8 U.S.C. § 1103 gives her authority over immigration law.

10. Respondent Mary De Anda-Ybarra is Field Office Director of ICE's El Paso Field Office. She is in charge of the custody of all immigration detainees under the control of the El Paso Field Office. She is a legal custodian of Mr. Montes. She is sued in her official capacity.

11. Respondent Angel Garite is the ICE Assistant Field Office Director in charge of the EPPC, which houses immigration detainees and is directly administered by ICE. As such, he is a legal custodian and the last known immediate custodian of Mr. Montes.

IV. JURISDICTION AND VENUE

12. This action arises under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 et seq.

13. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution, and 28 U.S.C. § 1331, as Petitioner is in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, 28 U.S.C. § 2201 *et seq.* (Declaratory Judgment Act), and the All Writs Act, 28 U.S.C. § 1651. This Court has authority under 28 U.S.C. § 2241 to entertain this Petition as filed by a next friend.

14. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Mr. Montes’s last known place of detention was the EPPC, within this District, and his evident removal from that facility was necessarily under the authority and control of the ICE El Paso Field Office and of Defendants Garite and De Anda-Ybarra.

V. LEGAL BACKGROUND

15. DHS’s authority to detain a non-citizen under a final order of removal is based on 8 U.S.C. § 1231(a), which provides that when such a person is ordered removed, removal shall be accomplished within a period of 90 days (“the removal period”) beginning on the date the order of removal becomes final. In this case, that date was May 29, 2024.

16. By statute, a non-citizen who is not removed within the removal period is to be subject to supervision. 8 U.S.C. § 1231(a)(3). Detention beyond the removal period triggers a post-order custody review process laid out at 8 C.F.R. § 241.4. This is in furtherance of Supreme Court precedent holding that the immigration statute does not authorize the indefinite detention of non-citizens under a final order of removal. *Clark v. Martinez*, 543 U.S. 371 (2005).

17. A person whose detention beyond the removal period has become indefinite may challenge its legality through a petition for a writ of habeas corpus and has a right to consult with and retain counsel for that purpose. The detainee's right to access the courts is defeated if he is unable to communicate with the outside world and if his place of detention is hidden from counsel and from his own relatives.

18. Enforced or involuntary disappearances are prohibited by international human rights law. The Declaration on the Protection of All Persons from Enforced Disappearance defines enforced disappearances as situations where:

persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, ... followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law...

U.N. General Assembly, "Declaration on the Protection of All Persons from Enforced Disappearance," (New York: United Nations, 1992), A/RES/47/133. While the United States has not signed or ratified the Declaration, the International Covenant on Civil and Political Rights ("ICCPR"), to which the United States is a party, prohibits arbitrary arrest and detention, and provides that all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person. ICCPR, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 999 U.N.T.S. 171. The U.N. Human Rights Committee, which monitors the implementation of the ICCPR by States Parties, has stated:

To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against *incommunicado* detention.

“ICCPR General Comment 20 (Forty-fourth Session, 1992): Article 7: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment,” A/47/40 (1992) 193, para. 11.

19. Consistent with these obligations, ICE’s own policies require its detention facilities to allow legal visits and attorney-client telephone calls for all detainees, including any in administrative or disciplinary segregation, and to provide a process to allow legal representatives to telephone the facility in advance to confirm whether a particular person is detained there. ICE 2011 Performance-Based National Detention Standards, Part 5.6. (Telephone Access), 5.7 (Visitation) (available at <https://www.ice.gov/detain/detention-management/2011>). ICE maintains the ODLS (<https://locator.ice.gov/odls/#!/search>) as a means of automating inquiries as to detainees’ locations and ensuring that not only legal representatives but also family members can immediately confirm whether a detainee is in ICE custody, and, if so, his location.

VI. FACTUAL ALLEGATIONS

20. Petitioner’s son Mr. Montes a citizen of Venezuela who entered the United States on March 30, 2024. He was charged with being present in this country without admission or parole pursuant to 8 U.S.C. § 212(a)(6)(A)(i) and issued a notice to appear in removal proceedings before the immigration court. On May 29, 2024, he was ordered removed by an immigration

judge in El Paso, Texas. He did not appeal that order and has been detained under a final order of removal for eight months now.

21. On Thursday, February 7, 2025, undersigned counsel made a request to ICE at the EPPC for legal phone calls with five other detainees. ICE responded promptly, denying that those men were detained at EPPC, even though ICE's ODLS listed them all as being held there.

22. On Friday, February 8, another detainee at the EPPC told Mr. Montes's family that the night before, on Thursday, February 7, ICE agents had taken Mr. Montes away. Mr. Montes' family have not heard from him since.

23. Later on Friday, February 8, one of Petitioner's undersigned counsel, Anwen Hughes, wrote to Respondent De Anda-Ybarra to ask for the whereabouts of, and legal access to, seven detainees, all Venezuelan nationals: the five with whom counsel had previously requested legal calls, Mr. Montes, and a seventh man. On Friday evening, an ICE supervisor called counsel to say that all of these men had been transferred to Miami. This officer stated that he did not know where Mr. Montes was being held at that time. Following this conversation, counsel again checked the ICE detainee locator, which still described Mr. Montes as being detained at the EPPC.

24. It was not until Monday morning, February 10, that Mr. Montes's listing in the ICE detainee locator was updated to replace his current detention facility with the mention "Call Field Office." This notation links to the address and telephone number of the ICE Miami Field Office. Counsel has made multiple attempts to reach that office without success. For more information about Mr. Montes's case, however, the ICE detainee locator still refers the reader back to the ICE Enforcement and Removal Operations office in El Paso. *See* ODLS Detention Information for Franyer Montes Fernandez (Feb. 11, 2025) (Ex. A). Petitioner has no evidence that Mr.

Montes is detained in Florida. His last place of detention known to Petitioner and counsel is the EPPC.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **VIOLATION OF PROCEDURAL DUE PROCESS**

25. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

26. The Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V.

27. Under the Due Process Clause of the Fifth Amendment to the U.S. Constitution and the provisions of the federal habeas corpus statute set forth at 28 U.S.C. § 2241 et seq., a non-citizen in Mr. Montes’s situation who is detained long past the statutory removal period must have a meaningful opportunity to challenge his detention before a neutral decisionmaker with the assistance of counsel.

SECOND CLAIM FOR RELIEF **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

28. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

29. The Administrative Procedure Act (“APA”) (5 U.S.C. § 551, et seq.) authorizes suits by “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.” 5 U.S.C. § 702. The APA, which authorizes federal courts to set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or constitutional right, also provides relief for

a failure to act: “The reviewing court shall . . . compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1), (2). In holding Petitioner’s son incommunicado in an unknown location for six days without access to counsel, Respondents have violated the APA.

THIRD CLAIM FOR RELIEF
VIOLATION OF SUBSTANTIVE DUE PROCESS

30. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

31. “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The INA gives ICE no authority to detain any non-citizen arbitrarily or for punitive purposes. Respondents’ ongoing incommunicado detention of Petitioner’s son violates the Fifth Amendment to the United States Constitution.

VIII. REQUEST FOR ORAL ARGUMENT

32. Petitioner respectfully requests oral argument on this Petition.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Issue a writ of habeas corpus requiring Respondents to produce Petitioner’s son, Mr. Montes, and to give undersigned counsel access to meet and confer with him in order to advise him of his legal rights and provide him with legal assistance;
- (4) Award Petitioner reasonable costs and attorneys’ fees; and

(5) Grant any other and further relief that his Court may deem fit and proper.

Respectfully submitted on this 12th day of February, 2025.

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** Applications for admission pro hac vice forthcoming.*

Verification by someone acting on Petitioner's behalf pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 12, 2025

s/Anwen Hughes
Anwen Hughes
Attorney for Petitioner