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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF WASHINGTON**

12 **GUSTAVO ORDUNO**
13 **HERNANDEZ, MARIA**
14 **MAGDALENA**
15 **CASTANADA ROSALES,**
16 **VALENTINA ORDUNO**
17 **CASTANEDA, RAFAEL**
18 **ORDUNO CASTANEDA**

19 **Plaintiffs,**

20 **v.**

21 **TODD LYONS, Acting Director,**
22 **U.S. Immigration and Customs**
23 **Enforcement, in his official**
24 **capacity as well as successors and**
assigns,

KRISTI NOEM, Secretary for the
U.S. Department of Homeland, in
her official capacity as well as her
successors and assigns,

Defendants

)
) **CIVIL ACTION NO.**
)
)
) **PETITION FOR WRIT OF**
) **HABEAS CORPUS TO 28**
) **U.S.C. § 2241 AND**
) **COMPLAINT FOR**
) **DECLARATORY AND**
) **INJUNCTIVE RELIEF**

)

PETITION FOR WRIT OF HABEAS CORPUS TO 28 U.S.C. § 2241 AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Plaintiffs, Gustavo Orduno Hernandez (“Plaintiff-Hernandez”) and his family, Maria Magdalena Castanada Rosales (“Plaintiff-Rosales”), Valentina Orduno Castaneda, and Rafael Orduno Castaneda, who shall collectively be referred to as the (“Plaintiffs”), by and through their undersigned counsel, respectfully petition this Honorable Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 for Plaintiff-Hernandez who is currently detained by the Immigration and Custom Enforcement (“ICE”) and seek declaratory and injunctive relief to remedy his unlawful detention by Respondents and prevent all Plaintiffs’ imminent removal while their appeals are pending before the Board of Immigration Appeals (“BIA”).

I. INTRODUCTION

1. The Plaintiffs were ordered removed by an Immigration Judge and filed an appeal with the BIA. This appeal remains pending.

2. Despite the pendency of that appeal—and absent a final order of removal—the Plaintiff-Hernandez is currently detained and facing imminent removal by U.S. ICE, in violation of 8 C.F.R. § 1003.39 and the Due Process Clause of the Fifth Amendment.

3. The Plaintiffs respectfully request that this Court (a) issue a writ of habeas corpus declaring Plaintiff-Hernandez’s detention and threatened removal unlawful,

1 and (b) find that the Plaintiffs' removal order is not final under law, and thus cannot
2 serve as a basis for immediate removal.

3 4 **II. JURISDICTION**

5 4. The Plaintiffs currently reside in Granger, Washington.

6 5. Plaintiff- Hernandez is currently being detained in Yakima, Washington.

7 6. This Honorable Court has subject matter jurisdiction over this action pursuant
8 to 28 U.S.C. § 1331 (Federal Question Jurisdiction); 28 U.S.C. § 2241(Habeas
9 Corpus); the Suspension Clause, U.S Const. art. I, § 2; and 5 U.S.C § 702
10 (Administrative Procedures Act).

11 7. This Court also has the authority to grant declaratory and injunctive relief
12 pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.

13 8. Exhaustion of remedies is not required here because 1) available remedies
14 provide no genuine opportunity for adequate relief; (2) irreparable injury may occur
15 without immediate judicial relief; (3) administrative appeal may be futile; and (4) in
16 certain instances a plaintiff has raised a substantial constitutional question. *Xuyue*
17 *Zhang v. Barr*, 612 F. Supp. 3d 1005 (C.D. Cal. 2020); *Habibi v. Barr*, 445 F. Supp.
18 3d 990 (S.D. Cal. 2020)
19
20

21 **III. VENUE**

22
23 9. Venue is proper in this District pursuant to 28 U.S.C. §1391(e)(1), as a
24 substantial part of the events or omissions giving rise to the claims occurred in this

1 District, and no real property is involved.

2 **IV. PARTIES**

3 10. The Plaintiffs consist of a father, Plaintiff-Hernandez, a mother Maria
4 Magdalena Castaneda Rosales, and their two minor children, Valentina Orduno
5 Castaneda, and Rafael Orduno Castaneda. They are all citizens of Mexico who reside
6 in Granger, Washington.

7 11. Plaintiff-Hernandez is currently detained by ICE and faces imminent removal.

8 12. Respondent Todd Lyons is the Acting Director of U.S. Immigration and
9 Customs Enforcement. In this capacity, he is responsible for ICE's policies and
10 operations, including oversight of the Plaintiffs' detention. He is sued in his official
11 capacity.

12 13. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland
13 Security. In this role, she is responsible for the enforcement and administration of
14 the Immigration and Nationality Act ("INA") and oversees ICE. She has legal
15 custody over the Plaintiffs and is sued in her official capacity.

16 **V. STATEMENT OF FACTS**

17 14. The Plaintiffs entered the United States through the Nogales, Arizona on
18 February 18, 2023, requesting asylum. They were given a credible fear interview,
19 and upon a finding of fear were placed into removal proceedings on February 19,
20

1 2023, with the filing of their Notice to Appear (“NTA”).

2 15. The Plaintiffs filed their I-589, Applications for Asylum and For Withholding
3 of Removal (“I-589 applications”) and supporting documentation with the Seattle,
4 Washington, Immigration Court and attended a merit hearing to argue their case.
5

6 16. On April 10, 2025, Plaintiffs’ I-589 applications were denied, and they were
7 ordered removed from the United States. Upon order of their removal, the Plaintiffs
8 immediately preserved their right to appeal the Immigration Judge’s decision and
9 was given until May 10, 2025, to file their appeal with the BIA.

10 17. The Plaintiffs initially filed their BIA appeal on May 9, 2025, however that
11 appeal was rejected on May 13, 2025, because it was filed in paper format, rather
12 than electronically as is now required per EOIR regulations.
13

14 18. Upon learning of this rejection, the Plaintiffs, with the help of counsel, filed a
15 new appeal concurrently with a motion to accept the late filing, which was accepted
16 by the BIA on May 19, 2025.

17 19. At this time, the Plaintiffs appeal remains pending with the BIA.

18 20. On June 4, 2024, Plaintiff-Hernandez and his partner, Plaintiff-Rosales, were
19 scheduled to report to their local ICE center in Yakima, Washington.
20

21 21. Once at the ICE location, both Plaintiff-Hernandez and Plaintiff-Rosales
22 provided ICE officials with representation packets indicating that they had filed an
23 appeal with the BIA and that their appeal was currently pending.
24

1 22. Rather than acknowledging the Plaintiffs pending appeals the ICE officers
2 immediately detained Plaintiff-Hernandez and began processing him for immediate
3 removal.

4 23. Plaintiff-Rosales was able to provide the ICE officer with documentation of
5 her pregnancy and was released by ICE.
6

7 24. At this point, Plaintiffs' counsel has been unable to talk to Plaintiff-Hernandez
8 but is informed that he is still in Yakima and will be transferred to Tacoma shortly.
9

10 VI. CLAIMS FOR RELIEF

11 Count I: Violation of the Due Process Clause of the Fifth Amendment

12 25. The Plaintiffs incorporate by reference all preceding paragraphs as if fully set
13 forth herein.
14

15 26. The Plaintiffs have timely appealed their removal order to the BIA. This
16 appeal is pending, and no final order of removal has been issued pursuant to 8 C.F.R.
17 § 1003.39.
18

19 27. Despite this pending appeal, Defendants detained Plaintiff-Hernandez and
20 commenced removal procedures, disregarding the protections and procedures
21 guaranteed under federal regulations and the Constitution.

22 28. The Due Process Clause of the Fifth Amendment guarantees individuals the
23 right to a fair proceeding before the deprivation of liberty or removal from the United
24

1 States.

2 29. By detaining the Plaintiff-Hernandez and initiating removal proceedings
3 while the Plaintiffs' lawful appeal is pending, the Defendants have violated the
4 Plaintiffs' procedural due process rights, including the right to have their cases fully
5 adjudicated by the BIA before being removed from the United States.
6

7 30. The Plaintiffs are suffering ongoing harm, including family separation,
8 detention, and the threat of immediate removal, without due process of law.

9 **Count II: Unlawful Detention in Violation of 28 U.S.C. § 2241**

10 31. The Plaintiffs incorporate by reference all preceding paragraphs as if fully set
11 forth herein.
12

13 32. Under 28 U.S.C. § 2241, federal courts have jurisdiction to review the legality
14 of a person's detention by the United States government.

15 33. Plaintiff-Hernandez is currently being detained by ICE even though the
16 Plaintiffs' removal order is not final under 8 C.F.R. § 1003.39 due to the filing of
17 their BIA appeal.
18

19 34. ICE has no lawful authority to detain individuals whose removal orders are
20 not final and who remain eligible to remain in the United States pending
21 administrative review.

22 35. The unlawful detention of Plaintiff-Hernandez has caused and continues to
23 cause significant harm to the Plaintiffs, including deprivation of liberty, emotional
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1 distress, and other damages.

2
3 36. Plaintiff-Hernandez's continued detention is arbitrary, capricious, and not in
4 accordance with law, and constitutes an unlawful deprivation of liberty.

5 **Count III: Declaratory Relief Under 28 U.S.C. § 2201**

6 37. The Plaintiffs incorporate by reference all preceding paragraphs as if fully set
7 forth herein.

8 38. An actual controversy exists between the parties as to whether the Plaintiffs'
9 removal order is final and whether ICE may detain and remove the Plaintiffs while
10 their BIA appeals are pending.
11

12 39. The Plaintiffs seek a declaration from this Court that their removal order is
13 not final under the applicable law; that ICE lacks the authority to detain or remove
14 them while their appeals remain pending before the BIA; and that detaining and
15 removing the Plaintiffs under these circumstances violates their statutory and
16 constitutional rights.
17

18 40. Declaratory relief is necessary to clarify the rights and obligations of the
19 parties and prevent further unlawful actions by Defendants.

20 **Count IV: Injunctive Relief**

21 41. The Plaintiffs incorporate by reference all preceding paragraphs as if fully set
22 forth herein.

23 42. The Plaintiffs face immediate and irreparable harm if they are removed from
24

1 the United States while their BIA appeals remain pending, including separation of
2 family, return to potentially life-threatening conditions, and loss of lawful right to
3 remain in the U.S. pending appeal.
4

5 43. The Plaintiffs also face irreparable harm through continued unlawful
6 detention of Plaintiff-Hernandez in violation of their constitutional and statutory
7 rights.

8 44. The Plaintiffs have no adequate remedy at law to redress theses harms, and
9 the balance of equities favors injunctive relief.

10 45. The Plaintiffs respectfully request that this Court enjoin the Defendants from
11 both executing removal orders against the Plaintiffs while their BIA appeals are
12 pending; and detaining Plaintiff-Hernandez during the pendency of their appeal
13 absent lawful justification and proper due process.
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VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court grant the following relief:

1. Assume jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 2241;
2. Issue an Order to the Defendants to show cause within three (3) days, directing the Defendants to explain why the writ of habeas corpus should not be granted, pursuant to 28 U.S.C §2243;
3. Declare that Plaintiff-Hernandez is being unlawfully detained in violation of federal law and the Due Process Clause of the Fifth Amendment;
4. Declare that the Plaintiffs' removal orders are not final for purposes of enforcement while their appeal is pending before the BIA;
5. Issue preliminary and permanent injunctive relief enjoining the Defendants from removing the Plaintiffs from the United States while their BIA appeals remaining pending;
6. Award such other and further relief as the Court deems just and proper under the circumstances; and,
7. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412.

Respectfully submitted on this 4th day of June 2025.

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