

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NANCY MARTINEZ ZARCO;

Petitioner,

v.

MICHAEL NESSINGER, Warden of the Donald
W. Wyatt Detention Facility, Central Falls, R.I.;
PATRICIA H. HYDE, Acting Field Office
Director of the Immigration and Customs
Enforcement, Enforcement and Removal
Operations Boston Field Office.

Respondents.

Case No. _____

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. The Executive Branch – acting through either U.S. Immigration and Customs Enforcement (“ICE”) or its predecessor, the Immigration and Naturalization Service (“INS”) – detained Petitioner Ms. Nancy Martinez Zarco on June 9, 2025.
2. She was moved soon after to the Donald W. Wyatt Detention Facility in Central Falls, RI.
3. Ms. Martinez Zarco has not been placed in removal proceedings before the Executive Officer for Immigration Review.
4. Although ICE appears to believe that she has a prior removal order, ICE has not placed Petitioner Nancy Martinez Zarco in proceedings to reinstate the prior order under 8 U.S.C. § 1231(a)(5).

5. The only documentation that Petitioner Nancy Martinez Zarco has received pertaining to any removal order is inconsistent with her known immigration history.
6. Despite inquiry, Attorney Benjamin M. Haldeman, who represents Petitioner, has not been provided with a copy of any removal order or other paperwork that would explain the basis for her detention.
7. The Due Process Clause of the Fifth Amendment does not permit ICE to continue to detain Petitioner Martinez Zarco without offering a legitimate and lawful basis for such detention.
8. In addition, the Administrative Procedure Act requires ICE to serve on the attorney of record all papers served on the attorney's client.
9. By this Petition, Ms. Martinez Zarco seeks a Court order releasing her from her present unconstitutional detention or ordering ICE to show cause for her continued detention, including through the production of the relevant documents.

JURISDICTION & VENUE

10. The U.S. District Court for the District of Rhode Island has jurisdiction to adjudicate the present Petition pursuant to Sections 2241 and 1331 of United States Code Title 28.
11. The U.S. District Court for the District of Rhode Island is the proper venue to hear the present Petition because Ms. Martinez Zarco is presently detained at Wyatt Detention Facility in the State of Rhode Island.

PARTIES

12. Petitioner Ms. Nancy Martinez Zarco is a resident of Connecticut who immigrated to the United States more than ten years prior to her detention by ICE on June 9, 2025.

13. Petitioner Nancy Martinez Zarco is presently being detained for immigration purposes at Wyatt Detention Facility, in Central Falls, Rhode Island, at the direction of ICE.
14. Respondent Michael Nessinger is the Warden of the Donald W. Wyatt Detention Facility, and is being sued in his official capacity as Warden.
15. Respondent Patricia Hyde is this Acting Boston Field Office Director, U.S. Immigration and Customs Enforcement, and is being sued in her official capacity as Field Office Director.

LEGAL FRAMEWORK

Basis for Detention

16. Detention in the context of immigration proceedings is tied directly to the pendency or completion of removal proceedings against the noncitizen. 8 U.S.C. § 1226(a) governs detention prior to a final order of removal, “pending a decision on whether the alien is to be removed from the United States.” *Id.* Detention authority shifts to Section 1231(a) during the removal period, which in pertinent part is defined as beginning when an “order of removal becomes administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i).
17. As such, the existence or nonexistence of a removal order is central to ICE’s ability to detain a noncitizen and under what conditions.

Removability

18. The Immigration and Nationality Act contains the various grounds of removability, which are codified at 8 U.S.C. § 1182 and 8 U.S.C. § 1237.
19. As relevant to the present action, 8 U.S.C. § 1182(a)(9)(A)(ii) renders inadmissible noncitizens who have previously been ordered removed who were removed (or departed

under an order of removal) and then seek admission to the United States again within a certain amount of time.

20. A noncitizen can be removed under Section 1182(a)(9)(A)(ii) only after a hearing and only because of an order from an Immigration Judge. *See* 8 U.S.C. § 1229a(a) (“an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen],” to include “any applicable ground of inadmissibility . . . or . . . deportability”); *compare* 8 U.S.C. § 1225(b)(1)(A)(i) (expedited removal of noncitizens by immigration officer limited to specific grounds of inadmissibility, not including Section 1182(a)(9)(A)(ii)).

Statutory and Regulatory Requirements to Disclose Records

21. The Immigration and Nationality Act mandates the disclosure of all records related to Ms. Martinez Zarco’s removal proceedings. It provides:

In any removal proceeding under part IV of this subchapter against any person, the burden of proof shall be upon such person to show the time, place, and manner of his entry into the United States, but in presenting such proof *he shall be entitled* to the production of his visa or other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry in the custody of the Service.

8 U.S.C. § 1361 (emphasis added). *See also* 8 U.S.C. § 1229a(c)(2) (providing noncitizens “shall have access to” a “visa or other entry document, if any, and any other records and documents” “pertaining to the [noncitizen’s] admission or presence in the United States” in meeting their burden of proof in removal proceedings).

22. The regulations implement these statutory rights:

Service upon and action by attorney or representative of record.

(a) *Representative capacity*. Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served

with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

See 8 C.F.R. § 292.5(a). In immigration cases, a signed Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) is proof of attorney-client relationship.

FACTS

23. Nancy Martinez Zarco was born in Mexico and immigrated to the United States more than two years prior to June 9, 2025. (Ex. 8, Dec. Haldeman ¶3).
24. On June 9, 2025, Ms. Martinez Zarco was detained by ICE in New Haven, CT, in the presence of her two U.S. citizen children. (Ex. 8, Dec. Haldeman ¶6).
25. She was soon sent to the Wyatt Detention Facility, in Central Falls, R.I., where she has remained ever since. (Ex. 8, Dec. Haldeman ¶6-7). (Ex. 1, ICE Detainee Locator Results).
26. On June 12, 2025, Attorney Benjamin M. Haldeman of the New Haven Legal Assistance Association emailed ICE's Boston Field Office, seeking to speak with Ms. Martinez Zarco's Deportation Officer. (Ex. 8, Dec. Haldeman ¶9). (Ex. 2, Email to Boston Field Office).
27. Attorney Haldeman called the Burlington Regional Field Office the same day, but was told that he should try to communicate with the Field Office via email. (Ex. 8, Dec. Haldeman ¶10).

28. Attorney Haldeman sent a follow-up email later that day, copying the Assistant Field Office Director (“AFOD”), Floyd Cleveland. (Ex. 8, Dec. Haldeman ¶11). (Ex. 3, Email to Boston Field Office & AFOD Cleveland).
29. AFOD Cleveland replied to Attorney Haldeman to indicate that he was “looking into” the situation. (Ex. 8, Dec. Haldeman ¶12). (Ex. 4, Email from AFOD Cleveland).
30. AFOD Cleveland’s email on June 12, 2025, was the first and only time ICE has responded to Attorney Haldeman with respect to Ms. Martinez Zarco’s case. (Ex. 8, Dec. Haldeman ¶12-13).
31. On June 17, 2025, Deportation Officer Donald Lawson visited Ms. Martinez Zarco to request that she sign Form I-229(a), *Warning for Failure to Depart*. (Ex. 8, Dec. Haldeman ¶15). (Ex. 7, Form I-229(a), *Warning for Failure to Depart*).
32. That Form I-229(a) indicated that ICE believed that Ms. Martinez Zarco had been previously removed on September 25, 2010, under the Section 212(a)(9)(A)(ii) [8 U.S.C. § 1182(a)(9)(A)(ii)] of the Immigration and Nationality Act. (Ex. 8, Dec. Haldeman ¶17). (Ex. 7, Form I-229(a), *Warning for Failure to Depart*).
33. Section 212(a)(9)(A)(ii) of the Act renders inadmissible those noncitizens who seek admission to the United States within ten (or, potentially, more) years following a prior removal.
34. Removal orders under that Section of Act must be issued by an Immigration Judge.
35. Ms. Martinez Zarco, however, had never been removed based on that order September 25, 2010. (Ex. 8, Dec. Haldeman ¶17).
36. As such, on June 17, 2025, Attorney Haldeman contacted ICE’s Boston Field Office again by email, copying both AFOD Cleveland and, to the best of his ability, Deportation

Officer Lawson. (Ex. 8, Dec. Haldeman ¶18). (Ex. 6, Email to Boston Field Office & AFOD Cleveland & DO Lawson).

37. Attorney Haldeman included a Form G-28, *Notice of Appearance*, which indicated that he was representing Ms. Martinez Zarco with respect to “all matters” before ICE. Among other things, he requested that ICE share a copy of any and all removal orders pertaining to Ms. Martinez Zarco. (Ex. 8, Dec. Haldeman ¶18). (Ex. 6, Email to Boston Field Office & AFOD Cleveland & DO Lawson).
38. Attorney Haldeman received neither copies of any alleged removal order, nor any further communication from ICE relating to Ms. Martinez Zarco’s situation. (Ex. 8, Dec. Haldeman ¶19).
39. To the best of his knowledge, Ms. Martinez Zarco has not received copies of any alleged removal order or any further communication from ICE relating to such an order. (Ex. 8, Dec. Haldeman ¶22).
40. She has not been placed into removal proceedings before an Immigration Judge. (Ex. 8, Dec. Haldeman ¶21).
41. Nor have Attorney Haldeman or Ms. Martinez Zarco been made aware that an order of removal has been reinstated. (Ex. 8, Dec. Haldeman ¶22).
42. Neither Attorney Haldeman nor Ms. Martinez Zarco currently possess any other documentation of any prior removal order, and they have not been made aware in any other way of the basis upon which ICE is currently detaining Ms. Martinez Zarco. (Ex. 8, Dec. Haldeman ¶17-20).

FIRST CAUSE OF ACTION – UNLAWFUL DETENTION
IN VIOLATION OF U.S. CONSTITUTION - FIFTH AMENDMENT

43. Ms. Martinez Zarco incorporates paragraphs 1 through 42 above as if fully restated below.
44. Ms. Martinez Zarco is currently in the custody of the Respondents under or by color of the authority of the United States – that is, detained at the Wyatt Detention Facility at the direction of ICE.
45. ICE has provided only a single document – the Form I-229(a) – to indicate its basis for detaining Ms. Martinez Zarco.
46. The basis provided by that document – a prior removal under Section 212(a)(9)(A)(ii) of the Immigration and Nationality Act – does not comport with Ms. Martinez Zarco’s immigration history. It would require both a removal prior to September of 2010 *and* that she had been ordered removed by an Immigration Judge in 2010. Ms. Martinez Zarco has been subject of neither.
47. Ms. Martinez Zarco’s attorney has requested documentation that would support the claimed basis for holding Ms. Martinez Zarco, but ICE has failed to respond to his requests.
48. Ms. Martinez Zarco’s continued detention without the provision of any legitimate basis violates the Substantive Due Process guarantee of the Fifth Amendment to the United States Constitution.
49. A judicial order requiring Ms. Martinez Zarco’s release from such custody would effectively redress Respondents’ unlawful conduct.

SECOND CAUSE OF ACTION
VIOLATION OF ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(1)

50. The allegations set forth in paragraphs 1-42 of the complaint are hereby realleged and incorporated by reference as if set forth in full.

51. Under the Administrative Procedure Act (“APA”), federal agencies are required to conclude matters presented to them “within a reasonable time.” 5 U.S.C. § 555(b). The APA further provides that federal courts “shall . . . compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).
52. CBP and ICE have a nondiscretionary duty to provide counsel with removal orders and associated paperwork that support current efforts to detain and remove a noncitizen. See 8 U.S.C. § 1361 and 8 C.F.R. § 292.5(a); cf. 8 U.S.C. § 1229a(c)(2).
53. CBP and ICE have not provided those documents to counsel despite repeated requests.
54. By failing to provide counsel with those documents, Respondents-Defendants have “unlawfully withheld or unreasonably delayed” the adjudicative and administrative functions delegated to them by law in violation of 5 U.S.C. § 706(1).
55. Ms. Martinez Zarco is entitled to relief under the APA in the nature of an order compelling Respondents-Defendants to immediately produce any prior removal orders and all associated paperwork. 5 U.S.C. § 706(1).
56. A judicial order from this Court requiring ICE to produce such documents or to release Ms. Martinez Zarco from custody would effectively redress Respondents’ unlawful conduct.

PRAYER FOR RELIEF

Wherefore, Nancy Martinez Zarco respectfully requests that the Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents-Defendants to show cause why this habeas petition should not be granted within three days;

- (3) Order Respondents to immediately release Nancy Martinez Zarco from Wyatt Detention Facility in Central Falls, R.I.
- (4) Order Respondents to immediately provide documentation of any prior removal orders and any other evidence pertaining to the basis upon which ICE is holding Ms. Martinez Zarco.
- (5) Bar the transfer of Ms. Martinez Zarco out of the District of Rhode Island absent further order of the Court.
- (6) Award to Ms. Martinez Zarco her reasonable litigation costs and attorney's fees pursuant to the Equal Access to Justice Act; and
- (7) Grant such other further relief that is deemed just and proper by the Court.

Respectfully submitted,

Plaintiff, by her Attorneys,

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