

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

LUIS MIGUEL AGUILAR TORRES,
On his own behalf and through his next friend,
his father, Luis Aguilar;

PLAINTIFFS/PETITIONERS

v.

KEVIN K. MCALEENAN,
Acting Secretary, U.S. Department of Homeland Security and
Commissioner, United States Customs & Border Protection,
JOHN P. SANDERS ,
Acting Commissioner of CBP,
CARLA PROVOST,
Acting Commissioner of CBP,
RODOLFO KARISCH,
Chief Patrol Agent- Rio Grande Valley Sector, and

RESPONDENTS/DEFENDANTS

**PETITION FOR WRIT OF HABEAS CORPUS, APPLICATION FOR TEMPORARY
RESTRAINING ORDER, and COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF**

I. INTRODUCTION

1. Plaintiff herein is an Asylum seeker who has been confined for more than four days by U.S. Customs and Border Protection (“CBP”) facilities in the Rio Grande Valley Sector of the U.S. Boarder Patrol (“Border Patrol”), a division of CBP. He has been denied access to counsel. Attorneys are not allowed to visit individuals detained at these facilities, so counsel has been unable to communicate directly with him, or obtain their signatures on G-28s, the forms required for counsel to be recognized as attorneys by DHS. Therefore, Plaintiff bring this action through their “next friend.” On their own behalf, they challenge the lack of proper facilities and unbearable conditions in the holding cells where they are detained and the lack of access to counsel and legal materials. Plaintiff are imprisoned by the federal

government under color of the immigration laws. On information and belief, it is alleged that the named Plaintiff have been held for more than four days.

This petition seeks the immediate release of the named Plaintiff from this incarceration. His imprisonment is unlawful because of the confluence of three unlawful government practices: first, he is being held virtually incommunicado. He has almost no contact with the outside world, and most particularly, he is being held in a facility that does not allow access by attorneys, and extremely limited access to telephones. Second, although Defendants ostensibly are acting under color of immigration law, on information and belief, Defendants have incarcerated the named Plaintiff for more than four days, without issuing charging documents. Third, Defendants are imprisoning them in Border Patrol temporary holding facilities, facilities that are not appropriate for overnight stays — let alone for multiple-day incarceration.

2. Plaintiff was apprehended on September 26, 2019, and subsequently detained. Once apprehended, such persons are often detained for extended periods in overcrowded holding cells, with inadequate food, water, and sanitation facilities, where attorneys are not allowed to visit. The conditions in these holding cells are dangerous and inhumane, particularly if CBP detains in the same cells individuals whom they know or have reason to believe have committed crimes other than 8 U.S.C. §1325.

3. Detaining the Plaintiff in facilities which do not allow access to counsel or legal materials violates *Nunez v. Boldin*, 537 F.Supp. 578 (S.D.Tex), appeal dismissed, *Nunez v. Boldin*, 692 F.2d 755 (Table) (5th Cir. 1982), holding that immigration officials must not only refrain from placing obstacles in way of communications between detainees and their attorneys, but are obligated to affirmatively provide them with legal assistance, and that besides providing reasonable access to attorneys, such legal assistance may take the form of access to attorney agents and other such legal resources as law libraries, legal forms, and writing materials.

II. JURISDICTION AND VENUE

4. Jurisdiction lies in 28 USC §2241 (habeas corpus) and §1331 (federal question).
5. Venue is proper in this District since the events giving rise to the action occurred in this judicial District. Defendants are sued only in their official capacities.

III. THE PARTIES

6. Luis Miguel Aguilar Torres is a native and citizen of Honduras, who has been detained by Defendants since approximately September 26, 2019. He was born on January 01, 1994. He is currently being held by CBP in Donna, Texas in the Rio Grande Valley Sector of CBP. On information and belief, it is alleged that he is detained in Donna, Texas. He is suing through his next friend, his father, Luis Aguilar, and on his own behalf.
7. Kevin K. McAleenan is the duly appointed acting Secretary of the U.S. Department of Homeland Security and duly appointed Commissioner of the United States Customs and Border Protection. He is sued in his official capacity only.
8. Respondent John P. Sanders is the Acting Commissioner of CBP. He is named in his official capacity only.
9. Carla Provost is the duly appointed Chief of the United States Border Patrol, and is being sued in her official capacity only.
10. Rodolfo Karisch is the the duly appointed Chief Patrol Agent – Rio Grande Valley Sector and is being sued in his official capacity only.

IV. THE FACTS

11. Plaintiff is a civil detainee detained in U.S. Customs and Border Protection (“CBP”) facilities within the Rio Grande Valley Sector of the U.S. Boarder Patrol (“Border Patrol”), a division of CBP.
12. During his detention, Plaintiff have been subjected to inhumane treatment and harsh conditions. Plaintiff has been denied access to legal counsel. Plaintiff brings this action to seek relief from the unbearable conditions in CBP’s holding facilities in the Rio Grande Valley Sector.
13. The notoriously abysmal conditions of BP stations throughout the country are well-documented in

federal litigation and third-party reports. These facilities, termed "hieleras" (Spanish for "freezers") are typically small, concrete rooms with concrete or metal benches. In Customs and Border Protection's own words, these facilities are "not designed for sleeping": they have no beds and showers are not guaranteed. Nevertheless, Border Patrol routinely imprisons individuals in Border Patrol field stations for days or weeks. An ACLU review of FOIA documents from 2009-2014 from Border Patrol holding facilities along the Southern border revealed "horrific detention conditions: children held in freezing rooms with no blankets, food, or clean water; forced to sleep on concrete floors or share overcrowded cells with adult strangers; [and] denied necessary medical care." Many individuals are suffering severe mental distress due to the extreme conditions under which they are detained.

14. Courts across the country have made factual findings about the horrific conditions in Border Patrol holding facilities. For example, the District Court of Arizona granted, and the Ninth Circuit affirmed, a preliminary injunction ordering Border Patrol to address grave deficiencies in the Tucson Sector stations' holding facilities. *Doe v. Kelly*, 878 F.3d 710, 716 (9th Cir. 2017) (detailing unsanitary and 8 unsafe conditions); see also *Flores v. Sessions*, No. 85-4544, ECF No. 459-1 (C.D. Cal. July 16, 2018) (July 2018 Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Enforce Settlement detailing physical and verbal assault, unsanitary drinking water, inedible food, freezing cell temperatures and inadequate sleeping conditions in ICE detention centers and Border Patrol stations).

15. Defendants have adopted the categorical position that they can imprison immigrants in temporary holding facilities with no contact to the outside world; in their view, they need not provide for either attorney or family visitation at facilities under the control of CBP.

16. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

17. Defendants' conduct violates the Fifth Amendment's prohibition against holding a prisoner incommunicado. As noted in *Halvorsen v. Baird*, 146 F.3d 680, 688–89 (9th Cir. 1998): There is a well

established tradition against holding prisoners incommunicado in the United States. It would be hard to find an American who thought people could be picked up by a policeman and held incommunicado, without the opportunity to let anyone know where they were, and without the opportunity for anyone on the outside looking for them to confirm where they were. This right applies to civil detainees as well as those in criminal custody. *Id.*: That a person is committed civilly ... cannot diminish his right not to be held incommunicado.

18. Defendants' actions to effectively bar Plaintiff from receiving attorney visits violate their right to counsel. The right of access to counsel in immigration proceedings is well established under both the Constitution and the Immigration and Nationality Act. U.S. Const., Am. 5; 8 U.S.C. § 1229a.

19. The Due Process Clause guarantees that all noncitizens must "be free from detention that is arbitrary or capricious." *Zadvydas*, 533 U.S. at 721 (Kennedy, J., dissenting); see also *Mathews v. Diaz*, 426 U.S. 67, 77, 87 (1976) (confirming that those "whose presence in this country is unlawful, involuntary, or transitory" have due process rights). In order to comply with the Due Process Clause, detention must therefore be reasonable in relation to its purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). In the immigration context, the basic purposes of detention are to prevent flight and danger, and, if there is no relief from removal, to ensure the detainee appears for removal. See *Zadvydas*, 533 U.S. at 699 (explaining the relevant detention statute's "basic purpose" as "to assure the alien's presence at the moment of removal").

20. Defendants have imprisoned Plaintiff under punitive conditions of confinement, even though they are not subject to punishment for any crimes. This violates the Fifth Amendment. *Wong Wing v. U.S.*, 163 U.S. 228, 236-38 (1896).

21. Whereas it was previously the Border Patrol's position that "a detainee should not be held for more than 12 hours," in 2015 - with no intervening change in the conditions of its holding centers - the agency "updated" its standards: now, "[d]etainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities." U.S. Customs and Border Protection, "National Standards of

Transport, Escort, Detention, and Search (Oct. 2015).

22. It is submitted that CBP is wrong: under the conditions in the Border Patrol holding facilities in the Valley, detention longer than twelve hours violates detainees' constitutional rights. See *Doe v. Kelly*, supra, (affirming injunction requiring Border Patrol facilities in the Tucson Sector to provide mats and Mylar blankets to immigrants held longer than 12 hours because "a person who has been detained in a station for over 12 hours . . . has a right to lie down and rest."). Regardless, Petitioner ' detention far exceeds the legal limit and CBP's own policy.

V. CAUSES OF ACTION

A. HABEAS CORPUS

23. Plaintiff incorporate by reference the allegations of paragraph 1-22 above.

24. Plaintiff' detention, without access to counsel, in overcrowded holding cells with inadequate food, water, sleeping and sanitation facilities, for periods of time in excess of 72 hours violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution and other legal rights, giving rise to causes of action in habeas corpus. See *Nunez v. Boldin*, supra.

25. It is therefore urged that this Honorable Court issue a Writ of Habeas Corpus, ordering that the named Plaintiff either be immediately released with an electronic tracking device, or that reasonable bond, not to exceed \$2,500, be set.

B. THE ADMINISTRATIVE PROCEDURE ACT DECLARATORY AND INJUNCTIVE RELIEF

26. Plaintiff incorporate by reference the allegations of paragraph 1-25 above.

27. Plaintiff also seek relief under the Administrative Procedure Act, 5 U.S.C. §702 et seq. Their detention without access to counsel in overcrowded holding cells without adequate food, water, and sanitation or sleeping facilities, for more than 72 hours, violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution and other legal rights, giving rise to causes of action under the

APA.

28. The decision by Defendants to continue the detention of a given detainee in a CBP holding cell beyond the 72 hours for which they claim the right to continue such detention, rather than releasing him/her with an electronic tracking devices, as was the practice in prior years, or transferring him/her to the custody of ICE, in order that they be moved to actual detention centers, such as PISPC, is a final agency action within the meaning of 5 U.S.C. §704, for which there is no other adequate remedy in a court. Such actions therefore are subject to judicial review.

29. Pursuant to 5 U.S.C. §706, this Court therefore is urged to issue a Declaratory Judgment, declaring such agency unlawful, on the grounds that they are: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

**C. REQUEST FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR
PRELIMINARY INJUNCTION**

30. Plaintiff incorporate by reference the allegations of paragraphs 1- 29 above.

31. On information and belief, it is alleged that the named Plaintiff have well-founded fear of returning to their country of origin for reasons which sound in asylum. They have been denied access to legal counsel, and prejudiced from such denial in that they have not had the opportunity to apply for asylum.

32. As such, Plaintiff have shown by clear and convincing evidence that it would be unconstitutional and prohibited as a matter of law to execute any order of expedited removal against the Plaintiff without first allowing them access to counsel and a meaningful opportunity to seek any relief from removal for which they may be eligible. See, 8 U.S.C. § 1252(f)(2).

33. Plaintiff are also entitled to preliminary and permanent injunctions. The actions of Defendants in detaining Plaintiff for more than 72 hours in CBP holding cells within this Court's jurisdiction, with inadequate food, water, and sanitation facilities, and without access to legal counsel, is unconscionable,

and violates both procedural and substantive due process.

34. While Plaintiff has signed an agreement to be removed to his home country of Honduras, this should not be enforced as it was signed under conditions which did not allow Plaintiff to explore his full legal options.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

- 1) Assume jurisdiction over the instant action;
- 2) Declare unlawful the actions of Defendants in holding Plaintiff in CBP holding cells within the jurisdiction of this Court for periods of time exceeding 72 hours, on the grounds that said actions are contrary to law and violate Due Process;
- 3) Issue a Temporary Restraining Order, restraining and enjoining Defendants from removing Plaintiff from the United States and from not releasing them either on a reasonable bond (not to exceed \$2,500), or with an electronic monitoring device;
- 4) It is further urged that the Court set the case for a hearing on the motion for preliminary injunction at the Court's earliest convenience.
- 5) It is further urged that the Court grant such order and further relief as the Court deems appropriate and just, including an award of court costs and attorneys fees.

Respectfully submitted,

/s/ Manuel Solis
Manuel Solis, Attorney
Law Offices of Manuel Solis
P.O. Box 230529
Houston, Texas 77223-0529
Federal ID: 36113
State Bar No: 18826790

CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of the foregoing was this date served by email to Christopher Pineda, AUSA, at christopher.pineda@usdoj.gov.
/s/ Manuel Solis

**UNITED STATES DISTRICT COURT
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MCALLEN DIVISION**

LUIS MIGUEL AGUILAR TORRES,
On his own behalf and through his next friend,
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Chief Patrol Agent- Rio Grande Valley Sector, and

RESPONDENTS/DEFENDANTS

**ORDER GRANTING
APPLICATION FOR TEMPORARY RESTRAINING ORDER PRECLUDING
RESPONDENTS FROM PHYSICALLY REMOVING PLAINTIFF FROM THE UNITED
STATES AND ORDER FOR RESPONDENTS TO SHOW CAUSE AS TO WHY PLAINTIFF
HABEAS CORPUS PETITION SHOULD NOT BE GRANTED**

Before the Court is the verified petition of Plaintiffs' for a Writ of Habeas Corpus and Application for Temporary Restraining Order, precluding Respondents from physically removing Plaintiffs from the United States. Plaintiffs also seek a corresponding preliminary injunction.

On consideration of same,

IT IS HEREBY ORDERED that:

- 1) Defendants are precluded from physically removing Plaintiffs from the United States;
- 2) A hearing on Plaintiffs' motion for a preliminary injunction is scheduled for the _____ day of _____, before this Court.

Judge Presiding

LUIS AGUILAR

STATE OF TEXAS §

COUNTY OF HARRIS §

Luis Aguilar appeared in person before me today and stated under oath:

"My name is Luis Aguilar; I am competent to make this declaration under perjury. The facts stated in this declaration are within my personal knowledge and are true and correct."

"I am a native and citizen of Honduras. I am a Lawful Permanent Resident"

"The purpose of this affidavit is to explain the situation with my son, Luis Miguel Aguilar Torres."

"My son is from Honduras. He entered the country on September 26, 2019."

"He was detained at the border by Customs and Border Patrol. He was then detained by Customs and Border Patrol we were not informed of where he was located. The only reason we knew of his detention was that his friend told family back in Honduras."

"My son was not given an Alien Number. He was not allowed to contact us. Instead he was detained by Border Patrol officers who did not place him in proper Immigration Proceedings."

"Finally on September 30, 2019 I was able to speak to him. After being isolated, secluded, and deprived of his right to counsel, my son signed an order of deportation."

"This was not a voluntary signature. The conditions my son was subjected to coerced his compliance and it is for this reason that he signed his removal order. He was only allowed to speak to my wife after he signed the order."

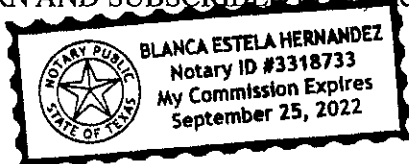
"I beg that my son not be removed, he is entitled to his day in court. He is an asylum seeker and we hope to assist him in fixing his papers as well."

"I swear under the penalty of perjury that the above is true and correct to the best of my knowledge and belief."

FURTHER THE AFFIANT SAYETH NOT.

Luis Aguilar
Luis Aguilar

SWORN AND SUBSCRIBED to me the undersigned authority, on this the 30 day of Sept, 2019.



[Signature]
Notary Public in and for the State of Texas