

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

ANTONIN TRINIDAD CANDIDO, a minor,)	
ROMAN TRINIDAD CANDIDO and MARIA del)	
REFUGIO MASIAS, individually and on behalf of)	CASE: 08 CV 1015 LRR
an unspecified number of DETAINED IMMIGRANT)	
WORKERS)	
)	
)	
Petitioners,)	
)	
v.)	
)	
UNITED STATES IMMIGRATION AND CUSTOMS)	
ENFORCEMENT DIVISION OF THE DEPARTMENT)	
OF HOMELAND SECURITY; JULIE L. MYERS,)	
Assistant Secretary of Homeland Security for Immigration)	
and Customs Enforcement; CLAUDE ARNOLD,)	
Immigration and Customs Enforcement Special Agent in)	
Charge of the Postville, Iowa Enforcement Operation)	
MICHAEL CHERTOFF, Secretary of Department of)	
Homeland Security and MICHAEL MUKASEY,)	
Attorney General of the United States,)	
)	
Respondents.)	

**PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

This is a petition for a writ of habeas corpus and complaint for declaratory and injunctive relief filed by Antonin Trinidad Candido, Roman Trinidad Candido Maria del Refugio Masias, individually and on behalf of an unspecified number of detained immigrant workers (“Petitioners”). Petitioners seek a class writ and declaratory and injunctive relief to remedy violations of their constitutional and statutory rights. Petitioners are approximately one hundred-forty seven Postville immigrants who have been detained since Respondent Immigration and Customs Enforcement Division of Homeland Security (“ICE”) conducted a

massive May 12, 2008 workplace raid that resulted in the immigrants' detention and separation from their families and community.

Jurisdiction

1. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. Sections 1101 *et seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction under 28 U.S.C. Section 1331 and 28 U.S.C. Section 2241, art. I, Section 9, cl.2 of the United States Constitution ("Suspension Clause"), as detainees and class members are presently in custody under color of authority of the United States. This Court may grant relief pursuant to 28 U.S.C. Sections 1651, 2201, 2202, 2241, and 2242 and Rule 57 of the Federal Rules of Civil Procedure.

Venue

2. Venue lies in the United States District Court for the Northern District of Iowa, the judicial district in which Respondent ICE carried out the raid, where the events giving rise to the claims alleged herein occurred, and where some of Petitioners are being held.

Parties

3. Petitioners Antonin Trinidad Candido, a minor, Roman Trinidad Candido, and Maria del Refugio Masias, are/were employed workers at Agriprocessors, Inc. in Postville, IA. The remaining petitioners are/were also employed workers at Agriprocessors, Inc.

4. Respondent ICE, the largest investigative arm of the Department of Homeland Security ("DHS"), is responsible for eliminating vulnerabilities in the nation's border, and with economic, transportation and infrastructure security. DHS is charged with, among other

things, administering the United States Immigration and Customs Enforcement (“USICE”) and implementing and enforcing the immigration and Nationality Act. As such, it has decision-making authority over the matters alleged in this Petition and Petitioners’ custody.

5. Julie L. Myers (“Myers”) is the Assistant Secretary of Homeland Security for Immigration and Customs Enforcement.

6. Michael Mukasey is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the immigration laws. As such, he is the ultimate legal custodian of Petitioners.

7. Michael Chertoff is Secretary of the Department of Homeland Security and has delegated his authority to administer the laws of the United States to ICE, a component of the Directorate of Border and Transportation Security.

8. Respondent Claude Arnold is the Office of the Bureau of Immigration and Customs Enforcement (“ICE”) agent in charge of the Postville, Iowa enforcement operation and has legal custody of the Petitioners.

Facts

9. Petitioners appear to have been taken into custody by ICE on May 12, 2008 from their place of employment. On information and belief, Petitioners are or were being held at the National Cattle Congress in Waterloo, Iowa.

10. The exact number of Petitioners taken into custody is not specifically known. Based on media reports, it appears that approximately 147 persons are currently held.

11. Upon information and belief, and based upon the practice of ICE in similar worksite raids and the resulting detainment of large numbers of individuals in the past, Petitioners have been or will be transported out of this State to detention facilities throughout the county to be charged administratively and placed in removal proceedings. A recent

example of this is the SWIFT plant worksite enforcement raid on or around December 12, 2006, after which many of the detainees were sent to Atlanta, Georgia to face removal proceedings.

12. On information and belief, private and pro bono counsel from local bar associations and nonprofit legal services providers have organized to respond to the detainees' needs for legal rights information, legal advice and counsel, and representation, but due to the massive numbers of immigrants arrested by Defendants at one time, these resources cannot be deployed effectively without a reasonable amount of time for attorneys accompanied by language-appropriate interpreters to adequately interview each detainee prior to the detainees' imminent transfer to remote facilities out of this court's jurisdiction. Transferring Petitioners outside of Iowa would substantially hamper Petitioner's access to these lawyers.

12. On information and belief, based upon initial consultations with lawyers, detainees are providing reports of what appear to be substantial violations by Agriprocessors, Inc., of Federal law including wage, labor and immigration violations.

13. Sonia Parras Konrad, a local attorney who has entered an appearance on behalf of many of the detainees, has interviewed over 50 detainees since the worksite raid. She has received personal accounts from detainees that Agriprocessors, Inc. allegedly procured false identification and employment eligibility documents for its immigrant employees; Agriprocessors, Inc. improperly withheld money from the paychecks of its immigrant employees for what it termed "immigration fees;" employees of Agriprocessors, Inc. were not allowed to use the restroom during some 10-hour shifts; employees of Agriprocessors, Inc. were not properly compensated for overtime work; and employees of Agriprocessors, Inc. were subjected to physical abuse at the hands of supervisors. *See,*

Affidavit of Sonia Parras Konrad attached hereto as Exhibit "A" and incorporated herein by reference.

14. According to the May 9, 2008 Affidavit of David M. Hoagland, Senior Special Agent for U.S. Immigration and Customs Enforcement offered in support of the search warrant issued on Agriprocessors, Inc., (the "Hoagland Affidavit"), the worksite raid was undertaken in part because evidence indicated that illegal aliens were being exploited in various ways. According to the Hoagland Affidavit:

Affiant is aware, from his training and experience, that those who employ illegal aliens often exploit the aliens in various ways. Those who knowingly employ or supervise illegal aliens, knowing their unlawful status, are able to exploit illegal aliens because illegal aliens are unlikely to contact authorities for fear they will be arrested and/or deported. Exploitation can take on many forms, such as requiring employees to provide money or other things of value to maintain employment or secure better working hours or tasks, providing sub-par working conditions, failing to pay overtime, and physically harassing or mistreating employees.

15. The Hoagland Affidavit contains numerous allegations of violations of Federal wage and labor law by Agriprocessors, Inc. as follows:

[E]quipment issued to perform the work in the hazardous conditions of the plant was substandard and previously used.

[O]ne of the floor supervisors ... duct-taped the eyes of an employee ... believed to be and undocumented Guatamalan. The floor supervisor then took one of the meat hooks and hit the Guatamalan with it ...

[A government informant employee] also described an oral altercation by a Rabbi who was calling employees derogatory names and throwing meat at employees.

Another incident occurred where a different floor supervisor ... pushed [a government informant employee] because the supervisor did not like the way [the government informant employee] was moving meat.

[U]ndocumented workers were paid \$5.00 an hour, and after three or four months of working they started making \$6.00.

16. The Hoagland Affidavit also contains numerous allegations of what appears to be several criminal enterprises in violation of Federal racketeering laws as follows:

- A Human Resources Manager provided information to a government informant that employees' taxes were deducted and deposited and placed in bank accounts belonging to an unknown person or persons.
- A government informant provided information that an Agriprocessors, Inc. employee transported employees across state lines to Minnesota to obtain false state identification cards.
- A government informant provided information that Agriprocessors paid certain undocumented workers in cash and there were reports that a Postville resident, possibly a government official, provided other undocumented workers with different-colored checks not bearing the name "Agriprocessors, Inc."
- A government informant provided information that a person believed to be a Mexican national working at Agriprocessors, Inc. was providing fraudulent documents through a vendor in Postville.
- Intelligence was provided to ICE that a man working for an elementary school in Postville sold an apartment complex to Agriprocessors, Inc. and was known to carry an envelope of cash at school to pay employees of Agriprocessors and was listed as a point of contact on letters sent by Agriprocessors to employees noting that they had been identified as having misunderstandings regarding the employee's social security number.
- A government informant provided information that checks were issued to certain undocumented workers with an unknown person's name on it and that the check would be cashed at another portion of the plant.
- A DOT investigator provided information that a supervisor at Agriprocessors used an intricate and unlawful scheme to purchase and register a large number of automobiles for resale to employees of Agriprocessors and that the supervisor forced employees to purchase vehicles from him or be fired or be given poor work shifts.

16. Petitioners have US citizen spouses and children and may be eligible for immigration relief through family. Additionally, as victims to the alleged crimes, Petitioners could be eligible for U or T visas, enabling them to legalize status. As victims they would need to participate in the investigations of the alleged crimes and may be needed to testify as to personal experiences.

17. Attorneys have entered an appearance on behalf of numerous detainees for the purpose of representing the detainees in any administrative or removal proceedings. Additionally, the undersigned counsel has been retained by detainees for the purpose of investigating and initiating a lawsuit on behalf of certain of the detainees against Agriprocessors, Inc. for potential FLSA, civil RICO, and other state and federal law and statutory violations.

17. Transfer of the detainees out of the state of Iowa would interfere with and effectively destroy the ongoing relationship between the detainees and their attorneys.

18. Transfer of the detainees out of the state of Iowa would deprive the detainees of the right to present witnesses and evidence in any administrative or removal proceedings. Further, transfer of the detainees out of the state of Iowa would deprive the Petitioners of the right to pursue civil legal action against Agriprocessors, Inc. for alleged violations of Federal wage, labor and racketeering laws. Further, transfer of the detainees out of the state of Iowa would deprive Petitioners of numerous material witnesses, many or all of whom witnessed the exploitive practices of Agriprocessors, Inc.

19. Transfer of the detainees out of the state of Iowa would effectively defeat the intent of Congress to provide enforcement measures of the nation's immigration laws through civil RICO and other actions.

20. Additionally, the transfer of the detainees out of the state of Iowa would violate the detainees' rights under 18 U.S.C. § 3771, the Crime Victims' Rights Act (CVRA), not to be excluded from any public court proceeding involving a crime against the detainees. Based upon the Hoagland Affidavit, numerous detainees were the victims of crimes perpetrated at the Agriprocessors, Inc. plant and have the right to be timely noticed and

attend any criminal proceedings against Agriprocessors, Inc. or its supervisors. That right will be violated if detainees are transferred out of the state of Iowa.

21. On information and belief, as a result of the raid, numerous children of Petitioners have been stranded with baby sitters, caretakers, and others. Lawyers and advocates are working to assist in providing care for the children. Transferring the parents of these children would significantly hamper this process.

22. Specifically, Maria del Refugio Masias, the mother of two minor children, ages 2 and 5, and her husband and the children's father are both detained and she has not been informed of the whereabouts of her two minor children. *See*, Affidavit of Sonia Parras Konrad. Transferring Maria del Refugio Masias and other parents in similar situations, outside the state of Iowa will result in undue family hardship.

23. Upon information and belief, two nursing mothers were detained and were not provided a breast pump for over 48 hours to relieve physical discomfort and pain.

Claims for Relief

Count I

(Constitutional Claim)

24. Petitioners allege and incorporate by reference paragraphs 1-23.

25. Respondents are liable for the conduct of the agencies they administer.

26. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of the detained Petitioners to be free from arbitrary prolonged and indefinite detention, in violation of the Due Process Clause of the Fifth and Fourteenth amendments to the Constitution of the United States.

27. To the extent that Petitioners' detention is without basis in law or fact and violates common law principles of due process and the Due Process Clause of the Fifth Amendment to the Constitution, Petitioners' detention is unlawful.

28. Respondents have violated Petitioners' right to consult with counsel by denying them access to counsel or any means to obtain counsel in a prompt and effective manner. This includes a meaningful opportunity to make decisions concerning the care of their children, a task for which proper access to counsel is fundamental.

Count II

(Statutory Claim)

29. Petitioners allege and incorporate by reference paragraphs 1-28.

30. Respondents' actions violate the INA.

Count III

(Statutory Claim)

31. Petitioners allege and incorporate by reference paragraphs 1-30.

32. The CVRA (18 U.S.C. § 3771) specifically provides Victims the following rights: "not to be excluded from any such public court proceeding..." unless the court determines on the record that this exposure would materially alter the victim's testimony; "to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding"; "...to be treated with fairness and with respect for the victim's dignity and privacy."

33. Respondents' actions violate the CVRA in that Petitioners will not be able to attend or be involved with any proceeding against Agriprocessors, Inc. if they are moved outside the jurisdiction of Iowa. Additionally, Petitioners would not be able to participate in the on-going investigation of federal and state violations against Agriprocessors, Inc.

Prayer for Relief

WHEREFORE, Petitioners respectfully request that the Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue process to the respondents with an order to show cause why the writ should not be granted;
3. Order declaratory, habeas and injunctive relief as well as any other relief the court may deem appropriate, including but not limited to:
 - (a) Immediate release, or
 - (b) A reasonable period of time, prior to any out-of-state transfer, for detainees to obtain a meaningful opportunity to meet with counsel and have confidential communications; to be fully advised of their rights to remain silent and have counsel; to seek relief under NACARA, the *ABC* Agreement, or *Orantes*, where applicable, or release on bond or personal recognizance; and to have counsel identify any derivative United States citizens and *bona fide* asylum seekers;
4. Enjoin Respondents from transferring Petitioners out of this state until they have been afforded their full statutory and constitutional rights and ordering the return to this state any Petitioners who have already been transferred; and
5. Grant such other and further relief as the Court may deem necessary and appropriate to protect Petitioners' rights under the common law, the United States Constitution, and federal statutory law.

DATED: May 15, 2008.

ANTONIN TRINIDAD CANDIDO, a minor, ROMAN TRINIDAD CANDIDO and MARIA del REFUGIO MASIAS, individually and on behalf of an unspecified number of DETAINED IMMIGRANT WORKERS, Petitioners,

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