UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI, OHIO

FILED
AUG 31 2007
JAMES BONINI, Clerk
CINCINNATI, OHIO

IVAN MUÑOZ MARTINEZ
(A88 922 314)
-and-

ESMERELDA T. BERMUDEZ
(A88 922 404)

Individually and on behalf of 120 John and Jane Does--whose identities are not known at the present time—and who were arrested in Butler County, Ohio on August 28, 2007 and who are currently being detained at various detention centers in Southern District of Ohio,

Petitioners/Plaintiffs,

v.

MR. MICHAEL CHERTOFF
U.S. Department of Homeland Security
Washington, D.C. 20528

and-

JULIE MEYERS, ASST. SECRETARY
U.S. Department of Homeland Security
Washington, D.C. 20528

-and-

MR. RICHARD WILKINS
District Director (ICE)
U.S. Citizenship & Immigration Services
550 Main Street, Room 4-001
Cincinnati, Ohio 45202

-and-

CASE NO.: 1:07 CV 722

JUDGE: J. DLOTT

MAGISTRATE JUDGE: J. HOGAN

EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS, WRIT OF MANDAMUS, COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND MOTION FOR A STAY OF REMOVAL

MR. TODD SMITH
Immigration and Customs Enforcement
50 W. Broad St. Suite 306
Columbus, Ohio 43215

-and-

MR. RICHARD K. JONES
705 Hanover Street
Hamilton, OH 45011,

Respondents/Defendants.

For their cause of action, Petitioners state as follows:

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief and/or a writ of habeas corpus and/or a writ of mandamus, declaring as illegal and unconstitutional the attempt to summarily remove over one hundred twenty (120) people arrested on or around August 28, 2007 in the Southern District of Ohio, and to obtain review of the Department of Homeland Security's (DHS) release of the Petitioners on bond, and for a stay of removal pending determination of these claims by this honorable Court. Petitioners seek an immediate order preventing DHS from removing those arrested without the ability to consult with counsel. Petitioners also seek an order preventing DHS from removing Petitioners from this area.
2. For some time now, a local Sheriff, acting as the mouth piece of a powerful local politician, has been engaged in a campaign that blames all the problems of the country, including crimes, on what he calls "illegal aliens." As the result of this insidious campaign, his deputies have begun to infringe on the constitutional rights of all who

look or sound "foreign." The overt intimidation by the Sheriff and covert pressure by a powerful politician in the area, who is apparently orchestrating all of the Sheriff's actions, finally culminated in the arrest of 160 people in Butler County, in the Southern District of Ohio, by the Department of Homeland Security (DHS). 20 of the detainees were turned over to the Sheriff for his efforts, and the rest are being held by the DHS. Since these arrests the Sheriff has given many news conferences taking credit for the events of August 28, 2007 in Butler County. Unless both the Sheriff and DHS are temporarily and permanently enjoined, petitioners will suffer irreparable harm.

3. This action arises under the United States Constitution, the Immigration and Nationality Act of 1952, as amended (the "Act"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, the Mandamus Act, 28 U.S.C. § 1361 *et seq.*, the All Writs Act 28 U.S.C. § 1651, *et seq.*, and the Declaratory Judgment Act 28 U.S.C. § 2201, *et seq.*, 42 U.S.C. §§ 1981 and 1983. Subject matter jurisdiction is based upon 28 U.S.C. § 1331, 28 U.S.C. § 2241 *et seq.*, the APA and 29 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act 28 U.S.C. § 2201, *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. Portions of this action also arise under Universal Declaration of Human Rights.

VENUE

4. Pursuant to 28 U.S.C. § 1291, venue lies in the Southern District of Ohio because a substantial part of the events or omissions giving rise to this cause of action occurred here.

PARTIES

5. Petitioners, Ivan Munoz Martinez and Esmerelda T. Berumudez, in their individual capacities and as the representatives of 120 other John & Jane Does were arrested and are being held in various parts of greater Cincinnati. Petitioners have standing to bring this action on their own behalf and on behalf of unnamed Petitioners because their grievances fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in this action. *Bennett v. Spear*, 520 U.S. 154, 163, 117 S.Ct. 1154 (1997).

6. Respondent, Michael Chertoff, is the Secretary of the United States Department of Homeland Security (hereinafter "DHS").

7. Respondent Chertoff is generally charged with the enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of DHS.

8. This action is brought against Respondent in his official capacity only. See generally, 8 U.S.C. § 1103 (a).

9. Respondent, Julie Meyers, is the Assistant Secretary of the Department of Homeland Security and is in charge of all of the U.S. Immigration and Customs Enforcement for the Department of Homeland Security ("DHS") in the United States.

10. This action is brought against Respondent in her official capacity only.

11. Respondent, Richard Wilkins, is the District Director of all of the U.S. Immigration and Customs Enforcement for the Department of Homeland Security ("DHS") in Ohio.

12. Respondent Wilkins is generally charged with arrest and enforcement of Immigration and Nationality Act in the Southern District of Ohio.

13. This action is brought against the Respondent in his official capacity only.

14. Respondent, Todd Smith, is the Director of Detention and Removal Office located in Columbus, Ohio.

15. Respondent Smith is generally charged with detaining and removing non-citizens.

16. This action is brought against the Respondent in his official capacity only.

17. Respondent, Richard Jones, is the Sheriff of Butler County, Ohio. He has usurped the federal immigration law.

18. This action is brought against the Respondent in his official capacity only.

FIRST CAUSE OF ACTION
FEDERAL REGULATION OF IMMIGRATION

19. The power to regulate immigration is unquestionably an exclusively federal power that derives from the Constitution's grant to the federal government of the power to "establish a uniform Rule of Naturalization," U.S. Const. Art. I, § 8, cl. 4., and to "regulate Commerce with Foreign Nations," *Id.*, cl. 3. In addition, the Supreme Court has held that the federal government's power to control immigration is inherent in the nation's sovereignty.

20. Pursuant to its exclusive power over matters of immigration, the federal government has established a comprehensive system of laws, regulations, procedures, and administrative agencies that determine, subject to judicial review, whether and under what conditions a given individual may enter, stay in, and work in the United States.

21. In addition to provisions that directly regulate immigrants' entry and behavior, the federal immigration laws also include provisions directed at other classes of

individuals, such as those who employ or assist immigrants. Thus, the comprehensive federal immigration scheme includes sanctions, documentation, and anti-discrimination provisions directly applicable to employers, as well as a criminal and civil scheme applicable to those who assist individuals who are not lawfully in the United States.

22. The federal government has also chosen to allow certain categories of non-citizens and certain individual non-citizens, to remain in the United States, even though such non-citizens may not have valid immigrant (permanent) or non-immigrant (temporary) status and/or may be removable under the federal Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

23. Federal laws and policies aimed at reducing illegal immigration include safe harbor and other provisions regarding the appropriate reach of such laws. For example, employers who have complied in good faith with the employment documentation procedures set forth in the INA have an affirmative defense to liability under the INA's employer-sanctions scheme.

24. These laws, procedures, and policies created by the federal government regulate immigration and confer rights in a careful balance reflecting the national interest.

25. Article VI, Section 2, of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding.

26. The Supremacy Clause mandated that federal law preempts any state regulation of any area over which Congress has expressly or impliedly exercised exclusive authority or which is constitutionally reserved to the federal government.

27. The power to regulate immigration is exclusively federal power.

28. The conduct of the local Sheriff to regulate immigration in the Southern District of Ohio is *per se* unconstitutional and he should be permanently enjoined from harassing and arresting people who look or sound foreign.

SECOND CAUSE OF ACTION
VIOLATION OF DUE PROCESS, PROCEDURAL DEFECT

29. Petitioners incorporate by reference the allegation in Paragraphs 1-28 as if fully set forth herein.

30. The Fourteenth Amendment to the United States Constitution guarantees petitioners certain fundamental rights. The Fourteenth Amendment to the United States Constitution provides that no state may "deprive any *person* of life, liberty or property, without due process of law; nor deny any *person* within its jurisdiction the equal protection of the law," United States Constitution Amendment XIV § 1. (emphasis added). The United States Supreme Court has consistently interpreted this provision to apply to all people present in the United States, whether they were born here, immigrated here through legal means, or violated federal law to enter the country. *See Plyler v. Doe*, 457 U.S. at 210, 102 S.Ct. 2382 (1982)(holding that "whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Even aliens, whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments"). The anonymous Plaintiffs/Petitioners are persons entitled to due

process under *Plyler*, and they seek to vindicate rights guaranteed them under the federal constitution. Therefore, they have standing to sue in this court.

31. The conduct of the local Sheriff and ICE has clearly denied the Petitioners the rights guaranteed under the Constitution of the United States.

32. Petitions are entitled to preliminary and permanent injunction against the local Sheriff from being harassed and persecuted without due process of law.

33. Petitioners are entitled to a writ of habeas corpus because they are being detained in violation of their rights.

THIRD CAUSE OF ACTION
VIOLATION OF EQUAL PROTECTION

34. Petitioners incorporate by reference Paragraphs 1 through 33 of this petition as if fully stated herein.

35. The egregious policies of the local politician carried out by the Butler County Sheriff has created a profound sense of fear and foreboding in the Southern District of Ohio where people have even sought refuge in churches.

36. The policy of terror by the local politicians, as carried out by the Butler County Sheriff, has created a linage classification that includes petitioners and numerous other individuals lawfully present in the United States and denies those individuals rights and privileges which it grants to those outside the class.

37. These inhumane and cruel policies are invalid under the Fourteenth Amendment of the United States Constitution.

38. As the result of the current and threatened violations of their fundamental right to equal protection, petitioners are entitled to declaratory and injunctive relief and to a writ of habeas corpus.

FOURTH CAUSE OF ACTION
VIOLATION OF 18 U.S.C. §§1981 and 1983

39. Petitioners incorporate by reference Paragraphs 1 though 38 of this petition as if fully stated herein.

40. The fundamental right to contract and to full and equal benefit of all laws is codified under 42 U.S.C. § 1981, as amended by Section 101 of the Civil Rights Act of 1991.

41. Pursuant to 42 U.S.C. § 1981, "All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

42. Section 1981 prohibits discrimination under the color of law based on alienage and race.

43. Congress deliberately used "all persons" instead of "citizens" in order to reflect the language of the recently ratified Fourteenth Amendment that extended the guarantee of equal protection under the laws to "any person within the jurisdiction of the United States."

44. Petitioners are entitled to the protections and benefits afforded by Section 1981, including Petitioners categorized as "illegal aliens."

45. By creating two classes of citizens in the Southern District of Ohio, Petitioners and those who look and sound foreign are denied rights protected under 42 U.S.C. § 1981.

FIFTH CAUSE OF ACTION
EXERCISE OF POLICE POWER

46. Petitioners incorporate by reference Paragraphs 1 though 45 of this petition as if fully stated herein.

47. In the exercise of the police power for the purpose of preserving the public health, safety and morals, a legislative body may limit the enjoyment of personal liberty and property, subject to constitutional limitations and judicial review.

48. The Constitution of the United States places well established limitations on the exercise of the police power; namely, it must not be unreasonable, unduly oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained.

49. The exercise of police power, may not exceed constitutional limitations.

50. The Sheriff's deputies in the Southern District of Ohio have abrogated the power of Congress; they drive around town arresting "foreign" looking and sounding individuals.

51. Respondents' unconstitutional conduct has created such a climate of fear that people have even sought refuge in churches.

52. As the result of Respondents' conduct, Petitioners are entitled to declaratory and injunctive relief.

SIXTH CAUSE OF ACTION
RELIEF UNDER THE MANDAMUS ACT

53. Petitioners incorporate paragraphs 1 through 52 as if fully set forth herein.

54. Petitioners have a claim for mandamus relief under 28 U.S.C. §1361 which provides the authority to compel the agency to perform a duty owed to them.

55. Respondents have failed to adjudicate Petitioners' applications for bond in accord with the governing statute, regulations, and case law.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE SUSPENSION CLAUSE, THE DUE PROCESS CLAUSE, AND ARTICLE III OF THE UNITED STATES CONSTITUTION

56. Petitioners incorporate paragraphs 1 through 55 as if fully set forth herein.

57. Petitioners are entitled, under the Suspension Clause, the Due Process Clause of the 5th Amendment, and Separation of Powers principles embodied in Article III to a review of illegal detention in habeas corpus proceedings as a matter of constitutional right, without regard to any statutory authorization.

58. Denial of habeas review of Petitioners' writ constitutes a violation of the Suspension Clause, the Due Process Clause, and Article III of the United States Constitution.

59. If the Petitioners are deported prior to a decision by this Court on this Complaint for declaratory relief and their petition for writ of habeas corpus, this action would become moot because "[d]eparture from the United States of a person who is the subject to deportation proceedings subsequent to the taking of an appeal but prior to a decision therefore shall constitute a withdrawal of the appeal, and initial decision in the case shall be final to the same extent as though no appeal had taken." 8 C.F.R.§1003.4; the

Petitioners would be unable to obtain a hearing or adjudication on the merits of their claim.

60. Petitioners are being subjected to an unlawful, arbitrary and unconstitutional restrain of their liberty to travel, work, and reside in the United States; they are being denied due process by the Respondents' refusal of the Defendants to grant them a bond hearing on the merits of their request for relief from deportation.

61. Respondents' actions are unconstitutional because Petitioners who have U.S. citizen family members were denied notice and a hearing to consider the implications of their removal on their U.S. citizen spouses and children.

EIGHTH CAUSE OF ACTION
VIOLATION OF INTERNATIONAL LAW

62. Petitioners' deportation, in light of the extreme hardship and irreparable harm that would result to their family, violates principles of customary international law. Specifically, Petitioners' deportation would violate fundamental principles of customary international law that affords special protection to the family and prohibits arbitrary expulsion.

63. Many of the Petitioners have lived in the U.S. for many years. They have U.S. citizen children. If they are deported, they would likely be separated from their family forever because they would be ineligible to ever return to the United States.

64. Petitioners' removal constitutes interference with their human rights under international law. "The right to be free from arbitrary interference with family life and from arbitrary expulsion are human rights that are part of customary international law that

must be followed by the U.S." *Maria v. McElroy,* 68 F.Supp.2d 206, 233 (E.D.N.Y. 1999).

65. The courts have recognized that customary international law, and particularly international human rights law is part of the law of the Unites States. *Maria,* 68 F.Supp.2d at 33; *Mojica v. Reno*, 970 F.Supp. 130, 147 (E.D.N.Y. 1997). This principle was articulated by Chief Justice Marshall, who wrote that U.S. courts are "bound by the law of nations, which is part of the law of the land." *Nereide,* 13 U.S. (9 Cranch) 388, 423(1815). *Paquete Habana,* 175 U.S. 677, 700 (1900), similarly held that U.S. courts were to apply the law of nations as federal law. More recently, the Supreme Court has directed federal courts to apply international norms as part of federal common law in a series of expropriation cases commencing with *Banco Nacionalde Cuba v. Sabbatino,* 376 U.S. 398 (1964).

66. As the Second Circuit held in *Filartiga*, international human rights standard unquestionably form a part of the domestic common law:

> The law of nations forms and integral part of the common law, and a review of the history surrounding the adoption of the Constitution demonstrate that it became a part of the common law of the United States upon the adoption of the Constitution, 630 F.2d at 886.

U.S. courts have consistently held that customary international law prohibitions are justiciable in U.S. courts. *See, e.g., Kadic v. Karadzic,* 70 F.3d 232 (2d Cir. 1995), *cert. den.* 116 S.CT. 2524 (1996); *Filartiga v. Pena-Irala,* 630 F.2d 876 (2d Cir. 1980). See also *Restatement (Third) of the Foreign Relations Law of the United States* § 703, Reporter's Note 7, citing *Rodriguez-Fernandez v. Wilkenson*, 505 F. Supp. 787 (D. Kan. 1980), hereinafter "Restatement (Third)."

67. The Second Circuit has established the standard for ascertaining customary international law: In *Filartiga*, the Court held that, "International law may be ascertained by consulting the works of international law scholars, by the general usage and practice of nations, or by judicial decisions recognizing and enforcing that law." 630 F.2d at 880, citing *United States v. Smith,* 18 U.S. (5 Wheat.) 153, 160-61 (1820). Customary international law is not stagnant: "(C)ourts must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today." *Filartiga,* 630 F.2d at 881.

REQUEST FOR INJUNCTIVE RELIEF

68. Petitioners incorporate paragraphs 1 through 67 as if fully set forth herein.

69. To obtain preliminary injunctive relief or temporary restraining order, the Petitioners must demonstrative the following: (1) they will suffer irreparable injury if injunctive relief is not granted; (2) such harm to the plaintiffs outweighs the harm that a grant of injunctive relief would inflict on the defendants; (3) they have a likelihood of success on the merits; and (4) the public interest will not be adversely affected by the granting of injunctive relief. Here, while the information provided by ICE has been sparse, it is clear even from what little is known that the four factors uniformly favor Petitioners, and accordingly, their motion should be granted.

A. TRANSFER WOULD DEPRIVE PETITIONERS OF THEIR THEIR RIGHT TO BE REPRESENTED BY COUNSEL OF THEIR CHOICE

Although the government has wide discretion to transfer immigration detainees, it cannot transfer detainees in violation of their statutory or constitutional rights. *See LaDuke*

v. Nelson, 762 F.2d 1318, 1325 (9th Cir. 1985), *amended by,* 796 F.2d 309 (9th Cir. 1986) ("[T]he executive branch has no discretion with which to violate constitutional rights."). As courts have made clear, due process "mandates that [an alien] is entitled to counsel of his own choice at his own expense under the terms of the Immigration and Nationality Act." *Rios-Berrios v. INS,* 776 F.2d 859, 862 (9th Cir. 1985). Indeed, courts have "consistently emphasized the critical role of counsel in deportation proceedings.[1] *Baires v. INS,* 856 F.2d 89, 91 n.2 (9th Cir. 1988); *see Rios-Berrios,* 776 F.2d at 863 (alien's right to counsel is "fundamental"); *cf. Lozada v. INS,* 857F.2d 10, 13 (1st Cir. 1988) (recognizing limited due process right to effective assistance of counsel in a deportation proceeding).

Here, the circumstances surrounding the massive raid have severely constrained Petitioners' ability to seek out and retain attorneys of their choice. Moreover, even if access was unlimited, because of the sheer number of Petitioners detained, their need for legal representation cannot be effectively absorbed by the surrounding legal community without sufficient time and a high degree of mobilization and coordination. Transferring such a massive group of individuals to a remove and unfamiliar location that most likely has even less of an ability to accommodate the legal representation needs of such a large group would greatly compound the problem and effectively deprive Petitioners of their right to counsel. *See Louis v. Meissner,* 530 F. Supp. 924, 926-27 (S.D. Fla. 1981) (transportation from "relatively advantageous location" to obtain legal representation and translators to remove area violated right to counsel); *see all Rios-Berrios,* 776 F.2d at 863 (finding that transfer was a key factor undermining petitioner's right to counsel).

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[1] Under the INA, an individual in a removal proceeding "shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose." 8 U.S.C. §1362.

Additionally, to the extent Petitioners have pre-existing attorney-client relationships with local attorneys, transfer would obviously interfere with those relationships and deprive Petitioners of their right to counsel. *See Committee of Central American Refugees v. INS,* 795 F.2d 1434, 1439 (9th Cir. 1986), *amended by* 807 F.2d 769 (9th Cir. 1986) ("The key factor present in each of these cases showing a constitutional deprivation is the existence of an established, on-going attorney-client relationship.") *Louis,* 530 F. Supp. At 929 (transfer of refugees whose attorneys had filed notices of appearance on their behalf "constitutes a direct and substantial interference with an ongoing attorney-client relationship"), *see also Garcia-Guzman v. Reno,* 65 F. Supp. 2d 1077, 1090 (N.D. Cal. 1999).

B. TRANSFER WOULD DEPRIVE PETITIONERS OF THEIR RIGHT TO A REASONABLE OPPORTUNITY TO PRESENT EVIDENCE ON THEIR OWN BEHALF IN REMOVAL PROCEEDINGS

Under §240(b)(4) of the INA, Petitioners are guaranteed a reasonable opportunity to present evidence in their own behalf in removal proceedings. 8 U.S.C. §1229(a). If Petitioners are transported out of the District for removal proceedings, their right under §240(b)(4) essentially vanishes. While perhaps in theory a detainee far removed from her city of residence may be able to gather documents and evidence on her behalf, the practical reality is that transfer would effectively render §240(b)(4) meaningless to Petitioners. Without local community ties and the aid of friends and relatives, Petitioners would be hard-pressed to collect the evidence they would be able to access if they were to remain in this District. *See La Franca v. INS,* 413 F.2d 686 698 n.9) ("Ordinarily the better procedure would be to hold the hearing in the district of the alien's residence or place of arrest. Obviously it should not be held in a district so far removed from his residence or place of arrest as to deprive him of a fair hearing."). Moreover, just as with the availability

of legal representation, the mass movement of detainees to a different locale would quickly sap any resources that might be helpful in gathering evidence remotely if only several individuals were involved. *See generally* Amanda Masters, Case Note, *Is Procedural Due Process in a Remote Processing Center a Contradiction in Terms -- Gandarillas-Zambrana v. Board of Immigration*, 57 Ohio St. L.J. 999, 1012 (1996) (citing *La Franca* and noting that cases suggest that when detainee is transferred to small, remote town, she is deprived of "access to counsel, evidence, witnesses, and thus procedural due process.").

C. TRANSFER WOULD DEPRIVE PETITIONERS OF THEIR RIGHT TO A BOND HEARING PURSUANT TO 8 C.F.R. §236.1(c)

To the extent Petitioners are entitled to a bond hearing pursuant to §236.1 (c) to determine eligibility for release on bond, transfer to another jurisdiction would severely hamper such right. As noted above, transfer of such a large group of detainees to a remote, unfamiliar jurisdiction to which the detainees have no local ties or community relationships constrains their ability to obtain adequate representation and effectively navigate through administrative proceedings. Indeed, with little, if any, access to documents and other evidence located in or around their place of residence, Petitioners' right to a bond hearing would be vacuous. Moreover, transfer would in all likelihood create delays in administratively processing Petitioners and providing them with the requisite bond hearings. Finally, in the event they are granted release, Petitioners would find themselves in a remote location from which it would be difficult for them to return. Accordingly, rather than being transported to an unfamiliar location immediately after being seized at their workplace, Petitioners should be promptly afforded the bond hearings to which they are entitled in this District.

STAY OF REMOVAL

70. Petitioners incorporate paragraphs 1 through 69 as if fully set forth herein.

71. Petitioners further request that a stay of deportation be granted so that their claim for relief may be heard on the merits. The Seventh Circuit has required an alien seeking a stay to demonstrate:

> (1) a likelihood of success on the merits; (2) that irreparable harm would occur if a stay had not been granted; (3) that the potential harm to the movant outweighs the harm to the opposing party if the stay is not granted; (4) that the granting of the stay would serve the public interest.

Sofinet v. INS, 188 F.3d 703, 706 (7th Cir. 1999). In *Bejjani v. INS* 271 F.3d 670, 687 (6th Cir. 2001), the Court held that a stay of deportation is proper when an alien is likely to prevail on the merits, when the harms caused by the alien's removal would be substantial, although not irreparable, when the harms greatly outweigh any inconvenience to legacy INS, and when the public interest is served by ensuring that the INS complies with the law. Petitioners meet each and every requirement.

72. First, stays of deportation have been granted when an alien has a "better than negligible chance of success on the merits." *See*, *Sofinet,* 188 F.3d 703 at 707 (stating that, for the purpose of stays of deportation, the minimum threshold for likelihood of success on the merits is "a low one."). This issue can not be determined until Counsel has had ample opportunity to meet and ascertain each detainee's case.

73. Second, irreparable harm would certainly occur if a stay is not granted. As noted above, if Petitioners are deported, many will be forced to return to a life without their

spouses and children. The "potential harm" to the Petitioners of finding themselves in such dire straits certainly outweighs any potential harm to government caused by a momentary delay in Petitioners' departure while their claim is fairly and fully adjudicated on the merits.

74. Lastly, granting the stay of removal will serve the public interest by ensuring that people in the Petitioners' situations have an opportunity to be heard on the merits of their cases before being deported to another country.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

1. Assume jurisdiction over the matter;
2. Issue a Writ, whether in the nature of Mandamus or otherwise, directing the Department of Homeland Security to set bond for all detainees;
3. Issue a writ of habeas corpus directing Respondents to show cause why Petitioners' detention should not be vacated as contrary to law and why they should not be discharged from the restraint of liberty now imposed on them by Defendants;
4. Enjoin Respondent Jones from usurping federal laws for political gain;
5. Enjoin DHS from removing Petitioners from this area;
6. Award reasonable attorneys' fees to the Petitioners;
7. Grant the Petitioner a Stay of Removal; and
8. Grant any and all further relief as this Court deems just and appropriate.

Dated this 31st day of August, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing document was served this 31st day of August, 2007, to the U.S. Attorney by hand delivery and to the following persons *via* ordinary U.S. Mail, postage prepaid:

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