

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CARLOS ENRIQUE AVILA SANDOVAL, the Consul
of Guatemala, as NEXT FRIEND of THREE-HUNDRED
AND FIFTY NEW BEDFORD IMMIGRANT WORKERS
(a.k.a. JOHN/JANE DOE ## 1-350),

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; BRUCE CHADBOURNE, Field
Office Director for Detention and Removal, Boston Field
Office, Immigration and Customs Enforcement; MICHAEL
CHERTOFF, Secretary, Department of Homeland Security;
and ALBERTO GONZALES, Attorney General of the
United States,

Respondents.

No. _____

07 CA 10471 RGS

CLERK OF COURT
JUDGE *Bader*

**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 Carlos Enrique Avila Sandoval, the Consul of Guatemala, as Next Friend and on behalf of Petitioners John/Jane Doe ## 1-350 ("Petitioners"). Petitioners, acting on their own and through their Next Friend, seek a class writ and declaratory and injunctive relief to remedy violations of their constitutional and statutory rights. Petitioners are approximately three hundred-fifty New Bedford immigrants whose identities remain unknown at this time due to the expedited manner in which Respondent Immigration and Customs Enforcement Division of

Homeland Security (“ICE”) conducted a massive March 6, 2007 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. §§ 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. § 1331 and 28 U.S.C. § 2241, art. I, § 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. §§ 1651, 2201, 2002, 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 District of Massachusetts, 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 and ICE’s regional field office is located.

Parties

3. Petitioners John/Jane Doe ## 1-350 are employed as workers at Michael Bianco Inc. in New Bedford, MA. The identity of some but not all of the Petitioners is known but their names are herein withheld out of concern that they will be retaliated against for bringing this Petition. The identity of the remaining Petitioners is presently unknown but upon information and belief will be obtained at some future time.

4. Carlos Enrique Avila Sandoval, Petitioners' Next Friend, is the Consul of Guatemala for Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Petitioner Sandoval has personally visited and met with Petitioners detained at Fort Devens following the March 6, 2007 raid.

5. 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.

6. Julie L. Myers ("Myers"), is the Assistant Secretary of Homeland Security for Immigration and Customs Enforcement.

7. Alberto Gonzales 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.

8. 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.

9. Respondent Bruce Chadbourne is the Field Office Director for Detention and Removal in the Boston Field Office of the Bureau of Immigration and Customs Enforcement ("ICE") and has legal custody of the Petitioners.

Facts

10. Petitioners appear to have been taken into custody by ICE on March 6, 2007 from their place of employment.

11. The exact number of Petitioners taken into custody is not specifically known. Based on media reports, it appears that approximately 350 persons were seized.

12. According to various media reports, Petitioners were taken into custody because of investigations concerning the working conditions. According to a news release posted on the ICE website on March 6, 2007:

Boston – Early this morning in an Immigration and Customs Enforcement-led investigation, federal authorities executed a search warrant at the New Bedford business Michael Bianco, Inc. (MBI). The owner of the company and three managers were arrested on charges in connection with alleged hiring of illegal aliens. Another individual was arrested on charges that he provided fraudulent identification documents to workers at the factory, announced United States Attorney Michael J. Sullivan, Assistant Secretary of the Department of Homeland Security Julie L. Myers, and Immigration and Customs Enforcement special agent in charge Bruce M. Foucart.

13. Petitioners are or were being held at Fort Devens in Devens, MA. According to media reports, Petitioners are or were being held at the Devens Reserve Forces Training Area within Fort Devens.

14. On information and belief, as a result of the raid, approximately 100 children of Petitioners were stranded with baby sitters, caretakers, and others. Advocates have collected the names of 70 detained parents of minor children and estimate that as many as 210 children might have been affected. Lawyers and advocates in Massachusetts have begun the task of assisting in providing care for the children. Transferring the parents of these children would significantly hamper this process.

15. The families and children affected by the Petitioners' detention have already suffered the fear and hardship of having a loved one detained almost 100 miles away. Any further transfer would only add to this hardship. Upon information and belief, many of the spouses and children of the detained Petitioners are in the United States legally and many are United States citizens.

16. On information and belief, some of Petitioners appear to be indigenous Guatemalan women who may be retraumatized by separation from their families, given the history of massacres and persecution that decimated indigenous communities in that country.

17. On information and belief, Petitioners have been or will be transported out of this District to remote locations in Texas and other distant jurisdictions to be charged administratively and placed in removal proceedings. Upon information and belief, over a dozen lawyers have met with some of the Petitioners and have established relationships with them. Transferring Petitioners outside of Massachusetts, and especially to Texas, which is over 2,300 miles away, would substantially hamper Petitioner's access to these lawyers.

18. On information and belief, 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.

19. Significantly, some detainees are Guatemalan and Salvadorans, according to media reports, and may not even be properly subjected to detention under the terms of a national

class action lawsuit, as reflected in the Nicaraguan Adjustment and Central American Relief Act (NACARA) and *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (“ABC”), or pursuant to the injunction issued in *Orantes-Hernandez v. Messe*, 685 F. Supp. 1488 (C.D. Cal. 1988), *aff’d*, 919 F.2d 549 (9th Cir. 1990). These agreements arose in response to civil wars and horrific conditions in those countries, and many Salvadorans and Guatemalans still have *bona fide* asylum claims arising from those horrific conditions. However, this cannot even be determined by the lawyers struggling to conduct all the interviews before the detainees are transferred to remote locations out of this Court’s jurisdiction.

Claims for Relief

Count I (Constitutional Claim)

20. Petitioners allege and incorporate by reference paragraphs 1-19.

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

22. 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.

23. 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.

24. 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)**

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

26. Respondents' actions violate the INA.

Prayer for Relief

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

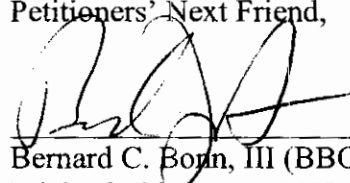
1. Assume jurisdiction over this matter;
2. Issue process to the respondents with an order to show cause why the writ should not be granted;
3. Order declaratory, habeas and injunctive relief as well as any other relief the court may deem appropriate, including but not limited to
 - (a) Immediate release, or
 - (b) A reasonable period of time, prior to any out-of-district 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 District until they have been afforded their full statutory and constitutional rights and ordering the return to this District any Petitioners who have already been transferred; and

5. Grant such other 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: March 8, 2007

Counsel for Petitioners and
Petitioners' Next Friend,



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VERIFICATION

The foregoing is true to the best of my knowledge, information, and belief. Sworn to under the pains and penalties of perjury, this 8th day of March 2007.

S/Carlos Enrique Avila Sandoval
Carlos Enrique Avila Sandoval *by [signature]*
with power