

5. On March 29, 2017, Mr. Arriaga appeared for such an interview at the USCIS office in Lawrence, Massachusetts. Mr. Arriaga received no notice that he might be detained at that time. Nevertheless, as the interview concluded, ICE agents appeared and arrested him, along with several others.
6. ICE has imprisoned Mr. Arriaga for roughly one month.
7. Prior to and throughout that time, it appears that ICE has failed to comply with its own regulations for detaining Mr. Arriaga after the expiration of the statutory removal period.
8. Further, Mr. Arriaga has never received a hearing before a neutral magistrate to determine whether his prolonged civil detention is authorized by statute or necessary to protect the community or prevent flight.
9. Accordingly, Mr. Arriaga requests that the Court remedy his unlawful detention by ordering his immediate release from custody.
10. If the Court does not order immediate release, then the Court should conduct its own detention hearing immediately, at which the government is required to justify Mr. Arriaga's detention by proving by clear and convincing evidence (1) the predicate facts necessary to trigger a proper basis for detention; (2) that Mr. Arriaga is a danger to others or a flight risk; and (3) even if so, that no condition or combination of conditions will reasonably assure Mr. Arriaga's future appearance and the safety of the community.
11. Mr. Arriaga submits that the government will not, and cannot, meet this burden given his longstanding ties to this community and his lack of criminal history. The Court should therefore order that Mr. Arriaga be immediately released, subject to any conditions the Court might deem just and necessary.

PARTIES

12. Petitioner Arriaga is detained by ICE at the Suffolk County House of Corrections, 20 Bradston Street, Boston, Massachusetts.
13. Respondent Steven W. Tompkins is the Sheriff of Suffolk County and is Mr. Arriaga's immediate custodian.

JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to 28 U.S.C. § 2241.
15. Venue lies in the District of Massachusetts because Mr. Arriaga is currently detained within this District.

FACTS ALLEGED

A. MR. ARRIAGA IS NOT DANGEROUS AND HAS LONGSTANDING TIES TO OUR COMMUNITY.

16. Mr. Arriaga was born in the Dominican Republic. He is 43 years old.
17. Mr. Arriaga has never been charged with or convicted of any crime anywhere in the world, except minor motor vehicle offenses that resulted in a fine.
18. Mr. Arriaga entered the United States in January 2001. He was immediately apprehended and placed into removal proceedings.
19. On February 2, 2001, an Immigration Judge entered an order of voluntary departure against Mr. Arriaga. However, Mr. Arriaga remained in the United States to support his mother and to pay for his sisters' college education. Because he remained, his voluntary departure order automatically became a final order of removal, retroactive to the date of issue.
20. Since 2001, Mr. Arriaga has lived openly in the community and has not conspired or acted to prevent his removal. For example, Mr. Arriaga filed federal tax returns in February 2016 listing his address and other information. *See* Ex. A (excerpt of redacted tax return).

21. Mr. Arriaga is now married to a U.S. citizen. He has four children who are U.S. citizens. His youngest child, a daughter, is only four months old. He has resided continuously in Massachusetts for roughly 16 years.

B. MR. ARRIAGA IS ELIGIBLE TO CORRECT DEFICIENCIES IN HIS IMMIGRATION STATUS AND BECOME A LAWFUL PERMANENT RESIDENT.

22. Because Mr. Arriaga has genuine and longstanding ties to our community, including his marriage to a U.S. citizen, the immigration laws and regulations of the United States authorize him to correct deficiencies in his immigration status and become a lawful permanent resident.

23. Specifically, a U.S. citizen (like Mr. Arriaga's wife) is permitted to file a Form I-130 Visa Petition to sponsor an alien spouse (like Mr. Arriaga) as a lawful permanent resident. USCIS will sometimes require an interview with the applicant and beneficiary of such a petition prior to allowing it.

24. Upon approval of the Form I-130, an alien (like Mr. Arriaga) who entered without inspection must ordinarily leave the United States for 10 years before re-entering the United States as a lawful permanent resident.

25. However, understanding that people will not abandon their families for 10 years to process green card applications, the federal government established by regulation a process that allows aliens to remain with their loved ones while regularizing their status. *See* 8 C.F.R. § 212.7. Specifically, upon approval of the Form I-130, it will be forwarded to the National Visa Center to begin the overseas green card process. Once that procedure has progressed somewhat, the alien may file a Form I-601A with USCIS to obtain a waiver of the 10-year bar to re-entry. Once the waiver is granted, the alien will then travel briefly to his or her

home country to complete the process of becoming a lawful permanent resident, and may then return promptly to his or her family in the United States.

C. MR. ARRIAGA WAS ARRESTED WHILE ATTEMPTING TO COMPLY WITH THE REQUIREMENTS TO REGULARIZE HIS IMMIGRATION STATUS.

26. Mr. Arriaga and his wife attempted to comply with the process described above. Mr. Arriaga's wife filed a Form I-130 on his behalf on February 22, 2016. *See* Ex. B (redacted Form I-130 Visa Petition). Mr. Arriaga appeared for his interview with USCIS in Lawrence, Massachusetts, on March 29, 2017. He received no notice that he would be detained at that time.
27. Nevertheless, at the conclusion of that interview, ICE agents appeared and arrested Mr. Arriaga, as well as several others present at the office.
28. Mr. Arriaga was detained by ICE at Bristol County House of Correction in North Dartmouth, Massachusetts, continuously from March 29, 2017, until April 27, 2017. At that time, he was transferred to the Suffolk County House of Corrections, where he remains in ICE custody today.
29. The Form I-130 petition filed on behalf of Mr. Arriaga was approved on March 30, 2017. *See* Ex. C (Notice of Action approving Form I-130).

D. MR. ARRIAGA IS DETAINED WITHOUT DUE PROCESS.

30. Pursuant to 8 U.S.C. § 1231(a)(1), ICE is authorized to detain Mr. Arriaga during the removal period, which extends for 90 days after the date his order of removal became final or (if applicable) after he was released from other custody.
31. Mr. Arriaga's order became final more than fifteen years ago, and he was not held in any other custody.

32. Consequently, the 90-day removal period is expired, and, as far as Mr. Arriaga and his counsel are aware, ICE has not asserted any other basis for detention.
33. If ICE did contemplate detaining Mr. Arriaga after expiration of the removal period, its own regulations require that it adhere to a specific procedure to determine whether such detention is warranted. *See, e.g.*, 8 C.F.R. § 241.4. Among other things, Mr. Arriaga was entitled to “approximately 30 days notice” of such review, an opportunity to be heard regarding the necessity of such detention, and ultimately a detention determination by ICE’s Headquarters Post-Order Detention Unit based upon consideration of certain specified factors. *See, e.g.*, 8 C.F.R. § 241.4(f), (h), & (k). As far as Mr. Arriaga and his counsel can determine, ICE did not adhere to any of these procedures when it detained him, and now holds him without authority.
34. On April 14, 2017, Mr. Arriaga, through counsel, filed a motion for a detention hearing in the Immigration Court. *See* Ex. D (redacted excerpt of Motion for Custody Redetermination). Among other things, the motion explained that ICE has not articulated any basis to detain him, and that, in any event, he is entitled to a hearing at which ICE should be required to prove such basis and also that detention is necessary due to dangerousness or risk of flight. *See id.*
35. The Immigration Judge scheduled a hearing on Mr. Arriaga’s detention motion to occur 10 days later, on April 24, 2017. At that time, Mr. Arriaga’s counsel appeared and was ready to argue the motion. However, counsel for ICE asserted that he had not brought Mr. Arriaga’s file and that ICE was therefore not prepared to proceed. The Immigration Judge then continued the hearing for two full weeks until May 8, 2017. *See* Ex. E (Notice of Hearing).

36. In addition to the motion for a detention hearing, Mr. Arriaga has also filed in the Immigration Court a motion to re-open his immigration case (which would vacate the final order of removal) and also for a stay of deportation. *See* Exs. F & G (redacted excerpts of Motion to Reopen and for Stay). The motion to re-open remains pending. The motion to stay deportation was denied, *see* Ex. H, and that denial has been appealed to the Board of Immigration Appeals.

CLAIMS FOR RELIEF

COUNT I – HABEAS CORPUS

37. The forgoing allegations are re-alleged and incorporated herein.
38. ICE has arrested and imprisoned Mr. Arriaga, on information and belief, without adhering to its own statutory and regulatory requirements for post-removal period detention.
39. Further, ICE has never been required to justify this detention by proving to a neutral magistrate by clear and convincing evidence that Mr. Arriaga is a danger to others or a flight risk, and, if he is, that no condition or combinations of conditions will reasonably assure Mr. Arriaga's future appearance and the safety of the community.
40. Mr. Arriaga requested that the Immigration Judge hold a hearing to require ICE to demonstrate a proper basis for, and the necessity of, his detention by clear and convincing evidence, but, almost two weeks later, no such hearing has been held.
41. Further, by detaining Mr. Arriaga while he was attempting to comply with the government's own procedures for correcting deficiencies in his immigration status and becoming a lawful permanent resident, and without any notice that such compliance would require his detention, ICE has arbitrarily obstructed Mr. Arriaga's access to relief which he is entitled to pursue as a matter of law.

42. Mr. Arriaga's prolonged civil detention in these circumstances deprives him of liberty without due process of law in violation of the Fifth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

Wherefore, Petitioner asks this Court to GRANT the following relief:

1. An order prohibiting Mr. Arriaga's transfer from this District pending resolution of this petition;
2. A writ of habeas corpus ordering that Mr. Arriaga be immediately released;
3. If the Court does not order immediate release, then a detention hearing at which the government is required to justify Mr. Arriaga's detention by proving by clear and convincing evidence (1) the predicate facts necessary to trigger a proper basis for detention; (2) that Mr. Arriaga is a danger to others or a flight risk; and (3) even if so, that no condition or combination of conditions will reasonably assure Mr. Arriaga's future appearance and the safety of the community;
4. Attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.*, if applicable; and
5. Any further relief this Court deems just and proper.

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Respectfully submitted,

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