

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 20-21553-Civ-COOKE/GOODMAN**

PATRICK GAYLE, *et al.*,

Petitioners,

and

MIGUEL ANGEL ZETINA,

**Petitioner-Intervenor,**

**vs.**

**FIELD OFFICE DIRECTOR, MIAMI  
FIELD OFFICE, U.S. IMMIGRATION  
AND CUSTOMS ENFORCEMENT, *et al.***

**Respondents.**

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**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

The petitioner, Miguel Angel Zetina, by and through undersigned counsel, submits this verified petition for writ of habeas corpus, and alleges as follows:

**SUMMARY OF CLAIM**

Mr. Zetina has been detained by the defendants in civil immigration custody for nearly three years without an opportunity to request release from a neutral arbiter. Because this is a violation of Fifth Amendment due process, Zetina seeks judicial relief ordering that he be released, or that a bail hearing be held before this Court or another neutral body.

**JURISDICTION**

1. This action arises under the Constitution for the United States of America.
2. The Court has jurisdiction under 28 U.S.C. §§1331 (federal question),

1346(a)(2) (United States as defendant), and 2241(a) (habeas corpus).

3. The Court may grant relief pursuant to the U. S. Const., Art. I, §9, cl. 2 (suspension clause), 28 U. S. C. §§1651 (All Writs Act), 2201-02 (declaratory relief), and 2241-43 (habeas corpus).

## VENUE

4. Venue is proper in this district under 28 U. S. C. §1391(e)(1) under traditional venue factors.

5. Venue is proper in this district because Mr. Zetina is in the legal custody of Michael W. Meade, Field Office Director for the ICE Miami Field Office which is headquartered in Plantation, Florida, in that Director Meade “has legal authority to effectuate [Zetina’s] release.” *Gayle v. Meade*, — F. Supp. 3d —, 2020 WL 3041326, at \*47 (S.D. Fla. June 6, 2020) (Goodman, J.) (quoting *Rumsfeld v. Padilla*, 542 U. S. 426, 441 (2004)); see also *Masingene v. Martin*, 424 F. Supp. 3d 1298, 1303 (S.D. Fla. 2020).

6. Venue is proper in this district because Mr. Zetina is a member of the class certified by the Court in this case. *Gayle*, 2020 WL 3041326, at \*24 (Cooke, J.) (“The Court shall retain jurisdiction over all class members who are transferred to other facilities regardless of where those facilities are located.”).

## PARTIES

7. The petitioner **MIGUEL ANGEL ZETINA** is currently detained by the defendants. He was detained by the defendants, at the direction of Director Meade, in between the Krome Service Processing Center and the Glades County Detention Center at the time that this action was initiated. On or about, or shortly before May 19, 2020, Mr. Zetina was transferred to a detention center somewhere in New Mexico at the direction of Director

Meade. Mr. Zetina's removal proceedings are still ongoing and being conducted by an immigration judge at the Krome Service Processing Center in Miami, Florida.

8. Respondent **MICHAEL W. MEADE** is the Field Office Director for the ICE Miami Field Office. The ICE Miami Field Office has complete control over the admission and release of noncitizens detained at Krome, BTC, and Glades. Respondent Meade is the immediate and legal custodian of the petitioner. He is sued in his official capacity.

9. Respondent **JEFFREY A. ROSEN** is the Acting United States Attorney General.<sup>1</sup> In this capacity, he has supervisory authority over all operation of the Executive Office of Immigration Review (EOIR) which includes all the immigration courts and the Board of Immigration Appeals (BIA). 8 U.S.C. §1103(g); 8 CFR §1003.0. He is also charged with the administration and the enforcement of the immigration laws under 8 U.S.C. §1103(a). Respondent Rosen is a legal custodian of the petitioner. He is sued in his official capacity.

### **FACTUAL ALLEGATIONS**

10. The petitioner is a 25-year-old native and citizen of Mexico who has lived in the United States since about the age of 4 when he was brought across the border in 1999. (App'x, Exh. A, at 1-7.)

11. On March 6, 2018, the respondents took Zetina into their custody and commenced removal proceedings against him. (App'x, Exh. B, at 8-11.)

12. Specifically, the respondents alleged that Zetina was present in the United States without admission or parole, and that he had been convicted of simple possession of marijuana. (App'x, Exh. B, at 11.)

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<sup>1</sup> Acting Attorney General Rosen is automatically substituted as a party to this action pursuant to Fed. Rule Civ. P. 25(d).

13. Shortly prior to being taken into the respondents' custody, Zetina was the victim of an attempted murder—via a brutal beating, and a stabbing with a samurai sword—which occurred on October 12, 2017, and which is currently being prosecuted by the State Attorney's Office in Polk County. (App'x, Exh. C, at 12-29.)

14. In fact, it is because of the fact that Zetina was a victim of the attempted murder that the respondents became aware of the presence of an "illegal alien" at a hospital who was in need of immigration detention.

15. A U visa is a nonimmigrant visa that is available to noncitizen victims of certain crimes to encourage noncitizens to come forward and help law enforcement investigate and prosecute criminal activity." *Meridor v. U. S. Att'y Gen.*, 891 F. 3d 1302, 1304 n.1 (CA11 2018).

16. "To obtain a U visa, foreign nationals must establish that they have 'suffered substantial physical or mental abuse,' that they possess 'information concerning criminal activity,' and that they have been 'helpful' to law enforcement in 'investigating or prosecuting criminal activity.'" *Id.* (citing 8 U. S. C. §1101(a)(15)(U)).

17. On October 19, 2018, Zetina's counsel obtained a "U-Visa certification" from Detective Hurley of the Lakeland Police Department, certifying to the DHS that Zetina was a cooperating victim whose testimony was necessary to the ongoing investigation and prosecution, and then filed a U-Visa petition with USCIS. (App'x, Exh. D, at 30-40.)

18. On February 6, 2020, at the Krome Immigration Court, the Honorable Maria Lopez-Enriquez, United States Immigration Judge, granted Mr. Zetina a waiver of inadmissibility in accordance with the dictates of the *Meridor* case, thereby relieving Zetina of the charges of inadmissibility. (App'x, Exh. E, at 41-47.)

19. During the pendency of proceedings, the State Attorney's Office has gone through tremendous efforts to make Zetina available as a witness for the attempted murder trial, including the obtainment of an order to perpetuate testimony by deposition and a writ of habeas ad testificandum. (App'x, Exh. F, at 48-60.)

20. Notwithstanding the compelling state interest in Zetina's release, and **Zetina's success at trial in the immigration court**, the respondents belligerently refuse to release him from their custody.

21. In fact, the respondents have insisted that the immigration judge order Zetina deported despite the fact that the judge granted him relief after trial.

22. (Fortunately for Zetina, the immigration judge—who trailblazed a successful career as an immigration prosecutor before being elevated to the bench—has declined to permit the travesty of justice that the respondents seek to achieve.)

23. For example, when Zetina requested bail from civil immigration detention, the original immigration judge on the case had to, following the respondent's objection, find Zetina subject to mandatory detention under 8 U. S. C. §1226(c) due to his conviction for simple marijuana possession. (App'x, Exh. G, at 61-64.)

24. For another example, after the immigration judge granted relief to Zetina, the respondents moved for reconsideration of the order, and for Zetina to be deported notwithstanding the grant of relief. (App'x, Exh. H, at 65-75.)

25. Since then, the immigration judge has held monthly hearings on Zetina's case, with the next one scheduled for January 11, 2020. (App'x, Exh. I, at 76-99 (some notices have been misplaced).)

26. Throughout these hearings, the immigration judge has repeatedly asked the

respondents to consider releasing Zetina, and to seek an expedited adjudication of the U-Visa petition that is pending at USCIS, which is simply awaiting processing for approval in light of the immigration judge's grant of an inadmissibility waiver.

27. The respondents have not acquiesced with the immigration judge's request.

28. Rather, in a quest to deport Zetina in order to avoid releasing a person "thrice-convicted for possession of marijuana" (App'x, Exh. H, at 67) from custody, the respondents appealed the immigration judge's grant of a continuance to the Board of Immigration Appeals. (App'x, Exh. J, at 100-17.)

29. On appeal, the respondents asked the Board to "remand the proceedings for issuance of a removal order." (App'x, Exh. J, at 116.)

30. On June 8, 2020, the Board ordered Zetina's counsel to submit a brief, noting that the respondents had informed the immigration court that "the USCIS made a finding of prima facie eligibility on November 16, 2018, for the U Visa." (App'x, Exh. K, at 118-20.)

31. In response, Zetina's counsel submitted a brief asking the Board to terminate the removal proceedings, or to administratively close them in the alternative. (App'x, Exh. L, at 121-40.)

32. On September 23, 2020, the respondents filed a motion to expedite with the Board. (App'x, Exh. M, at 141-45.)

33. In their motion, the respondents sought to fault the immigration judge for refraining from ordering Zetina's removal, stating that Zetina "has been detained for over 930 days and the Immigration Judge refuses to expeditiously complete the case; this delay will continue unless the Board intervenes." (App'x, Exh. M, at 144.)

34. Another way to look at these facts is that, even though Zetina was found to be

prima facie eligible for a U-Visa, and even though the immigration judge granted Zetina the required waiver of inadmissibility, Zetina has been detained **for over 1040 days, and the respondents refuse to release him.**

35. On November 30, 2020, the Board remanded the case to the immigration judge, without deciding anything, to have the immigration judge issue a new, full decision. (App'x, Exh. N, at 146-50.)

36. Zetina's next immigration court hearing is set for January 11, 2020.

37. And there is another wrinkle in all of this.

38. Following the initiation of this case before the Court, the respondents transferred Zetina to a detention center in New Mexico in a brazen attempt to evade the reach of this Court's jurisdiction.

39. In fact, the online detainee locator system on ICE's website does not show any information for where in fact Zetina has been detained all this time, and the only reason that Zetina's counsel know his approximate location is because Zetina has access to a telephone.

40. On top of that, the respondent's resistance against Zetina's liberty interests has been, and continues to disrupt the State of Florida's prosecution of a violent (real) criminal who aspired to murder Zetina in a quite brutal fashion. (App'x, Exh. O, at 150-62 (emails with ASA and Deportation Officer).)

41. Apparently, notwithstanding all this, Zetina's simple marijuana possession convictions make him a high priority for DHS which adamantly refuses to release him.

42. Oh yes, Zetina also has tickets for driving without a license, thereby adding more stripes to his "criminal history."

43. And his mother is currently receiving treatment for chronic myelocytic leukemia, and she cannot rely on the assistance of her son while he is being subjected to excessive, unconstitutionally prolonged mandatory detention.

44. Zetina's ongoing detention, without an individualized hearing where the government must prove by clear and convincing evidence that he is a danger or a flight risk in order to keep him in custody, is unconstitutionally prolonged in violation of procedural and substantive due process.

45. In essence, notwithstanding the constitutional liberty interests at play, the respondents have decided that the deportation of a pot smoker is worth risking the possibility that an attempted murderer will go free and be a true danger to society.

46. Worst of all, the respondents have behaved this way with Mr. Zetina notwithstanding all that has occurred in this COVID conditions case before Your Honor.

**CLAIM FOR RELIEF  
PETITION FOR WRIT OF HABEAS CORPUS**

47. The allegations in paragraphs 1-46 are realleged and incorporated herein.

48. The petitioner's detention is in violation of the Fifth Amendment.

49. Therefore, the petitioner is unlawfully detained, and he is entitled to a writ of habeas corpus.

**PRAYER FOR RELIEF**

**WHEREFORE**, the petitioner prays that the Court grant the following relief:

- (a) Assume jurisdiction over this matter;
- (b) Set this matter for expedited consideration pursuant to 28 U. S. C. §1657;
- (c) Order the respondents to show cause why the writ should not be granted;
- (d) Order the respondents to refrain from transferring the petitioner out of the juris-



- diction of this Court during the pendency of this proceeding, and while the petitioner remains in the respondents' custody;
- (e) Declare that the petitioner's detention has become unconstitutionally prolonged;
  - (f) Grant the petitioner a writ of habeas corpus: (1) ordering his immediate release from custody; or (2) granting him a bond hearing before this Court; or (3) ordering that the petitioner may no longer be detained unless the government proves by clear and convincing evidence that the petitioner should remain detained in an individualized hearing before a neutral immigration judge within 7 days;
  - (g) Award the petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U. S. C. §2412, and on any other basis justified under law; and
  - (h) Grant any other and further relief that the Court deems just and proper.

Dated: January 8, 2021

s/ Mark Andrew Prada  
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**VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF  
PURSUANT TO 28 U. S. C. §2242**

I, Mark Andrew Prada, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I have discussed with the petitioner the events described in this petition. On the basis of those discussion, I hereby verify that the statements

made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 10, 2021

s/ Mark Andrew Prada  
MARK ANDREW PRADA

*Counsel for Petitioner*