

**JUDGE DAVID BRIONES**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

**FILED**

2017 FEB 22 AM 9:20

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY      DEPUTY

IRVIN EDAMIR GONZALEZ-TORRES )  
USMS No. 49271-380 )  
El Paso Detention Facility )  
601 E. Overland Ave. )  
El Paso, TX 79901 )  
 )  
Petitioner, )  
 )  
v. )  
 )  
Steven Hayes, )  
ACTING U.S. MARSHAL FOR THE )  
WESTERN DISTRICT OF TEXAS; )  
 )  
Richard Wiles, )  
SHERIFF OF EL PASO COUNTY, TEXAS) )  
 )  
Respondents. )

Case No.

**EP 17 CV 0051**

**PETITION FOR A WRIT OF HABEAS CORPUS  
PURSUANT TO 28 USC § 2241**

Petitioner, Irvin Edamir Gonzalez-Torres, hereby petitions this Court for the Writ of Habeas Corpus to remedy Petitioner's unlawful detention by Respondents. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

**CUSTODY**

1. Petitioner is in the physical custody of the Respondents and is detained at the El Paso County Detention Facility, 601 E. Overland Avenue, El Paso, Texas 79901.

### **JURISDICTION**

2. This action arises under the Constitution and laws of the United States.
3. This Court has jurisdiction under 28 USC § 2241; art. I § 9, cl. 2 of the United States Constitution (“Suspension Clause”); and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority and laws of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.
4. Petitioner has exhausted any and all administrative remedies to the extent required by law.

### **VENUE**

5. Venue lies in the United States District Court for the Western District of Texas, El Paso Division, the judicial district in which Petitioner is unlawfully confined and in which she resides.

### **EXHAUSTION OF REMEDIES**

6. No Statutory exhaustion requirements apply to Petitioner’s claim of unlawful detention.

### **PARTIES**

7. Petitioner is a native and citizen of Mexico. Petitioner was first taken into federal custody when she was arrested by ICE agents on February 9, 2017 and has remained in federal custody continuously since that date.
8. Respondent Steven Hayes is the acting United States Marshal for the Western District of Texas and the authority responsible for detention of accused persons awaiting trial on federal criminal charges in this district. As such, this Respondent has ultimate custodial authority over Petitioner.

9. Respondent Richard Wiles is the Sheriff of El Paso County, Texas. He is responsible pursuant to a contract arrangement with the United States for confining pretrial detainees, at the El Paso County Detention Facility and elsewhere, who are awaiting trial on federal charges. As such, Mr. Wiles is the legal custodian of Petitioner.

### FACTUAL ALLEGATIONS

10. Petitioner, Irvin Edamir Gonzalez-Torres, is a native and citizen of Mexico. She was arrested by agents of the Border Patrol, ICE, and/or the Border Enforcement Task Force (“BEST”) on February 9, 2017 and charged with illegal reentry after deportation under 8 U.S.C. § 1326.
11. After the arrest, the ICE agents prepared an affidavit and criminal complaint alleging the elements of a § 1326 offense, including an allegation that Petitioner was found in the United States walking along San Antonio Avenue in the area of 500 East San Antonio Avenue. Border Patrol Agent John P. Urquidi swore to the allegations in the complaint, and the complaint was submitted to U.S. Magistrate Judge Anne T. Berton, who issued an arrest warrant based upon that complaint affidavit on February 10, 2017. A copy of the complaint affidavit sworn by Agent Urquidi is found in the government’s filing as CM/ECF filing No 2.
12. Counsel for Petitioner waived the preliminary hearing of February 10, 2017. At the time the waiver was executed, counsel was unaware that the affidavit was based on perjured testimony.
13. After the waiver was executed, counsel for Petitioner became aware that the agents had not in fact encountered Ms. Gonzalez on the street as they had claimed, but instead had entered the county courthouse and stationed themselves around the courtroom of the protective order court. The agents were aware<sup>1</sup> that Petitioner had filed a protective order against the physical abuse of her partner and was scheduled for court on February 9, 2017. They arrested her in the waiting area of the protective order court as soon as she exited her protective order hearing and took her out to a waiting ICE vehicle they had parked in front of the courthouse earlier.

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<sup>1</sup> It is believed that the agents received a tip about the hearing from Ms. Gonzalez’s abusive partner, who was the person against whom the protective order had been sought. He had repeatedly threatened to have her deported if she reported his abuse to the police and told her that they would believe him over her because he was a U.S. citizen.

14. The complaint affidavit and the arrest warrant based on that affidavit and the finding of probable cause on the strength of it are the basis upon which Ms. Gonzalez is and continues to be confined.
15. The United States Attorney's Office is aware that Agent Urquidi's affidavit (and, consequently, Ms. Gonzalez's detention) is based upon perjury as to one of the essential elements of a § 1326 offense, from both statements by the court personnel and the County Attorney personnel who were present and from surveillance video from the county courthouse which have been released by El Paso County. The surveillance video makes clear that Ms. Gonzalez had already been arrested long before she was removed from the courthouse by ICE agents, as she is seen being led out of the courthouse in their physical custody with one or more of them physically holding onto her.

### **LEGAL FRAMEWORK AND RELIEF SOUGHT**

16. It is beyond dispute that a prosecution based on the knowing use of perjured testimony violates the right to substantive due process. "That requirement, in safeguarding the liberty of the citizen against deprivation through the action of the state, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions. *Hebert v. Louisiana*, 272 U.S. 312, 316, 317; 47 S.Ct. 103; 71 L.Ed. 270; 48 A.L.R. 1102. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. And the action of prosecuting officers on behalf of the state, like that of administrative officers in the execution of its laws may constitute state action within the purview of the Fourteenth Amendment." *Mooney v. Holohan*, 294 U.S. 103, 112-13; 55 S.Ct. 340, 342; 79 L.Ed. 791 (1935).

### **CLAIMS FOR RELIEF**

#### **SUBSTANTIVE DUE PROCESS VIOLATION**

17. Petitioner re-alleges and incorporates by reference paragraphs 1 through 16.
18. Petitioner's continued detention based upon a complaint affidavit known to the U.S. Attorney's Office to be perjured as to an essential element of the offense violates Petitioner's right to substantive due process through deprivation of the core liberty

interest in freedom from bodily restraint. Likewise, the Fifth Circuit has made clear that the court “will not tolerate prosecutorial participation in technically correct, yet seriously misleading, testimony which serves to conceal” the true facts. *Blankenship v. Estelle*, 545 F.2d 510, 513 (5th Cir. 1977). This is precisely the situation here. Agent Urquidi’s affidavit was intended to seriously mislead the magistrate court and conceal the true facts, for the purpose of getting it to authorize taking Ms. Gonzalez into custody and keeping her there.

### PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody;
- 3) Enter preliminary and permanent injunctive relief enjoining the government from further unlawful detention of Petitioner;
- 4) Grant any other and further relief that this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.



Irvin Edamir Gonzalez-Torres

Petitioner



ANDREW STEED  
ASST. FED. PUB. DEFENDER  
ON BEHALF OF PETITIONER