

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

JUNIOR ONOSAMBA-OHINDO and ANTONIO LOPEZ AGUSTIN, on behalf of themselves and all others similarly situated,

Petitioners-Plaintiffs,

v.

WILLIAM BARR, in his official capacity as Attorney General of the Department of Justice; UNITED STATES DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as the Director of the Executive Office for Immigration Review; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; MATTHEW ALBENCE, in his official capacity as Deputy Director and Senior Official Performing the Duties of the Director of Immigration and Customs Enforcement; CHAD F. WOLF, in his official capacity as Acting Secretary of the U.S. Department of Homeland Security; and JEFFREY SEARLS, in his official capacity as the Acting Administrator of the Buffalo Federal Detention Facility,

Respondents-Defendants.

Case No. 1:20-cv-290

**CLASS PETITION FOR
WRIT OF HABEAS CORPUS
AND CLASS COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. The government jails thousands of people each year—separating them from families and communities, depriving them of their livelihoods, and often holding them in remote facilities, practically *incommunicado*—solely because it alleges they are removable from the United States. Immigration and Customs Enforcement incarcerates them for months or even years

without ever having to affirmatively prove that a particular individual's detention serves a legitimate government interest. In the Batavia and Buffalo Immigration Courts, this practice permits agency adjudicators to deny release entirely or condition it on prohibitively high bond amounts, even when individuals pose little or no risk of flight or danger. In fact, two Immigration Judges sitting within this District—Philip Montante and Mary Baumgarten—have adopted what is in effect a blanket policy of denying bond *across the board* (“the No Bond Policy”). The No Bond Policy demonstrates the extreme injustice that can result from such a procedurally deficient custody-review scheme.

2. But liberty is supposed to be the norm throughout the American legal system, and detention a carefully limited exception. Accordingly, when an individual faces a severe deprivation of liberty, the Constitution requires adequate procedural protections to ensure they are not incarcerated arbitrarily and unlawfully. The petitioners in this case—Junior Onosamba-Ohindo and Antonio Lopez Agustin, on behalf of a class of people similarly situated—respectfully ask this Court to restore these core due process principles at the Batavia and Buffalo Immigration Courts. Specifically, they seek declaratory and injunctive relief that ends the respondents' unlawful No Bond Policy and prohibits further detention without an adequate custody hearing that includes the following procedural protections: (1) the government bears the burden to prove by clear and convincing evidence that detention is necessary because the detained immigrant is a danger to others or a flight risk; (2) the government bears the burden of proving by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure the individual's future appearance and the safety of the community; (3) the immigration judge considers the individual's ability to pay and alternatives to detention in setting bond.

PARTIES

3. Petitioner JUNIOR ONOSAMBA-OHINDO is detained in the custody of U.S. Immigration and Customs Enforcement (“ICE”) pursuant to 8 U.S.C. § 1226(a), at the Buffalo Federal Detention Facility, located at 4250 Federal Drive, Batavia, New York 14020.

4. Petitioner ANTONIO LOPEZ AGUSTIN is detained in ICE custody pursuant to 8 U.S.C. § 1226(a), at the Richwood Correctional Center, located at 180 Pine Bayou Circle, Richwood, Louisiana 71202. His custody hearing was conducted at the Batavia Immigration Court. Mr. Agustin appeared at this hearing by video.

5. Respondent WILLIAM BARR is sued in his official capacity as the Attorney General of the United States and is the most senior official in the Department of Justice. He is responsible for the adjudication of immigration proceedings and delegates this responsibility to the Executive Office for Immigration Review (“EOIR”), which is subject to his control and direction. Respondent Barr is legally responsible for administering the petitioners’ custody hearings.

6. Respondent UNITED STATES DEPARTMENT OF JUSTICE (“DOJ”) is the federal agency responsible for the adjudication of immigration proceedings.

7. Respondent JAMES MCHENRY is sued in his official capacity as the Director of the Executive Office of Immigration Review. He is responsible for the administration of immigration proceedings in immigration courts, including at the Batavia and Buffalo Immigration Courts, where the petitioners receive custody hearings.

8. Respondent EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (“EOIR”) is a subcomponent of DOJ responsible for the administration of removal proceedings in immigration courts, including at the Batavia and Buffalo Immigration Courts where the petitioners receive

custody hearings.

9. Respondent MATTHEW ALBENCE is sued in his official capacity as the Deputy Director and Senior Official Performing the Duties of the Director of ICE. In this capacity, he directs all ICE operations. As a result, Respondent Albence has responsibility for the administration of the immigration laws and is a legal custodian of the petitioners.

10. Respondent CHAD F. WOLF is sued in his official capacity as the Acting Secretary of the U.S. Department of Homeland Security (“DHS”). In this capacity, he directs each of the component agencies within DHS, including ICE. As a result, Respondent Wolf has responsibility for the administration of the immigration laws and is a legal custodian of the petitioners.

11. Respondent JEFFREY SEARLS is sued in his official capacity as Acting Administrator at the Buffalo Federal Detention Facility, 4250 Federal Drive, Batavia, New York 14020.

FACTS

Immigration Detention and Custody Proceedings in Immigration Court

12. Under the Immigration and Nationality Act, the federal government has authority to detain people during immigration proceedings that may result in their being removed (colloquially, “deported”) from the United States. For many detained people—those present in the United States before ICE arrested them, currently in removal proceedings, and lacking certain criminal convictions that would otherwise subject them to mandatory detention—ICE is required to make an initial custody determination about whether to release them while their immigration cases proceed. That determination is based on whether the person presents a risk of flight or a danger to the community.

13. Those persons whom ICE does not release at the outset are entitled to ask an

immigration judge to review ICE’s custody determination in a custody hearing. Under the relevant federal regulation, “the immigration judge is authorized . . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released.”

14. Although the position carries the title of “judge,” immigration judges are not independent federal judges appointed pursuant to Article III of the U.S. Constitution. Rather, they are DOJ employees whom the agency describes as “non-supervisory career attorneys.” Immigration judges are “subject to such supervision and shall perform such duties as the Attorney General shall prescribe” and “act as the Attorney General’s delegates in the cases that come before them.”

15. During custody hearings, immigration judges must consider the evidence before them to make an individualized determination of whether the detained person poses a flight risk or danger and what bond amount, if any, could ameliorate any such risk. The amount of bond set should be only the amount necessary to ensure the person will return to court for the separate proceedings regarding whether they ultimately should be removed.

16. Current precedent of the Board of Immigration Appeals holds that the detained person bears the burden of proving they do not pose a flight risk or danger. This establishes a presumption of incarceration rather than release. In adopting this standard, the Board abruptly departed from previous agency policy without any reasoned explanation. Consequently, ICE routinely holds allegedly removable people in jail without ever being required to show that such detention is necessary. People are being deprived of freedom—jailed, and separated from their families and livelihoods—because they cannot prove a negative.

17. Furthermore, individuals who satisfy this unfair evidentiary burden face an additional hurdle: their release is routinely conditioned on a bond set without consideration of their

ability to pay. Bond set beyond a person's ability to pay is simply a *de facto* detention order. These *de facto* detention orders, coming after the immigration judge has found that the person could be released if they have a set sum of money, explicitly condition detention on wealth.

18. Nor do immigration judges generally consider individuals for alternative conditions of release that do not require the posting of bond. Both in the immigration and criminal justice contexts, alternatives to detention programs have been proven successful at mitigating risks of flight and danger. They also cost substantially less to the government and minimize harms to detained people and their communities.

Custody Hearings at the Batavia and Buffalo Immigration Courts and the “No Bond Policy” of Immigration Judges Montante and Baumgarten

19. The Buffalo area has two immigration courts. The Batavia Immigration Court is located inside the Buffalo Federal Detention Facility and hears mostly detained cases. The Buffalo Immigration Court is located in Buffalo, New York and hears mostly non-detained cases, though Buffalo judges also hear detained cases primarily by video feed.

20. From March 2019 through December 2019, Immigration Judges Baumgarten and Montante—both of whom sit on the Buffalo Immigration Court—heard the vast majority of custody hearings at Batavia.¹ Immigration Judge Montante is also the Assistant Chief Immigration Judge in Buffalo, a position he assumed in March 2019. In that role, he oversees the operations of the Buffalo and Batavia Immigration Courts, in addition to hearing removal cases.

21. Also from approximately March 2019 through December 2019, the Batavia and Buffalo Immigration Courts heard custody and removal proceedings for about one thousand people

¹ In approximately January 2020, Susan Aikman was hired to hear cases in person at the Batavia Immigration Court and now hears the majority of custody hearings there. All judges at the Buffalo and Batavia courts, however, continue to hold custody hearings, of varying frequency.

detained at the Richwood Correctional Center in Richwood, Louisiana. In those cases, the detained individual is connected to a courtroom at the Batavia Immigration Court by video feed from Richwood, the judge typically is connected to the same courtroom by video feed from the Buffalo Immigration Court, and the court clerk, ICE attorney, and attorney for the detained individual (if any) appear in person in the Batavia courtroom. Immigration Judge Baumgarten has heard the majority of the custody hearings for individuals detained in Richwood during this period.²

22. The addition of the Richwood video docket represented an enormous increase in the caseload of the Batavia Immigration Court and put significant pressure on the court. Several staff members, including the Court Administrator, left their positions in part because of the difficulties of managing the Richwood docket. In addition, Assistant Chief Immigration Judge Montante instituted a policy directing the Batavia clerk's office to not answer the phone, which meant detained individuals or their attorneys had to leave a voicemail and hope the court called them back.

23. The addition of the Richwood video docket also compounded the pressure put on the Batavia and Buffalo courts by EOIR's annual case completion goals. The agency expects Immigration Judges to adjudicate 600 cases per year, and custody hearings do not factor into that calculation.

24. In all custody hearings at the Batavia and Buffalo Immigration Courts for those held under Section 1226(a), immigration judges impose on the detained person the burden of proving they do not pose a flight risk or danger. If the immigration judges at those courts do decide to release a person on bond, they rarely, if ever, consider evidence of the detained person's ability

² These custody hearings are now currently heard by video feed at the Buffalo Immigration Court, primarily by Judge Steven Connelly.

to pay in setting a bond amount. The judges also categorically refuse to consider alternatives to detention that might mitigate any risk of danger or flight.

25. Further exacerbating this situation is the fact that Immigration Judges Montante and Baumgarten have adopted what amounts to a policy of denying release in all custody hearings assigned to them (the “No Bond policy”). Since March 1, 2019, when Immigration Judge Montante was promoted and Immigration Judge Baumgarten was hired, they each have denied release in 95% of the cases before them. Nationally, of the 204 Immigration Judges who had decided 50 or more cases in this same period, Immigration Judges Montante and Baumgarten have the third and fourth lowest grant rate, respectively.

26. This No Bond policy comes into even sharper relief when compared against the bond grant rates of the five other Immigration Judges who decided cases at Batavia and Buffalo during the same time period. These judges granted bond 51.3 percent, 45.7 percent, 40.9 percent, 28.1 percent, and 18 percent of the time.

27. By denying bond in almost every case and very rarely altering ICE initial custody determinations (with respect to either the grant of bond or the amount of bond), Immigration Judges Montante and Baumgarten have foregone individualized review in favor of effectively rubber-stamping ICE’s initial custody determinations. The consistent deference to the custody determination of ICE, the prosecuting agency, is an abdication of the immigration judges’ responsibility to serve as neutral adjudicators in custody determinations.

28. Neither Immigration Judge Montante, Immigration Judge Baumgarten, nor the Attorney General has provided an explanation—or even acknowledgement—of this policy change.

29. Immigration Judge Montante’s and Baumgarten’s individual bond decisions are practically immune from review. Most cases moot out in the months it takes for the Board of

Immigration Appeals to review custody appeals because of long delays in the Board adjudication or because, under the pressure of ongoing detention, people give up their claims and accept deportation. Many people lose their merits cases in part because their detention impedes them from effectively litigating their cases and are deported before the Board decides the custody appeal.

30. As a result of these practices and policies in the Buffalo and Batavia Immigration Courts, hundreds if not thousands of people have been and will be detained unlawfully.

The Government's Actions Exacerbate Inherent Difficulties For Detained People to Prove They Are Not a Danger or Flight Risk

31. People with custody hearings at the Batavia and Buffalo Immigration Courts struggle to meet their burden of proof due to the fact of their detention. Many detained people do not speak English and are unfamiliar with the U.S. legal system, much less immigration law. They are unfamiliar with the legal standard they must meet to obtain release at a custody hearing, or the evidence they must gather as proof.

32. The government's actions also severely limit detained people's ability to obtain legal counsel to assist them in navigating this field. The Buffalo Federal Detention Facility and the Richwood Correctional Center are located in remote, semi-rural areas. Legal visitation at these facilities is burdensome, occurring during restricted hours. With limited visitation rooms available, attorneys often must wait an hour or more for a room to become available to meet with clients.

33. Telephone communication is also restricted. At the Buffalo Federal Detention Facility, detained people must pay for phone calls, such that an indigent person is simply unable to make phone calls at all. They also cannot receive incoming calls. This makes it nearly impossible for them to find and retain an attorney or communicate with their attorney. It also prevents detained people from gathering the necessary evidence for their custody hearings, including proof of employment and residence, criminal records, and letters of support from their community.

34. Detained people also struggle to prepare initial applications for relief from removal—often a necessary component of showing at their custody hearings that they are not a flight risk—because they lack access to legal counsel or the documents necessary to complete their applications.

35. Further restricting access to counsel in custody hearings, immigration judges routinely deny attorneys' requests to appear at hearings telephonically. The requirement for attorneys to appear in person is particularly arbitrary in cases where both the immigration judge and the client are appearing via video feed and the hearing occurs in a remote location, such as Batavia. Because immigration judges often deny attorneys' requests to appear by telephone, some detained people have been forced to withdraw their request or proceed at custody hearings without their counsel of choice. Being forced to obtain substitute counsel at the last minute, when a request to appear telephonically was denied or not ruled upon, further limits the detained person's ability to present their evidence and meet their burden of proof.

36. On information and belief, many detained people would be able to secure release from detention if ICE bore the burden to prove their detention was justified. Many others, who will ultimately obtain bond under any standard, are forced to delay seeking release because they must first gather documents, request records, and prepare applications for relief to meet their burden of proof.

Ongoing Detention Causes Severe Harm to the Petitioners

37. Prolonged detention severely and irreparably harms detained immigrants in numerous ways. Once denied bond, people with cases at the Batavia and Buffalo Immigration Courts can be detained for months, sometimes years, before a final decision is reached on whether they are, in fact, removable.

38. Detention is devastating for detained individuals and their families. Most people arrested by local immigration authorities have lived in this country for long periods with their families and are deeply integrated into local communities. Extended detention separates children from their parents and can devastate families and communities. Contact with families, through phone calls and facility visits, is limited and often prohibitively expensive.

39. Detention has also been shown to have harmful impacts on the physical and mental health of imprisoned people. People in ICE custody often lack access to quality medical care. Detention can also be a stressor that exacerbates pre-existing mental health symptoms. These harms are compounded by the inherent and profound uncertainty about the length of detention, as well as detained persons' looming fear of deportation and permanent separation from their families and communities. Despite these psychological harms, mental health services in ICE detention facilities are woefully inadequate where they exist at all.

40. Detention also harms people's ability to defend their immigration case in other ways. They face difficulties finding and retaining lawyers, communicating with attorneys and witnesses, and obtaining records and documentary evidence to prove their entitlement to relief from removal.

Petitioner-Plaintiff Junior Onosamba-Ohindo

41. The petitioner-plaintiff, Junior Onosamba-Ohindo, was arrested by ICE, denied release pursuant to 8 U.S.C. § 1226(a) by ICE's Buffalo Field Office, and is currently detained at Buffalo Federal Detention Facility, within the Western District of New York.

42. On February 10, 2020, Mr. Onosamba-Ohindo appeared before Immigration Judge Aikman for a custody hearing.

43. At the hearing, Mr. Onosamba-Ohindo presented evidence that he was homeless

and living in a refugee shelter. He asked the court to consider release with conditions other than money bond, suggesting either an ankle monitor or regular in-person ICE check-ins. As an alternative, he asked for the minimum bond allowed under the statute, \$1,500.

44. ICE did not file any evidence in his custody hearing and conceded that he had no criminal history.

45. The Immigration Judge said that she could not consider such alternatives to money bond and set bond at \$8,000.

46. The Immigration Judge set bond that high in part because she had imposed on Mr. Onosamba-Ohindo the burden to prove that he was not a flight risk and was not a danger to others, rather than imposing that burden on the government.

47. Mr. Onosamba-Ohindo has no income or savings and cannot afford the \$8,000 bond. He remains detained because of poverty.

48. Detention has imposed significant hardship on Mr. Onosamba-Ohindo. He suffers from chest pains, back pains, and migraines, without adequate medical treatment. Separation from his wife and community also has caused Mr. Onosamba-Ohindo severe hardship. Due to these hardships and the stressors of detention, he cries frequently.

49. In addition to preventing Mr. Onosamba-Ohindo from communicating with his family regarding his welfare, being detained has severely inhibited his ability to gather evidence for his underlying application for immigration relief, and to assist his attorney in assembling his materials. This difficulty is compounded by the fact that he speaks little English.

Petitioner-Plaintiff Antonio Lopez Agustin

50. The petitioner-plaintiff, Antonio Lopez Agustin, is a 36-year-old man. He came to the United States in 1999, when he was 16 years old. He has lived in the United States for over

twenty years and has an eight-year-old U.S. citizen daughter.

51. On August 7, 2019, ICE arrested and detained Mr. Agustin during a raid at his workplace. Mr. Agustin has no violent or dangerous criminal history. He has several traffic infractions and one misdemeanor conviction for possessing false identification from 2005, for which he was sentenced to one-year supervised release. Despite his lack of serious criminal history and significant community ties, ICE detained Mr. Agustin without bond.

52. Before he was detained, Mr. Agustin earned approximately \$280 a week and supported his eight-year-old daughter. He did not have the money to pay for a lawyer and spent weeks in jail until he found an attorney willing to represent him *pro bono* for his custody hearing.

53. The immigration court scheduled a custody hearing for Mr. Agustin in Batavia before Immigration Judge Baumgarten. The hearing was scheduled for November 19, 2019—over four months after he was initially detained. Mr. Agustin's attorney requested to advance the custody hearing, but Immigration Judge Baumgarten denied the motion.

54. Because Mr. Agustin's *pro bono* attorney worked in Washington, D.C., she requested to appear telephonically at his custody hearing in Batavia. Although Immigration Judge Baumgarten and Mr. Agustin would appear at the Batavia court by video feed, Immigration Judge Baumgarten did not allow his *pro bono* attorney to appear telephonically.

55. Mr. Agustin's attorney could not appear in person in at the Batavia Immigration Court. Rather than further delay his custody hearing, she found substitute counsel to appear on her behalf at the last minute. Mr. Agustin had never previously met substitute counsel, whom he saw for the first time via video feed at his custody hearing.

56. At the custody hearing, Mr. Agustin introduced evidence that he had resided at the same address for eight years and had undertaken conversations with his landlord about buying the

property. He also introduced evidence about his role as a caretaker and provider for his eight-year-old daughter, who is a U.S. citizen. He submitted eight letters from friends, neighbors, and community members attesting to his good character and role in the community. Two of his neighbors specifically offered to confirm that he would appear at all future proceedings.

57. Five minutes into the hearing, Immigration Judge Baumgarten denied bond, finding that Mr. Agustin had failed to meet his burden to prove that he was not a flight risk. She did not consider whether alternatives to detention could mitigate any flight risk that Mr. Agustin posed.

58. Mr. Agustin has now been detained without bond for more than seven months.

59. During those seven months, his partner and daughter have struggled financially and emotionally. Mr. Agustin has also struggled emotionally and been subject to harsh conditions at the Richwood Correctional Center.

60. Being detained has made it more difficult for Mr. Agustin to communicate with the *pro bono* attorney who is helping him apply for cancellation of removal. He cannot communicate with friends and family on the outside to help gather evidence and support for his application. The detained hearing location is also too far for them to come in support or testify on his behalf.

CLASS ACTION ALLEGATIONS

61. The petitioners bring this representative habeas petition pursuant to 28 U.S.C. § 2241 and class action pursuant to Fed. R. Civ. P. 23(a), (b)(1), and (b)(2) on behalf of themselves and all other people similarly situated.

62. The proposed class is defined as follows:

All individuals currently detained under 8 U.S.C. § 1226(a) who have had or will have a custody hearing before the Batavia or Buffalo Immigration Courts.

63. The case is also brought on behalf of a subclass defined as follows:

All individuals currently detained under 8 U.S.C. § 1226(a) who have had or will

have a custody hearing before the Batavia or Buffalo Immigration Courts, in front of either Immigration Judge Philip Montante or Immigration Judge Mary Baumgarten.

64. The proposed class and subclass are so numerous, and membership so fluid and transitory, that joinder of all members is impracticable. Hundreds of people are currently detained with custody hearings at the Buffalo and Batavia Immigration Courts, a significant number of whom are being held under Section 1226(a).

65. Moreover, absent class certification, people in immigration detention would face a series of barriers to accessing the relief sought through individual actions. Many putative class members are unrepresented. Access to legal materials in detention is severely limited. A large percentage of detained people do not speak and/or cannot read or write in English. Many of them have limited educational backgrounds. A significant percentage suffer from physical or mental impairments.

66. The petitioners' claims are typical of those of the proposed class. All proposed class members are subject to the same uniform policies: (1) imposing the burden of proof on the detained immigrant at custody hearings; and (2) not considering ability to pay or alternatives to detention in setting bond. Moreover, Mr. Agustin's claims are typical of the subclass, who are all affected by the No Bond Policy.

67. The petitioners will fairly and adequately protect the interests of the proposed class. The petitioners have no interests separate from those of the class with respect to the claims and issues in this case and seek no relief other than the relief sought by the class. They are unaware of any conflicts that would preclude fair and adequate representation.

68. Common questions of law or fact exist as to all proposed class members, including but not limited to the following: (a) whether the respondents have instituted policies and practices

of imposing the burden of proof on detained individuals in their custody hearings and not considering ability to pay and alternatives to detention in setting bond; (b) whether the respondents' policies and practices violate the Fifth Amendment to the United States Constitution.

69. Common questions of law or fact exist as to all proposed members of the No Bond Policy subclass, including but not limited to the following: (a) whether Immigration Judges Montante and Baumgarten have instituted a policy or practice of denying bond to virtually all people detained under Section 1226(a), thereby denying individual assessment of their eligibility for release; (b) whether the respondents' policy and practice violate the Immigration and Nationality Act and its implementing regulations; (c) whether the respondents' policy and practice violate the Administrative Procedure Act.

70. The claims of the petitioners are typical of the claims of the class as a whole because the petitioners and the class members are, have been, or will be similarly detained subject to the same failure to provide a custody hearing that comports with due process and other federal law. Moreover, the petitioners and proposed class members are, have been, or will be directly injured by respondents' failure to provide such a hearing, which results in months, or even years, of unjustified and unnecessary detention.

71. The claims of Mr. Agustin are typical of the claims of the No Bond Policy subclass because he and the subclass members are, have been, or will be similarly detained subject to the same policy or practice of Immigration Judges Montante and Baumgarten refusing to provide individualized consideration for bond. Mr. Agustin and the proposed No Bond Policy subclass members are, have been, or will be directly injured by the respondents' policy and practice to deny bond which results in months, or even years, of unjustified and unnecessary detention.

72. Counsel for the petitioners are experienced in complex class action, civil rights, and

immigrants' rights litigation.

73. The fact that vulnerable class members are unlikely to be able to challenge their detention individually, as well as considerations of judicial economy, also militates in favor of class certification.

JURISDICTION AND VENUE

74. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1361 (mandamus); and 5 U.S.C. § 701 *et seq.* (Administrative Procedure Act).

75. Venue is proper under 28 U.S.C. § 2241 and 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to these claims occurred, and continue to occur, in this district; at the time of the filing of this action Mr. Onosamba-Ohindo is detained in the respondents' custody within the Western District of New York; Mr. Agustin's immigration case is being heard by the Buffalo Immigration Court and his custody hearing was held at the Batavia Immigration Court; Mr. Searls resides in this district; and the respondents are officers or employees of the United States acting in their official capacities.

CAUSES OF ACTION

FIRST CLAIM

Violation of the Immigration and Nationality Act & Implementing Regulations

76. The respondents' actions violate the Immigration and Nationality Act and its implementing regulations.

SECOND CLAIM

**Violation of the Due Process Clause of the Fifth Amendment to the United States
Constitution**

77. The respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

THIRD CLAIM

Violation of the Administrative Procedure Act

78. The respondents' actions violate the Administrative Procedure Act.

PRAYER FOR RELIEF

WHEREFORE, the petitioners respectfully request that the Court:

79. Assume jurisdiction over this matter;

80. Certify this action as a class action on behalf of the proposed class and subclass, appoint the petitioners as class representatives, and appoint the undersigned counsel as class counsel;

81. Declare that the respondents' actions, practices, policies, and/or omissions violate the Immigration and Nationality Act and its implementing regulations, the Fifth Amendment to the U.S. Constitution, and the Administrative Procedure Act;

82. Declare that each class member is entitled to a custody hearing at which the government bears the burden to justify continued detention by proving by clear and convincing evidence that the detained individual is a danger to others or a flight risk, and that no condition or combination of conditions will reasonably assure their future appearance and the safety of the community, and which includes consideration of ability to pay in selecting the amount of any bond and suitability for release on alternative conditions of supervision;

83. Order that each class member be released unless provided with a custody hearing consistent with the above paragraph within a reasonable period, determined by the Court, after this order enters or after their detention under Section 1226(a) begins;

84. Order regular and complete reporting on the petitioner class and subclass to class counsel;

85. Award reasonable attorneys' fees and costs for this action; and

86. Grant any further relief that the Court deems just and proper.

Dated: March 11, 2020
New York, New York

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

* Application for admission to the
Western District of New York
forthcoming

** Application for admission *pro hac*
vice forthcoming

By: /s/ Victoria Roeck
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Junior Onosamba-Ohindo, and Antonio Lopez Agustin, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Genesee (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment.

DEFENDANTS

See attachment.

County of Residence of First Listed Defendant Washington, D.C. (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 2241; 5 U.S.C. § 701 et seq.

Brief description of cause: Habeas Corpus; Administrative Procedure Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Elizabeth Wolford

DOCKET NUMBER 17-cv-00721

DATE 03/11/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Victoria Roeck

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Attachment to Civil Cover Sheet – *Onosamba-Ohindo, et al. v. Barr, et al.*

I(a) – Defendants

WILLIAM BARR, in his official capacity as Attorney General of the Department of Justice; UNITED STATES DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as the Director of the Executive Office for Immigration Review; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; MATTHEW ALBENCE, in his official capacity as Deputy Director and Senior Official Performing the Duties of the Director of Immigration and Customs Enforcement; CHAD F. WOLF, in his official capacity as Acting Secretary of the U.S. Department of Homeland Security; and JEFFREY SEARLS, in his official capacity as the Acting Administrator of the Buffalo Federal Detention Facility.

I(c) – Petitioners’ Attorneys

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VIII. Related Case(s)

This case is related to *Abdi v. McAleenan*, No. 17-CV-721, a pending class action before Judge Elizabeth Wolford. The putative class here challenges the imposition of the burden of proof on the detained person and immigration judges' refusal to consider ability to pay and alternatives to detention in bond hearings pursuant to Section 1226(a) of Title 8 of the U.S. Code. The court in *Abdi* addressed these issues in the mandatory detention context. *See Abdi v. Duke*, 280 F. Supp. 3d 373, 411 (W.D.N.Y. 2017) (issuing preliminary injunction ordering bond hearings where the government bore the burden of proof by clear and convincing evidence), *vacated in part sub nom. Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019); *Abdi v. Nielsen*, 287 F. Supp. 3d 327, 338 (W.D.N.Y. 2018) (clarifying that immigration judges were required to consider ability to pay and alternatives to detention in bond hearings under the preliminary injunction) *vacated sub nom. Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019).