

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

MANUEL DURAN ORTEGA,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY; KIRSTJEN NIELSEN, Secretary of Homeland Security; DAVID RIVERA, Director of the New Orleans Field Office of U.S. Immigration and Customs Enforcement; and DAVID COLE, Warden of the LaSalle Detention Facility,

Respondents.

CASE NO.

JUDGE:

MAGISTRATE JUDGE:

Date: April 13, 2018

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. The actions pursued by government officials in this case threaten core First Amendment freedoms that are essential to our democracy: the right to criticize and expose the actions of government officials, and the right of members of the press to write and publish about them. Petitioner Manuel Duran Ortega is a 42-year-old journalist from El Salvador who fled to the United States in 2006 after his life was threatened. On April 3, 2018, while reporting on a demonstration in Memphis, Tennessee, Mr. Duran Ortega was illegally arrested by Memphis police and subsequently turned over to and detained by the Department of Homeland Security (DHS) in retaliation for his past critical

coverage of immigration enforcement activities. Mr. Duran Ortega was arrested and is being detained by DHS in order to punish and suppress his speech as a journalist, in violation of the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

2. On April 3, 2018, Mr. Duran Ortega was arrested without probable cause by Memphis Police Department (“MPD”) officers while covering a protest related to MLK50, a city-sponsored event commemorating the 50th anniversary of Dr. Martin Luther King Jr.’s assassination. The demonstration specifically protested local law enforcement officials’ detention of immigrants for the purpose of turning them over to DHS custody. Although all charges against Mr. Duran Ortega were dropped on April 5, 2018, he was not allowed to leave jail. Instead, local officials turned him over to DHS officials at DHS’ behest. Since April 5, Mr. Duran Ortega has been detained at LaSalle Detention Center in Jena, Louisiana. He now faces removal to El Salvador, where investigative journalists like him regularly face threats and violent retaliation. His current detention is a direct result of his unlawful arrest and detention in violation of the First, Fourth, Fifth, and Fourteenth Amendments.

JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. §§ 1331, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution (U.S. Const. art. I, § 9, cl. 2).

4. Venue lies in the Western District of Louisiana, because a substantial part of the events or omissions giving rise to this action, specifically, Petitioner’s ongoing

unconstitutional detention, have occurred and are occurring in the District. *See* 28 U.S.C. § 1391 and 28 U.S.C. § 2241. Divisional venue is proper in the Alexandria Division. *See* LR77.3.

5. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

6. Nothing in federal immigration law strips this Court of its jurisdiction over Petitioner's claims. *See* 8 U.S.C. § 1252 (specifying provisions governing judicial review of orders of removal). Petitioner is currently challenging his removal order through separate proceedings in immigration court. Here, Petitioner challenges his current detention, which violates the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution.

PARTIES

7. Petitioner Manuel Duran Ortega is a citizen of El Salvador who has lived continuously in the United States since 2006. Mr. Duran Ortega has been in the custody of Respondents since April 5, 2018.

8. The U.S. Department of Homeland Security ("DHS") is a cabinet department of the United States federal government with the primary mission of securing the United States. Immigrations and Customs Enforcement (ICE) is a component agency of DHS.

9. Respondent Kirstjen Nielsen is the Secretary of DHS. She is sued in her official capacity.

10. Respondent David Rivera is the Director of the New Orleans Field Office of ICE, which has immediate custody of Petitioner. He is sued in his official capacity.

11. Respondent David Cole is the warden of the LaSalle Detention Center. He is sued in his official capacity.

STATEMENT OF FACTS

A. Mr. Duran Ortega is a journalist who has engaged in political speech critical of federal and local law enforcement.

12. Manuel Duran Ortega is a citizen of El Salvador who has lived in the United States continuously since his arrival in 2006. He has resided in Memphis, Tennessee, for the majority of that time. *See* Ex. 1 ¶ 5 (Duran Ortega Decl.)

13. In 2006, Mr. Duran Ortega fled El Salvador, where he had been working as a television station manager. *Id.* ¶ 3. After a rival television station employee used his law enforcement connections to have Mr. Duran Ortega arrested on trumped-up charges, Mr. Duran Ortega reported on corruption in law enforcement and the judicial system.. *Id.* After his report, he began to receive death threats and escaped to the United States. *Id.*

14. In Memphis, Mr. Duran Ortega is a well-known member of the local press. *See Id.* ¶ 8 (Duran Ortega Decl.); Ex. 2 (Valdez Decl.) ¶ 6; Ex. 3 (Escobar Decl.) ¶ 4; Ex. 4 (Flores Decl.) ¶ 3; Ex. 5 (Morales Decl.) ¶ 6. In 2007, Mr. Duran Ortega began working with a Spanish-language radio program called *La Voz*. *See* Ex. 1 (Duran Ortega Decl.) ¶5. In 2008, he left *La Voz* and began working as a host and producer for another radio station called *Radio Ambiente*. *Id.* He became well-known through his reporting with *Radio Ambiente*, but felt stifled in his ability to engage in investigative journalism. *See*

id.; see also Ex. 2 (Valdez Decl.) ¶¶ 3-4. Around 2012, he founded the Spanish language media outlet *Las Noticias con Manuel Duran*. Ex. 2 (Valdez Decl.) ¶ 4. In 2017, he began focusing on *Memphis Noticias* as his primary news outlet. *Id.* ¶ 5; Ex. 1 (Duran Ortega Decl.) ¶ 6. He expanded his reporting, including use of direct interviews, posting videos on Facebook Live, and posting updates to stories as they continued to evolve. See Ex. 1 (Duran Ortega Decl.) ¶¶ 7-9; Ex. 2 (Valdez Decl.) ¶ 5; Ex. 4 (Flores Decl.) ¶ 3.

15. Mr. Duran Ortega has recently published numerous stories on controversial issues involving the Memphis Police Department and other local law enforcement. See Ex. 1 (Duran Ortega Decl.) ¶¶ 7-9; Ex. 2 (Valdez Decl.) ¶ 6-7; Ex. 4 (Flores Decl.) ¶ 4. For example, he published a story on Facebook in July 2017 identifying collaboration between the Memphis Police Department and ICE at a traffic stop. Ex. 1 (Duran Ortega Decl.) ¶ 9; Ex. 23. Following that publication, a Memphis police officer sent Mr. Duran Ortega a text message asking him to take down the story and meet with a senior official in the Department. See Ex. 1 (Duran Ortega Decl.) ¶ 10; Ex. 4 (Flores Decl.) ¶ 5; Ex. 28 (screenshot of text message). The Memphis Police Department had publicly denied collaboration with ICE enforcement, and Mr. Duran Ortega's reporting contradicted their official line. Ex. 22-23.

16. Mr. Duran Ortega has also recently criticized DHS, including publishing an article in *Memphis Noticias* article regarding unjust conditions at DHS detention facilities and an article on the devastating impact of family separation caused by immigration enforcement. Exs. 16, 20, 24.

17. In addition to these stories, Mr. Duran Ortega, through *Memphis Noticias*, reported on police shootings, MPD collaboration with ICE, ICE enforcement actions and the resulting hardship on immigrant families, demonstrations calling for law enforcement accountability, and incidents of police misconduct. *See* Exs. 9-11, 13-15, 17-18, 20-21, 22-27. Most recently, in February 2018, he did significant in-depth reporting on an incident in which the body of Latino murder victim, Bardomiano Perez Hernandez, was left in the back of a van for 49 days after it had been impounded by the MPD. Ex. 1 (Duran Ortega Decl.) ¶ 12; Ex. 2 (Valdez Decl.) ¶ 7; *see also* Exs. 9-11. This reporting included attending hearings and conducting interviews with the victim's family. Ex. 1 (Duran Ortega Decl.) ¶ 12.

18. Mr. Duran Ortega has had numerous interactions with MPD personnel in his role as a reporter. *See* Ex. 3 (Escobar Decl.) ¶ 5; Ex. 4 (Flores Decl.) ¶ 4. He interviewed the department sub-director on a Facebook Live broadcast and attended an MPD meeting to discuss police cooperation with ICE. Ex. 1 (Duran Ortega Decl.) ¶ 7. He also was frequently in touch with the department as he pushed for *Memphis Noticias* to be included in MPD briefings and press conferences despite his exclusion from such events. *See* Ex. 1 (Duran Ortega Decl.) ¶ 11.

19. He had also spoken publicly with other government officials about police activity. *See* Ex. 22. He interviewed the mayor of Memphis about collaboration between the MPD and ICE, and most recently had broadcast an interview with a victim services specialist from the District Attorney's office about the mishandling of Mr. Perez Hernandez's body. *See* Ex. 1 (Duran Ortega Decl.) ¶ 7; Ex. 2 (Valdez Decl.) ¶ 7; Ex. 22.

B. Mr. Duran Ortega was engaged in activities as a member of the press at the time he was arrested without probable cause.

20. On April 3, 2018, a group of individuals participated in a protest related to the city's commemoration of the 50th anniversary of the assassination of Dr. Martin Luther King Jr. *See* Ex. 29 (MLK50.com article); Ex. 1 (Duran Ortega Decl.) ¶¶ 14-15; Ex. 2 (Valdez Decl.) ¶ 8; Ex. 3 (Escobar Decl.) ¶ 6; Ex. 5 (Morales Decl.) ¶ 4. The protest was held in front of the Shelby County Justice Center, the complex which houses the Shelby County Sheriff's Office (SCSO) and Memphis's central jail, which is administered by SCSO. *See* Ex. 1 (Duran Ortega Decl.) ¶ 14; Ex. 4 (Flores Decl.) ¶ 6; Ex. 5 (Morales Decl.) ¶ 5; Ex. 29 (MLK50.com article).

21. The protestors specifically targeted the MPD's collaboration with ICE and the SCSO officials' instances of prolonging the detention of suspected undocumented immigrants beyond their official release from jail in order to turn them over to ICE. *See* Ex. 1 ¶ 15; Ex. 2 (Valdez Decl.) ¶ 8; Ex. 3 (Escobar Decl.) ¶ 6; Ex. 5 (Morales Decl.) ¶ 5; Ex. 6 (Swatzell Decl.) ¶ 4; Ex. 7 (Vega Decl.) ¶ 3.

22. Mr. Duran Ortega arrived on the scene to film and report on the protest. *See* Ex. 1 (Duran Ortega Decl.) ¶ 14; Ex. 2 (Valdez Decl.) ¶ 8; Ex. 8 (Kaaz Decl.) ¶ 4. He was clearly identified as a member of the press. He was dressed in business attire and wore his press credentials, a bright yellow badge labeled "Press," around his neck. Ex. 1 (Duran Ortega Decl.) ¶ 16; Ex. 4 (Flores Decl.) ¶ 6; Ex. 5 (Morales Decl.) ¶ 6; Ex. 7 (Vega Decl.) ¶¶ 4, 7-8; Ex. 8 (Kaaz Decl.) ¶ 4; *see also* Ex. 29 (MLK50.com article). He spoke into the camera he carried, observed and described the activities, and did not join

the protestors in their chants. *See* Ex. 3 (Escobar Decl.) ¶ 6; Ex. 4 (Flores Decl.) ¶ 6; Ex. 5 (Morales Decl.) ¶ 6-7; *see also* Duran Ortega's Facebook Live video of the protest, <https://www.facebook.com/memphisnoticias/videos/1807922945897801/UzpfSTUxMjIzMDMzNTQ2NzA3NToxODA3OTg1NDM1ODkxNTUy/>.

23. Several MPD officers arrived at the demonstration. *See* Ex. 1 (Duran Ortega Decl.) ¶ 17; Ex. 4 (Flores Decl.) ¶ 7; Ex. 5 (Morales Decl.) ¶¶ 7-8; Ex. 7 (Vega Decl.) ¶ 5. During the march, protestors crossed a street at a crosswalk that had been blocked off by police cars. Ex. 4 (Flores Decl.) ¶ 7; *see also* Ex. 1 (Duran Ortega Decl.) ¶ 17; Ex. 3 (Escobar Decl.) ¶ 7; Ex. 5 (Morales Decl.) ¶¶ 7-8; Ex. 7 (Vega Decl.) ¶ 5; Ex. 8 (Kaaz Decl.) ¶ 5.

24. MPD officers began ordering protestors to move to a sidewalk. Ex. 1 (Duran Ortega Decl.) ¶ 17; Ex. 4 (Flores Decl.) ¶ 7; Ex. 5 (Morales Decl.) ¶ 9; Ex. 7 (Vega Decl.) ¶ 7; Ex. 8 (Kaaz Decl.) ¶ 6. At that point, at least one individual was arrested by local law enforcement in the street. Ex. Ex. 1 (Duran Ortega Decl.) ¶ 17; Ex. 4 (Flores Decl.) ¶ 7; Ex. 5 (Morales Decl.) ¶ 9; Ex. 7 (Vega Decl.) ¶ 5; Ex. 8 (Kaaz Decl.) ¶ 8. A number of protestors and media attempted to observe and film the arrest. Ex. 3 (Escobar Decl.) ¶ 7; *see also* Ex. 4 (Flores Decl.) ¶¶ 8, 10; Ex. 5 (Morales Decl.) ¶ 9.

25. MPD officers continued to attempt to clear the street by ordering the group onto the sidewalk. Ex. 1 (Duran Ortega Decl.) ¶ 17; Ex. 5 (Morales Decl.) ¶ 10; Ex. 8 (Kaaz Decl.) ¶ 6; *see also* Ex. 7 (Vega Decl.) ¶ 6. A bottleneck occurred where two cars were parallel parked against the sidewalk to which officers were instructing people to move. Ex. 4 (Flores Decl.) ¶ 8; Ex. 5 (Morales Decl.) ¶ 10; Ex. 8 (Kaaz Decl.) ¶ 6.

26. Some members of the press were physically guided to the sidewalk. *See* Facebook Live Video, <https://www.facebook.com/memphisnoticias/videos/1807922945897801/UzpfSTUxMjIzMzMzNTQ2NzA3NToxODA3OTg1NDM1ODkxNTUy/>. . Other members of the press were permitted to remain near the arrest in the middle of the street to film and photograph. *See* Ex. 29 (MLK50.com article); Ex. 4 (Flores Decl.) ¶ 10; Ex. 5 (Morales Decl.) ¶ 12; Ex. 8 (Kaaz Decl.) ¶ 8.

27. Mr. Duran Ortega, wearing his press credentials, attempted to comply with the officer's orders to "get out of the street." Ex. 1 (Duran Ortega Decl.) ¶ 17; Ex. 7 (Vega Decl.) ¶ 6; Ex. 8 (Kaaz Decl.) ¶ 6. A participant in the protest, Spencer Kaaz, held Mr. Duran Ortega's shoulder and responded to the police, "he's going; we're going together." Ex. 8 (Kaaz Decl.) ¶ 6; *see also* Facebook Live Video at <https://www.facebook.com/memphisnoticias/videos/1807922945897801/UzpfSTUxMjIzMzMzNTQ2NzA3NToxODA3OTg1NDM1ODkxNTUy/> at 15:04-15:20.

28. Several members of the press were filming the individual being arrested in the street. They were not ordered to go onto the sidewalk. *See* <https://www.facebook.com/memphisnoticias/videos/1807922945897801/UzpfSTUxMjIzMzMzNTQ2NzA3NToxODA3OTg1NDM1ODkxNTUy/> at 14:30-15:10.

29. As Mr. Duran Ortega attempted to comply with the police officers' orders, he felt an officer behind him and he showed the officer his press badge. Ex. 1 (Duran Ortega Decl.) ¶ 17. The officer told him "I don't care," and began to pull him from the crowd. *Id.* An officer knocked the video camera from his hands. Ex. 8 (Kaaz Decl.) ¶ 7;

see

also

<https://www.facebook.com/memphisnoticias/videos/1807922945897801/UzpfSTUxMjIzMzMzNTQ2NzA3NToxODA3OTg1NDM1ODkxNTUy/> at 15:04-15:30.

30. People who had been participating in the demonstration, knowing Mr. Duran Ortega to be a member of the press, grabbed him to attempt to prevent his arrest. Ex. 1 (Duran Ortega Decl.) ¶ 17; Ex. 3 (Escobar Decl.) ¶ 7; Ex. 4 (Flores Decl.) ¶ 9; Ex. 5 (Morales Decl.) ¶ 11; Ex. 7 (Vega Decl.) ¶ 6; Ex. 8 (Kaaz Decl.) ¶ 7. The video taken at the event shows that Mr. Duran Ortega did not resist arrest. Mr. Duran Ortega was, in fact, terrified that if he resisted arrest police would shoot him. Ex. 1 (Duran Ortega Decl.) ¶ 17. The two women attempted to communicate to the officers that Mr. Duran Ortega was a member of the press by yelling “he’s a reporter.” *See* Ex. 5 (Morales Decl.) ¶ 11; Video at <https://www.youtube.com/watch?v=VSCoXe8vR0w&app=desktop> at 3:02. An officer at the scene pointed at Mr. Duran Ortega while he was being arrested. *Id.* at 3:04. Ex. 8 (Kaaz Decl.) ¶ 7.

C. Mr. Duran Ortega’s arrest, continued detention in Shelby County jail, and transfer to DHS custody were without probable cause and retaliatory.

31. Mr. Duran Ortega was the only member of the press arrested at the MLK50 demonstration on April 3, 2018. Ex. 1 (Duran Ortega Decl.) ¶ 17; Ex. 2 (Valdez Decl.) ¶ 9. He was charged with misdemeanor (1) disorderly conduct and (2) obstruction of a highway or passageway. Ex. 32 (Shelby County Court Record). As set forth above, his conduct at the protest was that of a professional journalist, was not disorderly, and was

consistent with all police directives. *See* Ex. 1 (Duran Ortega Decl.) ¶ 17; Ex. 7 (Vega Decl.) ¶ 6; Ex. 8 (Kaaz Decl.) ¶ 6.

32. Mr. Duran Ortega was processed at the Shelby County jail alongside three other men who were arrested. Ex. 8 (Kaaz Decl.) ¶ 9. Because he does not speak English well, they helped him look at his paperwork. *Id.*

33. A bond was set for Mr. Duran Ortega on the evening of April 3, 2018 in the amount of \$100. Ex. 1 (Duran Ortega Decl.) ¶ 18; Ex. 2 (Valdez Decl.) ¶ 10; *see also* Ex. 6 (Swatzell Decl.) ¶ 6; Ex. 33 (bond receipt). Melisa Valdez, his domestic partner, paid the \$100 bond at around 9:00pm on April 3, 2018. Ex. 2 (Valdez Decl.) ¶ 10; Ex. 33; *see also* Ex. 6 (Swatzell Decl.) ¶ 7. Despite this, Mr. Duran Ortega was not released. Ex. 1 (Duran Ortega Decl.) ¶ 18; Ex. 2 (Valdez Decl.) ¶ 10; Ex. 6 (Swatzell Decl.) ¶ 7; Ex. 8 (Kaaz Decl.) ¶ 10. A clerk brought him documents in Spanish stating that DHS wanted to verify information about him. Ex. 1 (Duran Ortega Decl.) ¶ 18; Ex. 2 (Valdez Decl.) ¶ 10. The clerk also brought him paperwork in English that he did not understand and refused to sign. Ex. 1 (Duran Ortega Decl.) ¶ 18. Spencer Kaaz, who saw the paper, remembers that it was an ICE detainer. Ex. 8 (Kaaz Decl.) ¶ 9.

34. Later that evening, the other men arrested at the protest were released on bond. Ex. 8 (Kaaz Decl.) ¶ 10. Mr. Duran Ortega was separated from them. *Id.* One of the men attempted to ask an officer why he was being separated when his bond had also been paid, urging that the detainer itself said that it was not mandatory. *Id.* The officer refused to respond. *Id.*

35. On the morning of April 4, 2018, a SCSO representative stated publicly that Mr. Duran Ortega was not being released because he had not signed for his bond, and claimed that there was no immigration “hold.” Ex. 2 (Valdez Decl.) ¶ 11; Ex. 6 (Swatzell Decl.) ¶ 7 <http://wreg.com/2018/04/05/memphis-journalist-could-face-deportation-after-arrest-during-protest/>. In fact, ICE had lodged an immigration detainer against Mr. Duran Ortega on April 3, 2018, requesting that the Shelby County jail hold him and contact ICE at least 48 hours before he was released from custody on the state charges. Ex. 31 (Detainer). Mr. Duran Ortega’s lawyer requested that the bond paperwork be taken to him again so he could have the opportunity to sign it, but this was not done. Ex. 2 (Valdez Decl.) ¶ 11; Ex. 6 (Swatzell Decl.) ¶ 9.

36. Mr. Duran Ortega appeared with counsel in a Shelby County criminal court hearing on April 5, 2018. Ex. 1 (Duran Ortega Decl.) ¶¶ 19-20; Ex. 2 (Valdez Decl.) ¶ 13; Ex. 6 (Swatzell Decl.) ¶ 10. At that hearing, the district attorney dropped the charges and the judge dismissed the case Ex. 1 (Duran Ortega Decl.) ¶¶ 19-20; Ex. 2 (Valdez Decl.) ¶ 13; Ex. 6 (Swatzell Decl.) ¶ 10. After his case was dismissed, Mr. Duran Ortega was led back to the jail cell. Ex. 1 (Duran Ortega Decl.) ¶ 20; *see also* Ex. 6 (Swatzell Decl.) ¶ 10. No one told him what would happen next. Ex. 1 (Duran Ortega Decl.) ¶ 20.

37. Ms. Valdez asked a clerk in the sheriff’s office about Mr. Duran Ortega’s release following dismissal of the charges against him. Ex. 2 (Valdez Decl.) ¶ 13. The clerk told her that release normally took place within 6-8 hours. *Id.*

38. Instead of releasing Mr. Duran Ortega, Shelby County jail authorities transferred him to ICE custody less than two hours after his return to the jail. Ex. 1

(Duran Ortega Decl.) ¶ 20; Ex. 2 (Valdez Decl.) ¶ 14; Ex. 6 (Swatzell Decl.) ¶ 10. Two officers led him to a waiting vehicle where they fingerprinted him and attempted to make him sign documents in English that he did not understand. Ex. 1 (Duran Ortega Decl.) ¶ 20.

39. Ordinarily, detainees at Shelby County jail are transferred into DHS custody through processing first at a facility in Memphis and then spend several days at a small short-term detention center in Mason, Tennessee, before transfer to a longer-term ICE detention facility such as LaSalle Detention Center. *See* Ex. 4 (Flores Decl.) ¶ 12; Ex. 6 (Swatzell Decl.) ¶ 11; Daniel Connolly, *Immigration agents make arrests in Memphis – one family’s story*, Commercial Appeal (June 9, 2017) <https://www.commercialappeal.com/story/news/2017/06/09/immigration-agents-make-arrests-memphis-one-familys-story/101211638/> (ICE agents confirming transferring immigrants in Memphis to a holding center on Summer Ave., to Mason, TN, and then to LaSalle).

40. In contrast with this routine process for Tennessee detainees, Mr. Duran Ortega, was transferred directly from Shelby County jail to LaSalle Detention Center in Jena, Louisiana on April 5, 2018. *See* Ex. 1 (Duran Ortega Decl.) ¶ 20; Ex. 2 (Valdez Decl.) ¶ 14; Ex. 4 (Flores Decl.) ¶ 12; Ex. 6 (Swatzell Decl.) ¶ 11; Ex. 8 (Kaaz Decl.) ¶ 11. From the vehicle that drove him away from the Shelby County jail, he was transferred to a bus in Mississippi. Ex. 1 (Duran Ortega Decl.) ¶ 20. On that bus, he was shackled by his wrists, ankles, and waist and forced to endure the eight-hour ride without access to a bathroom. *Id.*

41. Mr. Duran Ortega remains in detention, where is he is subject to removal pursuant to an *in absentia* order of removal entered at a January 2007 immigration court hearing in Atlanta. Mr. Duran Ortega did not receive communication from DHS or the Immigration Court providing him notice of the 2007 Atlanta hearing. Ex. 1 (Duran Ortega Decl.) ¶ 4. On April 9, 2018, Mr. Duran Ortega filed a motion to reopen with the Atlanta Immigration Court. In his Motion to Reopen, Mr. Duran Ortega argues that: (1) material changes in conditions in El Salvador lead him to fear that, if returned, he will be persecuted both as a journalist and as an individual who has a political opinion rooted in pro-accountability and anti-corruption; (2) he was not notified of the hearing as required by statute and regulation and extraordinary circumstances prevented his presence at the hearing; and (3) humanitarian and constitutional considerations require re-opening his immigration case.

42. Mr. Duran Ortega's removal has been temporarily halted in conjunction with the filing of the Motion to Reopen, but he remains unlawfully detained by DHS pursuant to and as a direct result of, his unlawful arrest and detention.

CAUSES OF ACTION

COUNT ONE FIRST AMENDMENT – RETALIATION

43. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

44. The First Amendment to the United States Constitution prohibits government action that restricts freedom of speech. “The First Amendment prohibits not only direct limits on individual speech but also adverse governmental action taken against an individual in retaliation for the exercise of protected speech activities.” *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002).

45. Speech that addresses matters of government policy, including criticism of law enforcement practices, is entitled to vigorous First Amendment protection. Indeed, “[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” *City of Houston, Tex. v. Hill*, 482 U.S. 451, 462–63 (1987). Furthermore, critical speech is rooted in our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 354, 270 (1964).

46. Moreover, all persons in the United States, including non-citizens, enjoy the “right to peaceful expression of views through public demonstration.” *Parcham v. I.N.S.*, 769 F.2d 1001, 1004 (4th Cir. 1985); *see also Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1064 (9th Cir. 1995) (“It is thus especially appropriate that the First Amendment principle of tolerance for different voices restrain our decisions to expel a participant in that community from our midst.”).

47. The First Amendment precludes law enforcement officials from retaliating by targeting, detaining, arresting, and/or seeking to deport an individual engaging in protected speech where the officials’ actions “caused [the speaker] to suffer an injury that

would chill a person of ordinary firmness from continuing to engage in that activity” and were “substantially motivated against the plaintiffs’ exercise of constitutionally protected conduct.” *Keenan*, 290 F.3d at 258.

48. When law enforcement officers’ decisions to target, arrest, detain, or deport a non-citizen are substantially motivated by that individual’s protected speech, those decisions violate the First Amendment.

49. Mr. Duran Ortega’s speech, through his publications in *Memphis Noticias* and on social media outlets is core protected speech under the First Amendment. His articles and commentary have exposed the entanglement of local law enforcement and federal immigration enforcement and its impact on community members. His reporting on DHS, ICE, and local law enforcement activities have frequently been critical of law enforcement. His speech about immigration enforcement policy pertains to matters of public concern and seeks to educate and inform the Latino communities of Memphis about matters of political concern. It is therefore entitled to the highest level of protection under the First Amendment.

50. The arrest, detention, and imminent deportation that Mr. Duran Ortega currently faces have injured him and continue to injure him, and would chill any person of ordinary firmness from continuing to speak out on issues related to immigration enforcement and policy.

51. Respondents’ detention of Mr. Duran Ortega is a direct result of Memphis law enforcement officers’ and ICE officers’ illegal and unconstitutional actions in targeting, arresting, detaining, and seeking to deport Mr. Duran Ortega. MPD unlawfully

arrested Mr. Duran Ortega to silence and retaliate against him. Once Mr. Duran Ortega was jailed SCSO officials prevented him from exercising his right to bond and otherwise acted to prolong his already unlawful confinement in jail.

52. SCSO officials further retaliated against Mr. Duran Ortega by voluntarily turning him over to ICE officers. ICE officials then swiftly acted—in contrast with their normal processing of Memphis detainees—to remove Mr. Duran Ortega from Tennessee, where his attorneys and a large community of supporters were located.

53. Respondents' detention of Mr. Duran Ortega reflects a growing pattern of efforts by ICE officials to silence and suppress the controversial speech of certain immigrants by arresting, detaining, and attempting to summarily remove them. *See, e.g., Ragbir v. Sessions*, No. 18-CV-236 (KBF), 2018 WL 623557, at *1 n.1 (S.D.N.Y. Jan. 29, 2018) (“The Court also notes with grave concern the argument that petitioner has been targeted as a result of his speech and political advocacy on behalf of immigrants’ rights and social justice.”); *Vargas v. United States Dep’t of Homeland Sec.*, No. 1:17-CV-00356, 2017 WL 962420, at *3 (W.D. La. Mar. 10, 2017) (habeas petitioner alleged that ICE arrested, detained, and sought to remove her to retaliate against her for statements to the media); *see also* John Burnett, “Immigration Advocates Warn ICE is Retaliating for Activism,” *National Public Radio* (March 16, 2018). <https://www.npr.org/2018/03/16/593884181/immigration-advocates-warn-ice-is-retaliating-for-activism> .

54. The illegal detention of Mr. Duran Ortega suppresses his constitutionally-protected conduct; namely, Mr. Duran Ortega's reporting on how conduct by local law enforcement and ICE has adversely impacted immigrant communities in Memphis.

55. Respondents' ongoing detention of Mr. Duran Ortega violates the First Amendment to the United States Constitution.

COUNT TWO
FIRST AMENDMENT – SUPPRESSION OF FREEDOM OF THE PRESS

56. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

57. The First Amendment to the United States Constitution enshrines broad protections for freedom of the press. It protects the freedom of the press to speak and report, and also to gather news. *In re Express-News Corp.*, 695 F.2d 807, 808 (5th Cir. 1982) (“news-gathering is entitled to first amendment protection, for without some protection for seeking out the news, freedom of the press could be eviscerated”) (internal citations omitted). “Where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order.” *The Florida Star v. B.J.F.*, 491 U.S. 524, 542 (1989); *see also Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 103 (1979) (subjecting to heightened scrutiny criminal punishment for publication of information lawfully obtained through news-gathering).

58. “At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence . . . Government action that stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes this essential right.” *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994). The press must have broad discretion to print particular view points, and “[g]overnmental restraint on publishing need not fall into familiar or traditional patterns to be subject to constitutional limitations on governmental powers.” *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256 (1974).

59. Through *Memphis Noticias*, Mr. Duran Ortega has published in writing or posted to social media numerous reports that criticize or give voice to others criticizing law enforcement, particularly with respect to immigration enforcement activities by federal and local officials and local law enforcement’s entanglement with ICE. Memphis law enforcement officials attempted to make him change the content of his reporting, going so far as to ask him to remove a story about MPD’s collaboration with ICE. By repeatedly excluding *Memphis Noticias* from its press conferences on issues of importance to Mr. Duran Ortega’s readers, MPD continued its attempts to influence his reporting. On the day MPD arrested Mr. Duran Ortega, he was covering a protest that specifically targeted collaboration between local law enforcement and immigration authorities.

60. Mr. Duran Ortega’s arrest on April 3, his detention by local officials, his subsequent transfer to DHS custody and immediate transportation by DHS to a remote

detention center, and DHS' ongoing detention of Mr. Duran Ortega result directly from local and federal law enforcement officials' efforts to target, punish, and silence his voice as a journalist.

61. Mr. Duran Ortega's continued detention constitutes unlawfully targeted punishment and retaliation for his protected activities as a member of the press.

COUNT THREE
FOURTH AMENDMENT – UNLAWFUL ARREST AND DETENTION¹

62. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

63. As set forth above, Mr. Duran Ortega was arrested without a prior warrant or probable cause by Memphis Police Department (MPD) officers while he was reporting on a protest at the Shelby County Justice Center. Mr. Duran Ortega was attempting to comply with police orders to clear the street by moving from a crosswalk area to the sidewalk but was grabbed by MPD officers and not given a chance to do so. One

¹ The Supreme Court recently held that a plaintiff who alleged unlawful arrest stated a Fourth Amendment claim “when he sought relief not merely for his (pre-legal-process) arrest, but also for his (post-legal-process) pretrial detention.” *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 919 (2017); *see also Brooks v. George Cty., Miss.*, 84 F.3d 157, 166 (5th Cir. 1996) (“[O]nce the incidents of a *valid arrest* have long since been completed and the pretrial detainee remains in detention, the Fourth Amendment no longer applies when the challenge is solely to continued incarceration.” (emphasis added); *Blackwell v. Barton*, 34 F.3d 298, 302 (5th Cir. 1994) (plaintiff's claims that she was made to go to the police station without probable cause for detaining her were properly considered under Fourth Amendment). In the event this Court were to determine that his underlying arrest is lawful, Petitioner has plead in the alternative unlawful detention claims under the Fifth and Fourteenth Amendments.

protestor explicitly told MPD officers that Mr. Duran Ortega was following their instructions. Mr. Duran Ortega did not resist arrest. Protestors alerted MPD officers to the fact Mr. Duran Ortega was a journalist, and he was clearly identified as a journalist. These circumstances clearly showed Mr. Duran Ortega was neither engaged in disorderly conduct nor obstructing the road. *See* Tenn. Code Ann. § 39-17-305 (defining disorderly conduct as requiring, *inter alia*, “intent to cause annoyance or alarm”); Tenn. Code Ann. § 39-17-307 (requiring, *inter alia*, that an individual “intentionally, knowingly or recklessly” obstruct a road). Despite these facts, Mr. Duran Ortega was hastily arrested and charged with misdemeanor disorderly conduct and obstruction of a road.

64. Mr. Duran Ortega was then unlawfully detained at the Shelby County Jail for two days. Mr. Duran Ortega’s warrantless arrest and resultant unlawful detention by Memphis law enforcement officers violated the Fourth Amendment to the United States Constitution. *Hogan v. Cunningham*, 722 F.3d 725, 731 (5th Cir. 2013) (“It is well established that under the Fourth Amendment a warrantless arrest must be based on probable cause.”) (internal quotations omitted).

65. The MPD’s unlawful arrest and detention of Mr. Duran Ortega in violation of the Fourth Amendment was the direct cause of his current detention by DHS. Mr. Duran Ortega’s arrest and current detention by DHS flows directly from the unlawful arrest and detention effectuated by the MPD and SCSO and accordingly violates the Fourth Amendment. *See New York v. Harris*, 495 U.S. 14, 19 (1990) (“[T]he the indirect fruits of an illegal search or arrest should be suppressed when they bear a sufficiently close relationship to the underlying illegality.”); *Elkins v. United States*, 364 U.S. 206,

223 (1960) (evidence obtained from state officers during a search that violates the Fourth Amendment may not be introduced in federal proceedings).

**COUNT FOUR
UNLAWFUL DETENTION IN VIOLATION OF THE FOURTEENTH
AMENDMENT**

66. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

67. The due process clause of the Fourteenth Amendment protects pre-trial detainees from being detained in excess of their lawful period of detention. *Brooks v. George Cty., Miss.*, 84 F.3d 157, 166 (5th Cir. 1996).

68. As set forth above, the MPD had no lawful basis on which to arrest or detain Mr. Duran Ortega. Because MPD unlawfully arrested Mr. Duran Ortega, his confinement in the Shelby County jail for two days pursuant to MPD's unlawful arrest deprived him of his liberty without due process of law.

69. Even after Mr. Duran Ortega's domestic partner posted bond for him on April 3, 2018, SCSO jail authorities continued to detain Mr. Duran Ortega. SCSO authorities intentionally failed to present the bond papers to Mr. Duran Ortega for his signature, thereby restraining him from leaving jail when bond was posted for him. *See Dodds v. Richardson*, 614 F.3d 1185, 1193 (10th Cir. 2010) (arrestees who have bail "have a protected liberty interest in posting bail and being freed from detention"); *Campbell v. Johnson*, 586 F.3d 835, 840–41 (11th Cir. 2009) (plaintiff stated due process claim against sheriff who allegedly directed that plaintiff's bond would not be accepted).

70. Upon dismissal of all charges against Mr. Duran Ortega, SCSO authorities transferred him to ICE custody at DHS' behest, deliberately prolonging his already unlawful detention.

71. Shelby County authorities' illegal extension of Mr. Duran Ortega's confinement, which directly resulted in his transfer to DHS custody and his current detention, violated the due process clause of the Fourteenth Amendment to the Constitution.

**COUNT FIVE
UNLAWFUL DETENTION IN VIOLATION OF THE FIFTH
AMENDMENT**

72. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

73. The due process clause of the Fifth Amendment requires that no person be subject to confinement by federal government officials without lawful basis for their detention. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

74. Here, DHS's assumption of custody over Mr. Duran Ortega flowed directly and inextricably from his unlawful arrest by MPD and his unlawful detention in the Shelby County jail. DHS' current detention of Mr. Duran Ortega is the fruit of unlawful detention by SCSO officials.

75. DHS' continued detention of Mr. Duran Ortega results directly from the unlawful arrest and detention and violates the due process clause of the Fifth Amendment.

PRAYER FOR RELIEF

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

- (1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner immediately;
- (2) Enter a judgment declaring that Respondents' detention of Petitioner is in violation of his First, Fourth, Fifth and Fourteenth Amendment rights;
- (3) Award Petitioner reasonable costs and attorney's fees; and
- (4) Grant any other and further relief that this Court may deem fit and proper.

Respectfully submitted this 13th day of April, 2018,

/s/ Meredith B. Stewart
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**Pro hac vice motions forthcoming*