

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

Lenin A. Hernández-Argujo

Petitioner,

v.

Diane Witte, et al.,

Respondents.

Case No. EP-18-cv-276

DECLARATION OF LENIN A. HERNÁNDEZ-ARGUJO

I, Lenin A. Hernández-Argujo, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am twenty-two years old.
2. I was born on [redacted], 1996 in El Salvador.
3. I am a native Spanish speaker. I do not speak English.

My Persecution in El Salvador and Experience Seeking Asylum in the United States

4. I am currently detained by U.S. Immigration and Customs Enforcement (ICE) at the El Paso Processing Center in El Paso, Texas.

5. I was forced to flee El Salvador after members of a gang threatened to kill me and my family if I did not work for them.

6. I have been in immigration detention for more than 27 months.

7. I was a student in El Salvador. On May 11, 2016, I was walking to school, members of MS-13 approached me to demand that I join the gang, sell drugs for them, and collect extortion money. I knew that I could not work for them because I could never kill and hurt people like they do and I refused. Then the gang demanded that I give them a \$300 payment

every month. There was no way that I could pay what they were demanding. They said I needed to pay them or they would kill me.

8. When I responded that I did not have money, a gang member beat me, striking me in the head and chest. The gang also warned me that they had connections in the police, and that if I went to the police they would kill me and my family, and that the killing would be painful.

9. The gang members told me I had until the following day to give them a response.

10. Fearing for my life, I fled El Salvador.

11. In May 2016, I presented myself to U.S. immigration authorities at a bridge in the Paso Del Norte Port of Entry in El Paso, Texas and asked for asylum.

12. On June 30, 2016, I was interviewed by an asylum officer who determined that I had shown a credible fear of persecution or torture and referred my asylum claim to the immigration court.

13. I have no criminal history in the United States or El Salvador.

My Immigration Proceedings

14. Initially my uncle hired Annette Briones Dejesus to represent me in my immigration case. But my uncle and I later found out that Ms. Briones lied to us. She was not a lawyer or an accredited representative and she defrauded my uncle and me. Ms. Briones represented me for almost a year.

15. ICE officials allowed Ms. Briones to enter the El Paso Processing Center as an attorney and to fraudulently enter an appearance as my lawyer in my immigration proceedings.

16. After I found out about Ms. Briones's fraud, I hired my current attorney, Carlos Spector.

17. On April 20, 2018, I was represented by Mr. Spector at my asylum hearing.

18. The immigration judge found that I had testified credibly in all respects, but nonetheless denied my asylum claim, holding that I had not demonstrated enough of a connection between my fear of further persecution by MS-13 and a protected ground for asylum.

19. I appealed to the Board of Immigration Appeals. First, I argued that the immigration judge lacked jurisdiction over my case because the Notice to Appear was defective. Second, I argued that the immigration judge mistakenly denied my asylum claim. Specifically, I noted that I had presented evidence that I was harmed because of my political opinion (my opposition to MS-13's activities) and that I had presented evidence of past persecution (my testimony describing my beating).

20. Nearly three quarters of my time in detention took place prior to receiving an asylum decision on April 20, 2018, because of the delays caused by Ms. Briones's fraudulent representation.

21. Through Mr. Spector, I also referred Ms. Briones's fraud to the government for prosecution.

22. I have volunteered to communicate and cooperate with law enforcement officials during any criminal investigation into Ms. Briones's fraud.

23. On January 29, 2018, I submitted a request through my lawyer to the Office of the Inspector General of the Department of Homeland Security to review and investigate ICE's misconduct in allowing Ms. Briones to defraud me.

My Prolonged Detention and Applications for Release on Parole

24. After the asylum officer found that I had a credible fear in June 2016, no one explained to me how to apply for parole. An ICE officer gave me some papers and told me that the papers had a list of documents I needed to submit to be released.

25. On June 14, 2017, Mr. Spector filed a parole request for me with several supporting documents, including proof that my uncle—then a lawful permanent resident and now a naturalized U.S. citizen—could provide a home and financial support for me while I am in immigration proceedings. That request was denied.

26. I had tried to apply for parole earlier, when Ms. Briones represented me, but as I have explained, she was not a lawyer or an accredited representative.

27. I challenged my parole denials as a named plaintiff in a class action in the District of Columbia. In that case, I challenged ICE's failure to conduct individualized parole determination. The court held that ICE's failure to do so violated its own parole directive, and issued a preliminary injunction requiring ICE to conduct new, individualized determinations. *See Damus v. Nielsen*, 313 F. Supp. 3d 317, 343 (D.D.C. 2018).

28. After that preliminary injunction, I sought a new parole determination through my attorney. That new parole request relied on documents showing that my uncle would be a reliable sponsor, including copies of identity documents, of pay stubs, and a 2017 tax return.

29. My new parole request also noted that Ms. Briones's fraudulent representation could make me eligible for a U-visa, a form of immigration relief available to victims of crimes. The request noted that the delay by the ICE Office of the Inspector General in responding to my complaint has led to a corresponding delay in filing such an application, further prolonging my detention.

30. In response, I received a form letter with boxes ticked next to the sentences: “You have not established to ICE’s satisfaction that you are not a flight risk,” “Imposition of a bond or other conditions of parole would not ensure, to ICE’s satisfaction, your appearance at required immigration hearings pending the outcome of your case,” and “ICE previously provided you with a written decision declining to grant parole, and you have failed to provide additional documentation or to demonstrate any significant changed circumstances which would alter ICE’s previous determination.”

31. The parole denial gave no individualized reasons. For example, the denial did not address my evidence that I would live with my recently naturalized U.S. citizen uncle, Juan Carlos Araujo Hernandez. Nor did the denial address the fraudulent misrepresentation that delayed and prejudiced my immigration proceedings, nor my eligibility for a U-Visa as a victim of perjury, which would create an incentive for me to appear for subsequent hearings.

32. The denial, in stating that I had not “provide[d] additional documentation or . . . demonstrate[d] any significant changed circumstances,” did not acknowledge or address the extensive documentary evidence, in the form of pay stubs and a 2017 tax return, that my uncle has a steady income and could support me if released.

33. I am still detained.

34. I could be living with my uncle and my grandparents now. They will make sure I attend every immigration court date and appointment. It is important to my whole family that I go to all of my immigration court hearings and do what the immigration officials tell us to do. My uncle is a U.S. citizen. My grandmother and my grandmother’s husband are lawful permanent residents. All of them live together in Santa Ana, California.

35. I know that I can live in safety only if the immigration judge grants me the right to stay here. The gang will kill me if I return to El Salvador. Because of this, I will follow every order that the immigration judge and ICE officials give me, including electronic monitoring or other conditions of supervision.

36. I have never been in a prison or a detention center before. I have never committed a crime.

37. Many days, I pass the time by cleaning the detention center. On the days that I clean, I usually work in the morning for five hours. ICE pays me one dollar a day for my work.

38. But there are days when I don't even want to wake up.

39. Sometimes I try to get rid of my stress by playing dominos, but it doesn't help. I am afraid of the gang and I want to be with my family.

40. It is difficult to sleep here. The guards come into our unit at night and open and close the heavy metal doors. The metal doors clang and wake me up.

41. I miss my family. I never knew that I would be detained for so long.

42. This declaration was interpreted to me in Spanish and I agree with its contents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, based on my personal knowledge. Executed at El Paso, Texas on September 7, 2018.

/s/

L.A.H.A 09/07/2018
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