

The *Orantes* Injunction

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■ What is the *Orantes* injunction?

The *Orantes* injunction is a nationwide, permanent injunction that requires the Department of Homeland Security (“DHS”) to uphold certain rights of Salvadoran nationals in immigration detention.

In 1982, a U.S. district court issued a preliminary injunction based on evidence that the Immigration and Naturalization Service (“INS”) had detained and removed Salvadoran nationals eligible for asylum by using coercive tactics. Among other practices, the court found that there was evidence that INS provided misleading information to Salvadoran detainees regarding their right to apply for political asylum, denied Salvadoran detainees adequate access to counsel and to information about their rights, and placed Salvadoran detainees into solitary confinement without an administrative hearing.¹ After a lengthy trial, the court in 1988 entered a permanent nationwide injunction mandating that the INS provide Salvadorans placed in immigration custody with a written notice about their rights, ensure Salvadorans access to telephones, counsel, and legal materials in detention, and refrain from coercing Salvadorans into signing voluntary departure agreements.²

In 2005, the government moved to dissolve the *Orantes* injunction arguing that intervening changes in law and fact made the injunction’s protections unnecessary. In 2007, the U.S. District Court for the Central District of California denied nearly all of the government’s motion to dissolve the injunction, finding that the government had failed to show significantly changed conditions for Salvadoran detainees to warrant dissolving the injunction, and modified the injunction only slightly. The U.S. Court of Appeals for the Ninth Circuit upheld this decision in 2009.³ As a result, the injunction remains in force today and the government must abide by the terms of the modified permanent injunction nationwide.

A copy of the modified permanent injunction is available at https://www.nilc.org/wp-content/uploads/2015/11/orantes_modified_injunction_2007-11-26.pdf.

■ Who does the *Orantes* injunction cover?

The *Orantes* injunction applies to citizens and nationals of El Salvador who are *eligible* to apply for political asylum, and who have been, are, or will be taken into custody by agents of the

¹ *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 354 (C.D. Cal. 1982).

² *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1511-13 (C.D. Cal. 1988).

³ *Orantes-Hernandez v. Holder*, 321 Fed. Appx. 625, 2009 WL 905454 (9th Cir. Apr. 6, 2009).

Since it was first published in March 2011, this issue brief has been revised in the following ways: The contact information and hyperlinks to the copy of the modified, consolidated injunction have been updated; the NILC addresses in the footer of p. 1 have been updated; and the formatting has been otherwise slightly modified.

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Department of Homeland Security (DHS).⁴ The detainee does not need to have applied for asylum in order for the injunction to apply. Although the *Orantes* injunction does not apply to immigrant detainees from other countries, several of its requirements effectively benefit all detainees in immigration detention. Enforcement of the injunction, however, must take place on behalf of a Salvadoran detainee.

■ What does the *Orantes* injunction require the government to do?

The *Orantes* injunction requires that DHS provide the following to Salvadoran detainees:⁵

- advise detainees, in writing and orally, of their right to apply for asylum, to be represented by counsel, and to request a deportation hearing (often called the *Orantes* advisal)
- ensure privacy of attorney-client communications
- permit access by counsel and paralegals to detainees between the hours of 9:00 am and 9:30 pm, including the option to meet during mealtimes, and permit access by paralegals who are unaccompanied by counsel
- permit Salvadoran detainees to retain copies of the *Orantes* advisal, legal services list, legal materials, and written materials
- provide legal materials regarding immigration relief available in English and Spanish
- ensure that detention center libraries are “sufficiently accessible” to detainees
- provide Salvadoran detainees with updated and accurate legal service lists and writing materials, including papers, pencils, pens, and typewriters
- provide adequate telephone access to detainees, with at least one working telephone available for every 25 detainees

In addition, DHS may not coerce or in any other way attempt to persuade or dissuade Salvadoran detainees to accept voluntary departure.

And, so Salvadoran detainees may more easily retain attorneys, DHS may not transfer unrepresented Salvadoran detainees out of the district where they were first arrested or apprehended for a period of seven days. Salvadoran detainees who obtain counsel must be returned to the district in which venue is set in order to allow the detainee to consult with counsel.

■ What can I do if I've seen an *Orantes* violation?

The National Immigration Law Center is documenting violations of the injunction to advocate for better conditions in immigration detention and to instruct the government to correct any violations. If you know or suspect of violations of the *Orantes* injunction, please contact NILC.

FOR MORE INFORMATION, CONTACT

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⁴ *Orantes-Hernandez v. Meese*, 685 F. Supp. at 1491, *aff'd.*, 919 F.2d 549 (9th Cir. 1990).

⁵ *Orantes-Hernandez v. Gonzales*, No. 82-v-01107 (C.D. Cal. Nov. 26, 2007) (modified, consolidated injunction), available at https://www.nilc.org/wp-content/uploads/2015/11/orantes_modified_injunction_2007-11-26.pdf.