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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

REMILEKUN K. DAVIS Plaintiff, v. JEFFERSON B. SESSIONS, UNITED STATES ATTORNEY GENERAL; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION CUSTOMS AND ENFORCEMENT ("ICE"); U.S. CITIZENSHIP AND IMMIGRATION SERVICES; JOHN KELLY, SECRETARY OF UNITED STATES DEPARTMENT OF HOMELAND SECURITY; THOMAS HOMAN, "ICE" ACTING DIRECTOR; JERRY D. TURNER, ASSISTANT FIELD OFFICE DIRECTOR OF HOUSTON ICE FIELD OFFICE; RICKY HAMILTON, DICTRICT OFFICE DIRECTOR OF USCIS HOUSTON DISTRICT OFFICE; ROBERT LACY, JR., WARDEN OF CCA HOUSTON PROCESSING CENTER; SARAH HARTNETT, CHIEF COUNSEL, ICE HOUSTON Defendants.	No._____

PLAINTIFF'S PETITION FOR WRIT OF HABEAS CORPUS AND TEMPORARY RESTRAINING ORDER AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner, Lieutenant Remilekun ("Remi") K. Davis, is a veteran of the United States Army where he served beginning April 27, 2001. He graduated in the top 3% of the U.S. Army's Officer Candidate School in June, 2002, and served honorably as a Second Lieutenant until August 27, 2004. He has obtained a bachelor's degree in Applied Mathematics and a second bachelor's degree in Petroleum Engineering from the University of Missouri, as well as a Master's in Business Administration and a Master's in Finance from Northeastern University. A prominent local businessman, he owns DZ and Associates, which in turn owns several gyms including Anytime Fitness and Snap Fitness franchises. He employs twelve U.S. citizens in addition to providing contract employment for numerous personal trainers. He has a 16-year-old U.S. citizen daughter on whose behalf he pays voluntary child support. Finally, he has spent hundreds of hours in service of Houston's homeless population for the organization "Lord of the Streets." The latter fact is ironic because while Mr. Davis tirelessly serves Americans with no homes, he himself has no country.

2. Remi Davis has no identity. He does no know where he was born or who his parents are. Once, he believed he was born a U.S. citizen in the U.S. Virgin Islands. However, while serving in the Army it was brought to his attention that his birth certificate was illegitimate. A private investigator later led him to believe he was born in Missouri, where he subsequently filed for a birth certificate. The subsequent unravelling of what he believed was his truthful past left an otherwise innocent man with two federal convictions and a deportation order.

3. Despite being ordered deported, Mr. Davis has not been removed from the United States. This is because no country will claim him. However, he has reported to Immigration and Customs Enforcement faithfully for ten years under an Order of Supervision.

4. Because he served in the United States military during a period of conflict, Mr. Davis is eligible for "military naturalization" under Immigration and Nationality Act § 329. In brief, Congress provided that our soldiers, regardless of who they are or where they came from (or whether they have

an order of removal), can apply for U.S. citizenship without cost under only one substantive condition: that they have demonstrated good moral character during the past 12 months (as opposed to the normal requirement of 5 years). It is one of the most generous provisions in all of immigration law and reflects Congress's profound respect for our soldiers and a belief that military service has the power to make good citizens of men and women, even those with imperfect pasts.

5. Remi Davis applied for military naturalization on April 1, 2014. On June 3, 2015, his application was denied by USCIS on the grounds that his use of the identity he thought was real, and his subsequent struggle to survive as a ghost in modern America, are representative of a fraudulent and deceitful character.

6. On July 2, 2015, Mr. Davis filed a Form N-336, Request for Hearing on a Decision in Naturalization Proceedings. The request remains pending to date, nearly two years later. Because he committed no acts implicating moral turpitude in the 12 months preceding his N-400, he qualifies for U.S. citizenship and is likely to prevail on his appeal. If he prevails, ICE will have no jurisdiction over him and he cannot be deported. If he does not prevail, this Court will then have jurisdiction to review both USCIS decisions.

7. On March 20, 2017, during his annual check-in with ICE, Mr. Davis was arrested and detained, presumably in preparation for removal.

8. If Mr. Davis remains detained until USCIS's decision on his N-336, even if it is ultimately granted, his twelve employees will lose their jobs, his businesses will fail, his daughter will go without support, and the homeless of Houston will lose a uniquely generous and energetic patron.

9. If Mr. Davis is released, the government loses nothing. He is not a flight risk. He has substantial ties with Houston and has faithfully reported to ICE without fail for ten years. Nor has he ever committed a crime that harmed any individual. His detention is a waste of taxpayer funds.

10. In addition to meeting the criteria for a temporary restraining order, his detention is also illegal because USCIS acted arbitrarily and contrary to law in denying his naturalization and has also unreasonably delayed the adjudication of his administrative appeal of his citizenship. If not for the erroneous decision and unreasonable delay in adjudicating the appeal, Mr.

Davis would likely be a U.S. citizen at this time, in which case he cannot be detained by Defendants. Therefore, the Court should declare his detention illegal and issue a writ of habeas corpus.

11. We implore the Court to issue a temporary restraining order and a writ of habeas corpus to compel ICE to free Mr. Davis from detention until 1) USCIS adjudicates his naturalization appeal and this Court has had an opportunity to review that decision under the APA; and 2) until ICE offers proof that Mr. Davis is a "removable alien," that is, one who another country is willing to accept as its own. Otherwise his detention serves no purpose and violates his constitutional rights.

PARTIES

12. Petitioner Remilekun Davis is a stateless individual and a resident of Houston, Texas. He is currently detained by Respondents.

13. Respondent Jefferson B. Sessions is the Attorney General of the United States, sued in his official capacity.

14. Respondent U.S. Department of Homeland Security ("DHS")is the parent agency of U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services.

15. Respondent U.S. Immigration and Customs and Enforcement ("ICE") is the division of DHS charged with detaining and removing aliens under U.S. immigration laws.

16. Respondent U.S. Citizenship and Immigration Services is the division of DHS charged with adjudicating applications for U.S. citizenship.

17. Respondent Thomas Homan is the ICE Acting Director in Washington, D.C. He is sued in his official capacity.

18. Respondent Jerry D. Turner is the Assistant Field Office Director of ICE in Houston, Texas. Respondent has physical custody of Petitioner and is sued in his official capacity.

19. Respondent Ricky Hamilton is District Office Director of USCIS Houston District Office. The Houston District Office adjudicated Petitioner's Form N-400 Application for Naturalization and is responsible for adjudicating

his Form N-336, Request for a Hearing on a Decision in Naturalization. Respondent is sued in his official capacity.

20. Respondent Robert Lacy, Jr., is the Warden of the CCA Houston Processing center in Houston, Texas, where Petitioner is currently being detained. Thus, Respondent has physical custody of Petitioner. Respondent is sued in his official capacity.

21. Respondent Sarah Hartnett is the Chief Counsel for ICE Houston. Thus, Respondent has legal custody of Petitioner. Sarah Hartnett is sued in her official capacity.

JURISDICTION

22. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction under 28 U.S.C. § 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 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, 2243, and 1361; 5 U.S.C. § 702; and the All Writs Act, 28 U.S.C. § 1651.

23. The use of the Writ of Habeas Corpus to challenge detention by ICE is not foreclosed by the REAL ID Act. The REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231 (May 11, 2005), Title I, Section 106(c), amending INA §§ 242(a)(2)(A), (B), (C) and § 242(g), only deprives the district court of habeas jurisdiction to review orders of removal, not challenges to detention. *Hernandez v. Gonzalez,* 424 F.3d 42, 42 (1st Cir. 2005) (proper venue for a habeas petition remains the district court); *accord INS v. St. Cyr,* 533 U.S. 289, 364-65 (2001) ("The writ of habeas corpus has always been available to review the legality of executive detention.").

VENUE

24. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), because Petitioner was arrested by ICE in Houston, Texas; his petition for naturalization was adjudicated in Houston, Texas; and his N-336 was filed and remains pending in Houston. Petitioner is being detained at the CCA Houston Processing Center in Houston, Texas; and Defendants Jerry D. Turner and Robert Lacy, Jr., are located in Houston, Texas.

25. A copy of this motion is being served on all parties.

FACTS AND BACKGROUND

26. Petitioner is an intelligent, educated and successful entrepreneur and philanthropist. Nevertheless, as previously stated, he does not know where he was born or who his parents are. He grew up with a U.S. Virgin Islands birth certificate and the belief that he had been adopted from that territory and passed around from one family to another, in California at one point and later in New Jersey. Around the age of 15-17, Petitioner was found homeless in Missouri. *See* Exhibit E. We believe he may have suffered some trauma at this time that affected his early memories, but present counsel's recent attempt to initiate a psychiatric evaluation to explore this possibility was cut short by Petitioner's arrest and detention by Defendant ICE on March 20, 2017.

27. After graduating from high school and obtaining undergraduate and graduate degrees from University of Missouri and Northeastern University, Petitioner relied on his U.S. Virgin Islands birth certificate to enter the U.S. Army's Officer Candidate School in Fort Benning, Georgia, where he graduated in the top 3% of his class as a Second Lieutenant.

28. Petitioner served as an officer in the army until August 27, 2004. Prior to this time, he attempted to apply for a U.S. passport so that he could be deployed.

29. In 2003, Petitioner, while still serving in the Army, was arrested in conjunction with the filing of his passport and charged with making a false statement on a passport application. Until this time, Petitioner did not know his birth certificate was not real. Nevertheless, he pled guilty on advice of counsel in return for probation.

30. In 2004, Petitioner was arrested again and charged with making a false claim to U.S. citizenship which charges later apparently resulted in further charges of making a false declaration before a grand jury, for which he was sentenced to 10 months of imprisonment and placed in removal proceedings.

31. During his removal proceedings, an immigration judge advised him to apply for military naturalization.

32. Petitioner has applied for military naturalization on four different occasions. Each application resulted in a denial. Only the most recent application is before present counsel.

33. The most recent USCIS denial, issued on June 3, 2015, is premised on the supposition that a stateless person is not a legitimate person and thus all acts that person has undertaken are necessarily fraudulent. The denial states:

> The Service has evidence that the name Remilekun Davis is not a legal name for any purpose. You have not provided any evidence to show that the name you have used has an authentic record of birth or legal civil record of creation for the purposes of establishing your name, place, or date of birth. Therefore, each time you have used that name which you created, you have committed fraud. Every document, every application, every diploma which you have acquired has a fake or fraudulent name.
>
> See Tab C.

34. Additionally, USCIS asserted, for the first time, that it had determined through a fingerprint match that Petitioner had submitted a fraudulent asylum application under another name around the age of 17. *See* Tab C. Many, though not all, of the inconsistencies cited by USCIS in its denial were discrepancies between the facts, names, and dates presented in this alleged asylum application, and the facts Petitioner has believed (or learned about himself through investigation) and presented in his four naturalization applications.

35. Based on the evidence before present counsel, which consists solely of USCIS's June 3, 2015 denial, it is our position that a fraudulent asylum "package" was likely submitted by a dubious legal representative on

Petitioner's behalf at the behest of a would-be guardian. This guardian was likely aware that his birth certificate was illegitimate and was attempting by deceptive means to regularize his immigration status which had been irreversibly botched, probably when he was trafficked to the U.S. as a baby. Whether the guardian who oversaw the asylum filing was the same individual who had trafficked him is unknown. Present counsel is aware of similar circumstances in cases of other stateless individuals, almost always beginning with attempts by adoptive parents to circumvent international adoption hurdles.

36. On July 2, 2015, Petitioner timely submitted to USCIS a Form N-336 Request for a Hearing on a Decision in Naturalization Proceedings. This administrative appeal has been pending ever since. *See* Exhibit D.

37. As previously stated, Petitioner is a model citizen. He owns several successful businesses and has many employees and a daughter who depend on him. *See* Exhibit A. His charitable activities are particularly extraordinary. *See* Exhibit B and F. On September 27, 2013, a letter was written on his behalf by Reverend Robert T. Flick of Lord of the Streets, an organization devoted "exclusively with the homeless and disadvantaged population of the City of Houston, Texas." The letter asserts that "Remi volunteers in direct service, i.e., interviewing and doing intake and referral of individuals who need housing and job related services." An additional letter by Myra L. Mitchell, Director of Volunteer Services of the same organization, asserts:

> Mr. Davis is an ardent proponent and advocate for the homeless community. He has actually to date volunteered 2 ½ years (100 + hours).... Mr. Davis's service is invaluable to our ministry.

38. Additionally, this petition contains a letter from Kelly Williams Simon, President of People Matters Today, DBA East Houston Youth Basketball Association. The letter states:

> Remilekun Davis has been a great asset to our youth programs for well over 8 years with not only youth basketball, but youth football, along with many sponsorship [sic] that help assist underprivileged students with school uniforms, prom needs, etc. in the community. There are many things that many students would not have been able to do or participate in

> without his volunteer services and/or generous donations. Mr. Davis continuous [sic] hands on involvement means a lot and we pray that it continue.

FIRST CLAIM FOR RELIEF:

HABEAS RELIEF AND TEMPORARY RESTRAINING ORDER

39. Petitioner re-alleges and incorporates by reference paragraphs 1 through 34 above.

40. Petitioner seeks that defendants be prohibited from detaining him.

41. To obtain a temporary restraining order, Petitioner must show: (1) that he has a substantial likelihood of success on the merits; (2) that a substantial threat of irreparable injury will result if the order is not granted; (3) that the threatened injury outweighs any harm to Respondent; and (4) that granting the application will not disserve the public interest. *Canal Auth. of State of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974) (preliminary injunction); *Dilworth v. Riner*, 343 F.2d 226, 229 (5th Cir. 1965) (stating that an application for a temporary restraining order is equivalent to an application for a preliminary injunction where a summary hearing is held on the application).

Likelihood of Success on the Merits

42. First, Petitioner asserts that he has a substantial likelihood of success on the merits.

43. INA § 239 (8 U.S.C. § 1440) states:

> any person who, while an alien or a noncitizen of the United States, has served honorably…in an active-duty status in the military, air, or naval forces of the United States during [delineating various periods of conflict]…or thereafter during any other period which the President by Executive Order shall designate as a period in which Armed Forces of the United Sates are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment, reenlistment, extension of

> enlistment, 1/ or induction such person shall have been in the United States…whether or not he has been lawfully admitted to the United States for permanent residence…. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions[.]

44. USCIS does not question that Petitioner served in the military of the United States during a military conflict (Operation Enduring Freedom). Furthermore, it does not dispute that his discharge was under honorable conditions.[1]

45. The Service has additionally established by regulation that "[t]o be eligible for naturalization under Section 329(a) of the Act, an applicant must establish that he or she:…(d) Has been, for at least one year prior to the filing of the application for naturalization, and continues to be, of good moral character…."

46. Petitioner asserts that the record is plain that he did not committ any acts of moral turpitude in the twelve months preceding his application. The Service is simply wrong that an individual with the exemplary character of Petitioner commits fraud by using what he believes to be his own name. Stateless individuals exist among us, many of whom do not even know they are not U.S. citizens until they innocuously apply for a passport. And even if Petitioner's guilty plea to two federal crimes as a direct result of his lack of a certifiable identity established bad moral character, neither of these convictions occurred anywhere close to the 12 months preceding his N-400 application. Therefore, USCIS's decision is clearly erroneous and Petitioner believes he will ultimately prevail, either on his administrative appeal, or before this court when the case is ripe for review.

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[1] The Service does assert, bizarrely, that the "conduct" underlying his discharge was "unbecoming of an Officer," but it is unclear what this means. In any event, the Service does not rely on this conclusion in its ultimate denial. Indeed, American history is replete with stories of courageous individuals who misrepresent facts, including their age, in order to serve their country in war time. *See*, e.g., http://www.civilwar.org/education/history/children-in-the-civil-war/children-on-the-battlefield.html?referrer=https://www.google.com/ . It is questionable whether such conduct, even if done knowingly, could be considered morally turpitudinous.

A substantial threat of irreparable injury will result if the order is not granted

47. If the order is not granted, Petitioner may yet win his citizenship appeal (either before USCIS or subsequently on review with this Court); however, in the meantime, his businesses will collapse as there is no one to pay his employees. Furthermore, his daughter will suffer from the lack of voluntary support. Furthermore, the homeless of Houston and the East Houston Youth Basketball Association will lose a tireless advocate and supporter. Therefore, there is a "substantial threat of irreparable injury" if the temporary restraining order is not granted.

48. Furthermore, there is no threat to the government in this case. Petitioner has demonstrated time and again that he is not a flight risk. He has reported under his order of supervision for ten years. Furthermore, he has never harmed a soul and thus presents no risk to anyone. The worst that can be said of Petitioner is that he tried his best to survive in modern America with no verifiable identity, a condition entirely out of his control. Such an individual cannot open a bank account, board an airplane, lease an apartment, obtain a credit card, get a job, get married, die for his country, or even sign the birth certificate of his child.

49. Finally, granting the application will not disserve the public interest. Indeed, many members of the charitable organizations that rely heavily on his service attest it is in their best interest he be freed. *See* Exhibit B and F.

Habeas Corpus

50. Defendant USCIS's decision on Petitioner's naturalization application was an abuse of discretion, arbitrary and capricious, and contrary to law. *See* 5 U.S.C. §§ 701-706. Furthermore, its near two-year delay in adjudicating his naturalization appeal is unreasonable. *See* 5 U.S.C. § 706. These illegal actions directly affect Petitioner's detention because but for the illegal actions, he would be a citizen and not subject to detention by Defendants. Therefore, we assert his detention is in violation of the laws of the United States as it is a direct consequence of illegal administrative actions.

SECOND CLAIM FOR RELIEF:

DUE PROCESS

51. Petitioner re-alleges and incorporates by reference paragraphs 1 through 46 above.

52. As of the date of filing of this petition, Defendants have not demonstrated that they have any ability to remove Petitioner. Presumably, they seek to remove him to Nigeria (the country he was ordered deported to in 2005). Nevertheless, Petitioner requested Nigerian travel documents. *See* Exhibit G, Petitioner's Request for Nigerian Travel Documents. To our knowledge, the Embassy of the Federal Republic of Nigeria has never granted that request.

53. According to the U.S. Supreme Court, "[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely assuring the alien's presence at the moment of removal."). *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). If Defendants cannot remove Petitioner, then his detention serves no purpose and therefore violates due process under the 5th amendment as well as the Suspension Clause of the U.S. constitution. If Defendants cannot show that they are able to deport Petitioner to Nigeria, or some other country, the Court must order that he be released. *See also* 8 C.F.R. § 236.1(c)(6).

PRAYER FOR RELIEF

Wherefore, Petitioner prays the Honorable Court grant the following relief:

A. Assume jurisdiction over this matter;

B. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner immediately;

C. Grant Petitioner's request for a Temporary Restraining Order and Preliminary Injunction, preventing Respondents from further detaining

Petitioner during the pendency of his administrative naturalization appeal and (if necessary) petition for review with this Court;

D. Order Respondents to refrain from transferring Petitioner out of the jurisdiction of the Court during the pendency of this proceeding and while Petitioner remains in Respondent's custody;

E. Grant such other relief as the Court may deem just and proper.

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

DATED: March 21, 2017.

/s/ Sheridan Green

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