

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
~~SAN ANTONIO DIVISION~~
Houston

FILED

NOV 16 2018

David J. Bradley, Clerk of Court

18 CV 436A

TEIMOOR ABDULIJABBAR,

Petitioner,

v.

No. XX-XX-XXX

ATTORNEY GENERAL OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS AND ENFORCEMENT; THOMAS HOMAN, I.C.E. ACTING DIRECTOR; MR. JERRY D. TURNER, ASSISTANT FIELD OFFICE DIRECTOR OF ICE IN HOUSTON, TEXAS; MR. WILLIAM KOWIS IS THE ACTING FIELD OFFICE DIRECTOR AT MONTGOMERY PROCESSING CENTER IN CONROE, TEXAS; MR. RANDY TATE, THE WARDEN AT THE MONTGOMERY PROCESSING CENTER IN CONROE, TEXAS; ALL IN THE OFFICIAL CAPACITIES AND THE GEO GROUP,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

1. This is a petition for a writ of habeas corpus filed on behalf of Mr. Teimoor Abdulijabbar (hereinafter "Petitioner) seeking relief to remedy his unlawful detention pursuant to 28 U.S.C. § 2241. Petitioner seeks his immediate release from custody.
2. Respondents are detaining Petitioner without any lawful authority.

3. Petitioner has been granted asylum and this status has not been terminated. Although he has a criminal conviction he was released on parole. Upon his release he was immediately detained and brought before an Immigration Judge who promptly dismissed his case. However, there is currently no reason why Petitioner should be detained as he is lawfully in the United States. Moreover, even if Petitioner lost his asylum status he qualified for non-discretionary withholding and protection under the Convention Against Torture.
4. Petitioner submits that his detention is in violation of his constitutional rights. His prolonged detention is no longer justified under the Constitution or the Immigration and Nationality Act (INA). Petitioner seeks an order from this Court declaring his continued and prolonged detention unlawful and ordering Respondents to release Petitioner from their custody.

CUSTODY

5. Petitioner is in the physical custody of Respondents William Kowis, the Acting Field Office Director at the Montgomery Processing Center in Conroe, Texas, and, Randy Tate, the warden of the Montgomery Processing Center in Conroe, Texas. At the time of the filing of this petition, Petitioner is detained at the at Montgomery Processing Center in Conroe, Texas. The GEO Group is the private contractor operating the facility together with the DHS. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

6. This action arises under the Constitution of the United States, 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 because under 28 U.S.C. 2241. The Supreme Court of the United States has stated that "28 U.S.C.S. § 2241, confers jurisdiction upon the federal

courts to hear cases in which an alien is claiming that he or she is being held in custody in violation of the United States Constitution or laws of the United States. § 2241(c)(3).”

Zadvydas v. Davis, 533 U.S. 678, 682 (U.S. June 28, 2001).

7. In addition, art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”) and 28 U.S.C. § 1331, confer jurisdiction as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States.
8. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

9. Venue lies in the United States District Court for the Southern District of Texas, the judicial district in which Petitioner is detained by Respondents. 28 U.S.C. § 1391(e).

PARTIES

10. The Petitioner, Mr. Teimoor Abduljabbar, is a national and citizen of Iraq who entered the United States in 2010 after having served the United States government as a translator in Iraq. He was accorded asylum status and adjusted to lawful permanent resident status on or about January 19, 2012.
11. Respondent the Attorney General of the United States, is sued in his official capacity.
12. Respondent U.S. Department of Homeland Security (“DHS”) is the parent agency of the U.S. Immigration and Customs and Enforcement.
13. Respondent U.S. Immigration and Customs and Enforcement (“I.C.E.”) is the division of DHS charged with detaining and removing aliens under U.S. immigration laws.
14. Respondent Mr. Thomas Homan is the I.C.E. Acting Director in Washington, D.C. He is

sued in his official capacity.

15. Respondent Mr. 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.
16. Respondent Mr. William Kowis is the Acting Field Office Director at Montgomery Processing Center in Conroe, Texas.
17. Respondent Mr. Randy Tate is the warden of the Montgomery Processing Center in Conroe, Texas. He is Petitioner's immediate custodian and resides in the judicial district of the United States Court for the Southern District of Texas, Houston Division.
18. Respondent The GEO Group is the body that employs Mr. William Kowis and Mr. Randy Tate.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. Petitioner has exhausted his administrative remedies to the extent required by law.
20. Petitioner has fully cooperated with Respondents and has not delayed or obstructed his detention.
21. Petitioner's only remedy is by way of this judicial action.

STATEMENT OF FACTS

22. Petitioner is an Iraqi citizen who was admitted to United States as a refugee on August 17, 2010. **Exhibit A.** On January 19, 2012, he adjusted his status to a legal permanent resident effective as of August 17, 2010. Id. On October 5, 2012, he was convicted for the crime of aggravated assault under Section 22.20 of the Texas Penal Code because he threatened Malak Mohammed, his spouse at the time, with a lamp during an argument. **Exhibit B.** Petitioner at the time was convicted to probation for 4 years. However, his conviction was considered a crime involving moral turpitude for immigration purposes and the crime was committed

within five years of admission to the US, making Petitioner removable. On April 9, 2013, he was placed in removal proceedings in the Dallas immigration court. **Exhibit C.** Petitioner only relief from removal was to apply for asylum based on the persecution he suffered because he worked with the US army in Iraq as a guide, he would take the army out of the station and take them around cities making sure they knew where they were going. His 17 years old brother was killed over this when ISIS went to his house looking for him. ISIS later kidnapped and tortured his father over the same reasons. The immigration court granted him asylum on July 8, 2013. **Exhibit D.**

23. On August 24, 2015, his probation was revoked by the Dallas criminal district court and he was sentenced to 4 years in an institutional division. **Exhibit E.**

24. Petitioner was released on parole on July 17, 2018. **Exhibit A.** However, Immigrations and Customs Enforcement served him with a warrant for his arrest and a Notice to Appear and took him into custody that same day. **Exhibits F and G.** The Notice to Appear alleged that he is a legal permanent resident and that he was convicted for an aggravated felony. On October 4, 2018, the immigration judge terminated proceedings because she lacked jurisdiction. **Exhibit H.**

25. The Immigration Judge stated that she did not have jurisdiction over Petitioner because he has been granted asylum and his asylum status has not been reopened or terminated as required by the regulations. The Department of Homeland Security (hereinafter DHS) reserved appeal of this decision. **Exhibit H.** The appeal was due on November 5, 2018. No appeal was filed and no extension of time was requested. The Immigration Judge's decision has now become final.

ARGUMENTS

26. Petitioner has been granted asylum. **Exhibit A.** In general, an asylum seeker is entitled to remain in the United States when he cannot be returned to his country of nationality. Section 208(c)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1158.
27. To remove Petitioner, the government is required to first remove his asylum status. 8 C.F.R. § 208.24(a) (2018). This requires a process before the Immigration Court that granted asylum, which is the U.S. Immigration Courts in Dallas, Texas. To date Respondents have failed to provide Petitioner with any notice of an action to terminate his grant of asylum.
28. As a consequence, Petitioner is in the U.S. under a grant of asylum that remains valid and without challenge and Petitioner is therefore being detained without any legal grounds by the Respondents in violation of his right to liberty.
29. The right to liberty is one of the most fundamental rights protected by the Fifth Amendment of the U.S. Constitution, which states that “[n]o person shall ... be deprived of ... liberty ... without due process of law.” A person cannot be detained arbitrarily and without lawful grounds for their detention. In this case no grounds for Petitioner’s detention have been provided.
30. Although Respondent claims to have filed a Motion to Reopen no such motion has been served on Petitioner, who is not represented by a lawyer who can currently represent him in immigration proceedings. Petitioner remains in detention at the Montgomery Processing Center.
31. Moreover, Petitioner is not a danger to the community or a flight risk because he has well-established community ties through his family. He has a U.S. citizen wife and three U.S. citizen children.

32. Petitioner's continued detention deprives his family of his companionship and income.
33. Respondents' decision to detain Petitioner is not legally justifiable and is capricious and arbitrary. The Court should therefore consider Petitioner's request for immediate release by granting the writ to habeas corpus, which is intended for such blatant denial of liberty.
34. Moreover, the use of the writ of habeas corpus to challenge detention by I.C.E. is not foreclosed by the REAL ID Act because 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) in accord with INS v. St. Cyr, 533 U.S. 289, 364-65 (2001).

CLAIMS FOR RELIEF

COUNT ONE CONSTITUTIONAL CLAIM

Petitioner's Detention Violates His Fifth Amendment Rights

35. Petitioner alleges and incorporates by reference paragraphs 1 through 34 above.
36. Petitioner's detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution. These rights are violated by the continued detention of Petitioner without any legal grounds.
37. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.
38. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty interest be narrowly tailored to serve a compelling government interest. Any interest Respondents have in detaining Petitioner in order to effectuate removal does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the

reasonably foreseeable future.

**COUNT TWO
STATUTORY CLAIM**

Petitioner's Detention is not Justified by the Immigration and Nationality Act

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

40. Petitioner's continued detention violates the Immigration and Nationality Act and the U.S. Constitution.

41. No provisions of the Immigration and Nationality Act authorizes Petitioner's detention.

**COUNT THREE
FEES AND COSTS**

42. If he prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue an order directing Respondents to show cause within three days as to why the writ should not be granted;
3. Issue a writ of *habeas corpus* ordering Respondents to immediately release Petitioner on his own recognizance;
4. Award Petitioner reasonable costs and attorney's fees; and,
5. Grant any other relief which this Court deems just and proper.

Dated: November 16, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tatiana Obando', is written over a horizontal line.

Tatiana Obando
New York State Bar No. 5068671
Application for Admission Pro Hac Vice filed
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ATTORNEYS FOR PETITIONER