

JUL 7 2005 FILED
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY MAK
DEPUTY CLERK

ALI M. ABDULLE
A97-893-671

Petitioner,

VS.

ALBERTO GONZALES, ATTORNEY GENERAL;
JAMES ZIGLER, IMMIGRATION AND CUSTOMS
ENFORCEMENT COMMISSIONER; AND
ROBERT JOLECOUER, ICE DISTRICT FIELD
OPERATIONS DIRECTOR FOR THE EL PASO
DISTRICT OFFICE,

Respondents.

CIVIL ACTION NO. _____

EP0500259

PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

Petitioner, ALI M. ABDULLE A97-893-671, hereby petitions this Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

CUSTODY

1. Petitioner is in the physical custody of the Respondents and the Immigration and Customs Enforcement Division ("ICE"). Petitioner is detained at the Service Processing Center (SPC) at 8915 Montana Ave. El Paso, Texas 79925. Petitioner is under the direct control of the Respondents and their agents.

JURISDICTION

2. 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, and the Administrative procedure Act ("APA"), 5 U.S.C. § 701 et seq.

3. 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, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

4. Petitioner has exhausted any and all administrative remedies to the extent required by law.

VENUE

5. Pursuant to Braden vs. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which the Petitioner now resides.

PARTIES

6. Petitioner is a native and citizen of Somalia. Petitioner was first taken into ICE custody on the 26th day of May 2004, and has remained in ICE custody continuously since that date. Petitioner was ordered removed on the 3rd day of June 2004.

7. Respondent Alberto Gonzales is the Attorney General of the United States and is responsible for the administration of ICE and the implementation of and enforcement of the Immigration & Naturalization Act (INA). As such, Mr. Gonzales has ultimate custodial authority over the Petitioner.

8. Respondent James Ziglar, is the Commissioner of ICE. He is responsible for the INA. As such, Mr. ziglar is the legal custodian of the Petitioner.

9. Respondent Robert Jolecouer, is the ICE Field Operations Director for the El Paso District Office and is the Petitioner's immediate custodian.

FACTUAL ALLEGATIONS

10. Petitioner ALI M. ABDULLE A97-893-671, is a native and citizen of

Somalia. Petitioner has been in ICE custody since the 26th day of May 2004. An Immigration judge, Mr. Gary D. Burkholder, ordered the Petitioner removed on the 3rd day of June 2004.

11. To date however, ICE has been unable to remove the Petitioner to Somalia or any other country.

12. Petitioner has cooperated fully with all efforts by ICE to remove him from the United States.

13. Petitioner's custody status was first reviewed on the 3rd of September 2004. On the 27th day of September 2004, Petitioner was served with a written decision ordering his continued detention.

14. On the 3rd day of December 2004, Petitioner was served with a notice transferring authority over his custody status to the ICE Headquarters Post-Order Detention Unit ("HQPDU").

LEGAL FRAMEWORK FOR RELIEF SOUGHT

15. In Zadvydas vs. Davis, 533 U.S. 678 (2001), the Supreme Court held that six months is the presumptively reasonable period during which the ICE may detain aliens in order to effectuate their removal. Id. at 702. Interim administrative regulations also recognize that the HQPDU has a six-month period for determining whether there is a significant likelihood of an alien's removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(b)(2)(ii).

16. Petitioner was ordered removed on the 3rd day of June 2004, and the removal order became final on the 3rd day of June 2004. Therefore, the six-month presumptively reasonable period for the Petitioner ended on the 3rd day of December 2004.

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

17. Petitioner re-alleges and incorporates by reference paragraphs 1 through 16 above.

18. Petitioner's continued detention by the Respondents is unlawful and contravenes 8 U.S.C. § 1231 (a)(6) as interpreted by the Supreme Court in Zadvydas. The six-month presumptively reasonable period for removal efforts has expired. Petitioner still has not been removed, and the Petitioner continues to languish in detention. Petitioner's removal to Somalia or any other country is not significantly likely to occur in the reasonably foreseeable future. The Supreme Court held in Zadvydas that the ICE's continued detention of someone like the Petitioner under such circumstances is unlawful.

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

19. Petitioner re-alleges and incorporates by reference paragraphs 1 through 18 above.

20. Petitioner's continued detention violates the Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

21. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining the Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of the Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. Zadvydas recognized that the ICE may continue to detain aliens only for a period reasonably necessary to secure the alien's removal. The presumptively reasonable period which the ICE may detain an alien is only six months. Petitioner has already been detained in excess of six months and Petitioner's removal is not significantly likely to occur in the reasonably foreseeable future.

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

22. Petitioner re-alleges and incorporates by reference paragraphs 1

through 21 above.

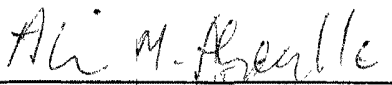
23. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. Petitioner in this case has been denied that opportunity. the ICE does not make decisions concerning aliens custody status in a neutral and impartial manner. The failure of the Respondents to provide a neutral decision maker to review the continued custody of Petitioner violates petitioner's right to procedural due process.

PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release the Petitioner from custody;
- 3) Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of the Petitioner;
- 4) Award the Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"). as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 5) Grant any other further relief that this Court deems just and proper.

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


ALI M. ABDULLE
A97-893-671
Petitioner

JUNE 30th 2005.

DATE OF EXECUTION