

HONORABLE MARSHA J PECHMAN

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NOV 26 2002

BY AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

YUSUF ALI ALI
(A73 426 435),
MOHAMED AWEYS
(A73 428 026),
MOHAMED HUSSEIN HUNDIYE
(A70 378 487), and
GAMA KALIF MOHAMUD
(A71 714 960), on behalf of themselves and all
persons similarly situated,

Petitioners,

v

JOHN D ASHCROFT, Attorney General,
IMMIGRATION AND NATURALIZATION
SERVICE, JAMES W ZIGLAR, Commissioner of
the Immigration and Naturalization Service, and
ROBERT S COLEMAN, JR , District Director,
Seattle District,

Respondents

NO C02-2304P

FIRST AMENDED, CONSOLIDATED
PETITION FOR HABEAS CORPUS FOR
INDIVIDUALS IN FEDERAL CUSTODY
- CLASS ACTION

CV 02-02304 #00000008

Petitioners, by and through their undersigned counsel, on behalf of themselves and all
others similarly situated, petition as follows

FIRST AMENDED, CONSOLIDATED CLASS
PETITION FOR HABEAS CORPUS
(NO C02-2304P) - 1
[40412-0001/SL023300 108]

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ORIGINAL

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JURISDICTION AND VENUE

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3 1 The Court has jurisdiction under 28 U S C § 2241(c)(1) and (3), Art I, § 9,
4 Cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U S C § 1331, as
5
6 Petitioners challenge Respondents' unlawful methods and means of effectuating their removal
7
8 to Somalia and continued post-removal-order detention. A district court retains the power to
9
10 hear a petition for writ of habeas corpus and to order the INS to take remedial actions if an
11
12 alien's involuntary departure from the United States is illegal. *Reno v. American-Arab Anti-*
13
14 *Discrimination Comm.*, 525 U S 471, 482 (1999), *Sing v. Walters*, 87 F 3d 346, 350 (9th
15
16 Cir 1996), *Mendez v INS*, 563 F 2d 956, 958-59 (9th Cir 1977). The court likewise may
17
18 hear a habeas petition and order Respondents to release an alien detainee whose post-
19
20 removal-period detention is unwarranted. *Zadvydas v. Davis*, 533 U.S. 678, 121 S Ct 2491,
21
22 2498 (2001). Petitioners allege, and seek to enjoin, violations of federal law, federal
23
24 regulations and guidelines, and procedural safeguards, which do not fall within the three areas
25
26 covered by 8 U S C § 1252(g). See *Goncalves v. Reno*, 144 F 3d 110, 121 (1st Cir 1998),
27
28 *Henderson v INS*, 157 F 3d 106, 112 (2d Cir 1998); *Sandoval v. Reno*, 166 F 3d 225, 234-
29
30 35 (3d Cir 1999), *Shaw v. Reno*, 184 F 3d 719, 724 (8th Cir 1999), *Magana-Pizano v INS*,
31
32 152 F 3d 1213, 1221 (9th Cir 1998), *vacated on other grounds*, 119 S Ct. 1137, 143 L Ed 2d
33
34 206 (1999), *Mayers v. INS*, 175 F 3d 1289, 1297 (11th Cir. 1999).

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36
37 2 Venue is proper in this court because Petitioners reside in this judicial district
38
39 and because Petitioners removal proceedings were held here or Petitioners will be removed
40
41 from this district. See U S C § 2241 *et. seq.*, and 28 U S C § 1391(e).

UNLAWFUL REMOVAL

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45 3 Petitioners are natives or nationals of Somalia
46
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1 4 Petitioners are subject to orders of removal to Somalia that are either final or
2 deemed to be final by Respondents
3

4 5 Petitioners are currently in detention, and thereby held in the custody of
5 Respondents. Even if some or all of Petitioners were to be released from detention pursuant
6 to Orders of Supervision, Petitioners would still be in the custody of Respondents for
7 purposes of jurisdiction under 28 U S C § 2241
8
9

10 6 Respondents recently indicated to Petitioners that Respondents intended to
11 proceed with plans to remove Petitioners to Somalia and have indicated that this removal was
12 "imminent "
13

14 7 The United States does not recognize a government in Somalia. Somalia has
15 no ambassador to either the United States or the United Nations. No foreign consular offices
16 for Somalia exist in the United States. The Embassy of the Somalia Democratic Republic
17 ceased operations May 8, 1991. Reciprocally, the United States does not maintain an
18 embassy or other diplomatic mission in Somalia
19

20 8 Removing Petitioners to Somalia without first obtaining official notification of
21 that country's willingness to accept them violates federal law including 8 USC § 1231(b)
22 (2000). Respondents have not and cannot meet the requirements of 8 U S C § 1231(b)
23 because Somalia has not, pursuant to the provisions of this law, accepted Petitioners prior to
24 removal from the United States
25

26 9 Petitioners will be placed in grave personal danger if they are deported to
27 Somalia without official internationally recognized travel documents and compliance with
28 United States law. If they were to be simply deposited in Somalia without acceptance by a
29 stable government, they would be in great risk of robbery, enslavement, injury or death
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1 10 Removing Petitioners to Somalia without first obtaining official notification of
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3 that country's willingness to accept them also would violate international law treaties to
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5 which the United States is a party, including the 1967 Protocol relating to the Status of
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7 Refugees ("Refugee Protocol"), 606 U N T S 267, 19 U S T 6223, T I A S. No 6577, the
8
9 International Covenant on Civil and Political Rights ("ICCPR"), 999 U N T S 171, and the
10
11 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or
12
13 Punishment ("Torture Convention"), 1465 U N T S 85

14 11 Specific provisions of the international treaties that would be violated by
15
16 Petitioners removal to Somalia include, but are not limited to the Refugee Protocol
17
18 (incorporating by reference Article 33 of the 1951 Convention relating to the Status of
19
20 Refugees), which forbids states parties to deport persons to states in which they have a well-
21
22 founded fear of persecution, Article 6 of the ICCPR, which forbids states to deport persons
23
24 to states in which they may be subjected to an arbitrary deprivation of life, Article 7 of the
25
26 ICCPR, which forbids states parties to deport persons to states in which they may face
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28 torture or other cruel, inhuman or degrading treatment or punishment, and Article 3 of the
29
30 Torture Convention, which forbids states to deport persons to states in which they have
31
32 substantial grounds to fear torture

33
34 12. Removing Petitioners to Somalia without first obtaining official notification of
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36 that country's willingness to accept them also violates customary international law, which
37
38 prohibits *refoulement*, or involuntary return Customary international law is part of the laws
39
40 of the United States

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42 13 Moreover, Respondents cannot lawfully deport Petitioners to a country to
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44 which deportation was not designated and from which Petitioners have had no opportunity to
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46 raise any claims for asylum, withholding of removal, and relief under the Convention Against
47

1 Torture To do so would also violate Petitioners right to substantive due process under the
2
3 Fifth Amendment to the United States Constitution

4
5 14 Petitioners seek a writ of habeas corpus to prevent Respondents from illegally
6
7 deporting them from the United States to Somalia or to any other non-designated country

8
9 **CLASS ACTION ALLEGATIONS**

10
11 15 Petitioners bring this action on behalf of themselves and as a class action
12
13 under the provisions of Federal Rule of Civil Procedure 23 on behalf of all members of the
14
15 following class ("the Class")

16
17 All persons in the United States who are subject to orders of removal,
18 expedited removal, deportation or exclusion to Somalia that are either
19 final or that one or more of Respondents believe to be final

20
21 16 Pursuant to Rule 23(a), this action is properly maintained as a class action
22
23 because

24
25 a There are several thousand members of the Class as above described Their
26
27 exact number and their identities and current locations in the United States are
28
29 in most instances unknown to Petitioners but are known to Respondents and
30
31 are easily identifiable from Respondents' records

32
33 b The Class is so numerous that joinder of all members is impracticable

34
35 c There are questions of law and fact common to the members of the Class,
36
37 including but not limited to the following

38
39 (1) Whether it is unlawful for Respondents to remove an
40
41 alien to a country without first obtaining official
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43 notification from that country that the country will
44
45 accept the alien,
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- 1 (2) Whether Somalia is able to provide official notification
2 of its willingness to accept aliens removed from the
3 United States,
4
5 (3) Whether Somalia has provided official notification of its
6 willingness to accept any member of the Class, and
7
8 (4) Whether it would be unlawful for Respondents to
9 remove any member of the Class to a country to which
10 deportation was not designated and from which that
11 Class member has had no opportunity to raise any
12 claims for asylum, withholding of removal, and relief
13 under the Convention Against Torture
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15
16 d Petitioners are members of the Class and their claims are typical of the claims
17 of Class members. The interests of Petitioners are coincident with, and not
18 antagonistic to, those of the other members of the Class
19

20
21 e Petitioners will fairly and adequately protect the interests of the Class, and
22 have retained counsel experienced in class litigation to represent them and the
23 Class
24

25
26 17 Pursuant to Rule 23(b)(2), this action is properly maintainable as a class action
27 because Respondents have acted on grounds generally applicable to the Class, thereby
28 making appropriate final injunctive relief or declaratory relief with respect to the Class as a
29 whole
30

31 CONTINUED DETENTION

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33 18 Petitioners are currently being held in post-removal period detention by the
34 United States
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36
37 19 Based on when Respondents assert each Petitioner's respective removal order
38 became final, the ninety (90) day removal period set forth in 8 U S C §1231(a)(2)(1999) has
39 elapsed for each Petitioner
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20 Because Petitioners cannot be removed to Somalia, there is not a substantial likelihood that Respondents will remove any of Petitioners within the reasonably foreseeable future. There is no permissible justification for Respondents to continue to detain Petitioners.

21 Petitioners Yusuf Ali Ali, Mohamed Aweys, and Mohamed Hussein Hundiye each previously had been released from detention on Orders of Supervision. However, each received a notice dated November 7, 2002, indicating that the Orders of Supervision relating to them was being "revoked" because the District Director had "received notification that plans were underway for [their] removal to Somalia" and that such return was deemed to be "imminent." These Petitioners removal is not imminent at this time and thus they should be re-released from detention. Each of these Petitioners are being held in detention past the period of time (six months) which the Supreme Court in *Zadvydas* deemed to be permissible. See 121 S Ct at 2498.

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22 Petitioners seek a writ of habeas corpus for their release from detention.

PRAYER

WHEREFORE, Petitioners request the following relief from this Court:

A That the Court determine that this action be maintained as a class action under Federal Rule of Civil Procedure 23,

B That the Court bar the Respondents from removing Petitioners or any member of the Class to Somalia or any non-designated country during the pendency of this action,

C That the Court order other temporary or preliminary relief during the pendency of this action, including release of Petitioners from detention under reasonable conditions,

1 D That the Court enter a final and permanent injunction barring Respondents
2 from removing Petitioners or any member of the Class to Somalia or any non-designated
3 country,
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5

6 E That the Court enter a declaratory judgment to the effect that it would be
7 unlawful for Respondents to remove Petitioners or any member of the Class to Somalia or
8 any non-designated country,
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11 F That the Court enter a final order that Petitioners be released from continued
12 detention under reasonable conditions, and
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14

15 G For such other relief as the Court may deem just and proper
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18 DATED November 26, 2002
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21
22 PERKINS COIE LLP

23
24
25 By  _____

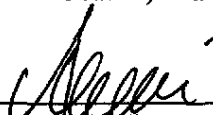
26 Thomas L. Boeder, WSBA #408
27 Nicholas P. Gellert, WSBA #18041
28 Karol E. Brown, WSBA #29444
29 Attorneys for Petitioners
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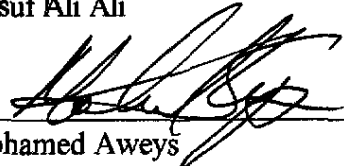
VERIFICATION

We hereby swear under penalty of perjury of the United States of America that, either on personal information or on information and belief, the facts set forth above are true and correct to the best of our knowledge To the extent the basis of this verification is on information and belief, rather than personal information, the sources of information to make this verification include documents received and interviews conducted by our counsel


SIGNED this ___ day of November in Seattle, Washington



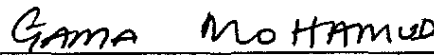
Yusuf Ali Ali



Mohamed Aweys



Mohamed Hussein Hundiye



Gama Kalif Mohamud

THE HONORABLE MARSHA PECHMAN

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YUSUF ALI ALI
(A73 426 435)

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(A73 428 026)

MOHAMED HUSSEIN HUNDIYE
(A70 378 487)

GAMA KALIF MOHAMUD
(A71 714 960), on behalf of themselves and all
persons similarly situated,

Petitioners,

v

JOHN D ASHCROFT, Attorney General,
IMMIGRATION AND NATURALIZATION
SERVICE; and ROBERT S. COLEMAN, JR.,
District Director, Seattle District,

Respondents

NO C02-2304P

CERTIFICATE OF SERVICE

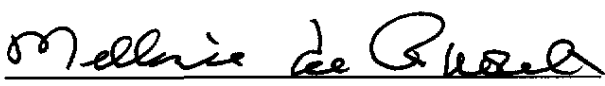
The undersigned is a citizen of the United States and resident of the State of
Washington, is over the age of eighteen and is not a party to the within action

On November 26, 2002, true and correct copies of the First Amended, Consolidated
Petition for Habeas Corpus for Individuals in Federal Custody – Class Action

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DATED. November 26, 2002

PERKINS COIE LLP

By 
Mellonie De Raoux, Legal Secretary