

Clerk's Office
United States District Court
District of Rhode Island
One Exchange Terrace
Federal Building and Courthouse
Providence, RI 02903

Date: 1/27/2025

Manuel Amadeu De Barros Gomes Lopes



Petitioner.

v.

Zachary A. Cunha,
U.S. Attorney
Alejandro Mayorkas,
Secretary of the Department of Homeland Security
Patricia Hyde,
U.S. ICE Field Office Director for the Rhode Island District
Micheal Nessinger,
Warden of Donald W. Wyatt Detention Facility

Respondents.

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U.S. DISTRICT COURT
DISTRICT OF R.I.

PETITION FOR A WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

Petitioner Manuel Amadeu De Barros Gomes Lopes also known as Manuel Lopes, 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

Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement (ICE). Petitioner is detained at Donald W. Wyatt Detention Facility/ 950 High Street/ Central Falls, RI 02863.

JURISDICTION

This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., amended by the Illegal Immigration Reform and Immigration Responsibility Act 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

This Court has the 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 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.

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

VENUE

Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Rhode Island.

PARTIES

Petitioner Manuel Amadeu De Barros Gomes Lopes is a native and citizen of Cape Verde who first came to the United States on March 10, 1982 as a legal Permanent Resident. Petitioner has a final order of removal and he is detained under ICE custody for removal proceedings.

Respondent Zachary A. Cunha is the U.S. Attorney and is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Naturalization Act (INA). As such, Zachary A. Cunha has ultimate custodial authority over Petitioner.

Respondent **Alejandro Mayorkas** is the **Secretary of the Department of Homeland Security**, and is responsible for the administration of ICE and the implementation and enforcement of the INA. As such **Alejandro Mayorkas** is the legal custodian of the Petitioner.

Respondent **Patricia Hyde** is the **ICE Field Office Director**, and is the Petitioner's immediate custodian. See *Vasquez v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), 122 S. Ct. 43 (2001).

Respondent **Micheal Nessinger** is the **Warden of Donald W. Wyatt Detention Facility** where Petitioner is currently detained under the authority of ICE, and alternatively maybe considered to be Petitioner's immediate custodian.

FACTS and PROCEDURAL HISTORY

Petitioner is a legal permanent resident who came to the United States on **March 10, 1982**. On **December of 1999**, the Petitioner was convicted of armed assault with intent to murder and was sentenced to 3 years. During that period, he went through immigration proceedings and was granted a cancellation of removal from Immigration Judge William Joyce on **December 8, 2000**. On **September 2006**, the Petitioner was convicted of assault in aid of racketeering and was sentenced to 5 years. On **April 7, 2009**, the Petitioner was ordered removed by an Immigration Judge in Texas. His order of removal became final on **July 8, 2009** after his appeal to the Board of Immigration Appeals was dismissed. Ever since **July 8, 2009**, the Petitioner has been cooperating with ICE on his removal. The Petitioner has asked and has requested travel documents from the Cape Verdean Consulate on numerous occasions but the Cape Verdean Consulate refused to issue travel documents. On **January 6, 2009** The Consulate of Cape Verde sent a letter to ICE stating that they will not issue travel documents for the the Petitioner because he has a medical condition (bipolar disorder) and has no family in Cape Verde to support him. On **February 19, 2010**, the Petitioner filed a Petition for a Writ of Habeas Corpus. On **March 30, 2010** Petitioner's Petition for a Writ of Habeas Corpus was denied as moot. On **March 2010**, the Petitioner was released from ICE custody under ICE supervision.

14 years later, on **June 26, 2024**, the Petitioner's supervised release was revoked, his request for release was denied, and he was taken into ICE custody. The Petitioner's 90 days review was on **September 9, 2024**. On **October, 2024**, his request for release was denied and ICE continued his detention. The Petitioner's 180 days review was on **November 12, 2024**. On **January 8, 2025**, ICE continued his detention. On **January 14, 2025**, the Petitioner submitted a letter to ICE headquarters requesting his release from custody.

LEGAL FRAMEWORK

In Zadvydas v. Davis, 533 U.S. 678 (2001), the U.S. Supreme Court held that six months is the presumptively reasonable period during which ICE may detain aliens in order to effectuate their removal. Id. at 702. Clark v. Martinez, 543 U.S. 371 (2005), the Supreme Court held that its ruling in Zadvydas applies equally to inadmissible aliens. Department of Homeland Security 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 foreseeable future. 8 C.F.R. § 241.13(b)(2)(ii).

To date, however, ICE has been unable to remove the Petitioner to Cape Verde. Petitioner has been in detention longer than six months and the Cape Verde Consulate has notified ICE that it will not accept Petitioner's removal to Cape Verde. Because the Cape Verde Consulate has specifically refused to accept Petitioner's removal to Cape Verde, the Petitioner is not significantly likely to be removed in the reasonable foreseeable future, or at all for the matter. See Shefqet v. Ashcroft, No. 02 C 7737, (2003) WL 1964290, *4 (N.D. Ill. Apr. 28, 2003) ordering release of Yugoslavian alien under Zadvydas after the Yugoslavian Consulate notified ICE that it would not issue him a travel document. See Zhou v. Ashcroft, Civ. No. 3:CV-01-0863 (M.D. Pa. Apr. 15, 2002) ordering release of a Chinese alien after the China Consulate notified ICE by letter that it would not accept his removal to China.

Petitioner removal order became final in July 8, 2009. He's been detained in ICE custody from June 26, 2024 until this day, therefore, the six-month presumptively reasonable removal period for Petitioner has ended since December 26, 2024. Therefore, the Petitioner's detention at this time is unlawful.

CLAIMS FOR RELIEF

Petitioner's continued detention by the Respondents is unlawful and contravenes 8U.S.C. (§) 123 (a)(6) as interpreted by the Supreme Court Zadvydas. The six-month presumptively reasonable period for removal efforts has expired. Petitioner still has not been removed, and Petitioner continues to languish in detention. Petitioner's removal to Cape Verde or any other country is not significantly likely to occur in the reasonable foreseeable future. Supreme Court held in Zadvydas and Martinez that ICE's continued detention of someone like the Petitioner under circumstances is unlawful.

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.

The Due Process Clause of the Fifth Amendment requires that the deprivation of the 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 reasonable foreseeable future. Zadvydas recognized that ICE may continue to detain aliens only for a period reasonably necessary to secure the aliens's removal. The presumptively reasonable period which ICE may detain an alien is only six months. The Petitioner has already been detained over six months and the Petitioner's removal is not significantly likely to occur in the reasonable foreseeable future.

Respondents have failed to acknowledge or act upon the Petitioner's administrative request for release in a timely manner. There is no administrative mechanism in place for the Petitioner to demand a decision, ensure that a decision will ever be made, or appeal a custody decision that violates Zadvydas.

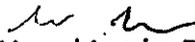
Now the Petitioner is not challenging his deportation order, he is only challenging his continued detention. Travel Documents will not be issued for the Petitioner in the foreseeable future, so there is no reason to keep the Petitioner detained any longer. Petitioner is asking the Federal Court to release him from indefinite detention until he can be deported by ICE.

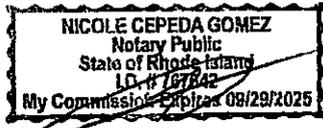
PRAYER FOR RELIEF

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 Petitioner;
- 4) Grant any other and further relief that this Court deems just and proper.

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


Manuel Amadeu De Barros Gomes Lopes 
Date: 1/27/2025


NICOLE CEPEDA GOMEZ
Notary Public
State of Rhode Island
I.C. # 767642
My Commission Expires 08/29/2025

Acknowledgment

State of Rhode Island

County of PROVIDENCE

On this 27 day of JANUARY, 2025, before me, the undersigned notary public, personally appeared

MANUEL AMADEU LOPES

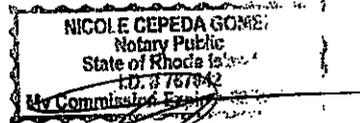
(name of document signer) and proved to me, through satisfactory evidence of identification, to be the person whose name is signed on the attached document, and who acknowledged that they signed the document voluntarily for its stated purpose.

Nicole Cepeda Gomez
Notary Public

Notary Public

Notary ID # 767642

My commission expires 9/29/2025



Loose Certificate Acknowledgment

This notarial certificate is attached to a PETITION FOR WRIT OF HABEAS CORPUS (title of document),

dated 1/27/2025, of 7 pages.