

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

## UNITED STATES DISTRICT COURT

for the

FILED 25 MAR 11 AM 8:13 MDGA-COL

MIDDLE DISTRICT OF GEORGIA, COLUMBUS DIVISION

PATEL PANKAJ KUMAR

Petitioner

MERRICK GARLAND, U.S. ATTORNEY GENERAL,  
 KEVIN K. MACALEENAN/ALEJANDRO MAYORKAS,  
 SECRETARY OF THE D.H.S. RONALD D. VITIELLO,  
 I.C.E. DIRECTOR U.S. FIELD OFFICE, RUSSELL  
 WASHBURN, WARDEN OF STEWART DETENTION  
 CENTER

Respondent

(name of warden or authorized person having custody of petitioner)

Case No. \_\_\_\_\_

(Supplied by Clerk of Court)

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

## Personal Information

1. (a) Your full name: PATEL PANKAJ KUMAR  
 (b) Other names you have used: N/A
2. Place of confinement:  
 (a) Name of institution: STEWART DETENTION CENTER  
 (b) Address: 146 CCA ROAD, LUMPKIN, GEORGIA - 31815
- (c) Your identification number: A # [REDACTED]
3. Are you currently being held on orders by:  
☒ Federal authorities    ☐ State authorities    ☐ Other - explain: \_\_\_\_\_
4. Are you currently:  
☐ A pretrial detainee (waiting for trial on criminal charges)  
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime  
 If you are currently serving a sentence, provide:  
 (a) Name and location of court that sentenced you: \_\_\_\_\_  
 (b) Docket number of criminal case: \_\_\_\_\_  
 (c) Date of sentencing: \_\_\_\_\_  
☒ Being held on an immigration charge  
☐ Other (explain): \_\_\_\_\_

## Decision or Action You Are Challenging

5. What are you challenging in this petition:  
☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

- ☐ Pretrial detention  
☒ Immigration detention  
☐ Detainer  
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)  
☐ Disciplinary proceedings  
☐ Other (explain): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

6. Provide more information about the decision or action you are challenging:

- (a) Name and location of the agency or court: U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
REFUSAL TO RELEASE ME FROM IMMIGRATION DETENTION.  
 (b) Docket number, case number, or opinion number: N/A.  
 (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; REFUSAL TO  
RELEASE ME FROM IMMIGRATION DETENTION.  
 (d) Date of the decision or action: 04/04/2014

#### Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☒ No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: \_\_\_\_\_  
 (2) Date of filing: \_\_\_\_\_  
 (3) Docket number, case number, or opinion number: \_\_\_\_\_  
 (4) Result: \_\_\_\_\_  
 (5) Date of result: \_\_\_\_\_  
 (6) Issues raised: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) If you answered "No," explain why you did not appeal: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☒ No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a second appeal: \_\_\_\_\_

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a third appeal: \_\_\_\_\_

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes☐ No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes☒ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: N/A

# 11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☒ Yes☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: 11/22/2024(b) Date of the removal or reinstatement order: 04/04/2014

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes☒ No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

If "Yes," provide:

(1) Date of filing: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Issues raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes☒ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Case number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**12. Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: \_\_\_\_\_

(b) Name of the authority, agency, or court: \_\_\_\_\_

(c) Date of filing: \_\_\_\_\_

(d) Docket number, case number, or opinion number: \_\_\_\_\_

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

(g) Issues raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE:** VIOLATION OF 8 U.S.C. § 1231(a)(6)

(a) Supporting facts (Be brief. Do not cite cases or law.):

I HAVE BEEN DETAINED BY ICE BEYOND THE REMOVAL PERIOD AUTHORIZED BY STATUTE. ICE IS NOT LIKELY TO REMOVE ME IN THE NEAR FUTURE. SEE ATTACHED MEMORANDUM WITH ADDITIONAL SPECIFIC FACTS. QUESTION (b) BELOW IS NOT APPLICABLE.

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☐ No

**GROUND TWO:** VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION [SUBSTANTIVE]

(a) Supporting facts (Be brief. Do not cite cases or law.):

ICE IS DEPRIVING ME OF MY RIGHT TO LIBERTY. I HAVE BEEN DETAINED BY ICE FOR A PROLONGED PERIOD. SEE ATTACHED MEMORANDUM WITH ADDITIONAL SPECIFIC FACTS. QUESTION (b) BELOW IS NOT APPLICABLE.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☐ No

**GROUND THREE:** VIOLATION OF THE DUE PROCESS OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION [PROCEDURAL]  
SEE ATTACHED MEMORANDUM WITH ADDITIONAL SPECIFIC FACTS.

(a) Supporting facts (Be brief. Do not cite cases or law.):

ICE DOES NOT PROVIDE A NEUTRAL DECISION MAKER TO REVIEW CUSTODY VIOLATIONS THAT OCCUR IN ZADYDAS'S STATUTE. ICE ALSO DOES NOT HAVE ANY ADMINISTRATIVE MECHANISM IN PLACE FOR A PETITIONER TO DEMAND A DECISION OR ENSURE THAT A DECISION WILL EVER BE MADE OR APPEAL A CUSTODY DECISION

(b) Did you present Ground Three in all appeals that were available to you? QUESTION (b) DOES NOT APPLY

☐ Yes

☐ No

GROUND FOUR: I AM NOT A TERRORIST. I DO NOT HAVE ANY  
CONTAGIOUS DISEASES. MY RELEASE WILL NOT AFFECT ANY  
FOREIGN POLICY OF THE UNITED STATES OF AMERICA ADVERSELY.  
QUESTION (b) BELOW DOES NOT APPLY.

(a) Supporting facts (Be brief. Do not cite cases or law.):

---

---

---

---

---

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: THIS IS NOT APPLICABLE HERE.

---

---

---

#### Request for Relief

15. State exactly what you want the court to do: ORDER my IMMEDIATE RELEASE  
FROM ICE CUSTODY.

---

---

---



LEGAL FRAMEWORK FOR RELIEF SOUGHT

In *Zadvydas v. Davis*, 533 U.S.678 (2001), the U.S. Supreme Court held that 8 U.S. C. ss. 1231(a)(6), when read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. 533 U.S. at 689. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal," *Id* at 699. If the individual's removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute." *Id* at 699-700.

In determining the length of a reasonable removal period, the Court adopted a "presumptively reasonable period of detention" of six months. *Id* at 701. After six months, the government bears the burden of disproving an alien's "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." See *Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS 182239, 2-3 (D. Mass. Oct. 19, 2001)(quoting and summarizing *Zadvidas*). Moreover, "for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future,' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. ICE's 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 See 8 C.F.R. Ss 241.4(k)(2)(ii).

Evidence showing successful repatriation of other persons to the country at issue is not sufficient to meet the government's burden to establish that an alien petitioner will be deported in the reasonably foreseeable future. See *Thompson v. INS*, 2002 U.S. Dist. LEXIS 23936 (E.D. La. September 16, 2002)(government failed to show that alien's deportation to Guyana was



reasonably foreseeable where the government offered historical statistics of repatriation to Guyana, but failed to show any response from Guyana on the application for travel documents that INS and the petitioner had requested). Rather for the government to meet its burden of showing that an alien's repatriation is reasonably foreseeable, it must provide some meaningful evidence particular to the individual petitioner's case.

An alien who has been detained beyond the presumptive six months should be released where the government is unable to present documented confirmation that the foreign government at issue will agree to accept the particular individual in question. See *Agbada v. Ashcroft* 2002 U.S. Dist. LEXIS 15797 (D Mass. August 22, 2001) (court "will likely grant" habeas petition after 14 months if ICE is unable to present document confirmation that the Nigerian government has agreed to [petitioner's] repatriation") *Zhou*, 2001 U.S. DIST. LEXIS 19050 at \*7 (W. D. Wash. Feb 28, 2002) (government failure to offer specific information regarding how or when it expected to obtain the necessary documentation or cooperation from the foreign government indicated that there was no significant likelihood of petitioner's removal in the reasonably foreseeable future).

### CLAIMS FOR RELIEF

#### COUNT ONE

#### STATUTORY VIOLATION

Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. Ss. 1231(a)(6) as interpreted by the U.S. Supreme Court in *Zadvydas*. The six-month presumptively reasonable period for continued removal efforts has expired. Petitioner still has not been removed, and for the reasons outlined above in the previous paragraphs. Petitioner's removal to <sup>INDIA</sup>~~Gambia~~ is not reasonably foreseeable. The Supreme Court held in *Zadvydas* and *Martinez* that ICE's continued detention of someone after six months where deportation is not reasonably foreseeable is unreasonably and in violation of 8 U.S.C. ss 1231(a) 533 U.S. at 701

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

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. See *Tom v. INS*, 14 F. Supp.2d 1184 (E.D. Cal 1998)(aliens retain substantive due process rights).

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 Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. Ss 1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest-to effect the alien's removal. See *Kay v. Reno*, 94 F. Supp. 546,551 (M.D. Pa 2000) (granting writ of habeas corpus because petitioner's substantive due process rights were violated, and noting that "if deportation can never occur, the government's primary legitimate purpose in detention- executing removal-is nonsensical.")

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that s/he should not be detained. Petitioner in this case has been denied that opportunity. ICE does not make decisions concerning aliens' custody status in a neutral and impartial manner. The failure of Respondents to provide a neutral decision-maker to review the continued custody of Petitioner violates Petitioner's right to procedural due process. [If you have not received a decision from HQPDU. Further, Respondents have failed to acknowledge or act upon Petitioner's administrative request for release in a timely manner. There is no administrative mechanism in place for Petitioner to demand a decision, ensure that a decision will ever be made, or appeal a custody decision  
THAT VIOLATES ZADVYDAS .

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:

\_\_\_\_\_

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

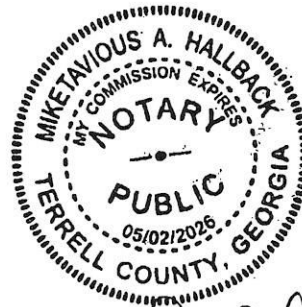
Date:

2.25.25

P. D. Patel,

Signature of Petitioner

\_\_\_\_\_  
Signature of Attorney or other authorized person, if any



M. Hallback  
2/25/25