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CLERK, U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

ROBERTO GREEN A# 
Petitioner,

LEONARD ODDO
In his official capacity as
Warden Of Moshanon Valley
Detention Center,

BRIAN MCSHANE,
In his official capacity as Acting
Field Officer Of Immigration and
Customs Enforcement and Removal
Operation Philadelphia field office

3:25-cv-126

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

DAVID O'Neal
Deputy Field Officer Director

KRISTI NOEM,
In her official capacity as
Secretary of The Department of
Homeland Security

PAM BONDI
In her official capacity as Attorney
General of the United States
Respondent

AFFIANT , ROBERTO GREEN was born in Panama and entered The UNITED STATES OF AMERICA with a valid entry in 1974 ,since that time has remained in THE UNITED STATES OF AMERICA IN THE REPUBLIC OF NEW YORK Until his detention by ICE ,On June 7, 2024.

I. BACKGROUND

1.AFFIANT, currently being detained by the department of Homeland Security (DHS) at the Moshannon Valley Processing Center ("Moshannon"). A Detention Center Privately owned by the GEO Group Inc. (GEO GROUP"),in Philipsburg, Pennsylvania, Since his Unlawful and Illegal detention uponjUNE 7,,2024,Despite The fact That Affiant was and still maintains A PRIVATE DWELLING IN THE REPUBLIC OF NEW YORK. Affiant asks this court to look at this motion Liberally Since it came from a litigant that is in detention and can not speak Legalese. Understand and belief that his 4th and 5th amendment right was violated .

2 Affiant ,reserved the right to appeal ,due to clear ineffective counsel claim and change of circumstances his appeal arrived late to BIA and encountered unfavorable outcome ,Now is being adjudicated by the second circuit.(See.Exhibit A second circuit).

3. This Claim of Ineffective counsel is also demonstrated on the court docket despite all these facts presented to the BIA They Affirmed The order due to untimely filed appeal order and rendered the removal Final.

5. Affiant completed his Five Year sentence at the New York state department Of Correction on June 7,2024 and has been on ICE custody since.

6. Attorneys' fees pursuant to the EAJA. Petitioner argues that he meets the requirements of the EAJA and is entitled to attorneys' fees and expenses because he has been redetain without a reason , has a net worth under two million dollars, the government's position was not substantially justified, and there are no special circumstances that make an award of attorneys' fees unjust. This court should deny any motion arguing to the contrary ,because sovereign immunity bars recovery of attorneys' fees and the EAJA waiver of sovereign immunity does apply to habeas Petitions. If the government argues that if the EAJA was not applicable, the Court should grant this motion because the government's position can not be justified .

LEGAL STANDARD

7. Pursuant to the EAJA, a court shall award to a prevailing party fees and other expenses incurred by that party in any civil action, brought by or against the United States, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust. 28 U.S.C § 2412(d)(1)(A). To be eligible for fees under the EAJA, a petitioner must submit an application within thirty days of final judgment, and the petitioner's net worth must be less than two million dollars at the time the civil action was filed. See *id.* §§ (d)(1)(B), (d)(2)(B)(i). The EAJA was enacted with the purpose of removing the financial disincentive for individuals challenging or defending against government action and encouraging challenges to improper government action as a means of helping formulate better public policy. See, e.g., *Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 163, 110 S. Ct. 2316, 110 L. Ed. 2d 134 (1990) ("[T]he specific purpose of the EAJA is to eliminate for the average person the financial disincentive to challenge unreasonable governmental actions." (citation omitted)); *Boudin v. Thomas*, 732 F.2d 1107, 1114 (2d Cir. 1984) ("The EAJA was passed partly to encourage{2023 U.S. Dist. LEXIS 6} challenges to improper actions by government agencies. The drafters perceived legal actions as helping to formulate public policy." .

ANALYSIS

8. A Habeas Proceeding Challenging Immigration Detention is a Civil Action Under EAJA That requires Sovereign Immunity

9. Petitioner argues that the EAJA unambiguously allows for a fee award in "any civil action" and that Mr. Green case falls within that scope because immigration removal proceedings are civil in nature. See (Arias v. Choate).

In the Tenth Circuit, habeas petitions arising from criminal confinement do not qualify for the EAJA's waiver of sovereign immunity. See also Sloan, 351 F.3d at 1322-23; Ewing v. Rodgers, 826 F.2d 967, 970-71 (10th Cir. 1987). As explained {2023 U.S. Dist. LEXIS 8} in Sloan, a habeas petition "challenging confinement arising from a criminal judgment is not a 'civil action'" regarding the "procedural endeavor of awarding attorneys' fees under the EAJA." Sloan, 351 F.3d at 1323 (emphasis added) (quotations omitted); see also O'Brien v. Moore, 395 F.3d 499, 505 (4th Cir. 2005) (observing that "to the extent that a habeas proceeding reviews a criminal punishment . . . the habeas proceeding necessarily assumes part of the underlying case's criminal nature" . Mr. Green incarceration beyond the conditional release over thirty seven months should be attributed to ICE detention .

10. The Legal argument remains that an order administratively final that is beyond six months violates due process clause guarantees fundamental fairness and removal proceedings. (INS v. Cardoza- Fonseca 480 US 421/1987). Holds That Non-citizens are entitled to due process protection on a final order of deportation entered without the respondent knowledge or presence violates procedural fairness. ICE have had multiple opportunities to execute on this alleged final order of removal and failed to do so ,this prolonged inaction renders the order legally defective and requires further review.

11. Doctrine of laches prevents the government from enforcing a right after an unreasonable delay results in prejudice to the Petitioner See. (Castello V. United States 365 us 265 1961).

12. Mr. Green has been in the United States Of America for over fifty and has filed a naturalization form N-400 with USCIS over twenty years ago, furthermore he have an I-130 filed by his daughter which is pending now. (See. Exhibit B)

13. For Over 10 months now Mr. Green has been available for the government in the united states ,in their custody the government failure to enforce the order in a timely manner despite his detention incarceration by ICE constitutes a waiver of its rights to now seek removal. Common law principles of settlers status supports relief under Texas v. Florida 306 us 398 1939. Domicile is determined by continuous residence Historically laws such as the naturalization act of 1790, Homestead act of 1862 recognize the long term resident to remain ,The Magna Carta 1215 clause 39 first establish that no person shall be deprived due process. This historical principle therefore grant Mr. Green with a defacto legal status ,furthermore makes him eligible for immigration bond under Jennings v. Rodrigues 38/830 2018 Pa. Detainees are entitled to bonds and meets criteria because he is not a flight risk nor danger to the community having resided here for over 50 years. as his prior conviction had been adjudicated and served. Since his removal order is legally questionable warranting further review.

14. On or about November ,2024 received the very first communication from ICE titled Notice Of Failure To Comply Pursuant to 8 C.F.R. 241.4(g). despite having all information to request for travel document and have aided them to assist on my removal by calling the Counselor and Panama Embassy at Batavia detention facility In Batavia New York and still readily available to assist on their effort of removal.

Substantive Due Process

15. In addition to violating his procedural due process rights, Affiant declares that his prolonged detention violates his substantive due process rights because his civil confinement has "become excessively prolonged, and therefore punitive Mr. Green asserts that "[t]he length of [his] confinement, its unrelatedness to the Immigration and Nationality Act's statutory purpose, and the negative impact imprisonment has on [his] health and family constitute an objectively unreasonable harm that rises to the level of punishment." Affiant claims that he is therefore entitled to immediate release.

16. Mr. Green contends that "[t]he government's objectives in detaining Mr. Green are not reasonable because they could be equally met by less punitive alternatives and are not connected to a constitutionally permitted purpose: to avoid flight or dangerousness." rather the Private Corporation ICE Operate Under has high interest to fill beds in the MOSHANNON Facility and nothing more. Furthermore, Mr. Green suggests that the conditions of his confinement are hurting his mental health, Mr. Green's Petition is premised on the length of his detention, not the conditions of his confinement.

17. Finally, suggests that Mr.Green's detention violates his substantive due process rights and requires his immediate release.

18. Mr.Green relies on Doe v. Becerra, 2024 U.S. Dist. LEXIS 94028, 2024 WL 2340779, at *5 (N.D. Cal. May 2, 2024), for the proposition that the length of his detention violates his substantive due process rights. Docket No. 1 at 19-20, ¶¶ 63-64. In that case, a federal district court in the Northern District of California found that a detainee's confinement for 30 months under § 1226(c) violated his substantive due process rights. Becerra, 2024 U.S. Dist. LEXIS 94028, 2024 WL 2340779, at *5. However, the district court, relying exclusively on Ninth Circuit precedent, found that the petitioner's confinement was punitive because the conditions of his federal civil confinement were worse than the conditions of the state criminal confinement from which he had been released. See at *13 ("Mr. Doe's detention is punitive if the conditions at GSA are harsher than those he faced in state prison, which were by definition intended to punish."). The court ordered the government to immediately release the detainee from custody or "propose an injunction that would modify the conditions of Mr. Doe's{2024 U.S. Dist. LEXIS 25} detention to rectify the due process violations and ensure that the conditions are not harsher than Mr. Doe's state incarceration." 2024 U.S. Dist. LEXIS 94028, [WL] at *14. Here, although Mr. Green states that "the conditions of detention within the MOSHANON VALLEY facility are akin to a penal institution," , he does not argue that these conditions violate his constitutional rights or that they are a basis for his release from custody, rather argues the continous detention and the government stands as to why he is being detained.

JURISDICTION AND VENUE

19. Jurisdiction is proper under the US. Constitution Art.1 §9 ,cl 2 (Suspension clause)and federal statutes 28 U.S.C § 1331 (federal coation);28 U.S.c. § 2241 (habeas Corpus);and 28 U.S.C. §1651 (All Writs Act).Additionally this court has jurisdiction to grant injunctive relief pursuant to the declatory judgemnt Act 28 U.S.C. § 2202.

20. Federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging their detention by DHS See. *Demore v. Kim* 538 U.S. 510, 516-17(2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88(2001), *German Santos v. Warden Pike County Corr. Facility*, 965 F.3d 203, 208(Cir.2020).

21. Venue is proper in the U.S. District court for central district of Pennsylvania under 28 U.S.C. § 1391 because I am currently being detained within this District at The Moshannon valley Processing Center in Phillipsburg, Pennsylvania and substantial part of the events giving rise to the claims in this action took place in this district. see. *Rumsfeld v. Padilla*, 542 U.S. 426, 443(2004). For core Habeas Petitions challenging Present Physical confinement, jurisdiction lies inthe District of Confinement).

LEGAL ARGUMENT

22. Procedural Due Process Requires That the body be Released or, at Minimum, Afforded a Constitutionally Adequate Bond Hearing at which The Government Must justify his Continued Detention.

23. The Fifth Amendment's due Process Clause forbids the government from depriving any "Personof liberty... without due process of law "U.S. Const.amend V."The due process clause applies to all "Persons" within the UNITED STATES OF AMERICA.including noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent" *Zadvydas*, 533 U.S. at 693 ."Freedom from imprisonment-and government custody, detention or other form of physical restraint -lies at the heart of the liberty that the due process clause protects" id at 090(citing *Foucha v. Louisiana*, 504 U.S. 71, 80(1992)).

24. One of the factor considered is whether the non-citizen removability is in the foreseeable future to continue detention. *German Santos*, 965 F.3d at 211 when the noncitizen removal proceedings unlikely to end soon.

25. This suggests that continued detention without a bond hearing unreasonable specially On MR. Green's case it has been over the statutory allowed time which is six month's, ICE showed No effort to remove but keep Affiant in detention under a Private corporation which their sole mission is to Maximize Profitability.

26..Affiant also submitted a form known as EOIR 40 application For Suspension Of Deportation.

27. Because my case is ongoing "the prospect of an additional undefined period of further detention in the future weighs in favor of a finding of unreasonableness "See. *Abioye v. oddo*, 704 F. supp.3d 625, 630-31(W.D.Pa 2023)(holding second *German Santos* factor weighed in favor of petitioner where "Additional delay of unidentified duration would continue to accrue pending a ruling by the court of appeals, and any further administrative proceedings that may be necessary following that appellate court decision); *Michelin v. oddo*, No. 3:23-CV-22-2023 WL 5044929, at *7(W.D Pa; Aug 8, 2023).reconsideration denied in part, No.3:23-CV-22, 2023 WL. 5672278(W.D. Pa. Sept.1, 2023), appeal dismissed sub nom. *Michelin V. warden Moshannon Valley Corr. Ctr.* No, 23-2966, 2024 WL 1904350(3d Cir.feb 2, 2024)(concluding that the second *German Santos* factor weighed strongly in the petitioner's favor where his motion to reopen had pending before the BIA for more than sixteen months with no indication of when a decision would issue ,such that his detention was "likely to continue for quite some time "). *Elyardo v. leichleimer*, No 1;23-CV-01089, 2023 WL 8259252, at

*3(M.D. Pa Nov.29,2023)(Concluding likelihood of continued detention favored habeas relief where the noncitizen case was remanded by the BIA and set for a hearing two months away ,and possible further appeals could extend detention strongly support a finding of unreasonableness. Where the noncitizen petition for a review was stayed pending a decision in another matter requiring him to stay in prison until a decision was issued and additional briefing could extend detention by Months nmore in prison.

The other factor is the reason for any delay .German santos ,965 F.3d at 211. Only delay resulting from a party's "Carelessness or bad faith" Count,district court should not hold an noncitizen's good-faith challenge to his removal against him,even if his appeals or applications for relief have drawn out the proceedings" Id.(doing so would "effectively punish a noncitizen for pursuing applicable legal remedies "Id quoting leslie V. Att'y Gen.,678 F.3d 265,271 (3d Cir 2012). Because I am exercising my rights right to pursue a defense to my removal" by pursuing applicable legal remedies ,this factor weighs in my favor.Abioye,704 F.Supp.3d at 631.

28. Without Intervention from this court ,my detention will continue as my immigration case is ongoing.The immigration court has not conducted a bond hearing to determine whether my continued detention is justified, Instead they issue documents that shows inadequate review .

29. When a Non-Citizen's who has been in detention becomes unreasonably prolonged ,the due process clause demands a bond hearing. As exhibit A suggests that ICE has No intention to release Affiant at this time per their communication on march 3,2025.(See. Exhibit A).

RELIEF REQUESTED

WHEREFORE, Affiant respectfully requests this COURT:

30. Assume Jurisdiction over this matter.

31. Order the Respondent to file an Answer and Return within 3 days of the filing of the Petition, unless they can show good cause for additional time:

32. Order respondents to ensure I receive all filings in a timely manner in order to facilitate prompt briefing.

33. Order Respondent all pertinent information mentioned to show that I have stated facts which relates to my current medical condition which is not accessible to me currently .

34. Grant the Great writ of Habeas Corpus requiring respondent to provide me with an individualized bond hearing before a neutral arbiter at which Respondent must bear the burden of establishing by clear and convincing evidence that my continued detention is justified.

35. Order that the immigration judge must consider alternatives to detention and my ability to pay when setting a monetary bond.

36. In the alternative, and in this court's equitable Powers order the respondents to release me from further unlawful and illegal detention.

37. I Affirm under Penalty of Perjury, that I am the Petitioner,I have read this Affirmation Petition and the information in this document is true and correct.

Roberto Green
Respectfully Submitted
ROBERTO GREEN

Moshannon Valley Processing Center
555 Geo Drive
Philipsburg, Pa 16866

DATED 04/18/2025

CERTIFICATE OF SERVICE

On APRIL 18,2025 I ROBERTO GREEN ,Served a copy of this Petition to the Office Of Chief Immigration & Customs Enforcement, 2350 Freedom Way,Suite 254,York,PA 17402

ROBERTO GREEN

04/18/2025

Commonwealth of Pennsylvania
County of Clearfield

Signed (or attested) before me

on April 18, 2024

by Roberto Green

Joanne M. Passmore

Commonwealth of Pennsylvania - Notary Seal
Joanne M. Passmore, Notary Public
Clearfield County
My commission expires November 16, 2026
Commission number 1427625
Member, Pennsylvania Association of Notaries