

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

HALEY, MARK ANTHONY

Petitioner,

V.

EL PASO FIELD OFFICE for the U.S.
IMMIGRATION AND CUSTOMS ENFORCEMENT
NOEM, KRISTI, U.S. DEPARTMENT HOMELAND
SECURITY; BONDI, PAM Attorney General of the
UNITED STATES of AMERICA; WARDEN of
EL PASO SERVICE PROCESSING CENTER;

Respondents.

Case No.: 3:25-cv-190

**VERIFIED PETITION
FOR WRIT OF HABEAS
CORPUS AND
COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

**ORAL ARGUMENT
REQUESTED**

COME NOW Petitioner, Mark Anthony Haley, for his Petition for a Writ of Habeas Corpus and Complaint against Respondents allege as follows:

INTRODUCTION

1. Petitioner Mark Anthony Haley (“Mr. Haley”) has remained in detention since his reentry into the United States on or about February 8, 2024. Immigration and Customs Enforcement (ICE) in El Paso refuses to release Mr. Haley despite having a pending stay of removal since on or about September 12, 2024, and a pending custody review determination from or about February 4, 2025. Mr. Haley has been detained for well over a year and his removal is

not reasonably foreseeable. Mr. Haley's continued detention is arbitrary and unlawful, and he requests that this Court order his immediate release from ICE custody.

2. Mr. Haley is detained pursuant to 8 U.S.C. §1231(a), which governs the detention of non-citizens with a final order of removal that the government seeks to reinstate. 8 U.S.C. §1231(a) (1) (B) (i) and (5).

3. Mr. Haley's continued detention violates 8 U.S.C. § 1231 (a) (6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. Mr. Haley cannot be deported because he filed a stay of removal with ICE that is currently pending. ICE's half-hearted attempts to give Mr. Haley periodic custody review determinations have remained pending and have gone unanswered despite multiple follow ups.

4. Furthermore, the ICE El Paso Field Office's detention of Mr. Haley for at least 90 days past the reinstatement of his removal order, and the subsequent filing and pendency of his stay of removal, without prompt, individualized determinations of whether he should remain detained is inconsistent with ICE's own long-standing policy and the INA, thereby violating the Administrative Procedure Act (APA) and due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

JURISDICTION & VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

6. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. See, e.g., *Zadvydas*, 533 U.S. at 687.

7. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Petitioner up to and past the 90-day removal period has adversely and severely affected Petitioner’s liberty and freedom.

8. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at the El Paso Service Processing Center. Furthermore, a substantial part of the events or omissions giving rise to this action occurred and continue to occur at ICE’s El Paso Field Office in El Paso, Texas, within this division.

PARTIES

Petitioner

9. Mr. Haley is a native and citizen of Guyana, who reentered the United States after having been previously removed on or about 2010. He has been detained for fifteen (15) months and is currently detained at the El Paso Service Processing Center. He is in the custody, and under the direct control, of Respondents and their agents.

Respondents

10. Respondent U.S. Immigration and Customs Enforcement (“ICE”) is a law enforcement agency of the federal government of the United States tasked to enforce the

immigration laws of the United States. ICE is charged with detaining and removing individuals from the United States under the authority and direction of the United States Department of Homeland Security.

11. Respondent Kristi Noem is sued in her official capacity as the secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Noem is empowered to carry out any administrative order against the Petitioner and is a legal custodian of Petitioner.

12. Respondent United States Department of Homeland Security is the agency responsible for the administration and enforcement of the immigration laws of the United States. Respondent United States Department of Homeland Security has the legal authority to detain or release Petitioner due to the authority conferred by the Attorney General of the United States.

13. Respondent Pam Bondi is sued in his official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

STATEMENT OF FACTS

14. Mr. Haley is a 58-year-old citizen of Guayana. He re-entered the United on or about February 4, 2024, to escape persecution in Guyana and reunite with reunite with his three U.S. citizen children, five U.S. citizen siblings, and his ailing U.S. citizen mother, Joycelyn Adams, who suffered from multiple underlying conditions, including beginning stages of dementia, vertigo, type 2 diabetes, and hypertension.

15. Mr. Haley has significant family ties in the U.S. because he lived in the United States as a lawful permanent resident for over 10 years. He was ordered removed on or about March 9, 2010, because of a guilty plea on a possession of marijuana charge in New Jersey.

16. Marijuana is now legal in the State of New Jersey.

17. Since Mr. Haley's entry into the United States on February 4, 2024, he has remained detained. Mr. Haley was initially detained at the Dona Ana County Detention Center. On or about August 2024, he was transferred to the El Paso Service Processing Center.

18. On or about September 2024, Mr. Haley filed a stay of removal with ICE, which has remained pending since then.

19. On or about November 26, 2024, ICE served Mr. Haley with a decision to continue his detention, despite repeated requests to be released in order to attend to his mother's ailing health.

20. On or about January 9, 2025, Mr. Haley renewed his request to be released from custody on an emergency basis because his mother, Ms. Adams, was hospitalized and on life support.

21. Four days later, Ms. Adams passed away without seeing her son.

22. On or about February 4, 2025, ICE conducted a review of custody interview. His custody review determination remains pending to this day.

23. If released, Mr. Haley will reunite with his U.S. citizen family, and will reside with his sister, Marlene Adams and will reunite with the rest of his U.S. citizen family to properly mourn the loss of his mother.

LEGAL FRAMEWORK

24. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” 28 U.S.C. § 2243 (emphasis added).

25. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

26. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.”). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

27. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he date the order of removal becomes administratively final”; “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court’s final order”; or “[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.”

28. Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal period” of

noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that “the statute, read in light of the Constitution’s demands, limits [a noncitizen’s] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

29. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen’s due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

30. The Court’s ruling in *Zadvydas* is rooted in due process’s requirement that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

31. The first justification of preventing flight, however, is “by definition . . . weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where

removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

32. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period.” *Id.* at 700.

33. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

34. Petitioner re-alleges and incorporates by reference the paragraphs above as through fully set forth herein.

35. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

36. Petitioner has been detained by Respondents for over 14 months. Over seven (7) months of this prolonged detention has taken place after ICE accepted his stay of removal requests, which remains pending.

37. The reinstatement of Petitioner's removal order became administratively final once he re-entered the United States on or about February 4, 2024.

38. Petitioner's prolonged detention is not likely to end in the reasonably foreseeable future given he has a pending stay of removal and a pending custody review determination. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process *See Zadvydas*, 533 U.S. at 690, 699–700.

39. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Violation of Immigration and Nationality Act, 8 U.S.C. § 1236(a)(6)

40. Petitioner realleges and incorporates by reference the paragraphs above. 8 U.S.C.

41. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 689, 701. 74.

42. Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT THREE
Arbitrary and Capricious Agency Action under the Administrative Procedure Act, 5
U.S.C. § 706(2)(A)

43. Petitioner realleges and incorporates by reference the paragraphs above.

44. Courts must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

45. ICE has deviated from its own policy in continuing to detain Petitioner despite his pending stay of removal and their failure to adjudicate his custody review determination, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

46. As a remedy, this Court should conduct its own review of Petitioner’s custody or, at least, order ICE to review Petitioner’s custody under the standard articulated in ICE policy.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

- a. Assume jurisdiction over this matter;
- b. Declare that Petitioner’s continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
- c. Order Petitioner’s immediate release;
- d. Enjoin Respondents from moving Petitioner to any other detention center while these proceedings are pending
- e. Issue a Writ of Habeas Corpus ordering Petitioner’s release from immigration detention

pending final resolution of this habeas proceeding;

- f. Alternatively, review Petitioner's custody under the standard articulated in ICE policy, or order ICE to review Petitioner's custody accordingly;
- g. Permanently enjoin Respondents, their subordinates, agents, employees, and all others acting in concert with them from subjecting Petitioner to these statutory violations and unconstitutional arrest and detention policies, practices, acts and omissions described herein, and issue injunctive relief sufficient to rectify those statutory and constitutional violations;
- h. Award compensatory and punitive damages to Petitioner for Respondents' violations of constitutional law, which caused Petitioner to suffer and continue to suffer physical and emotional harm, in an amount that is fair, just, and reasonable; and
- i. Grant any other further relief this Court deems just and proper.

Dated: May 27, 2025

Respectfully submitted,

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 27, 2025

Respectfully submitted,

/s/John T. Kirtley, III
John T. Kirtley, III
Attorney for Petitioner

/s/Tito Saavedra

Tito Saavedra Esq.*
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** Pro Hac Vice Forthcoming*

/s/Abadir J. Barre

Abadir J. Barre Esq.*
Attorney for Petitioner
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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. My co-counsel furthermore will mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

El Paso Field Office
8915 Montana Avenue
El Paso, TX 79925
United States

Kristi Noem
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c/o DHS Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Washington, DC 20528-0485

Pam Bondi,
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Warden of El Paso Service Processing Center
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El Paso, TX 79925

Stephanie Rico
c/o Civil Process Clerk
Office of the United States Attorney
for the Western District of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Dated: May 28, 2025

Respectfully submitted,

/s/John T. Kirtley, III
John T. Kirtley, III
Attorney for Petitioner

LIST OF EXHIBITS

- EXHIBIT A – Email Correspondence evidencing pending stay of removal for Petitioner
- EXHIBIT B – Email Correspondence of Delayed Custody Review Determinations
- EXHIBIT C – Email Correspondence of Attempts to Request Deportation Officer to Adjudicate Custody Review Determination
- EXHIBIT D – Statement of Respondent
- EXHIBIT E – Letter in Support from Family in the United States