UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

KHALED SALAH ABU-HAMDAH, *Petitioner,* v. **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI,** Attorney General of the United States; Miguel Vergara, Acting Director of San Antonio Field Office, U.S. Immigration and Customs Enforcement, San Antonio, TX; Francisco Venegas, Facility Administrator for El Valle Detention Facility, Raymondville, TX, in their official capacities, *Respondents.*	Case No. 1:25-cv-00142 **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** **ORAL ARGUMENT REQUESTED**

INTRODUCTION

1. Petitioner KHALED SALAH ABU HAMDAH [hereinafter HAMDAH] has been in civil immigration custody since October 17, 2024, over eight months. Petitioner's detention became unconstitutional six months after the prior order of removal order in his case was reinstated because removal is not reasonably foreseeable. Accordingly, to vindicate Petitioner's statutory and constitutional rights and to put an end to his continued arbitrary detention, this Court should grant the instant petition for a writ of habeas corpus. Additionally, Immigration Judge Pimentel ruled on his request for relief from removal on March 24, 2025. More than 90 days have elapsed since that ruling and there has been no removal.

2. Petitioner was born on January 1, 1973, in Jerusalem. He has a temporary Jordanian

passport but is not a citizen of Jordan. Petitioner unsuccessfully sought asylum in the United States based on actual innocence of his felony murder conviction and based on reasonable fear of torture if he returns to Gaza. INS has tried to return the Petitioner to Jordan but has been unsuccessful, most recently in early June 2025. Absent an order from this Court, Petitioner will likely remain detained for many more months, if not years.

3. Petitioner asks this Court to find that his prolonged incarceration is unreasonable and to order his immediate release.

JURISDICTION

4. Petitioner is detained in civil immigration custody at the ICE operated El Valle Detention Facility in Raymondville, TX. He has been detained since on or about October 17, 2024, when he was placed in civil immigration custody after serving a brief criminal sentence for Reentry After Deportation in violation of 8 USCA 1326. At his individualized bond hearing before an immigration judge, the Judge said that he had no jurisdiction to set a bond (IJ).

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Venue is proper because Petitioner is detained in Raymondville, TX, which is within the jurisdiction of this District.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to her claims occurred in this district, and no real property is involved in this action.

PARTIES

9. Petitioner who does not have citizenship of any country was ordered removed following entry of an order of deportation on June 3, 2009, in Atlanta, Georgia. He was initially removed on July 9, 2009. His prior order of removal was reinstated on July 22, 2024. The asylum officer at that time found the claimed fear of persecution or torture to be reasonable. His current detention is pursuant to 8 U.S.C. § 1231(a)(5). He has been detained for over eight months and is currently detained at El Valle Detention Center in Raymondville, TX. He is in the custody, and under the direct control, of Respondents and their agents.

10. 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 Petitioner and is a legal custodian of Petitioner.

11. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA. DHS oversees ICE and the detention of noncitizens. DHS is a legal custodian of Petitioner.

12. Respondent Pamela Bondi is sued in her 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.

13. Respondent Miguel Vergara is sued in his official capacity as the Acting Director for the Immigration and Customs Enforcement San Antonio Field office. Respondent Vergara is a legal custodian of Petitioner and has authority to release him.

14. Respondent Francisco Venegas is sued in his official capacity as the Facility Administrator for the El Valle Detention Center, Raymondville, Texas. Respondent Venegas is a legal custodian of Petitioner and has authority to release him.

STATEMENT OF FACTS

15. Petitioner is a 55-year-old resident of Palestine who is without citizenship of any country. He was originally removed on July 9, 2009, based on a Florida criminal conviction. Mr. Abu Hamdah was charged with second degree murder on July 23, 1996. On September 22, 2003, Mr. Abu Hamdah's Florida sentence of 23 years was vacated, and he was re-sentenced to 15 years imprisonment. Laws in Florida changed after his sentence was vacated which would have allowed him to present a defense under "stand your ground". This legislation was signed into law on April 25, 2005, and its provisions abolished the common law duty to retreat and allowed for immunity from criminal prosecution and civil action for justifiable use of force.

16. Mr. Hamdah re-entered the United States in July 2024 for two reasons – escaping the violence in Israel and his native Palestine and to care for his family in the United States. His wife and children are American citizens; his father is also in the United States and is seriously ill. Mr. Abu Hamdah was detained on July 13, 2024 when he was found unlawfully present in the United States at the Border Patrol checkpoint near Sarita. He was charged under 8 U.S.C. 1326 for illegal reentry. Mr. Abu Hamdah pled guilty and received a time served sentence in Federal Court and was released into Immigration Custody on October 17, 2024. Mr. Abu Hamdah was

interviewed for Reasonable Fear by Houston Asylum and a positive reasonable fear determination was rendered.

17. Based on the circumstances surrounding Mr. Abu Hamdah's case, under today's laws in Florida he would be allowed to present a defense against his charge of second-degree murder which was unavailable to him at the time he went to trial. Mr. Abu Hamdah has no other criminal convictions. Mr. Abu Hamdah has suffered threats to his life and freedom in his country of Palestine.

18. Petitioner sought asylum in the United States based on actual innocence of his felony murder conviction and also sought relief based on reasonable fear of torture if he returns to Gaza. He applied for asylum on February 12, 2025. In a lengthy order, Immigration Judge Pimentel denied relief but found the fear credible and found that Petitioner is not dangerous (attached as Exhibit A). No appeal was filed.

19. In his order, Immigration Judge Pimentel found the following: "This case is tragic. Because of Respondent's conviction for killing a man 29 years ago under circumstances that now might well have yielded a different result, his path to relief is the narrowest possible. And in my view, he has not cleared that path. If discretion played any part in this decision - which it does not - the Court would exercise that discretion in Respondent's favor. In fact, in my view, he poses no ongoing danger to the community even though the law unequivocally states that he does. And there can be no question that humanitarian factors overwhelmingly support relief. The individual hearing made manifest the love and dedication that Respondent's extended family has for him and one another despite the most trying of circumstances. But in the end, none of this is relevant to my decision."

20. Petitioner filed a motion for bond in immigration court. The bond request was withdrawn by counsel on December 3, 2024, when Immigration Judge Pimentel stated he did not have jurisdiction to grant a bond.

LEGAL FRAMEWORK

1. 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).

2. "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).

3. 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.

4. 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." Mr. Hamdah was already in immigration custody for more than 90 days when he filed his asylum application on February 12, 2025. Since Immigration Judge denied that request on March 24, 2025, it is now more than 90 days since that order was denied.

5. 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.

6. 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.*

7. 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.

8. 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.

9. 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.

10. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and removal 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 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

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

12. 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.

13. Petitioner has been detained by Respondents for over eight months.

14. Petitioner's removal order became administratively final on October 17, 2024. The removal period began on that day and thus elapsed on December 17, 2024. He did apply for asylum on February 12, 2025. His application was denied by order of Immigration Judge Pimentel on March 24, 2025. It is more than 90 days since March 24, 2025.

15. Petitioner's prolonged detention is not likely to end in the reasonably foreseeable future. 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.

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

COUNT TWO
Violation of 8 U.S.C. § 1231(a)

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

18. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6);

see also Zadvydas, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Because Petitioner's removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Declare that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a);

(3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

(4) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(5) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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