

UNITED STATES DISTRICT COURT FOR OCT -3 A 10:51
SOUTHERN DISTRICT OF GEORGIA KM
WAYCROSS DIVISION CLERK SO. DIST. OF GA.

BADRA KABA

Petitioner.

Civil action no: 5:25-cv-68

WARDEN MICHAEL
BRECKON

Respondent.

MOTION TO THE OPPOSITION
RESPONDENT MOTION TO DISMISS

Comes now Petitioner in the above captioned case in pursuant to federal Rules of Civil procedures, hereby move this Honorable Court to enter ruling in favor of petitioner due to multiple violations of respondent. Petitioner respectfully ask the Court for extension wherefore: for all reason set forth in this motion. Petitioner respectfully ask this Honorable Court to grant Petitioner favor order for immediate release

Respectfully submitted
by Badra Kaba
10/03/25

COUNT THREE

DOUBLE JEOPARDY

Double Jeopardy, protects people from being tried for the same crime twice in court of law. The clause is found in the fifth Amendments of the United States Constitution, where it was included to prevent the Government from erroneously or maliciously convicting innocent people, and protect people from the consequence of successive prosecutions. It also helps to preserve the finality of a criminal proceeding. The case Benton v. Maryland set a precedent stating that double jeopardy law extends to both state and federal criminal cases. Prior to this U.S. Supreme Court ruling, the double jeopardy clause of the Constitution only protected defendant's facing federal charges.

COUNT FOUR

STATUTORY VIOLATIONS

Petitioner's continued detention by Department of Homeland Security(DHS) Immigration and Custom Enforcement (ICE) is unlawful and contravenes 8 U.S.C Ss 1231(a) (b) as interpreted by the U.S. Supreme Court in Zadvydas. Six month presumptively reasonable period for continued removal effort has expired. Petitioner still has not been removed, and for the reasons outlined above in the previous paragraphs. Petitioner removal is not reasonably foreseeable. The Supreme Court held in Zadvydas and Martinez that ICE's continued detention of someone after six months without deportation is not reasonably foreseeable and is in violation of U.S.C. Ss 1231 (a) 533 U.S. At 701

COUNT ONE

PROCEDURAL DUE PROCESS VIOLATION

Under the Due Process Clause of the Fifth Amendments , an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. Petitioner in this case has been denied that opportunity. ICE does not make decision concerning alien' custody status in a neutral and impartial manner. The failure of Respondent to provide a neutral decision-maker to review the continued custody of Petitioner violates Petitioner's right to procedural due process. Respondent have failed to acknowledge or act upon Petitioner's administration request for release in a timely manner.

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

The petitioner continued detention violates Petitioner right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.
See Tom v. INS, 14 F. Supp2d 1184 (E.D. Cal 1998)(aliens retain substantive due process right).

Under 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 Respondent 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 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 right were violated, and nothing that “if deportation can never occur, the government primary legitimate purpose in detention-executing removal- is nonsensical.”)

Detention in Violation of the Statute and Regulation

Section 241 of the Immigration and nationality Act permits the detention of an alien with a final order removal for period of 90 days . Beyond the statutory period , the Supreme Court has held that six months is a presumptive reasonable period of detention for the government to effect removal *Zadvydas v. Davis* 533 U.S 678. 701 (2001). Once six months have passed the alien must be release is there is no reasonable likelihood of removal in the reasonably foreseeable future . *Zadvydas v . Davis* , 533 U.S 699. 700. In this case , ICE / D.H.S has detained petitioner for more than six months the issuance of his final order of removal .

Substance Due Process Violation

As a person in the United States , plaintiff' is protected by the due process Clause of the Fifth Amendment. ICE has detained petitioner for more than six months since the issuance of his final order of removal. There is no significant likelihood that petitioner removal will occur in the reasonably foreseeable future , Plaintiff' does not pose a danger to the community or a risk for flight ,and no special circumstances exist to justify his continued detention . As Plaintiff' is not danger , not a flight risk , and cannot be removed , his indefinite detention is not justified and violates substantive due process. See *Zadvydas* 533 U.S at 690- 91 .

Declaring that plaintiff continued detention is not authorized by the D.H.S and/ or violates the Fifth Amendment.

This Action arises under the Constitution of the United States, and the **Immigration and Nationality Act (INA) 8 U.S.C 1101 et seq...** as amended by the **Illegal Immigration Reform and Immigrant Responsibility Act 1996 (IIRIRA)**, Pub L. No. 104-208, 110 Stat. 1570 and **Administrative , Procedure Act (A.P.A) . 5 U.S.C Sec 701 et seq .** The **United States Constitution (" Suspension Clause)** and **28 U.S.C Sec 1331** , as Plaintiff is presently in custody under color of the authority of the United States , and such custody is in violation of **the Constitutions. Law , or Treaties of the United States . 5 U.S.C 702,** and the **All Writs Act , 28 U.S.C Sec 1651.** Its a reasonable belief that the Government (D.H.S) violated my rights .

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 demand, limit 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 701. After six month, 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 post-removal confinement grow, what count as the reasonably foreseeable future,' conversely would have to shrink ." *Zadvydas*, 533 U.S. At 701. ICE's administrative regulation 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.

DISCUSSION:

Pursuant to *Walker v. Lowe* 2016 , the 9th Circuit has continuously held that the primary point of reference for justifying an aliens continue detention must be whether the civil detention is necessary to achieve the Status goal:

1. ensuring participation in the removal proceedings
2. protecting the community from the danger that he poses.

The Petitioner holds Immigration and Customs Enforcement(ICE) is acting arbitrary to the goals of the Statues and is holding Petitioner in an arbitrary and overzealous manner and is using detention as a means to rehabilitate. To date Petitioner is proven to be in attendance of all removal and criminal proceedings and never been involve in anything violent towards fellow detainees and officers for the entire time being detained. The Petitioner also holds that any pending charges or conviction on the Petitioner's record has no degree of finality as there is non-exhaustion of appellate review.

See Pino v. Landon.

Additionally, the presumption of innocence ,although not articulated in the Constitution, is a basic component of a fair trial under the **Justice System of the United State of America**. The presumption plays an important role impressing upon us the fact "one accused of a crime, is entitled to have his guilt or innocence determined solely on the basis of evidence adduced at trial and not on the grounds of official suspension,indictment,continued custody or other circumstance not adduced at trial". The presumption of innocence is similar in principle to Due process in many respect. To minimize the danger of depriving petitioner's of their liberty, The Supreme Court has continuously held in *Speiser v. Randall* , both principles command that no man shall lose his liberty unless the government has borne the burden of producing evidence and sufficiency of proof of guilt beyond a reasonable doubt, convincing the fact finder of his guilt.

It is also the assertion of the petitioner that the continues detention is in direct infringement of the right constitutionally granted to him. These include the right to a fair trial and the right to a speedy trial. It must be noted , that if the petitioner is detained , he is unable to participate in the criminal justice proceeding to assert his innocence. With the violations of these right , As in the matter of *Mathews v. Eldridge* . 424 U.S. 319, 335, 96 S. Ct 893, 47 L. Ed. 2D 18 (1976) , The petitioner claims that the private interest of freedom and liberty is being directly affected by the official action of Immigration and Customs Enforcement (ICE). By being detained , the petitioner also claims that the action of DHS,ICE are arbitrary,capricious and with an abuse of discretion. Furthermore, in showing substantial prejudice, A petitioner's continued detention is evidence enough to make a "prima facie case.

Under the Due Process Clause of the **Fifth Amendment**, alien is entitled to a timely and meaningful opportunity to demonstrate the s/he should not be detained. Petitioner in this case been denied that opportunity. ICE does not make decision concerning aliens' custody status in neutral and impartial manner. The failure of Respondent to provide a neutral decision maker to review the continued custody of Petitioner violates Petitioner's rights to procedural due process.

The Supreme Court has held that six month is a presumptive reasonable period of detention for the government to effect removal. **Zadvy v. Davis**, 533 U.S. 678, 701. Once six months have passed, the alien must be release is there in no reasonable likelihood of removal in the reasonably foreseeable future **Zadvydas v. Davis**, 533 U.S. 699, 700. In this case, D.H.S has detained petitioner for more than six months. No special circumstance exist to justify petitioner continued detention.

This Action arises under the Constitution of the United States, and the Immigration and Nationality Act (INA) 8 U.S.C 1101 et seq... as amended by the Illegal Immigration Reform and Immigrant Responsibility Act 1996 (IIRIRA), Pub L. No. 104-208, 110 Stat. 1570 and Administrative, Procedure Act (A.P.A). 5 U.S.C Sec 701 et seq. The United States Constitution ("Suspension Clause") and 28 U.S.C Sec 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitutions. Law, or Treaties of the United States. This Court may granted relief, 5 U.S.C 702, and the All Writs Act, 28 U.S.C Sec 1651.

Jurisdiction exist in this Court pursuant to 28 U.S.C 2241 et seq., 28 U.S.C 1331, the APA 5 U.S.C et seq the Declaratory Judgment Act 28 U.S.C. et seq and the All Writs Acts, 28 U.S.C 1361.

A Federal court should not equitable interfere with state criminal proceedings, absent extraordinary of circumstances. In *Younger v. Harris*, 401 U.S. 37 (1971), The Supreme Court held that a federal court should not interfere with state proceedings "except in the most narrow and extraordinary of circumstances." *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996). *Younger* noted that courts of equity should not act unless the moving party has no adequate remedy at law and will suffer irreparable injury if denied equitable relief. *Younger*, 401 U.S. at 43-45; see also *sprint Commc'ns, inc v. Jacobs*, 571 U.S. 69, 72 - 73 (2013) (explaining the circumstances when *Younger* abstention is appropriate). From *Younger* and its progeny, the Fourth Circuit of Appeals has culled the following test to determine when abstention is appropriate (1) there are ongoing state judicial proceeding; (2) the proceeding implicate important State interest; and (3) there is an adequate opportunity to raise federal claim in state proceedings." *Martin Marietta Corp. v. Md Comm'n on Human Relations*, 38 F.3d 1392, 1396 (4th Cir. 1994) (citing *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n* 457 U.S. 423, 432 (1982)).

Here, the first criterion is met, as the petitioner is involved in ongoing state criminal proceedings. As for the Second criterion, the Supreme Court has stated that the 'States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of consideration that should influence a Court considering equitable type of relief *Kelly v. Robinson*, 479 U.S. 36, 49 (1986). The Court also addressed the Third criterion in nothing "that ordinarily a pending State prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional right" *Gilliam*, 75 F. 3d at 304 (quoting *Kugler v. Helfant*, 421 U.S. 117, 124 (1975)). Here, the petitioner has the opportunity to argue that his speedy trial right have been violated

PRAYER FOR RELIEF

WHEREFORE: Petitioner prays that this Honorable Court to grant the following relief

1. Declaring that petitioner continue detention is not authorized by the D.H.S and / or violates the Fifth Amendments.
2. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner .
3. Grant any other and further relief that this Court deems just and proper .

Respectfully Submitted

By: Badra Kaba

Folkston Processing Center

P.O Box 248

Folkston G.A 31537

Date: This 26th day of September, 2025 _____



U.S. Marshals Service/SCA