

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

FILED JUL 21 25 AM 8:16
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ENIL JOSADAC ZELAYA

DETAINED

A# 

Petitioner,

Civil Action No: _____

v.

PAM BONDI

Attorney General;

KRISTI NOEM

Secretary of Department of

Homeland Security;

HOMER BRYSON U.S.

ICE Field Office Director For

the Southern District of Georgia,

Field Office, and Warden DICKENSON

of Immigration Detention Facility,

Respondents.

**PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §2241, BY A PERSON
SUBJECT TO INDEFINITE IMMIGRATION
DETENTION.**

AND

**MOTION FOR APPOINTMENT OF COUNSEL
PURSUANT TO 18 U.S.C. §3006A**

Petitioner, ENIL JOSADAC ZELAYA, hereby petitions this Court for a writ of Habeas Corpus to remedy Petitioner's unlawful detention by Respondents, and to enjoin Petitioner's continued unlawful detention by the Respondents. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

BACKGROUND

Petitioner is a Citizen of HONDURAS. Detained and in the Custody of DHC/ICE in the United States, but has been ordered removed to HONDURAS by an Immigration Judge ON JUNE 09, 2006,

Petitioner's removal order is Final, but Petitioner HAS NOT been removed to HONDURAS. Thus Petitioner remains detained in DHS/ICE custody, and has been confined for a period far longer than the law mandates.

CUSTODY

1. Petitioner is in to physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is Detained at Stewart Detention Center in Lumpkin Georgia where ICE has contracted the institution to house Immigration detainees such as petitioner. Petitioner is in the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution of the United States, 28 U.S.C. §2241(c)(1), and to Immigration and Nationality Act ("INA"), 8 U.S.C. §1101 et seq. This Court has subject matter Jurisdiction under 28 U.S.C. §2241, Art. IS9, cl. 2 So to United States Constitution ("Suspension Clause"); and 28 U.S.C. §1331, as Petitioner is Presently in custody under color of the authority of the United States., and such custody is in violation of the Constitution, laws, or treaties So to united States. See Zadvydas v. Davis, 533 U.S. 678, 688 (2001) (We conclude that §2241 habeas corpus proceedings remain available as a form for statutory and constitutional challenges to post-removal-period detention.") INS V. St. Cyr, 533 U.S.289, 301 (2001) ("at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.")' Clark v. Martinez, 543 U.S. 371 (2005) (holding that Zadvydas applies to aliens found inadmissible as well as removable).

VENUE

3. Venue lies in the Middle District of Georgia, because Petitioner is currently detained in the territorial jurisdiction of this Court, at the Stewart Detention Center in Lumpkin, Georgia. 28 U.S.C. §1391.

EXHAUSTION OF REMEDIES

4. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. After the Supreme Court decision in Zadvydas, the Department of Justice issued regulations governing the custody of aliens removed. See 8C.F.R §241.4. Petitioner received a final order of removal on June 6, 2006. at His/Her "90-day" custody review, on or about June 18, 2025. ICE decided to continue His/Her detention. Subsequently in a decision dated "never given a decision", ICE's Headquarters Post-order Detention Unit ("HQPDU") **HAS NOT** informed Petitioner that it would continue to keep him in custody. The custody review regulations do not provide for appeal from a HQPDU custody review decision. **Especially if no decision is ever made or given to ICE or the Petitioner.** See 8 C..F.R. §241.4(d).

5. No statutory exhaustion requirements apply to Petitioner's claim of unlawful detention.

Petitioner remains detained without any indication from the United States Government or the Government of Honduras that the Petitioner's repatriation is reasonably foreseeable. A Habeas petition is proper in light of these facts.

PARTIES

6. Petitioner is a Citizen of Honduras. Detained and in the Custody of DHC/ICE in the United States, but has been ordered removed to Honduras Petitioner's removal order is Final, but Petitioner cannot be removed to Honduras, Thus Petitioner remains detained in DHS/ICE custody, and has been confined for a period far longer than the law mandates.

7. Respondent Pam Bondi is the Attorney General of The United States and is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Naturalization Act (INA). As Such, Ms. Bondi has ultimate custodial authority over the petitioner.

8. Respondent Kristi Noem is the secretary of the Department of Homeland Security. She is responsible for the administration of ICE and the Implementation and enforcement of the INA. As such Ms. Noem is the legal custodian of the Petitioner.

9. Respondent Homer Bryson is the ICE field office director for the Middle District of Georgia for the Stewart detention Center in Lumpkin, Georgia field office of ICE and is Petitioners immediate custodian. See Vasquez v. Reno, 233F.3d 688, 690 (1st Cir. 2000), cert. Denied, 122 S. Ct. 43 (2001).

10. Respondent Dickenson Warden at the Stewart Detention Center in Lumpkin, Ga where the petitioner is currently detained under the authority of ICE, alternatively may be considered to be petitioner's immediate custodian.

STATEMENT OF FACTS

11. Petitioner Enil Josadac Zelaya was born in Honduras on [REDACTED] and fled the Country from Honduras to the United States and arrived on 04-22-2006 then returned on 09-01-2016. [REDACTED] Petitioner was a Permitted into the United States on 09-03-2016 and ordered to report on Supervision and has as required by law. Petitioner lived in North Carolina Recently until the day he was detained on 03-20-2025 when he reported to DHS/ICE. Petitioner lived with his family until the day he was detained. All of petitioners family members rely on him as he is the sole provider.

Petitioner has lived here for over 8 years so far!

12. Petitioner arrived in the United States this time on 09-01-2016 as a refugee Honduran .

13. Petitioner only has Driving infractions in this Country and no criminal record at all!

14. Petitioner was released on Supervision with DHS/ICE on 09-03-2016 where he reported on Supervision ever since.

15. Petitioner was Detained this time by DHS/ICE on 03-20-2025 for reporting as required.

16. To date, however, ICE has not released Petitioner.

17. As of today ICE has been unable to remove the petitioner to Honduras.

19. Petitioner is categorized as a Honduran Refugee.

20. Petitioner has cooperated fully with all efforts of ICE.

21. Petitioner was ordered removed on 06-09-2006 and the removal order became final 30 days later on 07-09-2006.

22. Petitioner's most recent 90 day custody review under the Honduran review plan, 8C.F.R. §212.12 should have taken place on 06-18-2025 at which Petitioner still remains detained.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

23. In Zadvydas v. Davis, 533 U.S. 678(2001), the U.S. Supreme Court held that

8.U.S.C. §1231(a)(6), when "read in light of the Constitution's demands, limits an

aliens post-order removal period detention to a period reasonably necessary to bring about the 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 Clark v. Martinez, 543 U.S. 371 (2005), the U.S. Supreme Court held that Zadvydas applies to aliens found inadmissible as well as removable.

24. In determining the length of a reasonable removal period, the Court adopted a "preemptively reasonable period of detention" After 90 days, 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 18239, 2-3 (D. Mass. Oct. 19, 2001) (quoting and summarizing Zadvydas). Moreover, "for detention to remain reasonable, as the period of prior post-order removal grows, what counts as the reasonably foreseeable future' conversely have to shrink." Zadvydas, 533 U.S. At 701. ICE's administration regulations also recognize that the HQPDU has a maximum six-month period for determining whether there is significant likelihood of a alien's removal in the reasonable foreseeable future. See 8 C.F.R. §241.4(k)(2)(ii).

25. An alien who has been detained beyond the presumptive period 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. John Ashcroft, 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court "will likely grant" after 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. February 28, 2002) (government's 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 is no significant likelihood of petitioner's removal in the reasonably foreseeable future).

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

26. Petitioner re-alleges and incorporates by reference paragraphs 1 through 25 above.

27. Petitioner's continued detention by respondents is unlawful and contravenes 8 U.S.C. §1231(a)(6) as interpreted by the U.S. Supreme Court in Zadvydas. Petitioner's ninety-day statutory period of detention for continued removal efforts have passed. Respondent's are unable to remove petitioner to Honduras at the moment. In the instance of Martinez, the Supreme Court held that the continued indefinite detention of someone like petitioner under such circumstances is unreasonable and not authorized by 8 U.S.C. §1231(a)(6).

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

28. Petitioner re-alleges and incorporates by reference paragraphs 1 through 27 above.

29. 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 e.g., Tam v. INS, 14 F. Supp. 2d. 1184(E.D. Cal 1998)(**aliens retain substantive due process rights**).

30. The due process clause of the Fifth Amendment require 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. §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 interests to effect the alien's removal. See Kay v. Reno, 94 F. Supp. 2d. 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."). Because Petitioner' is unlikely to be removed to Honduras, his continued indefinite detention violates substantive due process.

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

31. Petitioner re-alleges and incorporates by reference paragraphs 1 through 30 above.

32. Under the Due process clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he/she should not be detained. Petitioner in this case has been denied that opportunity. **There is no administrative mechanism in place for the petitioner to obtain a decision from a neutral arbiter or appeal a custody decision that violates Martinez.** See generally 8 C.F.R. §212.12 **The custody review procedures for Hondurans are Constitutionally insufficient both as written and as applied.** A number of Courts have identified a substantial bias within ICE toward the continued detention of aliens, raising the risk of erroneous deprivation to constitutionally high levels. See, e.g., Phan v. Reno, 56 F. Supp. 2d. 1149, 1157 (W.D. Wash. 1999) (**"Ins does not meaningfully and impartially review the petitioner's status."**); St. John v. McElroy, 917 F. Supp. 243, 251 (S.D.N.Y. 1996)(**"Due to and community pressure, INS, an executive agency, has though they have served their sentences, on the suspicion that they may continue to pose a danger to the community."**); see also Rivera v. Demore, No. C99-3042 THE, 199WL521177, (N.D. Cal. Jul. 13, 1999) (procedural due process requires that aliens release determination be made by impartial adjudicator due to agency bias).

The question as to whether Petitioner's detention is in violation of the Laws of the United States is one for a Federal Habeas Court to hear. 28 U.S.C §2241. Accordingly, Petitioner files the accompanying petition for appointment of Counsel and request that this Court order his Immediate release from detention/confinement at Stewart Detention Center located at 146 C.C.A. Rd. Lumpkin, GA 31815.

Therefore, Petitioner request that this Court appoint Counsel to represent Petitioner in this Habeas action if he is not immediately released.

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

ENIL JOSADAC ZELAYA

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Petitioner,

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Attorney General;

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Secretary of Department of

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ICE Field Office Director For

the Southern District of Georgia,

Field Office, and Warden DICKENSON

of Immigration Detention Facility,

Respondents.

MOTION FOR APPOINTMENT OF COUNSEL
PURSUANT TO 18 U.S.C. §3006A

Petitioner, ENIL JOSADAC ZELAYA, prose hereby petitions this Court for appointment of Counsel to assist him in his habeas corpus petition. In support of his habeas corpus petition and complaint for injunctive relief he is incorporating this Motion for appointment of counsel, Petitioner re-alleges everything stated in the habeas corpus submitted with this motion and also alleges as follows:

I. The Court Should Exercise It's Discretion to Appoint Counsel

assuming that a Petitioner has shown financial need, a district Court may appoint Counsel in a Habeas proceeding under 28 U.S.C. §3006A(a)(2)(B). Courts have often examined 3 elements when determining whether appoint of counsel is necessary, the likelihood of success on the merits, the complexity of the legal issues involved in the case, and the ability of the petitioner to present the case in light of its complexity. See, e.g., *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Saldina v. Thornburgh 775 F. Supp. 507, 511 (D. Conn. 1991).

Petitioner has been held in Custody more that 120 days since being ordered removed to Honduras, and removal in the reasonable foreseeable future is unlikely.

Under the Supreme Court's decision in Zadvydas, Petitioner's continued detention is preemptively unreasonable. Thus, Petitioner has a highly likelihood of success on the merits.

Moreover, Petitioner would encounter great difficulty in presenting this Habeas Corpus case alone. The house report on the predecessor to §3006A(a)(2)(B) recognised that Habeas Corpus proceedings often present “**serious and complex issues of law and fact**” that would necessitate the assistance of counsel. H.R. Rep. No. 1546, 91st Cong. 2D Sess. (1970), reprinted in 1970 U.S.C.C.A.N. 3982, 3993. In addition the Congressional report on §3006A(a)(B) stated that a Court should appoint counsel when “**necessary to ensure a fair hearing.**” *Id* The complexity of a Habeas case will pose an especially great obstacle for petitioner if he is not appointed Counsel to represent him as it is already unfair to be put against such educated and well versed individuals as the ones holding him in custody such as DHS/ICE.

In light of the complicated issues involved in habeas corpus proceedings and petitioner's inability to adequately present the case at bar, as well as Petitioner's likelihood of success on the merits, this Court should exercise its discretion to appoint counsel under 18 U.S.C. §3006A(a)(B).

II. Appointment of Counsel Is Necessary Because Discovery is Imperative

The rules governing habeas proceedings require that appointment of counsel in certain circumstances. Under rule 6(a), 28 U.S.C. Foll. §2254, a judge must appoint counsel for a petitioner if it is necessary for effective utilization of discovery procedures.” ICE has information and documentation relevant to petitioner's habeas petition, and without the assistance of counsel, Petitioner will not be able to effectively pursue discovery and, as a result, will not adequately present his claims. The aid of an Attorney is especially important in this case given the Petitioner's lack of familiarity with the legal procedures involved in requesting and obtaining discovery. Moreover, even if Petitioner were to obtain documents in discovery, without the assistance of counsel, Petitioner would not be capable of analyzing them properly to determine the likelihood of being removed in the foreseeable future.

III. An Evidentiary Hearing or Motions Hearing May Be Necessary

Under rule 6(c), 28 U.S.C foll. § 2254, the court is required to appoint counsel in a habeas proceeding if an evidentiary hearing is needed. An evidentiary hearing will likely be necessary in this case. Regardless of any other issues, if an evidentiary hearing is scheduled, the court must appoint counsel for Petitioner.

For the above reasons, the court should appoint counsel to assist Petitioner in instant habeas proceedings challenging Petitioner's detention by ICE, pursuant to the Supreme Court decisions in *Zadvydas* and *Martinez*.

The rules cited in sections II and III typically govern those habeas corpus cases brought under § 2254. However, these rules may be applied to habeas cases that do not fall under § 2254 – such as those cases arising under § 2241 – at the discretion of the court. Rule 1(b). U.S.C. Foll § 2254.

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA**

ENIL JOSADAC ZELAYA

DETAINED

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Petitioner,

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Attorney General;

KRISTI NOEM

Secretary of Department of

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HOMER BRYSON U.S.

ICE Field Office Director For

the Southern District of Georgia,

Field Office, and Warden **DICKENSON**

of Immigration Detention Facility,

Respondents.

MOTION TO PROCEED INFORMA PAUPERIS

PURSUANT TO 18 U.S.C. §3006A and

PURSUANT TO 28 U.S.C. §2241

COMES NOW, the Defendant **ENIL JOSADAC ZELAYA** pro se' and files this Motion in a timely manner.

The Defendant files this Motion to proceed Informa Pauperis and states as follows:

The defendant is indigent and has no monies, employment or income as he was arrested on 03-25-2025 and has been in continued detention by DHS/ICE due to the present case and has been transferred to Stewart Detention Center at 146 CCA Rd, Lumpkin, GA 31815. Petitioner Humbly asks this Court to accept this motion and waive any Court Cost and fees associated with the proceedings and appointment of Counsel in this case at Bar and allow him to proceed Informa Pauperis as he in Indigent.

(See fee waiver form attached)

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over the matter;
2. Grant the Petitioner a habeas corpus directing the respondent to immediately release petitioner from custody, under reasonable conditions of supervision;
3. Order respondents to refrain from transferring the petitioner out of the jurisdiction of the ICE Jurisdiction for the Middle district of Georgia Director while the petitioner remains in the Respondent's custody; and
4. Award Petitioner's Attorney fees and cost under the Equal Access to Justice Act("EAJA"), as amended, 5 U.S.C. §504 and 28 U.S.C. § 2412, and on other basis justified under law; and
5. Grant any other form of relief this court deems just and proper.

X 

July-10-2025

ENIL JOSADAC ZELAYA

DETAINED A# 

Stewart Detention Center
146 CCA Rd
Lumpkin, GA 31815

CERTIFICATE OF OATH

I Swear under Penalty of Perjury from The United States of America if this Motion is found to be false, frivolous or made in bad faith. I also swear that this motion is true to the best of my knowledge.

I further state that this motion is not a copy of a Motion that has already been ruled on nor has it been deposed of by this Court.

I swear that this Motion has been prepared by me/or read to me and explained in full detail and that I understand everything that is said in the following motion and everything is true.

X  _____

July - 10 -2025

ENIL JOSADAC ZELAYA

DETAINED A# 

Stewart Detention Center

146 CCA Rd

Lumpkin, GA 31815

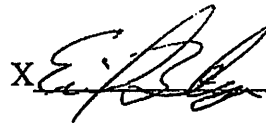
CERTIFICATE OF SERVICE

I Swear that a true and correct copy of the following Motion has been placed in the hands of an institution official or has been placed in the Mail-room official's hand at Stewart detention Center located at 146 CCA Rd. Lumpkin, Georgia 31815 to be mailed by fist class mail to be furnished and forwarded to the following parties listed below.

on July- 10 -2025

1. **United States District Court**
For the Middle District of Georgia
Columbus Division
P.O. Box 124
Columbus, GA 31902

2. **Department of Homeland Security/ICE**
Stewart Detention Center
P.O. Box 248.
Lumpkin, GA 31815

X 

July- 10 -2025

ENIL JOSADAC ZELAYA

DETAINED

A#

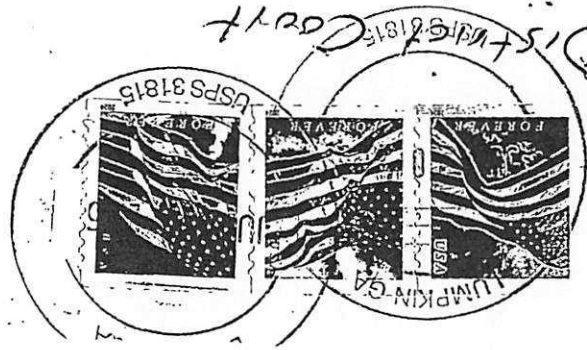


Stewart Detention Center

146 CCA Rd

Lumpkin, GA 31815

Enil Josadae Zelaya
A# [REDACTED]
Stewart Detention Center
146 CCA RD
Cumpling, GA 31815



United States District Court

For the Middle District of Georgia

Columbus Division

P.O. Box 124

Columbus, GA 31902

Legal Mail