

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

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.

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.