

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Fernando KABUDI,)
)
 Petitioner,)
)
 v.)
)
 Richard A. LUNA, Warden, FCI-Berlin;)
 Todd LYONS, Acting Director of U.S.)
 Immigration and Customs Enforcement;)
 Kristi NOEM, Secretary of the U.S. Department)
 of Homeland Security; and **Pamela BONDI,**)
 Attorney General of the United States,)
 in their official capacities,)
)
 Respondents.)
 _____)

Case No. 1:25-cv-00359

**PETITION FOR WRIT OF
HABEAS CORPUS**

**ORAL ARGUMENT
REQUESTED**

INTRODUCTION

1. Mr. Kabudi is a noncitizen detained by Immigration and Customs Enforcement (ICE) in FCI-Berlin. He is currently in withholding-only proceedings in immigration court, having had a prior order of removal reinstated in January 2023. Mr. Kabudi seeks release from detention on four grounds: 1) when revoking his release, Respondents did not comply with the procedures in 8 C.F.R. §§ 241.4(l) and 241.13(i); 2) FCI-Berlin has denied Mr. Kabudi timely access to legal counsel, preventing him from meeting deadlines set by the Immigration Court; 3) Mr. Kabudi has been detained more than 90 days and is no longer in his removal period, pursuant to 8 U.S.C. § 1231, nor is removal imminent; and 4) Mr. Kabudi has high blood pressure which has not adequately been managed in detention. Accordingly, to vindicate Petitioner’s regulatory, statutory, Constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

2. Absent an order from this Court, Petitioner will not be able to have a meaningful

opportunity to participate in his withholding-only proceedings.

3. Petitioner asks this Court to find that his detention is unlawful and unreasonably prolonged, and order release or a bond hearing before the Immigration Court.

JURISDICTION

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

5. 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).

6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, 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 at the Federal Correctional Institution-Berlin in Berlin, New Hampshire, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

8. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

9. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most

important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

10. Petitioner Fernando Kabudi is a noncitizen in withholding-only proceedings before the Chelmsford Immigration Court. Petitioner is currently detained at FCI-Berlin. He is in the custody, and under the direct control, of Respondents and their agents.

11. Respondent Richard A. Luna is the Warden of FCI-Berlin, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Luna also is in charge of setting and implementing policies for attorney visitation.

12. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

13. 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 Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner’s custody. Respondent Noem is a legal custodian of Petitioner.

14. 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 to oversee the Executive Office

for Immigration Review (EOIR), which administers the immigration courts and the BIA.

Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

15. Petitioner is a 47-year-old citizen of Angola. In 2018, he came to the United States and sought asylum. He was unsuccessful, and in the summer of 2019 he was removed from the United States to Angola.

16. Petitioner faced ongoing difficulties in Angola. In January 2023, he returned to the United States, along with his wife and child.

17. On or about January 20, 2023, agents of the Department of Homeland Security (DHS) issued an order reinstating Petitioner's 2019 order of removal. They did not provide Petitioner with a copy at that time, nor did they detain him. They released him into the United States.

18. From January 2023 until May 20, 2025, Mr. Kabudi lived peacefully in Maine with his family, attending regular check-ins as requested by Immigration and Customs Enforcement (ICE). He has no criminal history anywhere in the world. During this time, a U.S. citizen child was born to Mr. Kabudi and his wife.

19. On May 20, 2025, ICE requested that Mr. Kabudi appear at their local office. When he complied, they detained him. Counsel spoke with an officer who informed her simply that Mr. Kabudi would be detained. Mr. Kabudi received no notice in advance of this detention and had no opportunity to respond.

20. When a noncitizen subject to mandatory detention under 8 U.S.C. § 1231 is released, the DHS may determine that revocation of release is warranted under certain conditions

outlined in 8 C.F.R. §§ 241.4(l) and 241.13(i). The DHS did not follow any of the procedures outlined in those regulations.

21. On or about July 14, 2025, ICE informed Mr. Kabudi that he would have a 90-day custody review pursuant to 8 U.S.C. § 1231 and 8 C.F.R. § 241.14. Mr. Kabudi was provided written notice, but he does not speak nor read English. The 90-day period appeared to start when Mr. Kabudi was detained on May 20, 2025. Despite the fact that a notice of appearance was on file, ICE did not notify Mr. Kabudi's counsel or provide any copies of documents, even after counsel requested them.

22. On or about July 25, 2025, DHS gave Mr. Kabudi a reasonable fear interview pursuant to 8 C.F.R. § 208.31. The officer found that Mr. Kabudi did have a reasonable fear of torture if he were returned to Angola, and referred him to withholding-only proceedings before the Chelmsford Immigration Court.

23. Also on July 25, 2025, Mr. Kabudi filed a Petition for Review of the reinstated removal order with the First Circuit. *See Kabudi v. Bondi*, No. 25-1709 (1st Cir). At this time, neither Mr. Kabudi nor his counsel had a copy of the reinstatement order, despite counsel's requests.

24. On August 20, 2025, counsel for respondent Bondi filed a motion for summary dismissal of Mr. Kabudi's Petition for Review, arguing that it was untimely under *Riley v. Bondi*, 145 S.Ct. 2190 (2025) as the reinstatement order of January 20, 2023 was "the only 'final order of removal'". *Kabudi v. Bondi*, 25-1709, Resp. Mot. at 4 (Aug. 20, 2025; Doc. No. 00118329768).

25. On or about August 28, 2025, ICE notified Mr. Kabudi that they had declined to grant him release from detention. ICE did not explain why, in their estimation, May 20, 2025

started the “removal period” of 8 U.S.C. § 1231 rather than the reinstatement date of January 20, 2023.

26. Mr. Kabudi suffers from high blood pressure, for which he takes regular medication. His high blood pressure issues have not adequately been managed during his time in detention.

27. Mr. Kabudi was initially scheduled for a merits hearing on his withholding-only proceedings on October 10, 2025. The Immigration Court advanced the hearing date to September 25, 2025. The Immigration Judge ordered that all documents be submitted five days ahead of time, meaning Saturday, September 20, 2025.

28. On Wednesday, September 19, counsel contacted the FCI-Berlin staff to request a telephone call with Mr. Kabudi in advance of the court’s deadline for documents, to finalize his statement. The staff responded that no phone calls would be available until Monday, September 22, 2025.

29. Counsel next asked staff about the possibility of an in-person meeting. Mr. Kabudi speaks Lingala, a language that is not commonly spoken in the United States. Due to the difficulty of finding a Lingala interpreter, counsel generally works with a telephone language service. Staff informed counsel that she would not be able to visit before Monday, September 22, nor would she be able to access the telephone interpretation service during an in-person visit. Therefore, counsel and Mr. Kabudi have no way to meet the immigration court’s deadline of September 20, 2025.

30. Mr. Kabudi presents no risk of flight. He has complied with all of the DHS’s requests to appear for check-ins. He also has no criminal history anywhere in the world, and does

not present a danger to the community. Mr. Kabudi lived quietly in Maine with his wife and children for over two years before the DHS abruptly decided to detain him.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

30. The allegations in the above paragraphs are realleged and incorporated herein.

31. Respondents have violated Mr. Kabudi's Fifth Amendment right to due process by failing to accord him the regulatory process in revoking his release from detention and failing to allow him meaningful access to counsel, depriving him of the opportunity to meet deadlines in the immigration court and participate in his withholding-only proceedings.

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

COUNT TWO

Violation of 8 U.S.C. § 1231 and Implementing Regulations

33. The allegations in the above paragraphs are realleged and incorporated herein.

34. Respondents revoked Mr. Kabudi's release without following the procedures in 8 C.F.R. §§ 241.4(l) and 241.13(i).

35. Respondents also incorrectly calculated the 90-day removal period as beginning on the date they detained Mr. Kabudi, rather than the date his reinstatement order was issued, in violation of 8 U.S.C. § 1231(a)(1)(B).

36. For these reasons, Petitioner's revocation of release and continued detention violates 8 U.S.C. § 1231 and 8 C.F.R. §§ 241.4(l) and 241.13(i).

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and 8 C.F.R. §§ 241.4(l) and 241.13(i);
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or in the alternative, schedule a bond hearing before an immigration judge at which the DHS will be held to its burden to prove that continued detention of Petitioner is warranted;
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,
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Attorneys for Petitioner

Date: September 18, 2025

*motion for *pro hac vice* admission forthcoming

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Fernando Kabudi, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 18 day of September, 2025.

/s/ Stephanie E.Y. Marzouk
Stephanie E.Y. Marzouk MA BBO#683291*