

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Hossam Eldin Abou Nofal,

Petitioner,

v.

Sylvester M. ORTEGA, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Charlotte COLLINS, Warden of T. Don Hutto Detention Center,

Respondents.

Case No. 1:25-cv-2027

**PETITION FOR WRIT OF
HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

1. This is a petition for a writ of habeas corpus filed on behalf of HOSSAM ELDIN ABOU NOFAL seeking relief to remedy his unlawful detention. Respondents are detaining Mr. Nofal pending the execution of his final removal order. Mr. Nofal has fully cooperated with Respondents in their efforts to remove him. To date, Respondents have been unable or unwilling to remove Mr. Nofal and thus, he has been detained for approximately six (6) months. Mr. Nofal is not a flight risk or a danger to the community. Prior to his detention, he was reporting with the U.S. Immigration and Customs Enforcement (USICE). His prolonged detention is no longer justified under the Constitution or the Immigration and Nationality Act (INA).

2. On June 19, 2025, Respondent, Mr. Ortega arrested Mr. Nofal at his home and placed him in the custody of the T. Don Hutto Detention Center. Mr. Nofal's detention was for the purpose of executing his removal order. On or about December 1, 2025, Respondent, Mr. Ortega, reviewed the custody status of Mr. Nofal and determined that he should be detained because Respondent expected to obtain Mr. Nofal's travel documents to execute his removal order. To date, Respondents have not been able or are unwilling to remove Mr. Nofal.

3. Mr. Nofal has fully cooperated with Respondents' requests to complete the necessary paperwork to secure his travel documents. Respondents, however, have not secured the necessary paperwork to remove Mr. Nofal. Mr. Nofal submits that his detention is in violation of his constitutional rights. His prolonged detention is no longer justified under the Constitution or the Immigration and Nationality Act (INA). Petitioner seeks an order from this Court declaring his continued and prolonged detention unlawful and ordering Respondents to release Mr. Nofal from their custody.

CUSTODY

3. Mr. Nofal is in the physical custody of Respondent Sylvester M. ORTEGA, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, the Department of Homeland Security (DHS), and Respondent Charlotte COLLINS, Warden of T. Don Hutto Detention Center in Taylor, TX. At the time of the filing of this petition, Petitioner is detained at the Hutto Detention Center in Taylor, TX. The Hutto Detention Center contracts with the DHS to detain aliens such as Petitioner. Mr. Nofal is under the direct control of Respondents and their agents.

JURISDICTION

4. This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction under 28 U.S.C. 2241, art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

5. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g., Zadvydas*, 533 U.S. at 687.

6. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Petitioner up to and past the 90-day removal period has adversely and severely affected Petitioner’s liberty and freedom.

VENUE

7. Venue lies in the United States District Court for the Western District of Texas, the judicial district in which Respondents, Sylvester M. Ortega and Charlotte Collins reside where Petitioner is detained. 28 U.S.C. § 1391(e).

PARTIES

8. Petitioner Nofal is Palestinian and was born in Saudi Arabia who entered the United States on or about May 14, 1982 with an F-1 Student Visa. Mr. Nofal is a stateless person. Mr. Nofal was ordered removed on February 16, 1993. He is detained by Respondents pursuant to 8 U.S.C. § 1231, which permits the DHS to detain aliens, such as Petitioner, pending the execution of the alien's removal order.

9. Respondent Sylvester M. Ortega is the Field Office Director for Detention and Removal, USICE, DHS. Respondent Ortega is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas, Austin Division. Pursuant to Respondent Ortega's orders, Petitioner remains detained.

10. Respondent Charlotte Collins, is the warden of T. Don Hutto Detention Center, Taylor, Texas. He is Petitioner's immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas, Austin Division.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. Mr. Nofal has exhausted his administrative remedies to the extent required by law.

12. He has fully cooperated with Respondents and has not delayed or obstructed his detention.

13. Mr. Nofal's only remedy is by way of this judicial action.

STATEMENT OF FACTS

14. Petitioner Nofal is a Palestinian and was born in Saudi Arabia, but remains stateless. *See* Exhibit N. He entered the United States on or about May 14, 1982 with an F1 student visa, but was ordered removed on February 16, 1993. *See* Exhibits A and B.

15. After being ordered removed, Mr. Nofal was released through an “Order of Release on Recognizance.” *See* Exhibit C. Mr. Nofal was subsequently placed on an Order of Supervision (OSUP) on November 3, 1997. Petitioner abided by his OSUP and attended all check-ins. *id.*

16. Mr. Nofal filed a Motion to Reopen with the Immigration Court, which was denied on May 26, 2016. *See* Exhibits E and F. He subsequently filed a Motion to Reopen with the BIA, which was denied on February 24, 2021. *See* Exhibit H and I.

17. On or about June 19, 2025, Respondent Ortega and his agents arrested Mr. Nofal at his home. The reason for his arrest was to execute his removal order.

18. However, Respondents have been unable or unwilling to remove Mr. Nofal.

19. Mr. Nofal has fully cooperated with Respondents’ efforts to obtain his travel documents.

20. Respondents have reviewed Mr. Nofal ‘s custody status and have determined that he should be detained because his removal is likely.

21. Mr. Nofal has now been in detention for approximately (6) months pending his removal. Respondents continue to detain Mr. Nofal even though it is now clear that Respondents cannot remove him.

22. Mr. Nofal is not a danger to the community or a flight risk. He has no pending criminal cases and it has been more than three (3) decades since Mr. Nofal has had no contact with law enforcement.

23. Mr. Nofal has deep roots in this community. He has children and a United States citizen wife. He has resided in the United States for more than 30 years. *See* Exhibit P.

24. Prior to his arrest, Mr. Nofal was working, paying his taxes, and providing for his family. His continued detention deprives his family of his companionship and income.

25. Respondents' decision to detain Mr. Nofal is no longer legally justifiable and is capricious and arbitrary. There has been no change in circumstances from November 3, 1997, when he was placed on OSUP, to the present. There is no better time for the Court to consider the merits of Mr. Nofal's request for release.

ARGUMENT

I. PETITIONER'S CONTINUED DETENTION IS UNLAWFUL UNDER ZADVYDAS BECAUSE HIS REMOVAL IS NOT REASONABLY FORESEEABLE, AND THIS COURT SHOULD ACCORDINGLY ORDER HIS IMMEDIATE RELEASE.

A. Mr. Nofal's removal is not reasonably foreseeable under *Zadvydas*.

31. Mr. Nofal's detention is governed by 8 U.S.C. § 1231(a) because he has been detained for more than 90 days since he received a final order of removal and was subsequently placed on OSUP. The 90-day removal period began for Mr. Nofal on May 17, 1993, when the appeal period expired without either party filing a timely appeal. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c).⁶ Therefore, the *Zadvydas* framework applies to Mr. Nofal's detention because it has been more than 30 years since his removal order became final.

B. The Court should order Mr. Nofal's immediate release

32. Because Mr. Nofal's removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision"). To order his immediate release, this Court need only determine that Mr. Nofal's removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a danger to the community or a flight risk. *See* 533 U.S. at 699-700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.").

33. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, *See id.* at 690 (observing that the "justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best"), and that dangerousness cannot unilaterally justify indefinite civil detention barring "special circumstances," which may include the non-citizen being a "suspected terrorist[]" but do not include the non-citizen's "removable status itself." *Id.* at 691. *See also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention]."). With respect to Mr. Nofal's detention, ICE has not invoked the regulations governing these "special circumstances" determinations. *See* 8 C.F.R. § 241.14. To the extent this Court considers any factors outside of the foreseeability of Petitioner's removal, which it need not do, Mr. Nofal has significant equities that warrant release. Mr. Nofal has lived in the United States for over thirty (30) years. Additionally, this Court or ICE is free to impose conditions on release to mitigate any potential concerns regarding flight risk or danger. *See Zadvydas*, 533 U.S. at 700 ("[T]he [noncitizen]'s

release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.”).

CLAIMS FOR RELIEF

**COUNT I
CONSTITUTIONAL CLAIM**

34. Petitioner alleges and incorporates by reference the paragraphs above.

35. Petitioners’ detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution. His removal is not reasonably foreseeable and he must be immediately released.

**COUNT II
STATUTORY CLAIM**

36. Petitioner alleges and incorporates by reference the paragraphs above.

37. Petitioner’s continued detention violates the Immigration and Nationality Act and the U.S. Constitution.

COUNT THREE

38. If he prevails, Petitioner requests attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Declare that Petitioner’s continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

3. Order Petitioner's immediate release;
4. Award Petitioner reasonable costs and attorney's fees; and,
5. Grant any other relief which this Court deems just and proper.

Respectfully submitted,

By: /s/Kate Lincoln-Goldfinch
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ATTORNEYS FOR PETITIONER

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

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

Dated this 10th day of December, 2025.

By: /s/Kymerly Renaud
Kymerly A. Renaud