

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

Kelvin Ntokozo Matobela

Petitioner,

V.

Pamela Bondi, Attorney General of the United States
in their official capacities,
Kristi Noem, Secretary of the U.S. Department of Homeland Security;
Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement
Kelei Walker, Director of Dallas Field office for U.S. Customs and Immigration Enforcement;
Dr Scarlet Grant, Warden, Cimarron Correctional Facility;

Respondents

Case No:

PETITION FOR WRIT OF HABEAS CORPUS

Oral Argument Requested

I. INTRODUCTION

1. Kelvin Ntokozi Matobela, ("Petitioner") is a native and citizen of Zimbabwe who entered the United States on a B1/B2 tourist visa in 1996. Petitioner remained in the United States and eventually approached the US Department of Homeland Security ("DHS") in 2009 to address his presence in the United States and seek possible relief from removal. DHS took the Petitioner into custody and placed the Petitioner in Immigration Proceedings. Petitioner was released from custody and pursued his immigration relief through the immigration court.
2. When Petitioner was released from DHS custody, he was told that he would need to keep his address up to date with the Court, attend regularly scheduled check-ins

and not to engage in any unlawful activity. Petitioner has complied with this requirement since 2009 and was complying with this requirement when he was taken into custody without warning or reason by DHS at his regular check-in in December 2025.

3. Prior to being placed into immigration proceedings, Petitioner had married a U.S. Citizen and was preparing to file applications for relief based on this marriage.¹ However, the Petitioner missed the deadline of August 19, 2011, set for filing his application with the immigration Court and he was ordered removed by the Immigration Judge on November 11, 2011.
4. Petitioner timely appealed this decision by the immigration judge with the Board of Immigration Appeals (“BIA”) and that appeal was denied on November 30, 2012.
5. Petitioner filed another Motion to Reopen his case with the BIA on February 27, 2023, to pursue a request for asylum based on his fear of being returned to Zimbabwe. This appeal was denied on April 29, 2013.
6. Petitioner has remarried and his spouse is a U.S. citizen, and a Petition was filed by his spouse on his behalf over a year ago and remains pending with the United States Citizenship and Immigration Services (USCIS)
7. Petitioner also filed for relief in the form of a U-Visa which is a visa designated for individuals who are victims of a crime
8. Since the Petitioner was released from DHS detention, there has been no change in conditions or violations of the conditions of his release.

¹ This marriage was later annulled and was no longer a viable basis for the Petitioner to file for relief from removal.

9. Prior to DHS detaining him at his December 2025 check-in appointment, Petitioner received no notice nor was he given any reason why he was being detained.
10. Accordingly, to vindicate Petitioner's constitutional & regulatory rights, this Court should grant the instant petition for a writ of habeas corpus or order the Respondents to show cause why the Petitioner should be detained. Petitioner asks this Court to find that the Petitioner's detention is unlawful and order his immediate release.

II. JURISDICTION

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

III. VENUE

12. Venue is proper because Petitioner is detained at Cimarron Correction Facility, in Cushing, Oklahoma, which is within the jurisdiction of this District.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

13. 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).

14. 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).

V. PARTIES

15. Petitioner is a foreign national in immigration proceedings and is currently detained at Cimmaron Detention Center in Cushing, Oklahoma and he is in the custody of, and under the direct control, of Respondents and their agents.
16. 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.
17. 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 U.S. Customs and Border Protection, the component agency responsible for Petitioner’s

detention. Respondent Noem is a legal custodian of Petitioner.

18. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of the U.S. Immigration and Customs Enforcement. Respondent Lyons is responsible for the enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of the Petitioner.

19. Respondent Dr. Scarlet Grant is the Warden of Cimarron Correctional Facility, and she 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 Grant is a legal custodian of Petitioner.

20. Respondent Kelei Walker is sued in her official capacity as the Director of the Dallas Field Office of U.S. Immigration and Customs Enforcement. Respondent Walker is a legal custodian of Petitioner and has authority to release him.

VI. LEGAL ARGUMENT

DHS Lacks Authority to Re-Detain a Respondent Previously Released on Bond or on an Order of Supervision Absent Materially Changed Circumstances

21. Although 8 C.F.R. § 236.1(c) authorizes DHS to arrest and detain a noncitizen whose removal proceedings are pending, that authority is *not unlimited*. Detention under § 236.1(c) implements INA § 236(a), which is discretionary and constrained by fundamental due process principles. Once DHS has exercised that discretion to release a respondent on bond, it may not re-detain the individual without a legitimate and materially changed custody basis.

22. Allowing re-detention in the absence of new facts would render the initial bond or supervisory release determination meaningless and permit indefinite, cyclical detention, a result inconsistent with the regulatory scheme and constitutional norms.

VII. CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

23. The allegations in the above paragraphs are realleged and incorporated herein.
24. The Fifth Amendment's Due Process Clause protects all "persons" within the United States, including noncitizens, from arbitrary deprivation of liberty. Immigration detention is civil, not punitive, and therefore must be reasonably related to a legitimate governmental purpose and accompanied by fundamentally fair procedures.
25. Once the government has exercised its detention authority and released an individual from custody, the individual's liberty interest is reinvigorated and substantial. Any subsequent deprivation of that liberty requires heightened procedural and substantive justification.
26. The Fifth Amendment prohibits detention that is disconnected from its civil purpose. Civil detention is constitutional only when it is reasonably related to its stated purpose. Re-detention without notice or new justification bears no rational relationship to ensuring appearance at proceedings or protecting the community which it is alleged to accomplish. Instead, it operates as punishment for past conduct

or procedural posture, which the Fifth Amendment categorically forbids in civil immigration enforcement.

27. To date, the Respondents have provided no legitimate basis to re-detain the Petitioner.

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

COUNT TWO

Re-detention absent materially changed circumstances violates 8 C.F.R. § 236.1(c)

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

30. Under 8 C.F.R. § 236.1 re-detention absent materially changed circumstances is a violation of this Federal Regulation.

31. For these reasons, Petitioner's detention violates 8 C.F.R. § 236.1(c)

VIII. 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. § 236.1(c)
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
- (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,

Dated: January 29, 2026

s/ Gina V. Pointon.
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Osmany Alexander Recinos, 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 29th day of January 2026.

s/ Gina V. Pointon_____.