

UNITED STATES DISTRICT COURT
for the Southern District of Florida

FILED BY UQ D.C.

MAR 12 2025

ANGELA E. NOBLE
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S.D. OF FLA. - W.P.B.

HURIYAT MAMAJONOVA

Petitioner

v.

GARRETT RIPA, *et al.*

Respondents

CASE NUMBER
0:25-cv-60242-DMM

MOTION FOR APPOINTMENT OF COUNSEL.

Now comes the Petitioner and moves this Court for an Order Appointing Counsel to represent her interests in this case at Government's expense, in accordance with the provisions of 18 U.S.C. § 3006A(a)(2)(B) and in support thereof submits the following brief.

Respectfully submitted by

Huriyat Mamajonova
HURIYAT MAMAJONOVA

BRIEF IN SUPPORT OF THE MOTION.

1. This Court Has Subject Matter Jurisdiction In This Case.

This Court has subject-matter jurisdiction over the instant petition and action under 28 U.S.C. § 2241(c)(1) and (3), Art. I, § 9, Cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as Petitioner is in the custody of the United States Department of Homeland Security ("DHS"), acting under the color of authority, by Respondents, agents of the United States.

Despite the provisions of INA § 236(e), codified at 8 U.S.C. § 1226(e), which bar federal courts from reviewing discretionary decisions regarding parole and bond "under this section," it is well-settled that INA § 236(e) does not serve to bar federal courts from reviewing questions of statutory construction or Constitutional claims such as mandatory detention under the statutory writ of habeas corpus, 28 U.S.C. § 2241. *See Demore v. Kim*, 123 S.Ct. 1708, 1713 (2003) (INA § 236(e) does not bar habeas jurisdiction in absence of specific provision barring habeas and because petitioner lodged a constitutional challenge to legislation); *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1560 n. 9 (11th Cir. 1989) (holding that federal courts also have jurisdiction to review allegations that agency officials have acted outside their statutory authority); *Gonzalez v. O'Connell*, 355 F.3d 1010, 1014-15 (7th Cir. XXXX) (Habeas jurisdiction to challenge mandatory detention even where the predicate issue to the constitutional claim was a statutory claim); *Aguilar v. Lewis*, 50 F. Supp.2d 539, 542-43 (E.D. Va. 1999) (INA § 236(e) bars discretionary decisions not statutory interpretation); *Velasquez v. Reno*, 37 F. Supp.2d 663, 667-70 (D.N.J. 1999)

(INA §236(e) barring review of detention decisions does not foreclose habeas challenge to application of statute).

Moreover, INA §242(g) does not bar review of detention decisions; nor does INA §242(b)(9) or INA §242(a)(2)(B)(ii). *Zhislin v. Reno*, 195 F.3d 810 (6th Cir. 1999) (INA § 242(g) as interpreted by *Reno v. American-Arab Anti-Discrimination Comm.*, 119 S.Ct. 936, 943 (1999) does not bar review of challenge to indefinite detention); *Parra v. Perryman*, 172 F.3d 954 (7th Cir. 1999) (In light of *American Arab* INA §242(g) does not bar habeas to review detention issue); *Sillah v. Davis*, 252 F. Supp.2d 589, 593-97 (W.D. Tenn. 2003) (INA §242(a)(2)(B)(ii) does not preclude habeas jurisdiction to challenge revocation of parole); *Bouayad v. Holmes*, 74 F. Supp.2d 471, 473-74 (E.D. Pa. 1999) (Government conceded that habeas jurisdiction existed to challenge mandatory detention and the court determined that neither INA § 236(e) nor INA § 242(b)(9) preclude jurisdiction over detention); *Kiareldeen v. Reno*, 71 F. Supp.2d 402, 405-07 (D. N.J. 1999) (Neither INA § 236(e) nor § 242(g) bars habeas jurisdiction to review detention based upon secret evidence); *Alikhani v. Fasano*, 70 F. Supp.2d 1124, 1126-30 (S.D. Cal. 1999) (INA §§242(g), 242(b)(9) and 236(e) do not bar challenge to statutory and constitutional challenge to mandatory detention). In *INS v. St. Cyr*, 533 U.S. 289, 302 (2001), the Supreme Court held that habeas is still available to challenge the legality of the Service's deportation and removal orders because the Constitution requires habeas review to extend to claims of erroneous application or interpretation of statutes.

See Calcano-Martinez v. I.N.S., 533 U.S. 338 (2001) (holding that aliens may bring their statutory and constitutional claims in district court by filing a habeas petition although such claims brought in petitions for review with courts of appeals would be dismissed for lack of jurisdiction); *Bejacmar v. Ashcroft*, 291 F.3d 735, 736 (11th Cir. 2002) (abandoning its reasoning in *Richardson v. Reno*, 180 F.3d 1311 (11th Cir. 1998), *cert. denied*, 120 S.Ct. 1529 (2000), and finding that “*St. Cyr* removes the last statutory pillar supporting our circuit’s earlier conclusion that IIRIRA repealed district court jurisdiction in habeas cases”)

2. Petitioner’s Detention is Unlawful.

Forty five years ago, the United States Congress “established an asylum procedure available to any migrant, “irrespective of such alien's status,” and irrespective of whether the migrant arrived “at a land border or port of entry.”

Today's Immigration and Nationality Act (“INA”) preserves that principle. Migrants in the country, who file affirmatively for asylum, “,,,” never encounter any of the statutory provisions governing removal.” *See East Bay Sanctuary Covenant v. Trump* - 950 F. 3d 1242, 1270 - 9th Circuit Court, 2020.

The Petitioner, by relying on her husband’s knowledge of that Congressional enactment as well its treaty recognizing an Article 31 of the Refugee Convention against arbitrary detentions, arrived in the United States at a port of entry along with him and his brother-in-law, where they were lawfully admitted into the country by an immigration officer on November 13, 2024. *See Doc. 1 Attach 1*, Motion To Terminate Removal Proceedings, (“MTT”) at Part V-A.

Next day, the Petitioner *affirmatively* applied for asylum. *Id.* p. 29.

Three days later, another immigration officer lured her into his office, whereby he vowed to deport her based, *inter alia*, on his accusation that she was illegal in the country. *Id.* p. 35. In three months following her detention, the Government served the Petitioner with two Notices to Appear (“NTA”), none of which charged her with a crime or specifically alleged her illegal entry into the country. *See* initial NTA in the MTT, pp. 40-41 and amended NTA in the attachment below.

3. Petitioner is Entitled To Bring Her Case To the Court.

In *Department of Homeland Security v. Thuraissingiam*, 140 S. Ct. 1959, 1981, (2020) (*reversed on other grounds*) the U.S. Supreme Court reiterated its prior proposition that “[t]he writ of habeas corpus as it existed at common law provided a vehicle to challenge all manner of detention by government officials, and the Court had held long before that the writ could be invoked by aliens already in the country who were held in custody pending deportation.”

In this case, the Petitioner alleged that CBP officers detained her in violation of her constitutional rights as well as criminal law proscribing false arrest and false imprisonment. In addition to that, the Petitioner previously alleged that the CBP detained her in violation of Article 31, the Refugee Convention. *See* MTT, *supra*.

Thus, this case falls under a latter part of the judicial sphere in which civil rules "binding individuals for the benefit of other individuals overlapped with the norms of state relationships. Blackstone referred to it when he mentioned three specific offenses against the law of nations addressed by the criminal law of England [one of which is] violation of safe conducts...." See *Sosa v. Alvarez-Machain* - 542 US 692, 715 - Supreme Court, 2004 (*reversed on other grounds*).

"Blackstone recognized that safe conducts could be "express " or "implied." An express safe conduct was protection "expressly granted by the king or his ambassadors" through papers issued to a particular subject of a foreign country. An implied safe conduct was protection granted by a positive municipal act in favor of a class of persons."¹

A prime example of a modern day positive legislation in this area is the Refugee Act of 1980, as amended, that "established an asylum procedure available to any migrant, "irrespective of such alien's status," and irrespective of whether the migrant arrived "at a land border or port of entry." See *East Bay Sanctuary Covenant, supra*.

¹ See *The Alien Tort Statute and The Law of Nations*, 78 U. Chi. L. Rev. 445, 480 (2011), Notre Dame Law School Legal Studies Research Paper No. 10-12.

"Blackstone generally described two kinds of private wrongs—"the one without force or violence, as slander or breach of contract; the other coupled with force and violence, as batteries, or false imprisonment." *Id* at 517.

“Safe conducts could also be implied for a class of aliens—by contrast to the individual character of an express safe conduct document—from specific treaty provisions or generally from the law of nations.

An example of the former is Article V of the 1783 Treaty of Paris, which provided “that persons of any . . . description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months, unmolested” The special features of this specific implied safe conduct include the one-year time limitation and the applicability to “persons . . . of any description” rather than British subjects....”²

The present day example of such implied safe-conduct treaty is the Article 31 of the Refugee Convention that, *inter alia*, prohibits “States from penalizing asylum-seekers and refugees merely because they have entered a country irregularly, if they meet certain requirements.... The Refugee Convention states that refugees cannot be punished for irregular entry as long as three conditions are met – “directness”, “promptness” and the showing of “good cause”.

UNHCR’s legal guidance provides an interpretation of these terms, including that refugees and asylum-seekers must present themselves to the authorities without delay and show valid reasons why they have entered without a visa.

² See The Safe-Conduct Theory of the Alien Tort Statute, page 45, an article written by Thomas H. Lee, Associate Professor, Fordham University School of Law that is available at https://ir.lawnetfordham.edu/faculty_scholarship/405/

If these requirements are met, refugees and asylum-seekers should also not be detained for entering irregularly – including for the purposes of deterrence.”³

So, “[it] was this narrow set of violations of the law of nations, admitting of a judicial remedy and at the same time threatening serious consequences in international affairs, that was probably on minds of the men who drafted the ATS with its reference to tort.”⁴ See *Sosa, supra*.

Thus, the Supreme Court's holding in *Thuraissingiam, Sosa, St.Cyr* and other cases brought by aliens detained at Guantanamo Bay, “made it clear that this Court has jurisdiction to consider Petitioners' "habeas corpus challenges to the legality of their detentionbrought under 28 U.S.C. § 2241, as well as Petitioners' claims brought under 28 U.S.C. § 1331, the federal question statute, and 28 U.S.C. § 1350, the Alien Tort Statute.” See *Al Odah v. US* - 346 F. Supp. 2d 1 - District Court, District of Columbia, 2004, Part II-A.

³ See UNHCR legal guidance against penalization of asylum seekers for irregular entry at UNHCR issues latest guidance against penalization of asylum-seekers for irregular entry | UNHCR:

⁴ “The first Congress passed it as part of the Judiciary Act of 1789, in providing that the new federal district courts “shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States.” See *Sosa, supra* at 713.

It is clear then, that Petitioner is entitled to present the facts surrounding her confinement to the Court. *Ibid.* "It is equally clear that the Court is authorized to craft the procedures necessary to make this possible, in order that the Court might fully consider Petitioners' challenge to their detention... This encompasses the authority to appoint counsel to represent habeas petitioners." *Ibid.*

Again, by analogy to Guantanamo Bay habeas proceedings, this Court should consider *Al Odah* "factors in determining whether a habeas petitioner was entitled to be represented by counsel. The court considered whether the petitioner's claim was "nonfrivolous," and "whether the nature of the litigation will make the appointment of counsel of benefit to the litigant and the court. The court found that in order to make these determinations, it was necessary to consider "the pro se litigant's ability to investigate facts and present claims," as well as "the complexity of the factual and legal issues" raised by the petition." *Id.*

4. Petitioner Presented A Nonfrivolous Claim.

"In *Ex parte Chin Loy You*, 223 Fed. 833, also a deportation case, the district judge held that under the particular circumstances of the case the prisoner, having seasonably made demand, was entitled to confer with and have the aid of counsel. Pointing to the fact that the right to counsel as secured by the Sixth Amendment relates only to criminal prosecutions, the judge said, "... but it is equally true that that provision was inserted in the Constitution because the assistance of counsel was recognized as essential to any fair trial of a case against a prisoner." *See Powell v. Alabama* - 287 US 45, 70 - Supreme Court, 1932.

For the reasons stated above and below, this Court should find that Petitioner in the instant case has clearly presented a nonfrivolous claim. She has been detained virtually incommunicado for three months without being charged with any crime. To say that Petitioner's ability to investigate the circumstances surrounding her capture and detention is "seriously impaired" is an understatement. The circumstances of her confinement render her ability to investigate nonexistent. *Al Odah, supra*.

Furthermore, it is simply impossible to expect the Petitioner to grapple with the complexities of a foreign legal system and present her claims to this Court without legal representation. Petitioner faces an obvious language barrier, has no access to a law library and certainly lacks a working knowledge of the American legal system. *Ibid. See Petitioner's Affidavit.*

5. Congress Authorized The Appointment of Counsel.

"The habeas statute, 28 U.S.C. § 2241, does not specifically address the appointment of counsel. However, the Criminal Justice Act, 18 U.S.C. § 3006, permits the use of public funds to appoint counsel "[whenever... the court determines that the interests of justice so require." 18 U.S.C. § 3006A(a)(2)

The Criminal Justice Act specifically contemplates the appointment of counsel in the habeas context, listing it as one of several circumstances in which representation may be provided. *See* 18 U.S.C. § 3006A(a)(2)(B) (including both federal habeas actions under 28 U.S.C. § 2241 and state habeas actions under 28 U.S.C. § 2254).

Although Petitioners' habeas claims have been brought pursuant to the federal habeas statute, the Court also notes that Rule 8 of the Rules Governing § 2254 Cases authorizes appointment of counsel pursuant to the Criminal Justice Act at any stage of the habeas proceedings." *See Al Odah, supra.*

6. There Is No Conflict Between CJA and INA.

"Courts also have found no conflict between § 3006A and a provision of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1362, which provides that [i]n any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (*at no expense to the Government*) by such counsel, authorized to practice in such proceedings, as he shall choose. 8 U.S.C. § 1362 (emphasis supplied).

As the court noted..., the only types of proceedings referenced in Section 1362 are those before an IJ or the Attorney General; the habeas petitions in those cases—just like the habeas petition here—is not such a proceeding [a]nd, Section 3006A does not entitle the petitioner to appointed counsel.

Rather, it confers discretionary authority which "will be used infrequently," given that Section 2241 petitions in immigration cases "are limited to purely legal issues involving violations of the Constitution, laws or treatises of the United States[.]" and courts do not appoint CJA counsel "without consideration of the merits of the case, the complexity of the legal issues raised, and the ability of the petitioner to investigate and present the case...

Because appointment of counsel in these cases is discretionary, "there is no cause for speculation as to the calamitous [fiscal] results which might occur if all aliens were to receive CJA counsel." Internal citations omitted. *See Thomas v. Searls* - 515 F. Supp. 3d 34 - District Court, WD New York, 2021. Part II-A.

7. There Is No Conflict Between Court Decisions Either.

As stated above, the Supreme Court in *Thuraissingiam*, *Sosa*, *St.Cyr* and other Guantanamo Bay cases found that the Petitioner has the right to bring her claims before this Court and this Court should find that Petitioner cannot be expected to exercise this right without the assistance of counsel. Therefore, the Court, in its discretion and pursuant to that authority, should find that Petitioner is entitled to counsel, in order to properly litigate the habeas petition presently before the Court and in the interest of justice. *Al Odah, supra*.

With respect to the appointment of counsel at government's expense, there was a controlling case "from the Eleventh Circuit, *Perez-Perez v. Hanberry*, 781 F.2d 1477 (11th Cir.1986), in which that court indicated that the Criminal Justice Act "provide for the appointment of counsel in *criminal* proceedings or in those proceedings 'intimately related to the criminal process.'" However, a number of subsequent cases have pointed out, *Perez-Perez* relies on a narrow reading of a portion of the statute that has since been amended....The 1986 amendment removed the term "collateral relief," on which the analysis in *Perez-Perez* relied, and "Congress did not insert any qualification on the scope of section 3006A(a)(2)(B).

As noted by *Saldina*, the reliance of the *Perez-Perez* decision on a term that is no longer included in the statute 'logically restricts application' of the case." Internal citations omitted. See *Al Odah*, *supra* at footnote 9.

"So, the civil label as applied to applications seeking the writ of habeas corpus is gross and inexact, as habeas corpus proceedings are "unique" and occupy a special place of their own in our system ... and because the nature of habeas corpus proceedings makes it ambiguous as to whether habeas proceedings fall within that statutory phrase, we find that phrase excludes them" from civil actions. Internal citations omitted. See *Obando-Segura v. Garland* - 999 F.3d 190, 193 - Court of Appeals, 4th Circuit, 2021.

WHEREFORE, the Court should grant this motion.

Respectfully submitted by

Huriyat Mamajonova
HURIYAT MAMAJONOVA

GUVOHNOMA.

Men, Hurriyat Mamajonova, shuni bildiramanki turmush o'rtoghim, yan'i Raxmatulla Asatovni, o'zimning qonuniy ishlarimga ixtiyoriy ravishda vakil qilib olgan edim va uning vakillik harakatlari bilan mamnunman. Shu paytgacha u kishi mening haq huquqlarimni a'lo darajada himoya qilib kelgan va bundan keyin xam shunday qilishiga ishonchim komil. Xozirgi paytda men ishlamaganim uchun haq evaziga advokat olishga imkoniyatim yo'q, tekin advokatni esa topishga ilojim bolmadi, chunki unday advokatlarga turmush o'rtoghim telefon qilganida ular telefonga javob berishmaydi yo'ki javob berishganda xam yangi mizhoz olmaymiz deb javob berishadi. Men esa Ingliz tilini tushunmaganim uchun ular bilan umuman gaplasha olmayman. Men Amerikaning qonunlarini va odamlarini bilmaganim uchun o'z taqdirimni notanish odamlarning qoliga topshira olmayman. Ushbu sabalarni inobatga olgan xolda, men advokat topgan xolatimda xam turmush o'rtoghim menga qo'shimcha vakillik qilishini istayman.

Men, Huriyat Mamajonova, yuqoridagi arizani va guvohnomani SMS orqalik oq'ib chiqib ularda ko'rsatilgat ma'lumot haqiqat ekanligini tasdiqlayman va men ularni videoconfrentsiya orqalik ko'rib chiqib turmush o'rtog'imga ularni onlayn imzo chekilishiga va sudga taqdim etilishiga ruxsat beraman.

Imzo: Huriyat Mamajonova
HURIYAT MAMAJONOVA

Sana: 14 Fevral, 2025 yil.

APPENDIX, PART A.

CERTIFICATE OF TRANSLATION.

I, Rakhmatulla Asatov, confirm that the above affidavit was originally written in Uzbek language, that I am proficient in Uzbek language and that I have translated it into English language to the best of my abilities.

Signature R. Asatov

Date: February 14, 2025.

RAKHMATULLA ASATOV

APPENDIX. PART C.

DECLARATION.

I, Huriyat Mamajonova, declare that I voluntarily designated my husband, Rakhmatulla Asatov, to be my representative in my deportation proceedings and I am happy with his performance. He has so far done an excellent job in protecting my rights in his representative capacity and I am confident that he will continue to do so in the future. At this time, because of my unemployment, I can not afford to hire a lawyer. My husband tried to contact pro bono attorneys from many organizations, but they did not respond to his phone calls or told him that they did not take new clients. I can not directly call them because I do not speak English. I can not entrust my faith into the hands of people whom I do not know, because I am not familiar with American law and its people. Based on these facts, I would like to retain my husband's legal assistance even if I find a lawyer.

I, Huriyat Mamajonova, affirm that I read the above declaration and the motion via text message and saw them via videoconference, that all of its statements are true and that I authorize my husband to electronically sign and submit them to the Court on my behalf.

Signature Huriyat Mamajonova
HURIYAT MAMAJONOVA

Date: February 14, 2025

END OF TRANSLATION.

APPENDIX, PART B.