

DETAINED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

MICHAEL OBASOLUYI (A# )

Petitioner,

4:25-CV-0169-CDL-ALS

28 U.S.C. § 2241

v.

WARDEN, STEWART DETENTION CENTER

Respondent,

SUPPLEMENTAL MOTION TO HABEAS CORPUS
PURSUANT TO 28 U.S.C §2241

Comes now, Petitioner, Michael Obasoluyi, Pro Se, submitting a supplemental motion to habeas corpus petition pursuant to 28 U.S.C. §2241 and seeks declaratory injunction relief to review the lawfulness of this detention by the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) for more than six months and now over sixteen months.

Petitioner, is a Lawful Permanent Resident of the United States and is married to a United States born Citizen wife. Petitioner has resided the state of North Carolina since the year 2016 up till his detention by ICE which is now causing family separation. In North Carolina, petitioner serves his neighbors and neighborhoods with his small business at a very affordable low cost as a way of helping and giving back to the community while earning a legitimate income to support himself and his family and also pay taxes. Petitioner has strong ties to the community and is a home owner in North Carolina and not a danger to the society. Petitioner's continued detention is now violating his Fifth Amendment

right and causing family separation. Courts have recognized indefinite family separation as a form of irreparable injury. See, *Washington v. Trump*, 847 F.3d 1151, 1169 (9th cir. 2017) (identifying “separated families” as “substantial injuries and even irreparable harms.”)

Under 28 U.S.C. § 2241(c), habeas relief “shall not extend to a prisoner unless . . . [h]e is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. §2241(c)(3). A federal court has subject matter jurisdiction under §2241(c)(3) if two requirements are satisfied: (1) the petitioner is “in custody,” and (2) the custody is alleged to be “in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *Maleng v. Cook*, 490 U.S. 488, 490, 109 S. Ct. 1923, 104 L. Ed. 2D 540 (1989).

As supplement, Petitioner would also like to bring to the court's attention that in addition to the bond challenges presented before the court in the initial petition, petitioner would like to bring to the court's attention that he has been held in custody for over 16 months and seeks to be released from detention. Petitioner prays that this court gives “a fact-dependent inquiry requiring an assessment of all the circumstances of any given case.” *Diop*, 656 F.3d at 234. Petitioner believes that his continued detention constitutes an unconstitutional application of 8 U.S.C 1226(c) and is a violation of Due Process under the Fifth Amendment. The Fifth Amendment, which applies to aliens, provides that “[n]o person shall be . . . deprived of life, liberty, or property without due process of law.” U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2D 653 (2001) (“[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”). Thus, aliens are entitled to due process of law in deportation proceedings. *Demore*, 538 U.S. at 523.

In *Demore*, the Supreme Court considered whether an alien's mandatory pre-removal detention under Section 1226(c) constituted a due process violation. *Id.* at 513-14. The Court concluded that a six-month detention under Section 1226(c) was constitutional because “the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 558-59. However, Petitioner has been in detention for 16 months, and when his removal proceeding was terminated and bond granted, the DHS is appealing, most importantly the

bond saying that petitioner is subject to mandatory detention.

In determining the length of a reasonable removal period, the Court adopted a “presumptively reasonable period of detention” of six months. After six months, the government bears the burden of disproving an alien's “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” See *Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS 182239, 2-3 (D. Mass. Oct. 19, 2001)(quoting and summarizing *Zadvidas*).

Petitioner's continued detention violates his right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint. See *Tom v. INS*, 14 F. Supp.2d 1184 (E.D. Cal 1998)(aliens retain substantive due process rights). The Due process Clause of the fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future because the charges against petitioner has been dismissed by an Immigration Judge and it's now been appealed by Department of Homeland Security to the Board of Immigration Appeals, which means that petitioner would spend several more months in civil detention. Courts have noted that while criminal aliens should not be “punished for pursuing avenues of relief and appeals,” and also added whether the civil detention period exceeded the time the alien spent in prison for the crime rendering him removable. In this instant case, petitioner was sentenced to 30-days split sentence in a county jail in North Carolina. As at today, petitioner has now spent over 1600 percent more, which is sixteen times over the duration for the criminal conviction. Considering this extended period now spent at ICE detention, petitioner humbly asks that this Habeas Corpus be granted and ordered released from detention.

Section 1226 is clear and the Code of Federal Regulations dictates that a detention hearing must take place before an immigration judge. Although a hearing took place before an immigration judge and bond was granted, petitioner is still been held by DHS asserting that petitioner is still subject to mandatory detention even after 16 months in custody and no pending removal case. An automatic stay provision certainly results in prejudice and affects the outcome of the proceeding by superceding the Immigration Judge's ruling making the fair hearing process unfair. A fair hearing is only meaningful if

the results of that hearing are respected, otherwise it is merely a formality with no legal significance.

The Code of Federal Regulations provides that aliens can seek review of the Attorney General's detention determination by an immigration judge. Nielsen, 139 S. Ct. at 960 (citing 8 C.F.R. § 236.1(c)(8), (d)(1), 1003.19(a), 1236.1(d)); Johnson v. Guzman Chavez, 141 S. Ct. 2271, 2281, 210 L. Ed. 2D 656 (2021) (noting that an "alien may request a bond hearing in front of an immigration judge" in accordance with the Code of Federal Regulations) (citing 8 C.F.R. § 236.1(d)(1), 1003.19(a), 1236.1(d)(1)); Sopo, 825 F.3d at 1208 ("The District Director makes the initial custody determination, and the alien has the right to appeal an adverse decision to the IJ, and then to the BIA.") (citing 8 C.F.R. § 1236.1(d)(1), (3)); , Aham v. Gartland, No. 5:19-CV-46 2020 U.S. Dist. LEXIS 28426, 2020 WL 806929, at *3 n.3 (S.D. Ga. Jan. 29, 2020), report and recommendation adopted, 2020 U.S. Dist. LEXIS 27328, 2020 WL 821005 (S.D. Ga. Feb. 18, 2020) ("Even where prolonged detention would warrant an individualized bond hearing, such as in the § 1226(c) context, . . . all that is required is an individualized bond hearing in accordance with 8 C.F.R. § 1236.1(c).") (citing Sopo, 825 F.3d at 1220).

The U.S. Supreme Court in Zadvydas thus interpreted 8 U.S.C. § 1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest-to effect the alien's removal. See Kay v. Reno, 94 F. Supp. 546,551 (M.D. Pa 2000) (granting writ of Habeas corpus because petitioner's substantive due process rights were violated, and noting that "if deportation can never occur, the government's primary legitimate purpose in detention- executing removal-is nonsensical.")

PRAYER FOR RELIEF

WHEREFORE, petitioner prays that this honorable court to grant the following relief:

1. That this honorable court accepts this supplemental motion;
2. Grant a Writ of Habeas Corpus setting petitioner free from detention;
3. Grant any other relief that the Court may deem appropriate.

I declare under oath, penalty of perjury under the laws of the United States that the forgoing is true.

Respectfully,

s/ Michael Obasoluyi

Michael Obasoluyi

Stewart Detention Center

P.O Box 248,

Lumpkin, GA 31815

CERTIFICATE OF SERVICE

I certify that on June 13 2025, a copy of this supplemental motion to habeas corpus petition was sent to the Respondent by placing it in the outgoing mailbox and addressed to:

Warden

Stewart Detention Center

P.O Box 248,

Lumpkin, GA 31815

s/ Michael Obasoluyi

Michael Obasoluyi

Stewart Detention Center

P.O Box 248,

Lumpkin, GA 31815