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Attorney for Petitioner MUSSIE HAILE GHEBRESLASSIE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

MUSSIE HAILE GHEBRESLASSIE,

Petitioner,

vs

JAMES JANECKA, in his official capacity as Warden of the Adelanto Detention Facility;

DAVID MARIN, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, and Removal Operations Los Angeles Field Office;

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;

PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

Case No.:

PETITION FOR WRIT OF HABEAS CORPUS

Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes: Request for Declaratory and Injunctive Relief

INTRODUCTION

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

1. The Petitioner, Mussie Haile Ghebreslassie, is 54 year old citizen of Eritrea Petitioner was residing at [redacted] before his arrest and detention by ICE and who originally entered the United States on October 8, 2008 without inspection through the US/Mexican border.

2. Petitioner filed a Form I-589 Application for Asylum on May13, 2009 based upon his fear of returning to Eritrea due to past imprisonment and torture for his political opinion and was ultimately placed in removal proceedings in San Francisco where on December 18, 2014, the judge granted him relief under Article 3 of the Convention Against Torture (CAT) and ordered that his removal be withheld.

3. Petitioner has duly reported to ICE without issue for nearly the past 11years and continued his life in the United States. He has always been legally employed and has never had any criminal action initiated against him.

4. Nevertheless, on October 15, 2025, when Petitioner duly reported to ICE's San Bernardino field office for his annual reporting, he was summarily arrested and remains unlawfully detained at Adelanto Detention Center.

5. Petitioner was not arrested for violating the terms of his Order of Supervision. Nor was he detained because Respondents designated a third country to which he could be removed in conformity with the Convention Against Torture. Instead, he received no notice of why he was arrested.

6. Petitioner's detention is unlawful under the due process clause and under Respondents' own regulations. Respondents complied with *none* of its regulatory

and due process requirements. They never provided Petitioner actual notice of the reasons for his arrest. They never conducted an initial interview to evaluate the basis of that arrest. And they never gave him an opportunity to be heard. 8 C.F.R. §§ 241.4(1), 241.13(i).

7. Moreover, Respondents have done nothing to terminate Petitioner's protections under the Convention Against Torture, which would be necessary before he could be removed to Eritrea. Nor have they designated a third country to which his removal is reasonably imminent. Respondents have no authority, under the immigration laws or otherwise, to arbitrarily detain Petitioner indefinitely.

8. The conditions of Petitioner's arbitrary detention also violate his rights under the due process clause. Respondents have detained Petitioner in unlawful conditions of confinement that may cause him potentially health issues.

9. Petitioner believes that he is unjustly being detained at Adelanto Detention facility as he was always in complete compliance with both ICE and Immigration Court appearances.

10. Petitioner therefore petitions this Court for a writ of habeas corpus ordering his release from custody and enjoining Respondents from unlawfully and arbitrarily depriving him of his fundamental constitutional rights.

LEGAL STANDARD

11. A writ of habeas corpus is "available to every individual detained within the United States." Hamdi v. Rumsfeld, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody." Preiser v. Rodriguez, 411 U.S. 475,

484 (1973). A court may grant a writ of habeas corpus to a petitioner who demonstrates to be in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3). Traditionally, "the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." I.N.S. v. St. Cyr, 533 U.S. 289, 301 (2001). Accordingly, challenges to immigration-related detention are within the purview of a district court's habeas jurisdiction. Zadvydas v. Davis, 533 U.S. 678, 687 (2001); see also Demore v. Kimi, 538 U.S. 510, 517 (2003).

JURISDICTION

12. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

VENUE

13. Venue is proper in this district and division pursuant to 28 U.S.C. §2241(d) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Ghebreslassie, (Petitioner) is detained within this district at Adelanto Detention Facility in Adelanto, CA.

PARTIES

14. Mussie Haile Ghebreslassie, Petitioner, is a thirty eight-year old citizen and national of Eritrea. At the time of this filing, he is unlawfully detained in the Adelanto Detention Facility in Adelanto, CA.

15. James Janecka, Respondent, is the Warden of the Adelanto Detention Facility, in which Mr. Ghebreslassie remains incarcerated. Mr. Janecka is sued in his official capacity.

16. David Marin, Respondent, is the Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Los Angeles Field Office. Mr. Marin is sued in his official capacity.

17. Kristi Noem, Respondent, is Secretary of the Department of Homeland Security. She is sued in her official capacity.

18. Pamela Bondi, Respondent, is the Attorney General of the United States. She is sued in her official capacity.

LEGAL FRAMEWORK

19. Federal law prohibits the removal of non-citizens, who are otherwise subject to a final order of removal, if doing so would violate the Convention Against Torture. There are no restrictions on an individual's eligibility for deferral of removal under the Convention Against Torture. 8 C.F.R. § 208.16.

20. To be granted deferral under the Convention Against Torture, a non-citizen must show that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 208.16(c)(2). An applicant for deferral under the Convention Against Torture must show a higher likelihood of torture than the likelihood of persecution an asylum applicant must demonstrate. *Id.*

21. When an immigration judge grants a non-citizen deferral under the Convention Against Torture, the immigration judge issues a removal order and simultaneously defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See*

Johnson v. Guzman Chavez, 141 S. Ct. 2271, 2283 (2021). Once granted, either party has the right to appeal that decision to the Board of Immigration Appeals within 30 days. 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the deferral under the Convention Against Torture and the accompanying removal order become administratively final. *See id.* § 1241.1.

22. When an individual's removal is deferred under the Convention Against Torture, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. 8 U.S.C. §1231(b)(3)(A); 8 C.F.R. § 208.17(b)(2).

23. To terminate a deferral under the Convention Against Torture, Respondents must file a motion in the Immigration Court and come forward with all evidence "relevant to the possibility that the alien would be tortured" if his deferral is terminated. *Id.* § 208.17(d). The non-citizen then has the right to notice of the "time, place, and date of the termination hearing," as well as a right to supplement the factual record. *Id.* And an immigration judge, not Respondents, would make a de novo determination as to whether the deferral should be terminated. *Id.*

24. Alternatively, ICE may designate a third country that is prepared to accept an individual's removal. 8 U.S.C. § 1231(b); 8 C.F.R. § 208.16(f). The removal statute specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country "of which the [non-citizen] is a subject, national, or citizen" the country "in which the [non-citizen] was born," or the country "in which the [non-citizen] resided" immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E).

25. Before acting on such a third country removal, ICE must provide the non-citizen reasonable notice and undergo further proceedings in which the non-citizen is given a meaningful opportunity to be heard. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1240.10(f) (stating that "immigration judge shall notify the [noncitizen]" of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) ("If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) ... the immigration judge shall ... [a]dvise [the noncitizen] that he or she may apply for asylum in the United States or withholding of removal to those countries[.]"); *Andriasian v. INS*, 180 F.3d1033, 1041 (9th Cir. 1999). This is to ensure that the individual is being removed to a third country "where he or she is not likely to be tortured." 8 C.F.R. §§ 208.17(b)(2),1208.17(b)(2); *see also* Execution of Removal Orders; Countries to Which Aliens May Be Removed, 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. pts. 241, 1240, 1241) (supplementary information) ("[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231]."). .

26. Providing such notice and opportunity to be heard is also required under the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol"); *see also* United Nations Convention

Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4 ("Furthermore, the person at risk [of torture] should never be deported to another State from which the person may subsequently face deportation to a third State in which there are substantial grounds for believing that the person would be in danger of being subjected to torture.").

27. 8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" typically begins once a non-citizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "*may* be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

28. Aware of the constitutional problems with indefinite detention—even of removable non-citizens—the Supreme Court has expressly held that Section 1231(a)(6) "limits an alien's post-removal-period detention to a period

reasonably necessary to bring about that alien's removal from the United States. *It does not permit indefinite detention*." *Zadvydas*, 533 at 689 (emphasis added). "[I]ndefinite detention," the Court reasoned, would raise "serious constitutional concerns." 533 U.S. at 682 (addressing the cases of two non-citizens who could not be removed to their home country or country of citizenship).

29. By regulation, before the end of the 90-day removal period that ensues upon a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the non-citizen's detention must conduct a custody review to determine whether the non-citizen should remain detained. *See* 8 C.F.R. §241.4(c)(1), (h)(1), (k)(1)(i). If the non-citizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must conduct a custody review before or at 180 days, *id.* § 241.4(k)(2)(ii).

30. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-citizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE must initiate when "the [non-citizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

31. Under this procedure, ICE evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE determines that removal is not reasonably foreseeable

but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an immigration judge that the non-citizen is "specially dangerous." *Id.* § 241.14(f).

32. "[I]f the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (emphasis added). Per the statute, those regulations must include requirements for the alien "to appear before an immigration officer periodically," *id.* § 1231(a)(3)(A), and "to obey reasonable written restrictions on [his] conduct or activities," *id.* § 1231(a)(3)(D). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. 8 C.F.R. § 241.4(e). If the factors in § 241.4(e) are met, ICE must release the non-citizen under conditions of supervision, which in practice are memorialized in an Order of Supervision. *Id.* § 241.4(j)(2).

33. Once released, the non-citizen has a due process liberty interest against the arbitrary revocation of their release. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471(1972); *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement —even if that freedom is lawfully revocable- has a liberty interest that entitles him to constitutional due process before he is re-incarcerated.").

34. ICE itself recognizes that due process interest with three minimal due process requirements before it can revoke a non-citizen's release pending

deportation. Under its own regulations, ICE must: 1) provide the individual notice of the reasons for the revocation; 2) conduct an interview to review the revocation at the time the individual is taken into custody; and 3) give the individual a meaningful opportunity to be heard on the reasons for the revocation. 8 C.F.R. § 241.4(l).

STATEMENT OF FACTS

35 The Petitioner, Mussie Haile Ghebreslassie, is 54 year old citizen of Eritrea. Petitioner was residing at [redacted] before his arrest and detention by ICE

36. On October 10, 2008, the Petitioner entered the United States without inspection through the US/Mexican border.

37. Petitioner filed a Form I-589 Application for Asylum on May13, 2009 based upon his fear of returning to Eritrea due to past imprisonment and torture for his political opinion.

38. Petitioner was ultimately placed in removal proceedings before the immigration court in San Francisco where he renewed his application for discretionary relief seeking Asylum, Withholding of Removal, and CAT in the United States.

39. On December 18, 2014, Immigration Judge Polly A. Webber denied Petitioner's asylum and withholding applications and ordered him removed to Eritrea but concurrently granted Petitioner relief under Article 3 of the Convention Against Torture (CAT) and ordered that his removal be withheld. (Exhibit 1)

40. Petitioner appealed the denial of his asylum application to the Board of Immigration Appeals (BIA) which ultimately confirmed the judge's decision while leaving his status under CAT in place. (Exhibit 2)

41. On August 9, 2017. Petitioner was formally served with an "Order of Supervision"(Exhibit 3) which required him to report annually to a designated ICE office and Petitioner faithfully appeared at the ICE office for the required annual check-in/reporting annually from that date until October 15, 2025. (Exhibit 4) .

42. On October 15, 2025, during what was supposed to be his routine and faithful ICE check-in, something he has attended every single time for over eight years without a single violation Petitioner was suddenly and unexpectedly detained by ICE.

43. Shortly thereafter, ICE transported **Petitioner** to his current location at a detention facility in Adelanto, California.

44. **Petitioner** received no prior notice of ICE's intentions or any reason for his detention and has never received a **Form I-200, Warrant for Arrest of Alien.**

45. **Petitioner** has not received any explanation or detail as to why he was detained. ICE has also not provided **Petitioner** with any information regarding potential release, processing, or time frame; or granted **Petitioner** any opportunity to ask questions or respond to the putative bases for the revocation of his release. Additionally, contrary to the explicit language of the regulations, **Petitioner** has not participated in any interview, discussion, or other procedure despite being detained for nearly five months. **Petitioner** has been detained with no explanation, no time limit, and no ability to rebut or counter his detention — in sum, no due process.

46. ICE Officers have refused to set a bond or release **Petitioner** on Parole

47. Petitioner was not arrested for violating the terms of stay in the United States. He was not arrested based upon any criminal activity. Nor was he detained because Respondents designated a third country to which he could be removed in conformity with the Convention Against Torture. Instead, He was just informed he would be kept in the custody of U.S. Immigration and Customs Enforcement (ICE) at this time.

48. Petitioner's detention is unlawful under the due process clause and under Respondents' own regulations. They never provided Petitioner actual notice of the reasons for his detention. And they never gave him an opportunity to be heard. 8 C.F.R. §§ 241.4(1), 241.13(i).

49. Moreover, Respondents have done nothing to terminate Petitioner's protections under the Convention Against Torture, which would be necessary before he could be removed to Eritrea. Nor have they designated a third country to which his removal is reasonably imminent. Respondents have no authority, under the immigration laws or otherwise, to arbitrarily detain Petitioner indefinitely.

50. The conditions of Petitioner's arbitrary detention also violate his rights under the due process clause.

51. Petitioner believes that he is unjustly being detained at Adelanto Detention facility as he was always in complete compliance with both ICE and Immigration Court appearances.

52. Petitioner therefore petitions this Court for a writ of habeas corpus ordering his release from custody and enjoining Respondents from unlawfully and arbitrarily depriving him of his fundamental constitutional rights.

CLAIMS FOR RELIEF

COUNT I
VIOLATION OF DUE PROCESS
(ARBITRARY REVOCATION OF RELEASE)

53. Petitioner hereby incorporates by reference the allegations made in paragraphs 19-52 *supra*.

54. Individuals under legal restraint, but who are free from physical restraint, have a liberty interest that entitles them to constitutional due process before they are incarcerated. *Morrissey*, 408 U.S. 471; *Hurd*, 864 F.3d at 683. This entitled Petitioner to notice and an opportunity to be heard before his release, which after nearly two months, was summarily and arbitrarily revoked.

55. Because Respondents failed to provide Petitioner any process, let alone due process, the revocation of his release was arbitrary, capricious, and unlawful.

COUNT II
VIOLATION OF 8 C.F.R. §§ 241.4(1), 241.13(i)

56. Petitioner hereby incorporates by reference the allegations made in paragraphs 19-52 *supra*.

57. Before revoking an individual's release from immigration custody, Respondents must: 1) provide the individual notice of the reasons for the revocation; 2) conduct an interview to review the revocation at the time the individual is taken into custody; and 3) give the individual a meaningful opportunity to be heard on the reasons for the revocation. 8 C.F.R. § 214.4(l). Respondents must comply with their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954). Yet here, Respondents did none of those things.

58. Because Respondents failed to follow their own rules in revoking Petitioner's entitlement to release, his continued detention is arbitrary, capricious, and unlawful.

COUNT III
VIOLATION OF DUE PROCESS
(ARBITRARY DETENTION)

59. Petitioner hereby incorporates by reference the allegations made in paragraphs 19-52 *supra*.

60. "Freedom from imprisonment—from government custody, detention, or other forms physical restraint—lies at the heart of the liberty that [the Due Process]

Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. Indefinite detention, in particular, raises a "serious constitutional problem" and violates the Due Process Clause. *Id.* at 689–90. The Due Process Clause requires that the Deprivation of Petitioner's liberty must be narrowly tailored to serve a compelling Government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"). Detention must bear a reasonable relationship to its two regulatory purposes — to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690–691; *Diop v. ICE*, 656 F.3d 221, 233–34 (3d Cir. 2011).

61. Because Respondents have proffered no explanation or new basis for why Petitioner is now subject to detention — after three and one half years of liberty — his continued detention is arbitrary, capricious, and unlawful.

COUNT IV
VIOLATION OF DUE PROCESS
(CONDITIONS OF CONFINEMENT)

62. Petitioner hereby incorporates by reference the allegations made in paragraphs 19-52 *supra*.

63. Respondents have an affirmative constitutional duty to meet the "basic human needs" of the people it confines, including the provision of "food, clothing, shelter, medical care, and reasonable safety." *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989); *see also Brown v. Plata*, 563 U.S. 493 (2011); *Youngberg v. Romeo*, 457 U.S. 307, 315–16 (1982). The constitution further forbids Respondents from exhibiting "deliberate indifference to [a person's] serious medical needs" in confinement. *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976). Because immigration detention is civil in nature, Respondents are not permitted to create conditions of confinement that are "express[ly] inten[ded] to punish," not rationally related to a legitimate government objective, or excessive to that objective. *Bell v. Wolfish*, 441 U.S. 520, 538 (1979) (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963)). Respondents are also required, by statute, to ensure to "arrange for appropriate places of detention." 8 U.S.C. § 1231(g)(1).

64. Because Respondents continue to subject Petitioner to punitive conditions of confinement, characterized by unlawful degrees of overcrowding and medical neglect, his detention is arbitrary, capricious, and unlawful.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully asks that this Court:

1. Issue a Writ of Habeas Corpus directing Petitioner's immediate release;
2. Declare that Respondents have violated Petitioner's constitutional, statutory, and regulatory rights against arbitrary and unlawful detention;
3. Enjoin Respondents from detaining Petitioner in the future without reasonable notice and an opportunity to be heard; and
4. Order such other relief as this Court determines is just and proper.

Respectfully submitted,

Dated: December 18, 2025 /s/ Ali M. Farahmand

Ali M. Farahmand

Attorney for Petitioner

Mussie Haile Ghebreslassie

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have talked and corresponded with Petitioner regarding the events described in the Petition. Based on these communications, 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.

Executed on December, 18, 2025 in Irvine, California.

/s/Ali M. Farahmand
Ali M. Farahmand
Attorney for Petitioner Mussie Haile Ghebreslassie

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

In Re	
Mussie HAILE GHEBRESLASSIE,	**File Number:** [redacted]
	In Removal Proceedings
Respondent.	

Charges: INA § 212(a)(6)(A)(i)
Applications: Asylum, Withholding of Removal, Relief under the Convention Against Torture

On Behalf of Respondent:
Donald Lawson, Esq.
2464 El Camino Real, Suite 106
Santa Clara, CA 95051

On Behalf of DHS/ICE:
Kathleen Taylor, Esq. and Scott Eash, Esq.
Assistant Chief Counsels
100 Montgomery Street, Suite 200
San Francisco, CA 94104

DECISION OF THE IMMIGRATION JUDGE

I. Procedural History

Respondent has presented himself to this Court as a 43 year old single male, a native of Ethiopia and a citizen of Eritrea. At a hearing before this Court on May 31, 2011, Respondent admitted the factual allegations in the Notice to Appear, conceded removability as charged, and declined to designate a country of return if return should be required. The Court directed that Eritrea should be the country of return based upon his pleadings. I find that removability has been demonstrated by clear and convincing evidence as required by INA § 240(c). In lieu of removal, Respondent requested the Court to consider the application for asylum, withholding of removal and relief under the Convention Against Torture that was referred by the Asylum Office. That application was received by the Asylum Office on May 13, 2009 and was referred to this Court on October 8, 2010.

The hearings in this matter were held on July 14, 2014, July 21, 2014 and August 15, 2014. At the first hearing, DHS requested permission to question Respondent regarding his residence and whether he was properly within the San Francisco Immigration Court jurisdiction. Respondent revealed that until ten days before the hearing he had been living in Rancho Cucamonga,[1] with his mother, due to her being ill with Stage 4 cancer. Respondent admitted to

[1] In the jurisdiction of the Los Angeles Immigration Court.

Exhibit 1

living at that address for the past two years and six months, even though his asylum application indicates that he has been living in Oakland since March of 2009.[2] Respondent also claimed that he lived in Oakland, California[3] from January to December 2013. Respondent claimed that he was not working while with his mother because she needed his full time care. Nonetheless, he admitted that it was important to him to keep his work-permit valid, so that he applied for an extension of the work authorization in Southern California, rather than where he claimed he was living, in Northern California. Respondent indicated that he planned to return to Rancho Cucamonga on July 17, 2014, three days after the hearing.

Respondent also indicated that he has one brother who is a U.S. citizen and one brother who is a lawful permanent resident. His mother is also a lawful resident.

Respondent was asked about his English ability. He stated that he completed 12 grades of school and that he studied English for eight years. Respondent admitted that he planned to come to the United States and apply for asylum when he was in Sudan. He learned about asylum from people he overheard talking about it. Respondent confirmed that his application was complete when he signed it on April 21, 2009. Some changes were made later.

At the second and third hearings, Respondent testified on direct, cross, and re-direct as to the statutory and discretionary requirements of the applications he has filed. He was the only witness who testified in support of his claim.[4] DHS produced the Asylum Office's Fraud Detection and National Security Officer, Suzanne Linel Roseman, at the hearing on August 15, 2014. She testified in support of the DHS submission marked as Exhibit 10. At the end of the hearing, the Court reserved the matter for a written decision.

II. Exhibits in the Record of Proceedings

Exhibit 1: NTA;
Exhibit 2: Form I-589;
- A. Respondent's Declaration;
- B. Supporting Documents:
  - A. Birth Certificate;
  - B. Service Certificate;
  - C. Student Transcript;
  - D. Travel Receipts;
  - E. Temporary Travel Document from Mexico;
  - F. Membership in EMDHR;

[2] Respondent confirmed with the Court at his Master Calendar Hearing on May 31, 2011 that he was living in Oakland, in the jurisdiction of the Court, when according to what he told the Court recently, this was a lie.
[3] In the jurisdiction of the San Francisco Immigration Court.
[4] At the hearing on August 15, 2014, Respondent reported that his mother had passed away on July 26, 2014, in Fontana, CA. Respondent now claims to live full-time in Oakland.

G. Identification Card;
H. National Service ID Card;
C. Letter from Mexican National Immigration Institute, dated October 6, 2008, pertaining to Respondent and his authorization to be in Mexico;

Exhibit 3: Respondent's Documentary Evidence:
A. Declaration of Respondent's Brother, Berhane Haile;
B. Letter from Eritrean Youth for Change;
C. Photographs of Respondent in a Demonstration;

Exhibit 4: Letter from Berhane Haile, Respondent's Brother;

Exhibit 5: Notice of DHS Fingerprint Offices, with Biometrics Stamp;

Exhibit 6: DHS Service of Privacy Waivers for Respondent's relatives;
A. Aron Haile Gebreslasie, Respondent's Brother;
B. Berhane Haile, Respondent's Brother; and
C. Kudusan Abraham Zerahaimanot (Respondent's Mother);

Exhibit 7: Respondent's Production of Signed Privacy Waivers;

Exhibit 8: DHS Computer Generated Record of Respondent's Address submitted with Employment Authorization Request;

Exhibit 9: Copy of U.S. Passport Page for Berhane Haile;

Exhibit 10: DHS Submission of Seven (7) Redacted Asylum Applications and Comparative Analysis of "Boilerplate Language;"

Exhibit 11: Declaration by the Presidency on behalf of the European Union on Political Prisoners in Eritrea;

Exhibit 12: Report from the USICE Forensic Document Laboratory regarding their analysis of Respondent's Eritrean Identification Card;

Exhibit 13: Respondent's Mother's Application for an Immigrant Visa on Form DSL-230;

Exhibit 14: Berhane Haile's Application for Naturalization on Form N-400.

III. Description and Analysis of Evidence:

A. Respondent's Application and Testimony: In addition to the testimony presented by Respondent as described *supra* on pages 1 and 2, the following describes Respondent's declaration and testimony.

Respondent's declaration and testimony were consistent in stating that he was born in Addis Ababa, Ethiopia, and grew up as a native and citizen of Eritrea in Asmara. His family consisted of his parents and five siblings. Respondent attended school in Asmara. In the middle of high school he was called to military service. He spent six months in training at Sahel in 1991, then was sent to the Assab region where he did construction until his military service was completed in 1993. Respondent returned home and completed high school in 1995. He worked as a plumber until April 1998, and then he was ordered to work on a construction project that was expected to last one month. [redacted]

[redacted]

Paragraphs 8, 9 and 17 discuss general background conditions in Eritrea. Respondent did not discuss these issues in his oral testimony.

[redacted]

[5] **This last issue was not mentioned in Respondent's declaration. Respondent added it in his oral testimony.**

[redacted]
held for eight days. Although Respondent was given thirty days to leave Mexico, he states that he was able to arrange passage to the United States over the next five days, entering at Brownsville, Texas without inspection, admission or parole.

Respondent added information not in his declaration, that upon entering the United States, he has participated in demonstrations against Eritrea in New York, Washington, D.C., Los Angeles, Oakland and San Francisco. He is afraid that if he returns to Eritrea, he will be thrown into jail, punished and may be killed.

On cross-examination, Respondent stated that he wrote his own declaration, first in Tigrinya, about four months after arriving in the United States, and before he hired an attorney to help him with his application. Respondent claims that he has lost that declaration. He also answered a lot of questions posed by a preparer.

Respondent got the idea of writing down his experiences from people he knew who had filed for asylum, including his brother Berhane. They told Respondent to write down his life story. They did not help Respondent or tell him what to write. They did not show him their own declarations or applications. They did not read their own claims to Respondent. Respondent states that he did not read other people's applications. Respondent's friends also told him that he should get an attorney. When Respondent was asked whether he referred to the internet or other resources when finalizing his statement, he stated that he is not good with computers, so that he did not.

Respondent testified that he met with his attorney, Donald Lawson, about 20 days before submitting his application to the Asylum Office. Respondent says that rather than handing over his declaration, he read it to the attorney and kept it. Three days later, Respondent had another meeting with Mr. Lawson where preparation of the English declaration was begun. Although the attorney's interpreter had a laptop, he took notes by hand.

At this point, Respondent admitted that he had been referred to his attorney by other Eritreans whom Mr. Lawson had represented. He admitted discussing with them their reasons for filing for asylum. He also indicated that [redacted] whether they had ever applied for asylum in the United States or not. Respondent claimed not to know anyone who [redacted] Respondent also claimed not to know anyone who [redacted] Once again, Respondent claimed not to have any resources for what he stated in his declaration.

Respondent assured the Court that his English declaration was read back to him in Tigrinya. He stated that it was not exactly word for word what he himself had written, and that the attorney added some things. He did claim that all the information in the declaration came from him and that everything was true and correct. He also felt that the declaration sounded like his own words. He was allowed to keep a paper copy of that declaration.

Respondent was asked if he knew who Alice Hall is. Respondent indicated that he does not know who she is. DHS pointed out that she had translated Respondent's document from the Mexican immigration authorities, in the record at Exhibit 2C. Respondent explained that this document had not been translated when he had his interview at the Asylum Officer. An interpreter named Michael McKonnen had recommended that Respondent go to Alice Hall to have that document translated.

DHS then asked the EOIR Court interpreter to read Respondent's paragraph 8 from his declaration, reminding Respondent that he had said that everything in the declaration sounded like his own words and that he had provided all the facts. Respondent agreed. DHS then showed Respondent a declaration from the European Union, now in the record as Exhibit 11, which includes exactly the same language as was in Respondent's declaration, as follows: "Since then, other individuals have been arrested and detained incommunicado, with no charges and with their right to a due process suspended." DHS further demonstrated that the last sentence in Respondent's paragraph 8 is identical to the beginning of the second paragraph in Exhibit 11: "Despite repeated appeals by the international community, including the EU, and several governmental and non-governmental human rights bodies, these prisoners remain in detention, without having been charged with any offence, and without access to a free and fair trial." Although Respondent was asked about borrowing language from the internet or other sources, Respondent never addressed the issue of him plagiarizing, or borrowing language from the European Union declaration. His only comments were to agree with the substance of the statements.

The Court finally tried to explain the issue to Respondent. His response at that point was to say that he was trying to say in his previous testimony that he didn't know whether the interpreter at his attorney's office might have taken things from the internet.[6] When he was asked if anything else had been taken from the internet to include in his statement, he said he didn't know. When he was asked again, this time he said that no other materials from the internet were used.

DHS then went on to ask Respondent whether he and his attorney had reviewed the other six asylum applications and declarations that DHS had provided at the previous hearing (*See* Exhibit 10). Respondent said that they had not. When he was asked whether he understood that these cases involve [redacted]

[6] In fact, Respondent made no statement remotely reflecting this in his previous testimony.