

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

XXXXXXXXXXXXXXXXXXXXX,	§	
	§	
Petitioner,	§	
	§	
v.	§	No. XX-XX-XXX
	§	
MICHAEL J. PITTS, Field Office	§	
Director for Detention and Removal, U.S.	§	
Immigration and Customs Enforcement,	§	
Department of Homeland Security and	§	
REYNALDO CASTRO, Warden, South	§	
Texas Detention Complex,	§	
	§	
Respondents.	§	

PETITION FOR WRIT OF HABEAS CORPUS

This is a petition for a writ of habeas corpus filed on behalf of XXXXXXXXXXXXXXXXXXXX seeking relief to remedy his unlawful detention. Respondents are detaining Mr. XXXXXXXX pending the execution of his final removal order. Mr. XXXXXXXX has fully cooperated with Respondents in their efforts to remove him. To date, Respondents have been unable or unwilling to remove Mr. XXXXXXXX and thus, he has been detained for more than ten (10) months. Mr. XXXXXXXX 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) and had committed no crimes. His prolonged detention is no longer justified under the Constitution or the Immigration and Nationality Act (INA).

On or about September 23, 2016, Respondent Michael J. Pitts arrested Mr. XXXXXXXX and placed him in the custody of the South Texas Detention Complex. Mr. XXXXXXXX 's detention was for the purpose of executing his removal order. In December 2016, Respondent Pitts reviewed the custody status of Mr. XXXXXXXX and determined that he should be detained

because of his conviction and because Respondent expected to obtain Mr. XXXXXXXX 's travel documents to execute his removal order. On April 13, 2017, Respondent Pitts again determined that Mr. XXXXXXXX should continue to be detained because Respondent anticipates getting Mr. XXXXXXXX 's travel documents. On July 7, 2017, Respondents once again determined that Mr. XXXXXXXX should continue to be detained as travel was arranged. To date, Respondents have not been able or are unwilling to remove Mr. XXXXXXXX.

Mr. XXXXXXXX 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. XXXXXXXX. Mr. XXXXXXXX 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. XXXXXXXX from their custody.

CUSTODY

1. Mr. XXXXXXXX is in the physical custody of Respondent Michael J. Pitts, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement (USICE), the Department of Homeland Security (DHS), and Respondent Reynaldo Castro, Warden of the South Texas Detention Complex (STDC) in Pearsall, Texas. At the time of the filing of this petition, Petitioner is detained at the STDC in Pearsall, Texas. The STDC contracts with the DHS to detain aliens such as Petitioner. Mr. XXXXXXXX is under the direct control of Respondents and their agents.

JURISDICTION

2. 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.

VENUE

3. Venue lies in the United States District Court for the Western District of Texas, the judicial district in which Respondents, Michael J. Pitts and Reynaldo Castro reside and where Petitioner is detained. 28 U.S.C. § 1391(e).

PARTIES

4. Petitioner XXXXXXXX is a national and citizen of Jordan who was accorded lawful permanent resident status on or about August 11, 2002 and ordered removed on June 4, 2012. 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.

5. Respondent Michael J. Pitts is the Field Office Director for Detention and Removal, USICE, DHS. Respondent Pitts is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas, San Antonio Division. Pursuant to Respondent Pitts’ orders, Petitioner remains detained.

6. Respondent Raymundo Castro is the warden of the South Texas Detention Complex facility in Pearsall, Texas. He is Petitioner’s immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas, San Antonio Division.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

7. Mr. XXXXXXXX has exhausted his administrative remedies to the extent required by law.
8. He has fully cooperated with Respondents and has not delayed or obstructed his detention.
9. Mr. XXXXXXXX 's only remedy is by way of this judicial action.

STATEMENT OF FACTS

10. Petitioner XXXXXXXX is a national and citizen of Jordan who was previously accorded lawful permanent resident status but was ordered removed on June 4, 2012 due to a drug conviction.
11. After being ordered removed, Mr. XXXXXXXX applied for a U nonimmigrant visa, a special visa under the Immigration and Nationality Act for victims of certain crimes. Pending adjudication of his application, the Department of Homeland Security (DHS) allowed Mr. XXXXXXXX to report and he did so without any problems.
12. At a later date, his application was denied and he continued to report to the DHS.
13. Because he was the victim of a second robbery, Mr. XXXXXXXX applied for a U nonimmigrant visa again. The U.S. Citizenship and Immigration Services (USCIS), the agency that reviews and approves U visa applications, has informed Mr. XXXXXXXX that his application is prima facie approvable but a final decision cannot be made because there are no visas available in the current fiscal year.
14. On or about September 23, 2016, Respondent Pitts and his agents arrested Mr. XXXXXXXX at his home. The reason for his arrest was to execute his removal order.
15. However, Respondents have been unable or unwilling to remove Mr. XXXXXXXX.
16. Mr. XXXXXXXX has fully cooperated with Respondents' efforts to obtain his travel

documents.

17. Respondents have thrice reviewed Mr. XXXXXXXX 's custody status and have determined that he should be detained because his removal is likely.

18. Mr. XXXXXXXX has now been in detention for more than ten (10) months pending his removal. Respondents continue to detain Mr. XXXXXXXX even though it is now clear that Respondents cannot remove him.

19. Mr. XXXXXXXX is not a danger to the community or a flight risk. He has no pending criminal cases and he long ago completed his community supervision sentence relating to his drug conviction.

20. Mr. XXXXXXXX has deep roots in this community. He has two U.S. citizen children and a brother who is lawful permanent resident.

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

22. Respondents' decision to detain Mr. XXXXXXXX is are longer legally justifiable and is capricious and arbitrary. There is no better time for the Court to consider the merits of Mr. XXXXXXXX 's request for release.

CLAIMS FOR RELIEF

COUNT ONE CONSTITUTIONAL CLAIM

23. Petitioner alleges and incorporates by reference paragraphs 1 through 22 above.

24. Petitioners' detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT TWO STATUTORY CLAIM

25. Petitioner alleges and incorporates by reference paragraphs 1 through 24 above.
26. Petitioner's continued detention violates the Immigration and Nationality Act and the U.S. Constitution.

COUNT THREE

27. 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. Issue an order directing Respondents to show cause why the writ should not be granted;
3. Issue a writ of habeas corpus ordering Respondents to release Mr. XXXXXXXX on his own recognizance or under parole, a low bond or reasonable conditions of supervision show;
4. Award Petitioner reasonable costs and attorney's fees; and,
5. Grant any other relief which this Court deems just and proper.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

By: _____
Javier N. Maldonado
Texas State Bar No. 00794216

VERIFICATION OF COUNSEL

I, Javier N. Maldonado, hereby certify that I am familiar with the case of the named petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

Javier N. Maldonado