

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 14-20308—Civ—(Altonaga/Simonton)

John Doe I, and John Doe II,

Petitioners,

vs.

ERIC HOLDER, Attorney General of the United States, JEH JOHNSON, Secretary of the U.S. Department of Homeland Security, MARC J. MOORE, Field Office Director for the Miami District of U.S. Immigration and Customs Enforcement, and RAMON BADO, Assistant Field Office Director for Detention and Removal Operations at Krome Service Processing Center,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS [UNDER SEAL]

1. In this Petition for Writ of Habeas Corpus, Petitioners [REDACTED], hereinafter

John Doe I and John Doe II, challenge their prolonged detention on federal statutory and constitutional grounds. Both men are asylum seekers from Sri Lanka who have sponsors with whom they could reside. Yet Defendants have imprisoned each of them for over three years without even determining whether they present a

risk of danger or flight sufficient to justify their extended detention. They seek their immediate release from detention, or alternatively a bond hearing before this Court, an Immigration Judge, or another neutral decisionmaker with authority to grant their release unless the government shows that their detention is necessary to prevent danger or flight risk, notwithstanding the availability of monitoring and supervision conditions.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. 2241 (habeas corpus), 28 U.S.C. 1651 (All Writs Act), and the Suspension Clause of Article I of the U.S. Constitution. INS v. St. Cyr, 533 U.S. 289, 304 (2001). The federal district courts have jurisdiction under 28 U.S.C. 2241 over habeas petitions challenging the lawfulness of immigration detention. Demore v. Kim, 538 U.S. 510, 516-17 (2003) (finding jurisdiction to challenge legality of detention pending removal); Zadvydas v. Davis, 533 U.S. 678, 687 (2001) (finding jurisdiction to challenge legality of post-removal order detention because “the primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases”); see also Nadarajah v. Gonzales, 443 F.3d 1069, 1075-76 (9th Cir. 2006) (holding that cases not challenging final orders of removal remain within the jurisdiction of the district court under 28 U.S.C. 2241).

3. This Court also has authority to grant relief under 28 U.S.C. 1331 (federal question), 28 U.S.C. 1651 (All Writs Act), 28 U.S.C. 2241 and 2243 (habeas corpus), 28 U.S.C. 2201-02 (declaratory relief), and Federal Rule of Civil Procedure 65 (injunctive relief). Were no other source of jurisdiction available, this Court would have authority under the Due Process Clause and Article III of the U.S. Constitution to hear the claims brought in this Complaint.

4. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. 2241(d) because all of Petitioners' legal custodians, including the field office director in charge of their removal cases, reside in this district. Venue is also proper under 28 U.S.C. 1391(e)(2) because many events relevant to this action, including much of the prolonged detention, took place in this district.

PARTIES

5. Petitioner John Doe I is a refugee from Sri Lanka who has applied for political asylum in the United States. He is currently detained at the Krome Service Processing Center in Miami, Florida, under color of authority of the United States government.

6. Petitioner John Doe II is a refugee from Sri Lanka who has applied for political asylum in the United States. He is currently detained at the Krome Service

Processing Center in Miami, Florida, under color of authority of the United States government.

7. Respondent Eric Holder is the Attorney General of the United States and as such, he is responsible for the administration of ICE and the implementation and enforcement of the immigration laws. In his official capacity, he is the ultimate legal custodian of the two Petitioners.

8. Respondent Jeh Johnson is the Secretary of the U.S. Department of Homeland Security (“DHS”), the agency charged with enforcement of the nation’s immigration laws. In his official capacity, he is a legal custodian of the two Petitioners.

9. Respondent Marc J. Moore is the Field Office Director for the Miami Field Office, which includes the Krome Detention Center. In his official capacity, Mr. Moore is authorized to make the parole determination for all Petitioners, and he is the local ICE official who has legal custody of Petitioners.

10. Respondent Ramon Bado is ICE’s Assistant Field Office Director for Detention and Removal Operations at the Krome facility in Miami, Florida. As such, he is the local ICE official who has immediate custody of all Petitioners.

FACTS AND PROCEDURAL HISTORY

11. As explained below, each of the petitioners fled the brutal war in Sri Lanka and arrived in the United States in late 2010. Each of them has since been imprisoned by Defendants for more than three years.

John Doe I

12. John Doe I [REDACTED]

[REDACTED] He was born in [REDACTED] Sri Lanka.

Like thousands of other ethnic Sri Lankan Tamils, he suffered persecution by the Sri Lankan army on the basis of his race and particular social group, and on the basis of political opinions imputed to him in the context of Sri Lanka's civil strife.

13. Like the other petitioner, John Doe I fled Sri Lanka and arrived in the United States in late 2010. He was arrested within the territory of the United States, on land, after having arrived by boat. The government charged John Doe I with being unlawfully present in the United States the next day.

14. The Immigration Judge, Judge Rex Ford, deemed John Doe I ineligible to even seek release on bond because of the manner in which he entered. At a hearing held in June 2011, this Court informed John Doe I that "because of your manner of entry, I cannot grant you a bond, but [your attorney] can request parole from your deportation officer."

15. The Immigration Judge denied John Doe I's application for asylum (as he does in 94% of all asylum cases), in December 2011. The Board of Immigration Appeals affirmed that decision six months later. John Doe I then filed a petition for review of that decision with the Eleventh Circuit. The circuit court granted his petition in June 2013, finding error in the Immigration Judge's failure to consider whether Sri Lankan Tamils as an ethnic group face a pattern and practice of persecution in Sri Lanka. The Eleventh Circuit then remanded the case back to the Board of Immigration Appeals, which in turn remanded it to the Immigration Judge.

16. The Immigration Judge conducted a new hearing on John Doe I's case in November 2013. He has issued no decision as of this date.

17. Over the years, John Doe I has suffered deep psychological injury as a result of his lengthy imprisonment. In a moment of despair, John Doe I wrote a *pro se* letter in December 2013 to the immigration court asking that he be permitted to withdraw his asylum request and return to Sri Lanka because he could not withstand further detention. Although John Doe I was represented by counsel at the time, the court nonetheless accepted the letter and treated his application as withdrawn.

18. John Doe I has since changed his mind and has written a letter to the immigration judge asking that his asylum case be reinstated. He desperately wishes for release from detention and the opportunity to live in this country.

John Doe II

19. John Doe II [REDACTED]
[REDACTED] He was born in [REDACTED]
[REDACTED] of Sri Lanka. Like thousands of other ethnic Sri Lankan Tamils, he suffered persecution by the Sri Lankan army on the basis of his race and particular social group, and on the basis of political opinions imputed to him in the context of Sri Lanka's civil strife.

20. In particular, John Doe II lived through perhaps the most horrific violence of this century, during which the Sri Lankan army massacred approximately 40,000 Tamil civilians over the course of a few months in 2009. See generally REPORT OF THE [UNITED NATIONS] SECRETARY-GENERAL'S PANEL OF EXPERTS ON ACCOUNTABILITY IN SRI LANKA, 31 March 2011 (available at http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf) ("Between September 2008 and 19 May 2009, the Sri Lanka Army advanced its military campaign into the Vanni using large-scale and widespread shelling, causing large

numbers of civilian deaths. This campaign constituted persecution of the population of the Vanni.”).

21. John Doe II managed to survive that horrific violence, although his body bears scars from the wounds to this day. He faced continuing threats of violence until he fled Sri Lanka in 2010.

22. Like the other petitioner, John Doe II fled Sri Lanka and arrived in the United States in late 2010. He was arrested within the territory of the United States, on land, after having arrived by boat. The government charged him with being unlawfully present in the United States the next day.

23. Although John Doe II sought his release before Immigration Judge Rex Ford, the judge deemed him ineligible to even seek release on bond because of the manner in which he entered. At a hearing in August 2011, the Immigration Judge informed John Doe II that “you have an expedited asylum case, you are not eligible for bond.”

24. The Immigration Judge denied John Doe II’s application for asylum (as he does in 94% of all asylum cases), in March 2012. The Board of Immigration Appeals affirmed that decision four and a half months later. John Doe II then filed a petition for review of that decision with the Eleventh Circuit. The circuit court granted his petition in July 2013, finding error in the Immigration Judge’s failure to consider whether failed asylum seekers face a pattern and practice of

persecution in Sri Lanka. The Eleventh Circuit then remanded the case back to the Board of Immigration Appeals.

25. For reasons that remain unclear, the Board of Immigration Appeals never remanded John Doe II's case to the Immigration Judge. Instead, it remained unadjudicated there for five and a half months. During that time, John Doe II requested a bond hearing before the Immigration Judge, but the judge summarily rejected that motion on the ground that his case remained at the Board. He has appealed that decision to the BIA.

26. Over the years, John Doe II has suffered deep psychological injury as a result of his lengthy imprisonment. In a moment of despair during December 2013, he wrote a *pro se* letter to the Board of Immigration Appeals asking that he be permitted to withdraw his asylum request and return to Sri Lanka because he could not endure further detention. The Board promptly accepted the letter, even though John Doe II was represented by counsel at the time, and treated his application as withdrawn as of December 2013.

27. John Doe II remains detained as of this time, and desperately wishes for release from detention. He would like to continue pursuing his application for asylum, but only if he is released from detention.

FIRST CAUSE OF ACTION

Violation of Immigration and Nationality Act

(Right to a Bond Hearing under 8 U.S.C. 1226(a), 8 C.F.R. 1003.19, and 8 C.F.R. 1236.1)

28. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

29. Because Petitioners were arrested within the United States and have not been convicted of any crime triggering so-called "mandatory detention" under 8 U.S.C. 1226(c), they are entitled to a bond hearing before an Immigration Judge and eligible for release on bond at that hearing, under 8 U.S.C. 1226(a), 8 C.F.R. 1003.19, and 8 C.F.R. 1236.1.

SECOND CAUSE OF ACTION

Violation of Immigration and Nationality Act

(Prolonged Detention Without a Bond Hearing)

30. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

31. Respondents' continued detention of Petitioners without a hearing violates the Immigration and Nationality Act, because no immigration detention statute authorizes their detention for a prolonged period of time absent a hearing where the government bears the burden to prove that their prolonged detention is justified.

THIRD CAUSE OF ACTION

Violation of Fifth Amendment Procedural Due Process

(Right to a Hearing)

32. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

33. Respondents' continued detention of Petitioners without a hearing to determine whether their prolonged detention is justified violates their right to be free of prolonged non-criminal detention without adequate justification and sufficient procedural safeguards, as guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution.

FOURTH CAUSE OF ACTION

Violation of Immigration and Nationality Act

(Prolonged Detention in Excess of Period Authorized by Statute)

34. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

35. Respondents' prolonged detention of Petitioners exceeds the period of time authorized by the statute. The statute cannot be construed to authorize such prolonged detention without raising serious constitutional problems.

FIFTH CAUSE OF ACTION

Violation of Fifth Amendment Substantive Due Process

(Prolonged Detention)

36. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

37. Respondents' continued detention of Petitioners has become so prolonged that it is no longer reasonably related to its purpose of effecting removal and therefore violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

SIXTH CAUSE OF ACTION

Violation of Immigration and Nationality Act

(Arbitrary and Capricious Denial of Parole)

38. Petitioners allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

39. Respondents' continued detention of Petitioners and their failure to apply the appropriate legal standards in determining whether to release them on parole is arbitrary and capricious in contravention of 8 U.S.C. § 1182(d)(5), 8 C.F.R. 212.5, and any other authorities that authorize Respondents' parole authority.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court grant the following relief:

- A. Assume jurisdiction of this matter;
- B. Grant the writ of habeas corpus and order Petitioners' immediate release from custody under reasonable conditions of supervision; or in the alternative, order a constitutionally adequate hearing before this Court, an immigration judge, or another neutral adjudicator at which Respondents will bear the burden to prove that Petitioners' continued detention remains justified because they present a danger or flight risk notwithstanding the availability of conditions of monitoring or supervision;
- C. Declare that Respondents' failure to release Petitioners or, in the alternative, to provide Petitioners with a hearing as set forth above violates the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment;
- D. Grant such other relief as the Court deems just and equitable, including but not limited to fees under the Equal Access to Justice Act and any other applicable statute.

Dated: February 7, 2014¹

Respectfully Submitted,

/s/ Shalini Goel Agarwal

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**pro hac vice motions forthcoming*

¹ The facts asserted in this motion were true as of January 24, 2014, the date of the sealed habeas petition.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by notice of electronic filing on February 7, 2014, on all counsel of record.

Dated: February 7, 2014

Respectfully Submitted,

/s/ Shalini Goel Agarwal

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