

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

WARREN HILARION EUSTA JOSEPH,)

Plaintiff-Petitioner)

vs.)

OSCAR AVILA, in his official capacity as)

Director of Hudson County Correctional Facility;)

SCOTT WEBER, in his official capacity as Field)

Office Director for Detention & Removal, Newark)

District Office; JULIE L. MYERS, in her official)

capacity as Assistant Secretary of United States)

Immigration and Customs Enforcement;)

MICHAEL CHERTOFF, in his official capacity as)

the Secretary of the United States Department of)

Homeland Security; and ALBERTO GONZALES,)

in his official capacity as Attorney General of the)

United States.)

Defendants-Respondents.)

Civil Action No.

Hon. _____

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO
28 U.S.C. § 2241**

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INTRODUCTION

1. Petitioner Warren Joseph has been imprisoned by immigration authorities for more than three years, while removal proceedings against him remain pending. A longtime lawful permanent resident of the United States and a decorated veteran who served in combat positions during Gulf War I, Mr. Joseph has lived in this country for close to twenty years. He faces removal based on a single nearly six-year-old conviction for which he was initially sentenced to probation alone. Although Mr. Joseph was subsequently imprisoned for six months for violating probation, he has now spent more than six times his criminal sentence incarcerated by immigration authorities, even though he poses no danger or flight risk that would warrant such prolonged detention. Moreover, during this time Mr. Joseph has never received any custody hearing, not to mention the kind of hearing that due process would require to justify a detention of such length.

2. Mr. Joseph's first habeas petition, filed on his own and without the assistance of counsel, was dismissed without prejudice by this Court in June 2006. At the time, Mr. Joseph was subject to a final administrative removal order which was stayed pending review by the Court of Appeals. Treating his habeas petition as one for release under *Zadvydas v. Davis*, 533 U.S. 678 (2001), this Court found that he was not entitled to release because, once the stay was lifted, his removal to

Trinidad was reasonably foreseeable. Less than four months later, however, the Third Circuit Court of Appeals vacated Mr. Joseph's removal order and remanded his case for further administrative proceedings. Pursuant to the Third Circuit's decision, Mr. Joseph is now eligible for both cancellation of removal and naturalization, claims on which he has a high likelihood of success. Nonetheless, and even though Mr. Joseph has offered to submit to reasonable conditions of supervision including electronic monitoring, the government refuses even to consider his release, arguing that his continued detention is mandatory under 8 U.S.C. § 1226(c).

3. As set forth in greater detail in a memorandum of law filed in support of the instant petition, the government's mandatory detention of Mr. Joseph, when he has strong challenges to removal and when his removal proceedings have already extended well beyond the "brief period of time" typically needed to complete such proceedings, *Demore v. Kim*, 538 U.S. 510, 513 (2003), violates both the Immigration and Nationality Act ("INA") and the Constitution. The Supreme Court has repeatedly held that immigration detention violates due process unless it is reasonably related to its purpose. Moreover, where detention is prolonged, due process requires a "sufficiently strong special justification" to outweigh the significant deprivation of liberty, as well as strong procedural protections. *See Zadvydas*, 533 U.S. at 690-91. Mr. Joseph's continued and

mandatory detention bears no such reasonable relationship to its purpose. Indeed, the sheer length of his detention – six times the period of his criminal sentence and seven times the average five month period recognized by the Supreme Court in *Demore*, 538 U.S. at 530 -- is patently unreasonable. The government has never alleged a “sufficiently strong special justification” for such prolonged detention, quite apart from providing Mr. Joseph with a hearing on the issue. In addition, Mr. Joseph’s detention violates the bail clause of the Eighth Amendment which prohibits detention that is “excessive in light of the perceived evil” the government seeks to avoid.

4. This Court, however, need not – and should not – decide the serious constitutional questions presented by Petitioner’s detention. Principles of statutory construction require that, where possible, courts should construe statutes so as to avoid serious constitutional problems. Applying these principles here, the pre-final-order removal statute, 8 U.S.C. § 1226, authorizes detention only for a reasonable period of time. Thus, no statute – neither § 1226(c), which the government asserts requires Petitioner’s mandatory detention, nor § 1226(a), which provides for discretionary pre-final-order detention -- authorizes Petitioner’s more than three year long detention, at least not in the absence of a hearing where the government would bear the burden of demonstrating that such prolonged detention is warranted and hence reasonable.

5. Mr. Joseph requests that this Court issue the writ of habeas corpus and order his immediate release under reasonable conditions of supervision or, in the alternative, order a constitutionally adequate hearing where Respondents must prove that his continued detention is justified. Notably, just one month ago, another district court in this circuit ordered just such relief, when faced with a case very similar to the Petitioner's. *Madrane v. Hogan*, 2007 WL 404032, *4-5 (M.D. Pa. Feb. 1, 2007) (finding it "appropriate and necessary to hold a hearing" for immigration detainee held for three years in light of "extraordinarily lengthy deprivation of liberty").

6. Pursuant to 28 U.S.C. § 2243, and as set forth in an application filed herein, Mr. Joseph respectfully requests that the Court immediately order Respondents to show cause why the writ of habeas corpus should not be granted. Mr. Joseph also requests that the Court set a prompt hearing on this matter upon Respondents' return on the order to show cause.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. §§ 2201-02 (declaratory relief); and the U.S. Constitution, art. I, § 9, cl. 2 (Suspension Clause).

8. Mr. Joseph has exhausted any and all administrative remedies to the extent required by law.

9. While the courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. at 516-17; *Zadvydas*, 533 U.S. at 687; *Nnadika v. Attorney General of U.S.*, --- F.3d---, 2007 WL 1227474, *6 (3rd Cir. Apr. 27, 2007) (holding that, post-REAL ID, challenges to detention remain within the jurisdiction of the district court).

10. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 2241(d) because Mr. Joseph is incarcerated at Hudson County Correctional Facility in South Kearny, New Jersey.

PARTIES

11. Petitioner Warren Joseph is a national and citizen of Trinidad and Tobago and a lawful permanent resident of the United States for nearly twenty years. A decorated military veteran, he served in the first Gulf War. For the past three years he has been imprisoned by immigration authorities, most of this time at the Hudson County Correctional Facility in South Kearny, New Jersey.

12. Respondent Oscar Avila is the Director of the Hudson County Correctional Facility and is Mr. Joseph's immediate custodian. Mr Avila is sued in his official capacity.

13. Respondent Scott Weber is the Field Office Director for Deportation and Removal in the Newark District Office of U.S. Immigration and Customs Enforcement. In this capacity, he has jurisdiction over the detention facility in which Mr. Joseph is held, is authorized to release Mr. Joseph, and is a legal custodian of Mr. Joseph. Mr. Weber is sued in his official capacity.

14. Respondent Julie L. Myers is the Assistant Secretary of Immigration and Customs Enforcement. In this capacity, she has responsibility for the enforcement of the immigration laws. As such, she is a legal custodian of Mr. Joseph. Ms. Myers is sued in her official capacity.

15. Respondent Michael Chertoff is the Secretary of Homeland Security and heads the Department of Homeland Security ("DHS"), the arm of the U.S. government responsible for enforcement of the immigration laws. Mr. Chertoff is the ultimate legal custodian of Mr. Joseph. Mr. Chertoff is sued in his official capacity.

16. Respondent Alberto Gonzales is the Attorney General of the United States and the head of the Department of Justice, which encompasses the BIA and immigration judges as a subunit, the Executive Office of Immigration Review. Mr.

Gonzales shares responsibility for the implementation and enforcement of immigration laws along with Respondent Chertoff. Mr. Gonzales is a legal custodian of Mr. Joseph. Mr. Gonzales is sued in his official capacity.

FACTS AND PROCEDURAL HISTORY

Mr. Joseph's U.S. Military Service and Background

17. Petitioner Warren Hilarion Eusta Joseph is a longtime lawful permanent resident, and a decorated veteran of the first Gulf War, who has lived in the United States for nearly twenty years. He has four U.S. citizen children, a U.S. citizen mother, and a U.S. citizen sister.

18. A few months after coming to the U.S. from Trinidad, when he was twenty-one years old, Mr. Joseph enlisted in the U.S. Army. He served in the United States Army and the Army Reserves from 1988 to 1996. During the first Persian Gulf War he served in combat positions and was injured in the course of duty. He received numerous awards and commendations recognizing his valiant service in that war, including recognition for returning to battle after being injured and successfully rescuing his fellow soldiers.

19. After his return from the Gulf in 1991, Mr. Joseph suffered from a variety of physical and mental symptoms often referred to as "Gulf War Syndrome," including symptoms of post-traumatic stress disorder. Like many other such veterans, he struggled with depression, alcoholism, and dependence on

illegal drugs. He had recurring nightmares about killing people, and would wake up in a cold sweat. He became withdrawn and thought about suicide constantly. In 2003, he drank rust remover and had to be hospitalized.

20. Mr. Joseph continues to suffer from severe muscular problems, and at times cannot move his hands and legs. His exposure to artillery fire as a canon operator during the war has impaired his hearing in his right ear.

21. Mr. Joseph twice applied for naturalization —first in 1994, and again in 1995. He never received a decision on either application.

22. In October 2001, Mr. Joseph was convicted, following a plea of guilty, to transporting or receiving firearms while not licensed to do so, in violation of 18 U.S.C. § 922(a)(3). The conviction stemmed from Mr. Joseph's purchase in 1996 of handguns for individuals to whom he owed money. Mr. Joseph did not use the guns himself—he turned them over to his creditors in repayment of his debts. Mr. Joseph fully cooperated with the investigation by the Bureau of Alcohol, Tobacco, and Firearms, and his actions were not deemed sufficiently serious to warrant incarceration. Instead, he received a non-custodial sentence of four years probation. Two years later, however, Mr. Joseph violated his probation when he moved to his mother's house while suffering from partial paralysis and debilitating depression and failed to inform his probation officer in advance of his change of address. When his health improved, Mr. Joseph

subsequently reported back to his probation officer. He also pled guilty to the probation violation for which he was sentenced to six months in prison.

Mr. Joseph's Three Year Long Detention During Removal Proceedings

23. It was while he was nearing the end of his six-month sentence that the Bureau of Immigration and Customs Enforcement ("ICE") commenced removal proceedings against Mr. Joseph based on his 2001 conviction. Shortly thereafter, upon Mr. Joseph's completion of his criminal sentence on April 30, 2004, ICE agents took him into custody, first transferring him to the Monmouth County Correctional Institution and then to the Hudson County Correctional Facility. Mr. Joseph received a notice informing him that "the Immigration and Nationality Act prohibits your release from custody" and that he could not request review of this determination by an immigration judge.¹ Mr. Joseph has remained incarcerated at the Hudson County Jail since that time.

24. On July 12, 2004, an immigration judge ordered Mr. Joseph removed based on his firearms conviction. Because the immigration judge found that this conviction was an aggravated felony, Mr. Joseph was ineligible for naturalization and other relief from removal that would otherwise have been available to him as a longtime lawful permanent resident. Mr. Joseph appealed the immigration judge's

¹ Presumably the authority for Mr. Joseph's detention was 8 U.S.C. § 1226(c), a statute which requires mandatory detention of certain non-citizens charged with removal on criminal grounds, and which the government asserts is the basis for his current mandatory detention.

decision to the Board of Immigration Appeals (“BIA”), which affirmed the decision on December 10, 2004, without an opinion.

25. Following the BIA’s decision, Mr. Joseph filed a Petition for Review before the Third Circuit Court of Appeals challenging the finding that his firearms conviction constituted an aggravated felony. Mr. Joseph also requested a stay of removal pending resolution of the Petition for Review, which the Third Circuit granted on March 4, 2005.²

26. Five months later, at which point Mr. Joseph had been imprisoned fifteen and a half months without any individualized determination that he posed a danger or flight risk, ICE issued a “Decision to Continue Detention.” Based solely on a paper review of his file, the decision stated that Mr. Joseph would not be released because his “removal from the United States appears imminent.” It noted that, due to the Third Circuit’s stay of removal, ICE was “precluded from enforcing” Mr. Joseph’s removal at this time. It further stated that his custody status would be reviewed again “90 days after the stay of removal is lifted, or one year from the date of this decision.” The custody review decision offered no further explanation for the decision to continue detention, made no mention of how

² Mr. Joseph also filed a petition for a writ of habeas corpus in the U.S. District Court of New Jersey raising similar claims. Pursuant to the REAL ID Act, that petition was transferred to the Third Circuit and consolidated with his petition for review. *See Joseph v. Attorney General of the U.S.*, 465 F.3d 123, 125 (3rd Cir. 2006).

long Mr. Joseph had been detained at that time, and offered no suggestions as to what steps he might take to effect a different outcome in any future decisions.

27. Shortly thereafter, Mr. Joseph – on his own and without the assistance of counsel -- filed a petition for a writ of habeas corpus in this court, challenging his prolonged detention on due process grounds. *See Joseph v. Dep't of Homeland Security*, No 2:05-CV-05233-JLL, Doc. # 1 (D.N.J. Nov. 2, 2005) (Petition for Writ of Habeas Corpus). In a decision issued on June 12, 2006, while the Third Circuit's stay of removal was still in place, this court dismissed the petition "without prejudice to Petitioner bringing a new petition" in the future. *Joseph v. Dep't of Homeland Security*, 2006 WL 1644875, *5 (D.N.J. June 12, 2006). The Court found that Mr. Joseph did not qualify for release under *Zadvydas v. Davis*, because, absent the stay of removal, his removal to Trinidad was "reasonably foreseeable." *Id.* at * 3. While recognizing that Mr. Joseph was protected by the Fifth Amendment's Due Process clause, the Court found that his continued detention was "not constitutionally impermissible at this juncture" because he had been afforded an individualized custody review in August 2005 and another custody review was "imminent." *Id.* at *4-5. The Court further noted that Mr. Joseph would have an opportunity to reassert his claims "if the BICE does not provide adequate due process in the future." *Id.* at *5.

28. Two months later, ICE issued Mr. Joseph a second “Decision to Continue Detention” that was again based solely on a review of his file. The decision stated that because of the Third Circuit stay of removal, “ICE has not had an unencumbered period of 90 days to affect your removal,” and that therefore Mr. Joseph “did not appear to meet the threshold for custody review as set forth in 8 CFR 241.4(g)(1)(i).” The decision further added that “[n]onetheless, your history of firearms convictions [sic] and probation violations suggests that you would pose a risk of flight as well as a danger to the community if released from ICE custody.”³ Like the previous custody review decision issued more than a year before, the August 2006 custody review decision offered no further explanation for the decision to continue detention, made no mention of how long Mr. Joseph had been detained (more than twenty-seven months at the time), and offered no suggestions as to what steps he might take to effect a different outcome in any future decisions. *Id.*

29. Less than two months later, on October 2, 2006, the Third Circuit granted Mr. Joseph’s Petition for Review, agreeing with his argument that his firearms conviction is not an aggravated felony, and remanding his case to the BIA for further proceedings. *Joseph v. Attorney General of U.S.*, 465 F.3d 123, 129 (3rd Cir. 2006). As a result of the Court’s decision, Mr. Joseph is now eligible for

³ The decision erroneously states that Mr. Joseph has multiple firearms convictions when he has only one.

both naturalization under 8 U.S.C. § 1440 and cancellation of removal under 8 U.S.C. § 1229b(a).

30. In the aftermath of the Third Circuit's ruling, counsel for Mr. Joseph contacted counsel for the government to request that he be released under reasonable conditions of supervision, including electronic monitoring if necessary. Government counsel responded that Mr. Joseph would continue to be detained as he was subject to mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c).

31. Mr. Joseph thereafter renewed his request for release before the Immigration Court in Newark, New Jersey. Pursuant to 8 C.F.R. § 1003.19(h)(2)(ii), Mr. Joseph argued that he was entitled to a bond hearing because he is not "properly included" in the mandatory detention categories designated under 8 U.S.C. § 1226(c). This motion was denied by the immigration judge on March 22, 2007.

32. A hearing on Mr. Joseph's claim for cancellation of removal is currently scheduled to begin on June 4, 2007. Mr. Joseph's application for naturalization on grounds of his being a military veteran is also pending. There is no time frame for the completion of his removal proceedings or a decision on his naturalization application. Meanwhile, Mr. Joseph remains imprisoned at the Hudson County Correctional Facility in New Jersey.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

VIOLATION OF IMMIGRATION AND NATIONALITY ACT— MANDATORY DETENTION OF A NON-CITIZEN WHO IS NOT TAKEN INTO IMMIGRATION CUSTODY WHEN RELEASED FROM CRIMINAL INCARCERATION

33. The foregoing allegations are realleged and incorporated herein.

34. INA § 236(c), 8 U.S.C. § 1226(c), the statute under which Mr. Joseph is detained, provides in relevant part that the Attorney General “shall take into custody an alien who is deportable by reason of having committed any offense covered [inter alia] in section [237(a)(2)(C)]*when the alien is released* for the same offense.” 8 U.S.C. § 1226(c) (emphasis added).

35. Mr. Joseph was never incarcerated for the offense which renders him “deportable.” Moreover, he was not taken into ICE custody until more than two years after he was arrested and released on bond for that offense.

36. Because Mr. Joseph was not taken into ICE custody “when . . . released” for his offense, his mandatory detention is not authorized by INA § 236(c), 8 U.S.C. § 1226(c).

SECOND CAUSE OF ACTION

VIOLATION OF IMMIGRATION AND NATIONALITY ACT— MANDATORY DETENTION OF A NON-CITIZEN WHO HAS A SUBSTANTIAL CHALLENGE TO DEPORTABILITY

37. The foregoing allegations are realleged and incorporated herein.

38. INA § 236(c)(1)(B), 8 U.S.C. § 1226(c)(1)(B), the sub-provision under which Mr. Joseph is detained, provides, in relevant part, that the Attorney General “shall take into custody any alien who . . . *is deportable* by reason of having committed” designated offenses. *Id.* (Emphasis added).

39. In light of the serious constitutional problems that would be raised if the statute were construed as requiring the mandatory detention of non-citizens with substantial challenges to deportability – and in the absence of any indication that Congress intended this result -- the “is deportable” language in § 1226(c) must be construed as not applying to such individuals.

40. Because Mr. Joseph has substantial claims for cancellation of removal and naturalization, he is not “deportable” under the meaning of § 1226(c) and his mandatory detention is not authorized by that statute.

THIRD CAUSE OF ACTION
VIOLATION OF IMMIGRATION AND NATIONALITY ACT—
MANDATORY DETENTION OF A NON-CITIZEN BEYOND THE
BRIEF PERIOD OF TIME CONTEMPLATED BY DEMORE V. KIM

41. The foregoing allegations are realleged and incorporated herein.

42. INA § 236(c), 8 U.S.C. § 1226(c), the statute under which Mr. Joseph is detained, is silent with regard to the length of mandatory detention authorized.

Because of the serious constitutional problems that would be posed if § 1226(c) authorized mandatory detention for a prolonged period of time -- and in the absence of any indication that Congress intended this result -- this Court must construe the statute as authorizing such detention only for the “brief period of time necessary” to complete removal proceedings. *Demore*, 538 U.S. at 513.

43. Mr. Joseph’s detention, already surpassing three years, far exceeds the “brief period of time necessary” to complete removal proceedings. As such, his mandatory detention is not authorized by INA § 236(c), 8 U.S.C. § 1226(c).

FOURTH CAUSE OF ACTION
VIOLATION OF IMMIGRATION AND NATIONALITY ACT--
PROLONGED DETENTION BEYOND THE BRIEF AND
REASONABLE PERIOD OF TIME AUTHORIZED BY THE
STATUTE, IN THE ABSENCE OF A HEARING WHERE THE
GOVERNMENT BEARS THE BURDEN OF SHOWING THAT SUCH
PROLONGED DETENTION IS JUSTIFIED

44. The foregoing allegations are realleged and incorporated herein.

45. INA § 236(a), 8 U.S.C. § 1226(a), the statutory provision under which Mr. Joseph is detained if his detention is not authorized by 1226(c), is silent with regard to the length of pre-final-order detention authorized and the procedures required if such detention becomes prolonged. Serious constitutional problems would be arise if § 1226(a) authorized detention for a prolonged period of time without the kind of strong justification and procedural safeguards that such

detention would require. To avoid these constitutional problems, this Court must therefore construe the statute as authorizing detention for only a brief period of time, or in the alternative as requiring a constitutionally adequate hearing where the government bears the burden of showing that such prolonged detention is justified.

46. Mr. Joseph's three-year detention exceeds the brief period of time authorized under the statute. There is no justification for his continued detention. Nor has he received any hearing to determine whether his prolonged detention is justified.

47. For the foregoing reasons, his continued detention is not authorized under 8 U.S.C. § 1226(a).

FIFTH CAUSE OF ACTION
VIOLATION OF DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT – PROLONGED DETENTION THAT BEARS NO
REASONABLE RELATION TO ITS PURPOSE

48. The foregoing allegations are realleged and incorporated herein.

49. Immigration detention violates due process unless such detention is reasonably related to its purpose. *Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *Demore v. Kim*, 538 U.S. at 513 (upholding brief period of mandatory detention because it was necessary to purpose).

Moreover, as detention becomes prolonged, the Due Process Clause requires a

sufficiently strong justification to outweigh the significant deprivation of liberty, as well as strong procedural protections. *Zadvydas*, 533 U.S. at 690-91.

50. Mr. Joseph's continued immigration detention, when he raises substantial challenges to deportability, when he faces deportation based on a single nonviolent offense committed more than ten years ago, when he has already been in immigration detention for more than three years (and more than six times his criminal sentence), and when he has agreed to comply with reasonable conditions of release including electronic monitoring, bears no reasonable relation to the government's purpose.

51. For all of the foregoing reasons, Mr. Joseph's prolonged detention violates due process.

SIXTH CAUSE OF ACTION
VIOLATION OF DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT – PROLONGED DETENTION WITHOUT A
CONSTITUTIONALLY ADEQUATE HEARING WHERE THE
GOVERNMENT BEARS THE BURDEN OF SHOWING THAT SUCH
DETENTION IS JUSTIFIED

52. The foregoing allegations are realleged and incorporated herein.

53. Prolonged detention violates due process unless it is accompanied by strong procedural protections to protect against the erroneous deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91; *Ngo. v. INS*, 192 F.3d 390, 398 (3rd Cir.

1999). Moreover, when the government deprives an individual of a significant liberty interest, the burden of justifying such a deprivation should be placed on the government. *See Tijani v. Willis*, 430 F.3d 1241, 1244-45 (9th Cir. 2005) (Tashima, J. concurring) (noting that when a fundamental right such as the right to individual liberty is at stake, Supreme Court precedent rejects laws that place on the individual the burden of protecting that right) (citing *inter alia*, *Addington v. Texas*, 441 U.S. 418 (1979)).

54. During more than three years of immigration imprisonment, Mr. Joseph has never received any custody hearing, not to mention a hearing where the government bore the burden of demonstrating that his prolonged detention was justified. Instead he has received only two perfunctory custody reviews which were based solely on a paper review of his file review, and which merely rubberstamped the government's detention decision.

55. Mr. Joseph's prolonged detention has not been accompanied by the kind of procedural protections that such a significant deprivation of liberty requires.

56. For the foregoing reasons, Mr. Joseph's continued detention violates due process.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE EIGHTH AMENDMENT'S BAIL CLAUSE--
DETENTION THAT IS EXCESSIVE IN RELATION TO ITS
PURPOSE

57. The foregoing allegations are realleged and incorporated herein.

58. The Eighth Amendment provides, in relevant part, that “excessive bail shall not be required.” U.S. Const. Amend VIII. As such, it prohibits detention that is “excessive in light of the perceived evil” the government seeks to avoid. *United States v. Salerno*, 481 U.S. 739, 754 (1987).

59. No purpose is served by Mr. Joseph’s detention as he poses neither a danger nor a flight risk. His detention of more than three years without even a hearing to determine if he actually poses any danger or flight risk, is clearly excessive.

60. For the foregoing reasons, Mr. Joseph’s detention violates the Bail Clause of the Eighth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Petitioner prays that this Court grant the following relief:

(a) Assume jurisdiction over this matter;

- (b) Order Respondents to show cause, within three days of filing this petition, why the writ of habeas corpus should not be granted; and set a hearing on this matter within five days of Respondents' return on the order to show cause, pursuant to 28 U.S.C. § 2243;
- (c) Grant the writ of habeas corpus and order Mr. Joseph's immediate release from custody under reasonable conditions of supervision; or in the alternative, order a constitutionally adequate hearing where Respondents must demonstrate that Petitioner's continued detention is justified.
- (d) Declare that Respondents' continued detention of Mr. Joseph violates the Immigration and Nationality Act because it exceeds the brief period authorized by the statute, or in the alternative, because Respondents have failed to provide him with a hearing where the government bears the burden of showing that such prolonged detention is justified;
- (e) Declare that Respondents' three-year detention of Mr. Joseph violates the Due Process Clause of the Fifth Amendment because it bears no reasonable relation to a legitimate governmental purpose, and/or because Respondents have failed to provide him with a hearing where the government bears the burden of showing that such prolonged detention is justified.

- (f) Declare that Respondent's continued detention of Mr. Joseph, when he poses no significant danger or flight risk, violates the bail clause of the Eighth Amendment because it is excessive in relation to the government's interests.
- (g) Award reasonable attorney's fees, costs and other disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- (h) Grant any other and further relief that this court deems just and proper.

Dated: May 22, 2007

Respectfully submitted,



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*Application for admission pro hac vice
forthcoming

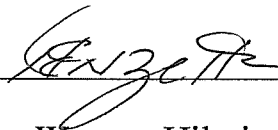
Attorneys for Petitioner

VERIFICATION

Warren Hilarion Eusta Joseph, under penalty of perjury, states the following:

1. I am the Petitioner to whom the foregoing Petition for Writ of Habeas Corpus relates.
2. I affirm the truth of the factual contents of the Petition.

Dated: May 11, 2007



Warren Hilarion Eusta Joseph