

Massimiliano Dellaguardia
A 27-282-387
NWDF
1623 East J Street
Tacoma WA 98421-1615

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

MASSIMILIANO DELLAGUARDIA,) NO. CIV
)
Petitioner,)
)
v.) PETITION FOR WRIT OF HABEAS
) CORPUS BY A PERSON IN FEDERAL
ALBERTO R. GONZALES,) CUSTODY PURSUANT TO 28 U.S.C.
Attorney General; MICHAEL) § 2241
CHERTOFF, Secretary of)
Homeland Security; A. NEIL)
CLARK, Seattle Field Office)
Director, Bureau of)
Immigration and Customs)
Enforcement; WARDEN of)
Immigration Detention)
Facility; and the Bureau of)
Immigration and Customs)
Enforcement,)
)
Respondents.)

1. Name and location of place of confinement:

Northwest Detention Facility, 1623 East J Street, Tacoma WA 98421-1615, pursuant to a contractual arrangement with my custodian, the ICE Field Office Director at Seattle, Washington.

2. Name and location of court causing confinement:

ICE Field Office Director, Seattle, Washington.

3. Case Name and Number: [ICE file number, if known]

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- 1 **4. Date of judgment of conviction:** [Date of Order of Confinement]
2 ICE custody: September 13, 2006;
3 Order of Removal: March 1, 2001.
- 4 **5. Sentencing Date:** N/A
- 5 **6. Sentence:** N/A
- 6 **7. Sentencing Judge:** N/A
- 7
- 8 **8. Nature of offense or offenses for which you were convicted:** N/A
- 9
- 10 **9. What was your plea:** N/A
- 11 **10. Kind of trial:** N/A
- 12
- 13 **11. Did you testify at trial?** N/A
- 14 **12. Did you appeal from the judgment of conviction or sentence?**
15 [Any administrative review]
- 16 **13. If you did appeal, list the court to which you appealed:**
17 (a) **Name of Court:** [or administrative tribunal]
18 (b) **Result:**
19 (c) **Date of Result:**
- 20 **14. Did you seek any further review?**
- 21 **15. List the court(s) to which you sought further review?**
22 (a) **Name of Court:**
23 (b) **Nature of Review:**
24 (c) **Result:**
25
26 (a) **Name of Court:** [or administrative tribunal]
27 (b) **Nature of Review:**
28 (c) **Result:**

1 16. Other than a direct appeal from the judgment of conviction and
2 sentence, have you previously filed any petitions, applications,
3 or motions with respect to your confinement in any court, state or
4 federal? Yes. I previously filed a petition for writ of habeas
corpus pursuant to 28 U.S.C. § 2241 with this Court. See 04-cv-
00367 (Lasnik, J.). On April 7, 2004, the petition was dismissed
without prejudice.

5 17. GROUNDS FOR RELIEF:

- 6 A. My family came to the United States in 1984 as refugees from
7 what was at that time Ethiopia. My family, however, is
8 ethnically, culturally, and geographically from Eritrea, not
from Ethiopia. My family has identified itself as Eritrean
and are recognized as citizens of Eritrea, not Ethiopia.
- 9 B. My mother became a naturalized United States citizen on May
10 3, 1995. At the time, my parents were legally separated, I
was under the age of 18, and my mother had custody of me.
11 Pursuant to former 8 U.S.C. § 1431(a)(3), INA § 320(a)(3),
repealed by Pub.L. 106-935, Title I, § 103(a), Oct. 30, 2000,
12 114 Stat. 1632, I automatically obtained derivative
citizenship when my mother was naturalized.
- 13 C. On March 1, 2001, I was ordered deported to Ethiopia. The
14 deportation was predicated on the erroneous belief that I was
a legal permanent resident rather than a United States
15 citizen.
- 16 D. ICE was unable to remove me to Ethiopia because the Ethiopian
consulate had determined that I am Eritrean and not Ethiopian
17 and had refused to issue travel documents for me.
Accordingly, on March 30, 2004, ICE released me from
18 immigration custody pursuant to the Supreme Court's holding
in *Zadvydas v. Davis*, 533 U.S. 678 (2001).
- 19 E. I remained on release until September 13, 2006, when ICE
again took me into custody. Despite the fact that Ethiopia
20 had previously determined that I am not Ethiopian but am, in
fact, Eritrean, ICE informed me that it expected to obtain
21 travel documents to Ethiopia. ICE initially said that it had
no evidence in its files that I had ever been interviewed by
22 the Ethiopian consulate and insisted that I was Ethiopian.
- 23 F. Because I am a United States citizen, my continued detention
by ICE is unconstitutional.
- 24 G. Because I am a United States citizen, ICE has no statutory
25 authority to detain me.
- 26 H. Because I am seeking relief related only to my custody
27 status, exhaustion of administrative remedies, if any, is not
required.
- 28 I. My detention is unconstitutional, because I am not a flight
risk, and I am not a danger to society.

18. Do you have any petition or appeal now pending in any court or administrative body as to the claims raised above? No.

19. Have you exhausted your administrative remedies with respect to the claims raised above?

See 17(H), above. Moreover, since I am a United States citizen the requirement of administrative exhaustion does not apply to me. *Theagène v. Gonzales*, 411 F.3d 1107, 1111 (9th Cir. 2005).

20. State the administrative remedies that you pursued?

(a) Nature of Review:

(b) Result:

(a) Nature of Review:

(b) Result:

(a) Nature of Review:

(b) Result:

21. Give the name and addresses, if known, of each attorney who represented you in the following stages of the underlying judgment:

(a) At preliminary hearing: N/A

(b) At arraignment and plea: N/A

(c) At change of plea: N/A

(d) At trial: N/A

(e) At sentencing: N/A

(f) On appeal: N/A

(g) In any post-conviction proceedings: N/A

(h) On appeal from any adverse ruling in post conviction proceedings: N/A

(i) Other:

(j) Other:

22. Do you have any future sentence to serve after you complete the sentence imposed by the underlying judgment in your case? No

1
2 23. If you are seeking leave to proceed in forma pauperis, have you
3 completed the sworn affidavit setting forth the required
4 information? Yes.

5
6
7
8 **PRAYER FOR RELIEF**

9 Based upon the illegal and unconstitutional actions listed above,
10 I request that the Court grant my petition and direct respondent to
11 release me from custody, as well as any other relief to which I may be
12 entitled in this proceeding under 28 U.S.C. § 2241.

13 I verify, under penalty of perjury, that the foregoing information
14 is true and correct to the best of my recollection.

15 Dated: September 21 2006.

16 Respectfully submitted,

17
18 Massi DellaGuardia [SIGN NAME]
19 Massimiliano Dellaguardia
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21 NWDF
22 1623 East J Street
23 Tacoma WA 98421-1615

24 In Propria Persona
25
26
27
28