

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

OVBOKHAN ADUN ODIASE,

Petitioner,

v.

RON CHARLES, *in his official capacity as Director of ECCF*; JOHN TSOUKARIS, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Newark Field Office*; BRIAN MCSHANE, *in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Philadelphia Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*; and PAMELA BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

**PETITION FOR A WRIT OF
HABEAS CORPUS**

Case No.

INTRODUCTION

1. Petitioner Ovbokhan Adun Odiase (“Ms. Odiase” or “Petitioner”), a survivor of Female Genital Mutilation in her home country of Nigeria who won protection from deportation in immigration court three months ago, has been trapped in different forms of immigration detention since February of 2024, over a year ago.

Most recently, she has been detained at the Essex County Correctional Facility (“ECCF”) for three weeks at the behest of ICE and with no end in sight, while the jail waits for Immigration and Customs Enforcement (“ICE”) to re-detain her for no purpose whatsoever. Meanwhile, she remains separated from her two young children and continues to suffer from a litany of medical and mental health issues, including nightly panic attacks. Ms. Odiase should be home with her children, but Respondents continue to deny her that opportunity.

2. Following a minor, pre-indictment theft charge for which a New Jersey judge released Ms. Odiase pre-trial on conditions—her only criminal history in her nearly five years living in the United States—ICE apprehended Ms. Odiase in February 2024 and took her to the Moshannon Valley Processing Center (“Moshannon”) in Pennsylvania, where she entered immigration proceedings.

3. On January 10, 2025, an Immigration Judge (“IJ”) granted Ms. Odiase humanitarian relief in the form of an alternative to asylum called “withholding of removal,” blocking her deportation based on a clear probability that she would be persecuted if returned to Nigeria. ICE did not appeal that decision but nonetheless continued to detain Ms. Odiase while it purportedly searched for alternative countries to which to remove her. Upon information and belief, ICE has neither identified any alternative countries, has formulated plans to effectuate her removal

from this country, nor can the agency even effectuate third-country removals absent due process.

4. On or around March 3, 2025, the Hon. Karina D. Fuentes, a New Jersey Superior Court Judge, issued an Order to Produce, requesting that Ms. Odiase be “delivered directly to the custody of the Essex County Correctional Facility,” noting that “[t]he county of Essex will honor the ICE detainer.” The Judge further wrote that “[u]pon completion of the Essex County matter and at the request of ICE, the inmate OVBOKHAN ADUN ODIASE, it will be determined if the inmate is to be released on Order of Supervision or be returned to ICE custody.”

5. ICE requires state court Judges to issue writs with language providing that noncitizens will be kept in State custody, regardless of any independent state legal basis on which to hold them, before they will permit the release of a detained noncitizen on a writ to State custody. Put another way, even if an individual, like Ms. Odiase, was previously released from state custody before they were apprehended by ICE, and then brought back into state custody to be present for part or all of criminal proceedings brought against them, ICE requires that state entities hold that individual *on their behalf* even upon resolution of the state matter.

6. On March 12, 2025, officers from the Essex County Sheriff’s office came to Moshannon and took Ms. Odiase to ECCF, in execution of a bench warrant for alleged violation of pre-trial monitoring conditions. Those conditions had

included requirements for Ms. Odiase to appear at hearings and report to Pretrial services monthly, and a stay-away order from the alleged victim's house along with a prohibition against possessing a firearm or other dangerous weapon.

7. At a hearing on March 13, 2025, in the Superior Court of New Jersey, the judge and prosecution quickly realized that Ms. Odiase was unable to comply with conditions—like reporting to the Court—simply because she had been in ICE detention. The State withdrew the motion and the warrant was vacated.

8. Ms. Odiase would have been immediately released but for ICE's requirement that the State of New Jersey hold Ms. Odiase until ICE is able to resume custody of her. ECCF is still holding her on behalf of ICE *three weeks later* without any end-date or mechanism by which she can seek release from jail.

9. Moreover, even if Ms. Odiase is re-detained by ICE, as the jail presumably anticipates, her redetention would serve no reasonable purpose. The purpose of ICE detention is to remove non-citizens from the U.S. and Ms. Odiase legally cannot be removed to the only country of which she is a citizen.

10. Ms. Odiase's continued detention at the ECCF violates her Fourth Amendment Rights. And, ICE's insistence on continuing Ms. Odiase's custody, which is the sole reason she is still detained at all, violates 8 U.S.C. § 1231(a) as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), as well as Ms. Odiase's due process rights under the Fourteenth and Fifth Amendments. Ms.

Odiase seeks immediate release from custody to remedy these violations and to reunite her with her children.

JURISDICTION & VENUE

11. 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”); and 28 U.S.C. § 1331 (federal question jurisdiction).

12. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See Zadvydas*, 533 U.S. at 687.

13. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 2241(c)(3), 1391(b)(2) and (e)(1), because Petitioner is presently detained at the ECCF in Newark, New Jersey, within the jurisdiction of the District of New Jersey.

PARTIES

14. Petitioner Ovbokhan Odiase was born in and is a citizen of Nigeria. She has lived in the United States since 2020.

15. Respondent Ron Charles is the Director of the ECCF, a Division of the Essex County Department of Corrections. This jail does not have a contract to detain non-citizens for ICE. Nonetheless, ECCF continues to hold Petitioner on ICE’s behalf. Accordingly, Respondent Charles is the immediate custodian of Petitioner. Respondent Charles is sued in his official capacity.

16. Respondent John Tsoukaris is the Field Office Director of the ICE Enforcement and Removal Operations (“ERO”) Newark Field Office. In that capacity, he is charged with overseeing all ICE enforcement in New Jersey. Respondent Tsoukaris is a legal custodian of the Petitioner because the sole purported basis for her continued detention at Essex is ICE’s detainer. Respondent Tsoukaris is sued in his official capacity.

17. Respondent Brian McShane is the Acting Field Office Director of the ICE Enforcement and Removal Operations (“ERO”) Philadelphia Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Pennsylvania, Delaware, and West Virginia and has the authority to make custody determinations regarding individuals detained there. Respondent McShane is a legal custodian of Petitioner because the sole purported basis for her continued detention at Essex is ICE’s detainer and Ms. Odiase was transferred from Respondent McShane’s custody. Petitioner brings this action against Respondent McShane in his official capacity.

18. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. She supervises ICE, an agency within DHS which is responsible for the administration and enforcement of immigration laws. Respondent Noem has supervisory responsibility for and authority over the detention and removal of non-

citizens throughout the United States. Respondent Noem is a legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

19. Respondent Pamela Bondi is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office of Immigration Review (“EOIR”), including all IJs, and has authority over immigration detention. Respondent Bondi is sued in her official capacity.

STATEMENT OF FACTS

20. Ms. Odiase is a 39-year-old citizen of Nigeria. Ex. 1, Excerpt from Nigerian Passport. She is not a citizen of any country besides Nigeria.

21. Ms. Odiase has two children. Ex. 2, Birth Certificates of Ms. Odiase’s Children. Her son, N.G.O., is currently 12 years old, and her daughter, N.P.O, is 10 years old. *Id.*

22. Ms. Odiase is a survivor of Female Genital Mutilation (“FGM”) in Nigeria. Ex. 3, Statement in Support of Asylum Application. When members of her family began threatening to subject her daughter to FGM as well, per local custom, Ms. Odiase felt that she had no other option to protect her daughter but to flee the country. *Id.*

23. On or around October 14, 2020, Ms. Odiase arrived in the United States on a B2 nonimmigrant visa and was authorized to remain in the U.S. until April 13, 2021. Ms. Odiase has not left the U.S. since this last entry.

24. On or around March 7, 2021, Ms. Odiase's two children arrived in the United States on B2 nonimmigrant visas and were authorized to remain in the U.S. until April 13, 2021. After entering the U.S., the two children reunited with Ms. Odiase and remained in her care and custody in New Jersey up until she was arrested, in February 2024.

25. On or around October 1, 2021, DHS issued a Notice to Appear ("NTA") to Ms. Odiase, charging her as removable from the U.S. for overstaying her B2 visa.

26. On or around October 25, 2021, shortly after her visa expired, Ms. Odiase filed an asylum application with the Immigration Court in Elizabeth, NJ.

27. Approximately six months after filing her asylum application, Ms. Odiase became eligible for work authorization and a Social Security number, which she obtained. Ex. 4, Employment Authorization Document and Social Security card. For several years, Ms. Odiase worked to support her children, who were attending school in New Jersey. Before being arrested, Ms. Odiase was working several jobs as a home care worker in Newark, New Jersey. Through hard work and sacrifice, Ms. Odiase provided a safe and stable life for her children.

28. On February 15, 2024, Ms. Odiase witnessed a fight. The aftermath resulted in her arrest.¹

¹ Ms. Odiase neither admits nor denies any allegation made against her or described within the court exhibits in the Superior Court matter. She reserves her right to

29. On February 20, 2024, police in New Jersey arrested Ms. Odiase. *Id.* Ms. Odiase was charged with robbery, conspiracy, aggravated assault, and burglary for her alleged role in the events of February 15, 2024.

30. The New Jersey state court determined that Ms. Odiase was a very low risk for new criminal activity or for failure to appear. Ex. 5, NJ Public Safety Assessment. Accordingly, on February 21, 2024, the court ordered Ms. Odiase's release on non-monetary conditions.

31. However, upon her release from state custody, ICE detained Ms. Odiase and took her first to a detention facility in the immediate area, and then to Moshannon.

32. When ICE initially detained her at Moshannon, officers stripped her naked on camera, an egregious and unnecessary violation of her bodily autonomy, especially given that Ms. Odiase is an FGM survivor. This, along with the stress of the transfer, caused Ms. Odiase to have a severe panic attack. On February 23, 2024, Moshannon staff forced her into a small, locked room and placed her on suicide watch. Ex. 6, Suicide Watch Log and Notes. Over the next several days, she was observed at various points to be yelling, screaming, crying, singing, and mumbling incoherently. *Id.* On February 26, 2024, Ms. Odiase was taken off suicide watch. *Id.*

remain silent and her right against self-incrimination, as guaranteed under the State and Federal Constitutions and State statutory provisions and the common law, with respect to any details about the events leading up to the arrest.

33. While detained at Moshannon for over a year, Ms. Odiase suffered severe emotional and physical distress, arising from the trauma of being separated from her young children and threatened with removal to a country where she fears persecution. Before being arrested, Ms. Odiase had never spent a night away from her children. Now, she is regularly having panic attacks, back and chest pain, high blood pressure, migraines, an inability to speak, and difficulty sleeping.

34. On January 10, 2025, nearly twelve months after Ms. Odiase entered ICE custody, an IJ granted her humanitarian protection in the form of withholding of removal. Ex. 7, IJ Decision. ICE waived appeal of this decision, which meant that the IJ's decision was administratively final on that date. *Id.*

35. On or around February 10, 2025, Ms. Odiase sent a message to her ICE deportation officer at Moshannon, requesting to be released from detention.

36. On or around February 17, 2025, the ICE deportation officer replied to Ms. Odiase's message and told her that ICE would attempt to find an alternative country to which to remove her and would not review her custody until April 10, 2025.

37. Ms. Odiase's Nigerian passport expired in 2023. *See* Ex. 1. She has no other travel documents for Nigeria or any other country. She has never lived anywhere besides Nigeria and the United States. It is unclear whether ICE has even

sent requests to alternative countries, let alone which countries and whether any countries have responded.

38. On January 24, 2025, Superior Court Judge Fuentes issued a bench warrant for Ms. Odiase's arrest, based on the State's allegation that she was in violation of her monitoring conditions. In execution of the warrant, officers from the Essex County Sheriff's office came to Moshannon to pick up Ms. Odiase on or around March 12, 2025. Ms. Odiase, confused and having another panic attack, insisted on bringing her belongings with her, including her many medications. The officers at Moshannon refused, saying she would be coming back to Moshannon later. The Sheriff's office transported Ms. Odiase to ECCF ("Essex") in shackles.

39. On Monday, March 17, Ms. Odiase appeared in the Superior Court of New Jersey by video from the ECCF. Inexplicably, she was not represented by counsel at this hearing. At the hearing, the parties realized that Ms. Odiase did not comply with reporting conditions because she had been in ICE detention. That same day, the State withdrew their motion alleging monitoring violations and the judge vacated the bench warrant. Ex. 8, Withdrawal of VOM Motion.

40. Ms. Odiase was not released from custody at ECCF.

41. The next day, March 18, the New Jersey Office of the Public Defender was appointed to represent Ms. Odiase in any ongoing criminal proceedings. With

all parties assuming that ICE would re-detain her shortly, no action was taken for nearly two weeks, and Ms. Odiase languished at ECCF.

42. Undersigned counsel soon became aware of the situation, and began investigating it in depth on March 31, 2025. Upon counsel's request, on April 1, Ms. Odiase's appointed public defender inquired with the court and jail as to why Essex was still holding Ms. Odiase. Both the court and the jail initially informed the public defender that there had been no writ to bring Ms. Odiase to New Jersey from Moshannon, and the only basis for ECCF to hold her was ICE's detainer. Believing this to be unlawful, particularly under New Jersey's Immigrant Trust Directive, counsel inquired with various city and state officials. Ultimately, the officials determined that there was in fact a writ through which the New Jersey judge ordered Essex to hold Ms. Odiase until ICE comes to re-detain her. Ms. Odiase's public defender obtained a copy of the writ from the court and provided it to undersigned counsel on April 2. Ex. 9, Writ.

43. Upon information and belief, neither the writ nor any other paperwork authorizing Ms. Odiase's detention was provided to her.

44. The writ reveals that both the State and Judge Fuentes were apparently aware that Ms. Odiase was still in ICE custody at Moshannon yet still ordered her brought to New Jersey on a bench warrant for failure to appear so that Ms. Odiase

could appear in Court *virtually* from the Jail.² The writ request from the prosecutor's office contains numerous errors, including the wrong Date of Birth and referring to Ms. Odiase as a man. *Id.* at 2. The writ signed by Judge Fuentes states that “[u]pon completion of the Essex County matter and at the request of ICE, the inmate OVBOKHAN ADUN ODIASE, it will be determined if the inmate is to be released on Order of Supervision or be returned to ICE custody.” *Id.* at 3.

LEGAL BACKGROUND

I. STATE ASSUMING CUSTODY OF NON-CITIZEN'S ON ICE'S BEHALF

45. Being held in jail, “regardless of its label,” is a seizure that triggers the Fourth Amendment’s full protections. *Dunaway v. New York*, 442 U.S. 200, 215-16 (1979) (internal quotation marks and citations omitted); *see also Brown v. Illinois*, 422 U.S. 590, 605 (1975). As the Supreme Court has explained, “[t]he Fourth Amendment applies to all seizures of the person.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 881-82 (1975).

46. It is well settled that seizures of non-citizens, for any purpose, must comply with constitutional requirements, including the Fourth Amendment. *See*

² Ms. Odiase could have appeared for the New Jersey proceedings virtually from Moshannon. *See Doe v. U.S. Dep’t Homeland Sec.*, No. 24-CV-259, 2025 WL 360534 (W.D. Pa. Jan. 31, 2025) (preliminary injunction requiring ICE to provide virtual production for New Jersey criminal court proceedings to noncitizens detained at Moshannon).

Arizona v. United States, 132 S. Ct. 2492, 2509 (2012) (noting that “[d]etaining individuals solely to verify their immigration status would raise constitutional concerns,” and citing Fourth Amendment cases); *see also Oliva-Ramos v. Atty’y Gen. of U.S.*, 694 F.3d 259, 284-85 (3d Cir. 2012) (reaffirming that a civil immigration enforcement actions must be “consistent with the limitations imposed by the Fourth Amendment”); *Cotzoy v. Holder*, 725 F.3d 172, 181 (2d Cir. 2013) (“[I]t is uncontroversial that the Fourth Amendment applies to aliens and citizens alike.”).

47. The Fourth Amendment requires that all arrests be approved by a neutral judicial official, either before the arrest (in the form of a warrant) or promptly afterward (in the form of a prompt judicial probable cause determination). *See Gerstein v. Pugh*, 420 U.S. 103 (1975). Absent an emergency or other extraordinary circumstance, a detention of more than 48 hours prior to a judicial probable cause determination violates the Fourth Amendment as a matter of law. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

48. The Attorney General has promulgated regulations that allow specific immigration officers to issue an “Immigration Detainer-Notice of Action[] to any other Federal, state, or local law enforcement agency[.]” 8 C.F.R. § 287.7(a). A detainer “serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of

arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.” *Id.*

49. An ICE “detainer” is effectively a request to detain. ICE detainers “do not confer upon the recipient agency the legal authority to make an arrest.” *N.S. v. Dixon*, 355 F.R.D. 337, 346 (D.D.C. 2020); *see also Gonzalez v. Immigr. & Customs Enf’t*, 416 F. Supp. 3d 995, 1016 (C.D. Cal. 2019) (noting ICE's concession that “a detainer itself does not provide the legal authority for a state or local officer to make a civil immigration arrest”).

II. WITHHOLDING OF REMOVAL

50. To be granted “withholding of removal,” a non-citizen must convince the Attorney General (via an IJ) that the noncitizen’s “life or freedom would be threatened in that country because of the [noncitizen]’s race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 1208.16(b). Withholding of removal has all the same elements as asylum, *see* 8 U.S.C. § 1158(b)(1), except that to receive withholding the noncitizen must show that a “clear probability” of future persecution – that it is more likely than not that she or she would be subject to persecution – as opposed to merely showing a

“reasonable possibility” of future persecution in the asylum context. *INS v. Stevic*, 467 U.S. 407, 424 & n.19 (1984).

51. If a non-citizen is granted withholding removal by the IJ, they receive a removal order to their country of origin, but that removal order is “withheld” indefinitely because of the high likelihood of persecution upon removal. 8 U.S.C. § 1231(b)(3). The noncitizen thus cannot be removed to their native country unless DHS brings forward sufficient evidence demonstrating that the non-citizen is no longer at risk of persecution, or other extremely limited circumstances. 8 CFR § 1208.24(b).

52. While ICE is authorized to remove non-citizens who were granted withholding of removal to alternative countries, *see* 8 U.S.C. §§ 1231(b), 1208.16(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 citizen, subject, or national,” 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).

53. If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings in immigration court to effectuate removal to that

country.³ *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (“If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, *see* 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . .”); *Romero v. Evans*, 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) (“DHS could not immediately remove [Ms. Odiase] to a third country, as DHS would first need to give [Ms. Odiase] notice and the opportunity to raise any reasonable fear claims.”), *rev’d on other grounds*, *Guzman Chavez*, 141 S. Ct. 2271.

54. The Government itself has repeatedly acknowledged this right to notice and opportunity to seek relief, including just last month before the U.S. Supreme Court. Transcript of Oral Argument at 33, *Riley v. Bondi*, 23-1270 (2025) (“We would have to give the person notice of the third country and give them the opportunity to raise a reasonable fear of torture or persecution in that third

³ ICE itself acknowledges this obligation. In 2020, officials within ICE’s Office of the Principal Legal Advisor (OPLA) created and circulated forms—acquired through a Freedom of Information Act (FOIA) request—that were designed to advise non-citizens of ICE’s intent to pursue third country removal and afford them the opportunity to seek withholding-only relief for that country. Ex. 11, ICE Notice of Third Country Removal Form. Upon information and belief, no such form has been provided to Ms. Odiase.

country.”);⁴ *see also* Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).⁵

55. Specifically, the non-citizen’s removal proceedings would have to be reopened for the IJ to designate the alternative country of removal and for the non-citizen to apply for any fear-based relief from removal to that country. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006-10 (W.D. Wash. 2019); *accord* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 1240.10(f), 1240.11(c)(1)(i).

56. On March 28, 2025, the U.S. District for the District of Massachusetts issued a nationwide Temporary Restraining Order (TRO) enjoying ICE from

[r]emoving any individual subject to a final order of removal from the United States to a third country, i.e., a country other than the country designated for removal in immigration proceedings, UNLESS and UNTIL Defendants provide that individual, and their respective immigration counsel, if any, with written notice of the third country to where they may be removed, and UNTIL Defendants provide a meaningful opportunity for that individual to submit an application for CAT protection to the immigration court, and if any such application is filed, UNTIL that individual receives a final agency decision on any such application.

Ex. 10, D.V.D. TRO.

⁴ https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-1270_c0n2.pdf.

⁵ https://www.supremecourt.gov/oral_arguments/argument_transcripts/2020/19-897_1537.pdf.

57. As a result of the aforementioned restrictions and procedures, “only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country” in FY 2017. *Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting). According to publicly available data, ICE removed only *three* non-citizens granted withholding of removal to alternative countries in a four-year span from FY 2020 to FY 2023. Ex. 11, Data on Post-Relief Removal.⁶

II. DETENTION OF NON-CITIZENS GRANTED WITHHOLDING OF REMOVAL

a. Statutory Framework

57. Section 1231 of 8 U.S.C. governs the detention of non-citizens “during” and “beyond” the “removal period.” 8 U.S.C. § 1231(a)(2)-(6). The “removal period” begins once a non-citizen’s removal order “becomes administratively final.” *Id.* § 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. *Id.* § 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 she meet certain criteria, such as being inadmissible or deportable under specified statutory categories. *Id.* § 1231(a)(6) (emphasis added).

⁶ For the complete raw data, visit <https://deportationdata.org/data.html> and select “Removals (deportations).” Only three of these removals were to alternative countries.

58. To avoid “indefinite detention” that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to her home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231 authorizes detention only for “a period reasonably necessary to bring about the [non-citizen]’s removal from the United States.” *Id.* at 689. Six months of post-removal order detention is considered “presumptively reasonable.” *Id.* at 701.

59. But the “*Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). Rather, “the presumption scheme merely suggests that the burden the detainee must carry within the first six months of postorder detention is a heavier one than after six months has elapsed.” *Id.*; *see also Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“*Zadvydas* established a ‘guide’ for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months.”); *Ali v. DHS*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) (“Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to

remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.”).

b. Regulations

60. DHS regulations provide that, at or 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). In making these custody determinations, ICE considers several factors, including whether the availability of travel documents for removal. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

61. 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 HQ 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).

62. Under this procedure, ICE HQ 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 HQ determines that removal is not reasonably foreseeable but still 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 IJ that the non-citizen is “specially dangerous.” *Id.* § 241.14(f).

CLAIMS FOR RELIEF

COUNT I VIOLATION OF 8 U.S.C. § 1231(a)

1. Ms. Odiase realleges and incorporates by reference the paragraphs above.

2. The only possible authority through which ICE could continue Ms. Odiase’s detention is 8 U.S.C. § 1231. Ms. Odiase’s 90-day “removal period” began on January 10, 2025, when an IJ issued and simultaneously withheld her removal order and both parties waived appeal. Ex. 7.

3. Ms. Odiase will very likely *never* be deported from the United States, let alone in the reasonably foreseeable future. Ms. Odiase cannot be deported to her sole country of citizenship, Nigeria, because of the IJ's grant of withholding of removal to that country, based on the clear probability of future persecution should she return there. *See* 8 U.S.C. § 1231(b)(3).

4. Furthermore, it is exceedingly unlikely that ICE will identify an alternative country to which it can remove Ms. Odiase. It is unclear if ICE is even actively looking for such a country. Regardless, removal to alternative countries occurs in a miniscule number of cases each year. *See* Ex. 11. Even if ICE were able to convince a third country to receive Ms. Odiase – despite her not having any significant ties to any country other than the U.S. and Nigeria – Ms. Odiase would be entitled to pursue protection from removal to said third country if she fears persecution or torture there. *See* Ex. 10.

5. Because Ms. Odiase has been detained under ICE's authority for more than twelve months and her removal is not reasonably foreseeable, *Zadvydas* requires that she be immediately released. *See Zadvydas*, 533 U.S. at 699-700 (“[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.”); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to . . . terms of supervision” when removal not reasonably foreseeable).

COUNT II
VIOLATION OF THE DUE PROCESS CLAUSES OF THE FIFTH AND
FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION

6. Ms. Odiase realleges and incorporates by reference the paragraphs above.

7. The Due Process Clauses of the Fifth (as applied to the Federal Defendants) and Fourteenth (as applied to the State Defendant) Amendments forbid the Government from depriving any person of liberty without due process of law. U.S. Const. Amend. V. To comply with the Due Process Clauses, civil detention must “bear[] a reasonable relation to the purpose for which the individual was committed,” which for immigration detention is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Furthermore, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotations omitted).

8. ICE’s attempts to maintain custody of Ms. Odiase pending supposed third-country removal efforts, including by having her held by the State Defendants for their purposes, without notice of whether and to which countries ICE is actually attempting to remove her, and for an indefinite period of time, violates her due process rights.

COUNT III
Violation of the Fourth, Fifth, and Fourteenth Amendments

9. Ms. Odiase realleges and incorporates by reference the paragraphs above.

10. Essex County's arrest and continued detention of Ms. Odiase is a seizure under the Fourth Amendment. Once the State withdrew its motion alleging violation of the monitoring conditions and Judge Fuentes vacated the bench warrant, there ceased to be any probable cause for Ms. Odiase's arrest and detention by the State of New Jersey. The sole basis for continued detention appears to be the ICE detainer which the writ issued by the Superior Court ordered the County to honor. *See* Ex. 9 at 3 ("The county of Essex will honor the ICE detainer"). The writ issued provides no mechanism by which Ms. Odiase can challenge the underlying ICE detainer, and does not provide a specified timeframe within which her detention at ECCF must end and ICE must resume custody.

11. More than two weeks later, Ms. Odiase continues to be detained at ECCF at the behest of ICE. For the foregoing reasons, it is unreasonable for federal immigration authorities to detain Ms. Odiase, and there is no other legal basis by which the County can keep her in their Jail. Therefore, the continued seizure and detention of Ms. Odiase violates the Fourth Amendment and constitutional due process clauses.

PRAYER FOR RELIEF

WHEREFORE, Ms. Odiase respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Declare that Respondents' actions or omissions violate the Fourth Amendment of the U.S. Constitution, the Immigration and Nationality Act, and/or the Fifth and Fourteenth Amendments to the U.S. Constitution;
- c. Order Ms. Odiase's immediate release from custody;
- d. Order that, if ICE re-detains Ms. Odiase for any period of time, it detain her only within New Jersey or Pennsylvania;
- e. Award Ms. Odiase her costs and reasonable attorneys' fees; and
- d. Grant any other further relief this Court deems just and proper.

Dated: April 3, 2025

Respectfully submitted,

/s/ Shira Wisotsky

Shira Wisotsky, Esq.

NJ #243172017

Raquiba Huq, Esq.

NJ #030952007

**LEGAL SERVICES OF
NEW JERSEY**

100 Metroplex Drive, Suite 402

Edison, New Jersey 08817

Tel: (908) 882-2665

SWisotsky@lsnj.org

/s/ Ian Austin Rose

Ian Austin Rose

MD Bar # 2112140043

Amica Center for Immigrant Rights

1025 Connecticut Ave NW, Ste. 701

Washington, DC 20036

Tel: (202) 788-2509

Austin.rose@amicacenter.org

Pending Pro Hac Vice Admission

Pro Bono Attorneys for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. My co-counsel or I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: April 3, 2025

Respectfully submitted,

/s/ Ian Austin Rose

Ian Austin Rose

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, Ms. Odiase filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system.

My co-counsel or I will furthermore send a courtesy copy via email to the office of the United States Attorney for the District of New Jersey and the Office of County Counsel for Essex County, and send true copies by USPS Certified Mail to all Respondents and the U.S. Attorney's office.

Dated: April 3, 2025

Respectfully submitted,

/s/ Shira Wisotsky

Shira Wisotsky, Esq.

Pro Bono Counsel for Petitioner

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Ovobokhan Adun Odiasse**DEFENDANTS**

RON CHARLES, in his official capacity as Director of ECCF; JOHN TSOUKARIS, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal O

(b) County of Residence of First Listed Plaintiff Essex

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Essex

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Legal Services of New Jersey, 100 Metroplex Drive, Suite 402
Edison, New Jersey 08817. Tel: (908) 882-2665; Amica Center for
Immigrant Rights, 1025 Connecticut Ave NW, Ste. 701**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	Habeas Corpus: ☒ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Constitution; 8 U.S.C. 1231(a)

Brief description of cause:

Unlawful continued detention of non citizen held in state custody at the behest of federal immigration authorities.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE