

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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**WAHEBA DAIS,**

Petitioner,

v.

Case No:

**Eric Tollefson, Sheriff, Kandiyohi County;  
Kristi Noem, Secretary, Department of  
Homeland Security; Pam Bondi,  
Attorney General; Todd Lyons, Acting  
Director, Immigration and Customs  
Enforcement; Peter Berg, Field Office  
Director, St. Paul Field Office,  
Immigration and Customs  
Enforcement,**

**PETITION FOR A WRIT  
OF HABEAS CORPUS**

**28 USC 2241**

Respondents.

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Petitioner, Waheba Dais,  petitions this Court for a Writ of Habeas Corpus pursuant to 28 USC 2241.

**PRELIMINARY STATEMENT**

1. Before finishing a federal prison sentence, Petitioner applied for asylum, withholding of removal, and relief under the Convention Against Torture. On 2/8/22 that application was denied, and Petitioner was ordered removed by Immigration Judge Ryan R. Wood. Petitioner never appealed that 2/8/22 Decision. On November 1, 2024, Petitioner finished her BOP sentence, and was placed into the custody of Immigration and Customs Enforcement (ICE.) Since 2/8/22, she has

not contested removal. Petitioner, *who is essentially stateless because, upon information and belief, Israel will not consent to her return*, has now fully complied with any and all requests from ICE to facilitate removal. It has now been more than six months since her release from BOP custody (the issuance of the final order of deportation occurred prior to that) and ICE has not yet removed Ms. Dais. It is submitted that her removal is not reasonably foreseeable, and she should be immediately released from custody pursuant to *Zadvydas v. Davis*, 533 US 678 (2001.)

#### **PARTIES**

2. Petitioner Waheba Dais is a Palestinian woman originally from Jerusalem who is in the custody of ICE and is detained at the Kandiyohi County Jail, located at 2201 23rd Street NE, Willmar, MN 56201.

3. Respondent Eric Tollefson is the Sheriff of Kandiyohi County, and is named in his official capacity as Petitioner's legal custodian.

4. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and is named in her official capacity - DHS has delegated authority regarding detention and removal of aliens to ICE.

5. Respondent Pam Bondi is the Attorney General of the United States, and is named in his official capacity – the Attorney General exercises authority over immigration matters.

6. Respondent Todd Lyons is the Acting Director of ICE and is named in his official capacity - ICE is responsible for the detention and removal of aliens.

7. Respondent Peter Berg is the Director of the St. Paul Field Office of ICE and is named in his official capacity – he has legal custody over Petitioner.

### **JURISDICTION**

8. This Court has jurisdiction pursuant to 28 USC 2241 and 1331. Petitioner is being unlawfully detained at the Kandiyohi County Jail in violation of the laws and Constitution of the United States.

### **VENUE**

9. Venue lies in this District because Petitioner is detained in the Kandiyohi County Jail, located in the Minnesota.

### **EXHAUSTION OF REMEDIES**

10. There are no statutory exhaustion requirements with regard to Petitioner's claim of unlawful detention. She obtained a final order of removal on February 8, 2022, and finished her BOP sentence on November 1, 2024. (Removal Decision and Order attached as Exhibit "A") At her 90 day custody review, on January 27, 2025, ICE decided to continue her detention. (Exhibit "B") It has now been more than six months since she finished her sentence. In addition, Petitioner has done everything she could do to help effectuate removal, including providing

her Palestinian passport.

### **STATEMENT OF FACTS**

11. Petitioner Waheba Dais has been in ICE custody since on or about November 1, 2024 when she was released from federal Bureau of Prisons (BOP) custody. She has been in the Kandiyohi County Jail since that time and had been given a final order of removal on February 8, 2022.

12. The Decision Ordering Removal stated that Petitioner shall be removed to “Israel and the Palestinian Territories” (Exhibit “A” at 16) The Decision also stated:

“...[T]he Court acknowledges the possibility that the Respondent is stateless, does not hold citizenship in Israel, but is a native of Israel. However, the Court notes that Israel and the Palestinian Territories may deny or accept Respondent based on their own determination of Respondent’s citizenship or whether Respondent is a native of Israel and the Palestinian Territories.” (Exhibit “A” at 2, Footnote 1)

13. Petitioner was given her 90 day custody review under CFR 241.4 and 241.13 on or about January 27, 2025, and was told that her detention would be continued. (Exhibit “B”) She was also told that her removal is “pending approval from Israel” which will likely never come.

### **Petitioner’s Background**

14. Waheba Dais is Palestinian and was born in Jerusalem in 1972. In 1992, she, using a temporary Israeli passport, came to the United States and was

given residence status. She had four children with her first husband – they are all US citizen adults and she is in touch with them. She then Islamically married Mohammed Wardeh and had three children with him. They resided together in Cudahy, WI for many years. Mohammed and the two youngest children still reside in the house he and Petitioner purchased in about 2015. One of the children, [REDACTED] [REDACTED] 19, is autistic. The youngest, [REDACTED] 12, has cystic fibrosis.

15. Ms. Dais has four siblings who reside in Jerusalem – unlike her, they are all apparently Israeli citizens. Ms. Dais was told at the jail that Israel is refusing to allow Ms. Dais to return there.

#### **Petitioner’s Convictions and Institutional Record**

16. Petitioner was convicted in 2020 of Attempted Material Support to a Foreign Terrorist Organization (ISIS). The offense involved promoting ISIS on the internet. Petitioner was sentenced to 90 months in August, 2020, and completed her sentence on November 1, 2024. Other than this conviction, she had absolutely no criminal history. In imposing sentence, the judge stated:

“...She provided information only, not weapons or funds. And there’s no proof that anyone used her information to carry out an actual attack. And she also has no prior record.

Given her age and lack of prior record, the research would suggest that she *poses a very low risk of reoffending.* ..

And the [psychologist] doctor’s testing suggests the same.

...With mental health treatment she will hopefully be able to overcome the pathologies that caused her to seek this kind of attention.

Given her history and statements and the statements of her family, I do not see her as a hardened jihadist who can't be reformed.

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...I find a sentence of 90 months sufficient but not greater than necessary to satisfy the purposes of sentencing..." (Sentencing Transcript, at 34-35, available upon request)

17. Since being convicted and sentenced back Petitioner has had an exemplary institutional record, with *not a single disciplinary violation*. She also completed many programs and generally has an excellent record. She served her sentence in a low security prison.

#### **Petitioner's Release Plans if Granted Release Pending Removal**

18. If Petitioner is released pending removal, she plans to reside in the house she and Mr. Wardeh own together in Cudahy WI with him and their two youngest children.

#### **LEGAL FRAMEWORK**

19. Waheba Dais is currently being detained pursuant to 8 USC 1231(a)(6.) This statute provides that generally, after there is an order of removal (or, in this case, release from prison) removal should happen within a 90 day "removal period." (8 USC 1231(a)(1)(A.) The statute goes on to provide for the possibility of detention beyond said 90 day removal period, and does not itself place any limit on this post-removal detention. 8 USC 1231(a)(6)

20. However, in *Zadvydas v. Davis*, 533 US 679 (2001), the United States Supreme Court held that to avoid Constitutional problems, 8 USC 1231(a)(6) must be interpreted to limit detention to “the period reasonably necessary to secure removal.” *Zadvydas*, at 689.

21. The *Zadvydas* Court went on to hold that after six months of detention, there arises a presumption that removal may not be reasonably foreseeable – the Court stated:

“After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink....” *Zadvydas*, supra, at 701.

22. In accordance with *Zadvydas*, cases in this Circuit have held that release must be granted when post-removal detention goes on longer than six months, and when removal is not reasonably foreseeable. See, i.e. *Hussein S.M. v Garland*, 2021 US Dist. LEXIS 94192 (DMN 2021) (petitioner ordered released nine months after six month period because it wasn’t clear he could be removed to Ethiopia); *Sokpa-Anku v. Paget*, 2018 US Dist. LEXIS 106533 (DMN 2018 LEXIS 106533 (DMN 2018) (petitioner ordered released because Ghana had not issued a travel document for an extended period of time.)

**CLAIMS FOR RELIEF**

**FIRST CLAIM:**

**STATUTORY VIOLATION**

23. Waheba Dais re-alleges and incorporates by reference Paragraphs 1-22 above.

24. Petitioner's continued detention by Respondents violates 8 USC 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*, supra.

25. Waheba Dais' six month period under *Zadvydas* expired on or about May 1, 2025, six months after she finished her federal sentence. Therefore, she is entitled to be released if she can show that her removal is not reasonably foreseeable.

26. Despite the fact that Petitioner has cooperated completely with ICE to facilitate removal, removal is *not* reasonably foreseeable because Israel refuses to accept her, and no third country has agreed to accept her.

27. Based on the foregoing, because Waaheba Dais is being illegally detained in violation of 1231(a)(6) as interpreted by the above case law, she should be immediately released.

**SECOND CLAIM:**

**VIOLATION OF SUBSTANTIVE DUE PROCESS**

28. Waheba Dais re-alleges and incorporates by reference Paragraphs 1-27 above.

29. Petitioner's continued detention violates her right to substantive due process by depriving her of her core liberty interest to be free from bodily restraint. See *Zadvydas*, supra; *Tam v. INS*, 14 F. Supp.2d 1184 (EDCA 1998) (aliens retain substantive due process rights.) The Due Process Clause requires that the deprivation of liberty be narrowly tailored to achieve a compelling government interest. See *Reno v. Flores*, 507 US 292 (1993). While Respondents might have a compelling interest in detaining Petitioner to actually affect her deportation, that interest does not exist if they cannot deport her. The *Zadvydas* Court thus interpreted 1231(a)(6) to allow for detention only for the period reasonably necessary to affect removal because any other reading would violate the Due Process Clause.

**THIRD CLAIM:**

**VIOLATION OF PROCEDURAL DUE PROCESS**

30. Waheba Dais re-alleges and incorporates by reference Paragraphs 1-

29 above.

31. Under the Due Process Clause of the United States Constitution, an alien is entitled to a timely and meaningful opportunity to demonstrate that she should not be detained. In this case Petitioner has been denied that opportunity, as there is no administrative mechanism in place for her to demand a decision, ensure that a decision will ever be made, or appeal a custody decision that violates *Zadvydas*.

### **RELIEF REQUESTED**

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Waheba Dais a writ of habeas corpus directing the Respondents to immediately release her from custody, under reasonable conditions of supervision;
- 3) Grant Petitioner reasonable attorneys' fees, costs and other disbursements pursuant to the Equal Access to Justice Act, 28 USC 2412; and
- 4) Grant any other and further relief which the Court deems just and proper.

May 1, 2025

Respectfully submitted,

s/ Kathy Manley  
Kathy Manley (motion for *Pro Hac Vice*  
admission to be filed)  
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TO: Clerk, US District Court for the District of Minnesota  
(filed electronically)

United States Attorney for the District of Minnesota  
(filed electronically)

Waheba Dais  
Address on file

**CERTIFICATE OF COMPLIANCE – WORD COUNT**

Undersigned counsel, Kathy Manley, hereby certifies that the instant Petition complies with the type volume limitations contained in the Federal Rule of Appellate Procedure 21(d)(1.) A proportionally spaced typeface was used in the Word program, as follows:

Times New Roman  
14 Point  
Double Spaced

The total number of words in this Petition, including headings, footnotes, and quotations, but excluding Certificates, is 2187, which is less than the 7800 word limit set forth in Rule 21(d)(1.)

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**CERTIFICATE OF SERVICE**

On May 1, 2025 I filed the foregoing Petition with the clerk of court for the U.S. District Court, District of Minnesota. I hereby certify that I have served the document on all counsel and/or pro se parties of record by a manner authorized by Federal Rules of Civil Procedure 5 (b)(2).

May 1, 2025.

s/ Kathy Manley  
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