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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

Sunday Kayode Kunkushi,

Petitioner,

v.

Warden, Desert View Annex; **Ernesto Santacruz Jr.** Acting Field Office Director of Los Angeles Field Office, U.S. Immigration and Customs Enforcement; **Todd M. Lyons**, Acting Director, U.S. Immigration and Customs Enforcement; **Kristi Noem**, Secretary of the U.S. Department of Homeland Security; and **Pamela J. Bondi**, Attorney General of the United States, in their official capacities,

Respondents.

) Case No. 5:25-cv-01608

)
) **PETITION FOR WRIT OF HABEAS**
) **CORPUS**

) **ORAL ARGUMENT REQUESTED**

INTRODUCTION

1. Petitioner, Sunday Kayode Kunkushi, has been incarcerated since June 6, 2025 upon re-detention by Immigration and Customs Enforcement (ICE). Petitioner's detention is unconstitutional six months after the removal period began on July 16, 2020 because removal is

not reasonably foreseeable. Accordingly, to vindicate Petitioner's statutory and constitutional rights and to put an end to his continued arbitrary detention, this Court should grant the instant petition for a writ of habeas corpus.

2. Petitioner, a Nigerian citizen, was initially released from custody on January 5, 2021. Since that time, he has twice attempted to obtain travel documents from the Nigerian embassy in Atlanta, Georgia but has been unable to do so. ICE has made no progress in effectuating Petitioner's removal between his release from immigration detention in 2021 and the present time. Therefore, removal is not reasonably foreseeable.

3. Petitioner asks this Court to find that his prolonged incarceration is unreasonable and to order his immediate release.

JURISDICTION

4. Petitioner is detained in civil immigration custody at Desert View Annex in Adelanto, California. He has been detained since on or about June 4, 2025. He has not received an individualized bond hearing before an immigration judge (IJ).

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

8. Venue is proper because Petitioner is detained at Desert View Annex in Adelanto, California which is within the jurisdiction of this District.

9. Venue is proper in this District because a substantial part of the events or omissions giving rise to his claims occurred in this District. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. §§ 2241 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

11. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

12. Petitioner is “in custody” for the purposes of § 2241 because he is arrested and detained by Respondents.

PARTIES

13. Petitioner is a 50-year-old citizen of Nigeria. He was ordered removed under 8 U.S.C. § 1229a. Petitioner is currently detained at Desert View Annex in Adelanto, California. He is in the custody of, and under the direct control, of Respondents and their agents.

14. Respondent Warden of Desert View Annex has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to

detain noncitizens and is a legal custodian of Petitioner. Respondent Warden is a legal custodian of Petitioner.

15. Respondent Ernesto Santacruz Jr. is sued in his official capacity as the Acting Director of the Los Angeles Field Office of U.S. Immigration and Customs Enforcement. Respondent Santacruz Jr. is a legal custodian of Petitioner and has authority to release him.

16. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

17. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement the component agency responsible for Petitioner's detention custody. Respondent Noem is a legal custodian of Petitioner.

18. Respondent Pamela J. Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA). Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

19. Petitioner is a 50-year-old citizen of Nigeria. Petitioner has been living in the United States long term, since February 2014 when he last entered with a visitor visa.

20. Petitioner was placed in removal proceedings pursuant to 8 U.S.C. § 1229a after a conviction for Arizona attempted transportation of marijuana for sale. He pursued asylum,

withholding of removal and protection under the Convention Against Torture (CAT) relief from immigration detention before the immigration court in Eloy, Arizona. The Immigration Judge denied relief and ordered removal on December 19, 2018.

21. While remaining detained, Petitioner appealed the Immigration Judge's denial to the BIA. The BIA dismissed his appeal on May 22, 2019.

22. Still detained, Petitioner filed a petition for review before the Ninth Circuit Court of Appeals *pro se*.

23. On July 16, 2020 the Ninth Circuit dismissed Petitioner's appeal and denied his request for a stay of his removal.

24. Petitioner remained detained in Arizona and then Louisiana until ICE released him in 2021 after being unable to remove him to Nigeria or another third country.

25. Petitioner was placed on an Order of Supervision. Petitioner was enrolled in the Intensive Supervision Appearance Program (ISAP) and also required to continue check ins with ICE. As part of that supervision he was required to wear an ankle and then wrist monitor so ICE could track his location at all times.

26. On information and belief, Petitioner did not violate the terms of his order of supervision.

27. On information and belief, Petitioner has not been issued a Notice of Failure to Comply pursuant to 8 CFR § 241.4 or 8 CFR § 241.13.

28. Between 2021 and 2025, Petitioner twice attempted to obtain his Nigerian passport in person from the Nigerian Consulate in Atlanta, Georgia. The Nigerian Consulate was unable to provide him that passport.

29. On June 5, 2023, Petitioner was the victim of felonious assault after he confronted an individual vandalizing a wall. The suspect brandished a knife at him, called him racially charged words, and threatened to stab Petitioner.

30. On April 20, 2025 the Los Angeles Police Department signed Form I-918, Supplement B certifying that Petitioner was helpful in the investigation of the felonious assault. Based on the signed certification, Petitioner intends to apply for U-nonimmigrant status.

31. Prior to June 2025, Petitioner last checked in with ICE on January 15, 2025. At that appointment he was provided with another check-in date with ICE on June 18, 2025.

32. However, on or around June 2, 2025, Petitioner received a text message from his ISAP officer instructing him to report to his ICE officer on Tuesday or Wednesday of that week.

33. Petitioner is diabetic. He takes Glipizide and Metformin to control his diabetes.

34. On June 4, 2025, Petitioner attended his ICE check in Los Angeles, California. He entered the building around 10am. He was detained around 6:30pm. He was not provided with food during this time. He was first asked for court documents and then a passport. He did not have court documents or a passport to provide. Petitioner's Attorney, Veronica Barba, notified ICE officials that Petitioner is diabetic. ICE officials did not provide Petitioner with food until around 2am on June 5, 2025. Around midnight on June 4, 2025, Petitioner was asked to sign a document. He was so tired and hungry by that point he is not sure what he signed. He was not provided with a copy of the document.

35. ICE officials did not provide Petitioner with the reason for his re-detention. They did not tell him that he violated the conditions of his Order of Supervision or provide him any related paperwork.

36. From June 4, 2025 to June 7, 2025, Petitioner stayed in a temporary holding facility in Los Angeles, California. He slept on the floor and on benches. He was not allowed to leave the room and could not see outside. He wore the same clothes until June 7, 2025.

37. On June 7, 2025, Petitioner was transferred from ICE's temporary facility in Los Angeles, California to Desert View Annex. Desert View Annex was not prepared for additional detainees so Petitioner spent 8 hours in a van in leg cuffs and hand cuffs on June 7, 2025.

38. It was not until June 10, 2025 that Petitioner was provided medication for his diabetes. The doctor told him that day his blood sugar level was 413.

LEGAL FRAMEWORK

39. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” 28 U.S.C. § 2243 (emphasis added).

40. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

41. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary

or capricious.”). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

42. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he date the order of removal becomes administratively final”; “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court’s final order”; or “[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.”

43. Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal period” of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that “the statute, read in light of the Constitution’s demands, limits [a noncitizen’s] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

44. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen’s due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen “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.” *Id.*

45. The Court’s ruling in *Zadvydas* is rooted in due process’s requirement that there

be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

46. The first justification of preventing flight, however, is “by definition . . . weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

47. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period.” *Id.* at 700.

48. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six

months” and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).

49. The regulations that implement § 1231(a)(6) are codified in part at 8 C.F.R. § 241.13. Pursuant to the regulations, if there is not a “significant likelihood that the [noncitizen] will be removed in the reasonably foreseeable future,” then the Service “shall promptly make arrangements for the release” of the noncitizen unless there are “special circumstances” that justify continued detention. 8 CFR § 241.13(g)(1).

50. A noncitizen’s release may be revoked and the noncitizen may be returned to DHS custody, but only if the noncitizen violates the terms of their release or if, due to a change in circumstances, DHS “determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 CFR § § 241.13(i)(1), (2). The Service is required to notify the noncitizen of the reasons for the revocation of their release. 8 CFR § 241.13(i)(3) (proscribing revocation procedures).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

51. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

52. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

53. Petitioner has already been detained by Respondents for over five years. Over five months of this prolonged detention has taken place *after* his removal period began.

54. Petitioner's removal period began on July 16, 2020 when the Ninth Circuit issued a memorandum decision dismissing his petition for review and denying his motion to stay his removal. The removal period began on that day and thus elapsed on January 16, 2021.

55. Petitioner's prolonged detention is not likely to end in the reasonably foreseeable future. Petitioner was previously released from ICE custody in 2021 after ICE could not remove him to Nigeria. Since that time, he has twice sought travel documents from the Nigeria consulate without success. ICE has provided him with no explanation of why his removal is now reasonably foreseeable. Four years have gone by without ICE securing Petitioner's removal. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

56. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. § 1231(a) and Implementing Regulations 8 CFR § 241.13 & 8 CFR § 241.4

57. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

58. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Because Petitioner's

removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

59. In detaining Petitioner the Respondents have not complied with the requirements under 8 CFR § 241.13(i). When Petitioner was detained, he was not informed why his release was revoked. Further, there has not been a change in circumstances that would justify a determination by DHS that there is now a significant likelihood that Petitioner may be removed in the reasonably foreseeable future.

60. For these reasons, Petitioner's detention violates 8 U.S.C. § 1231, 8 C.F.R. § 241.13 and 8 CFR § 241.4.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the Central District of California pending the resolution of this case;
- (4) Declare that Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a), 8 C.F.R. § 241.4, and/or 8 C.F.R. § 241.13;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Veronica Barba
VERONICA BARBA,
California State Bar No. 254155

/s/ Nancy Alexander
NANCY ALEXANDER (Pro Hac Vice)
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Counsel for Petitioner

Dated: June 27, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Sunday Kayode Kunkushi, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 27th day of June, 2025.

/s/ Veronica Barba
VERONICA BARBA
California State Bar No. 254155