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

**Kennedy Ndolo Timina,**

Petitioner,

v.

Minga Wofford, Warden, Golden State Annex,  
McFarland, CA  
Robin Barrett, Director of San Francisco  
Field Office,  
U.S. Immigration and Customs Enforcement;  
Kristi Noem, Secretary of the U.S. Department of  
Homeland Security; and  
Pamela Bondi,  
Attorney General of the United States,  
in their official capacities,

Respondents.

Case No. \_\_\_\_\_

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**ORAL ARGUMENT  
REQUESTED**

**INTRODUCTION**

Petitioner Kennedy Ndolo Timina is a native and citizen of Kenya who has been in U.S. Immigration and Customs Enforcement (ICE) custody since November 5, 2024, the date his final administrative removal order under INA § 238(b); 8 U.S.C. § 1228(b) became effective.

On March 31, 2025, an Immigration Judge granted Mr. Timina protection under the Convention Against Torture (CAT), thereby prohibiting his removal to Kenya. **(See Exhibit A, Immigration Judge's CAT Order)**. Despite this protection, he remains detained at the Golden State Annex in McFarland, California, with no third country identified or willing to accept him for removal.

As of the date of this filing, Mr. Timina has been detained for **over 225 days**, well beyond the 90-day statutory removal period authorized under 8 U.S.C. § 1231(a). His continued detention is unconstitutional and unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because there is no significant likelihood of removal in the reasonably foreseeable future. Mr. Timina respectfully petitions this Court for a writ of habeas corpus directing his immediate release under appropriate supervision.

Accordingly, to vindicate Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

Absent an order from this Court, Petitioner will continue to suffer indefinite detention in violation of the Constitution and federal immigration law, despite having secured protection from removal to his home country and facing no viable prospect of removal elsewhere.

Petitioner asks this Court to find that his continued detention beyond the statutory removal period, in the absence of a realistic prospect of removal, violates the Fifth Amendment and 8 U.S.C. § 1231(a), and to order his immediate release under appropriate conditions of supervision.

### **JURISDICTION**

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

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). Jurisdiction is proper because Petitioner challenges the legality of his continued civil immigration detention under 8 U.S.C. § 1231(a) and the Constitution, and no statute strips this Court of jurisdiction to review such claims.

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**

Venue is proper because Petitioner is detained Golden State Annex in McFarland, California, which is within the jurisdiction of the Eastern District of California, Fresno Division.

In addition, Venue is proper in this District because Respondents are officers and agencies of the United States, and a substantial part of the events and omissions giving rise to the claims occurred in this District, including Petitioner's ongoing detention at Golden State Annex in McFarland, California. No real property is involved in this action. Venue is therefore proper under 28 U.S.C. § 1391(e).

### **REQUIREMENTS OF 28 U.S.C. § 2243**

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).

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).

### **PARTIES**

Petitioner Kennedy Timina is a noncitizen of Kenya who is currently detained at Golden State Annex in McFarland, California. He is in the custody and under the direct control of Respondents and their agents.

Respondent Minga Wofford is the Warden of Golden State Annex, and has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens. Respondent Wofford is a legal custodian of Petitioner.

Respondent Robin Barrett is sued in her official capacity as the Director of the San Francisco Field Office of U.S. Immigration and Customs Enforcement. Respondent Barrett is a legal custodian of Petitioner and has the authority to release him.

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. Respondent Noem is a legal custodian of Petitioner.

Respondent Pamela 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, Respondent Bondi 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. Respondent Bondi is a legal custodian of Petitioner.

### **STATEMENT OF FACTS**

Petitioner Kennedy Ndolo Timina is a 31-year-old citizen and national of Kenya. He is married to a U.S. citizen, Linda Wambulwa, and is the stepfather of Jermaine Mulinge, a U.S. citizen born on May 15, 2009. Mr. Timina has lived in the United States for over a decade. Mr. Timina fears persecution in Kenya based on his bisexual identity and has provided extensive evidence of past threats, familial rejection, and the hostile legal and social environment faced by LGBTQ+ individuals in his country.

Petitioner was taken into immigration custody on November 25, 2024, and has been detained at Golden State Annex in McFarland, California since that time.

On or about November 5, 2024, DHS issued a final administrative order of removal under INA § 238(b) based on Petitioner's record. **(See Exhibit B, Final Administrative Removal Order)**. After expressing fear of return to Kenya, he was referred to withholding-only proceedings, during which he sought protection under the Convention Against Torture (CAT).

On March 31, 2025, an Immigration Judge granted Mr. Timina deferral of removal under the CAT, finding that he would more likely than not face torture if returned to Kenya.

Despite this protection, Petitioner remains detained nearly three months after the CAT grant and more than **225 days** since his final removal order became effective. ICE has not identified any third country willing to accept Mr. Timina, and there is no indication that removal is reasonably foreseeable.

Mr. Timina's detention now exceeds the presumptively reasonable 90-day removal period set forth in 8 U.S.C. § 1231(a) and violates the due process principles articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001), which bars indefinite detention absent a significant likelihood of removal in the reasonably foreseeable future.

### **LEGAL FRAMEWORK**

Under the Immigration and Nationality Act (INA), the government may detain a noncitizen with a final order of removal during a 90-day "removal period." See 8 U.S.C. § 1231(a)(1)(A). During this period, the Department of Homeland Security (DHS) attempts to carry out the removal. Detention during this period is generally mandatory. See 8 U.S.C. § 1231(a)(2).

After the 90-day removal period expires, the statute authorizes continued detention only if removal remains reasonably foreseeable. See *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001). The Supreme Court in *Zadvydas* held that a noncitizen may not be detained indefinitely; after six months, if the noncitizen provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing.

The Court later clarified in *Clark v. Martinez*, 543 U.S. 371 (2005), that this limit on detention applies even to noncitizens who cannot be removed because of a grant of protection under the Convention Against Torture (CAT). Thus, a person who is legally barred from being removed to their country of origin may not be detained indefinitely if no third country will accept them.

DHS may issue a final administrative removal order under INA § 238(b) for certain noncitizens convicted of aggravated felonies. If the individual expresses fear of return, they are

entitled to withholding-only proceedings under 8 C.F.R. § 208.31. In these proceedings, they may apply for protection under CAT. A grant of CAT deferral prohibits removal to the country of feared torture but does not invalidate the underlying final order of removal.

Because CAT protection is country-specific, the government may not remove a CAT grantee to any third country unless the individual has been provided with advance notice and a meaningful opportunity to raise a new fear claim. *See D.V.D. v. DHS*, --- F. Supp. 3d ---, 2025 WL 1142968, at \*24 (D. Mass. Apr. 18, 2025). Without such process and without an identified receiving country, detention is not only unlawful under *Zadvydas* but also a violation of procedural due process under the Fifth Amendment.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process**

The allegations in the above paragraphs are realleged and incorporated herein by reference.

1. Petitioner Kennedy Timina has been detained by U.S. Immigration and Customs Enforcement (ICE) for more than 225 days following the entry of a final administrative order of removal under INA § 238(b), despite the grant of deferral of removal under the Convention Against Torture (CAT) on March 31, 2025.
2. ICE has failed to identify a third country willing to accept Petitioner, and there is no significant likelihood of removal in the reasonably foreseeable future.
3. Petitioner's continued detention beyond the 90-day removal period authorized by statute, and in the absence of a realistic prospect of removal, constitutes a violation of the Fifth Amendment's guarantee of substantive due process.
4. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

**COUNT TWO**  
**Violation of 8 U.S.C. § 1231(a) and Implementing Regulations**

The allegations in the above paragraphs are realleged and incorporated herein by reference.

1. Under 8 U.S.C. § 1231(a), the government may detain a noncitizen with a final order of removal for up to 90 days—the “removal period.” Continued detention beyond this period is only authorized where removal remains reasonably foreseeable. The regulations implementing this provision, 8 C.F.R. §§ 241.4 and 241.13, require the government to conduct regular post-order custody reviews and to release individuals where removal cannot be effectuated in the reasonably foreseeable future.
2. Petitioner has been detained for more than 225 days since the issuance of a final administrative removal order under INA § 238(b). Following the grant of deferral of removal under the Convention Against Torture on March 31, 2025, removal to his home country of Kenya is legally prohibited. No third country has been identified, and DHS has made no showing that removal is likely in the reasonably foreseeable future.
3. For these reasons, Petitioner’s detention violates 8 U.S.C. § 1231(a) and 8 C.F.R. §§ 241.4 and 241.13.

**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. Declare that Petitioner’s continued detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a), and 8 C.F.R. §§ 241.4 and 241.13;



4. Issue a Writ of Habeas Corpus ordering Respondents **to** release Petitioner immediately under appropriate conditions of supervision;
5. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this Court deems just and proper.

Respectfully submitted,

Ashkan Yekrangi, Esq.  
*Counsel for Petitioner*

Dated: July 1, 2025

# EXHIBIT A



**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
ADELANTO IMMIGRATION COURT**

Respondent Name:

NDOLO TIMINA, KENNEDY

To:

Yekrangi, Ashkan  
One Park Plaza  
Suite 600  
Irvine, CA 92614

A-Number:



Riders:

In Withholding Only Proceedings

Initiated by the Department of Homeland Security

Date:


03/31/2025

**ORDER OF THE IMMIGRATION JUDGE**

- ☐ This is a summary of the oral decision entered on
- ☒ Both parties waived the issuance of a formal oral decision in this proceeding.

The noncitizen's request for:

- ☒ Withholding of Removal under Immigration and Nationality Act § 241(b)(3) is:
- ☐ granted ☒ denied ☐ withdrawn.
- ☒ Withholding of Removal under the Convention Against Torture is:
- ☐ granted ☒ denied ☐ withdrawn.
- ☒ Deferral of Removal under the Convention Against Torture is:
- ☒ granted ☐ denied ☐ withdrawn.




Immigration Judge: MULLINS, KATIE 03/31/2025

Appeal: Department of Homeland Security: ☒ waived ☐ reserved  
Respondent: ☒ waived ☐ reserved

Appeal Due:

### Certificate of Service

This document was served:

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To: [ ] Noncitizen | [ ] Noncitizen c/o custodial officer | [ E ] Noncitizen's atty/rep. | [ E ] DHS  
Respondent Name : NDOLO TIMINA, KENNEDY | A-Number : 


Riders:

Date: 03/31/2025 By: BOUWHUIS, BRITTANY, Court Staff

# **EXHIBIT B**

## Final Administrative Removal Order

In removal proceedings under section 238(b) of the Immigration and Nationality Act

Event No: 

File Number 

Date November 05, 2024

To: KENNEDY NDOLO TIMINA AKA: UNKNOWN, NEPHEW

Address: IN DHS CUSTODY 300 N LOS ANGELES ST LOS ANGELES, CALIFORNIA, 90012  
(Number, Street, City, State and ZIP Code)

Telephone: (213) 830-4925

(Area Code and Phone Number)

### ORDER

Based upon the allegations set forth in the Notice of Intent to Issue a Final Administrative Removal Order and evidence contained in the administrative record, I, the undersigned Deciding Officer of the Department of Homeland Security, make the following findings of fact and conclusions of law. I find that you are not a citizen or national of the United States and that you are not lawfully admitted for permanent residence. I further find that you have a final conviction for an aggravated felony as defined in section 101(a)(43)(U/B) of the Immigration and Nationality Act (Act) as amended, 8 U.S.C. 1101(a)(43)(U/B), and are ineligible for any relief from removal that the Secretary of Homeland Security, may grant in an exercise of discretion. I further find that the administrative record established by clear, convincing, and unequivocal evidence that you are deportable as an alien convicted of an aggravated felony pursuant to section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. 1227(a)(2)(A)(iii). By the power and authority vested in the Secretary of Homeland Security, and in me as the Secretary's delegate under the laws of the United States, I find you deportable as charged and order that you be removed from the United States to:

KENYA

or to any alternate country prescribed in section 241 of the Act.

L 3698 UYEDA

(Signature of Authorized Official)

AFOD

(Title of Official)

11/05/2024 Los Angeles, CA

(Date and Office Location)

### Certificate of Service

I served this FINAL ADMINISTRATIVE REMOVAL ORDER upon the above named individual.

11/05/2024, 1114 HR5 LOS ANGELES, CALIFORNIA

IN PERSON

(Date, Time, Place and Manner of Service)

O 9419 DOMINGUEZ

DO

(Signature and Title of Officer)

Form I-851A (Rev. 08/01/07)

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

I represent Petitioner, Kennedy Ndolo Timina, 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 1 day of July, 2025.

s/Ashkan Yekrangi

Ashkan Yekrangi

*Counsel for Petitioner*