


UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI

ALEM WOLDEGHERGISH, )  
 )  
Petitioner, )  
v. )  
ROBERT K. LYNCH, Field Office )  
Director for Enforcement and Removal )  
Operations, U.S. Immigration and )  
Customs Enforcement, Department )  
of Homeland Security, RICHARD K. )  
JONES, Sheriff, Butler County Sheriff's )  
Office, and NICK FISHER, Warden, )  
Butler County Correctional Complex, )  
Respondents. )

Case No. 1:25-cv-461

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**PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner, by and through undersigned Counsel, respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents.

**INTRODUCTION**

1. Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) detained Petitioner on or around June 10, 2025 during an ICE check-in appointment.

2. Petitioner is detained at the Butler County Correctional Complex in Hamilton, Ohio. ICE has contracted with the facility to house detainees such as Petitioner. Petitioner is under the direct control of the Respondents and their agents.

3. Petitioner contends that he is not subject to detention under INA § 241(a), 8 U.S.C. § 1231(a), and he asserts that his detention violates his due process rights under the Fifth Amendment of the Constitution of the United States.

## JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 1570. This court has jurisdiction under 28 U.S.C. § 2241, art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

5. The use of the Writ of Habeas Corpus to challenge detention by ICE is not foreclosed by the REAL ID Act. The REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231 (May 11, 2005), Title I, Section 106(c), amending INA §§ 242(a)(2)(A), (B), (C) and § 242(g), only deprives the district court of habeas jurisdiction to review orders of removal, not challenges to detention. *Kellici v. Gonzales*, 472 F.3d 416, 419-20 (6th Cir. 2006) (citing *Hernandez v. Gonzales*, 424 F.3d 42, 42-43 (1st Cir. 2005)); accord *INS v. St. Cyr*, 533 U.S. 289, 364-365 (2001) (“The writ of habeas corpus has always been available to review the legality of executive detention.”).

6. Petitioner has exhausted his administrative remedies to the extent required by law. Under 28 U.S.C. § 2241, there is no statutory requirement for exhaustion of administrative remedies. However, exhaustion may be judicially required as a prudential matter unless specific exceptions apply. Courts may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative proceedings would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d

685, 688 (9th Cir. 1981)). On April 11, 2028, an Immigration Judge in Port Isabel, Texas ordered removal. Subsequently, on August 8, 2018, ICE issued Form I-220B, an Order of Release on Supervision to Petitioner, pursuant to 8 U.S.C. § 1231(a)(3). Accordingly, Petitioner is in compliance with all administrative requirements tied to his removal and release, and further exhaustion would be futile.

### VENUE

7. Venue is proper in the United States District Court for the Southern District of Ohio, pursuant to 28 U.S.C. § 1391(e), because Petitioner is currently detained in the Butler County Correctional Complex in Hamilton, Ohio. See also *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (“The plain language of the habeas statute ... confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”).

### PARTIES

8. Petitioner, Mr. Alem Woldeghergish, is a national and citizen of Eritrea. Petitioner entered the United States in 2017, after fleeing his country to save his life. Petitioner is currently detained at Butler County Correctional Complex. Petitioner has been in the custody of ICE since June 10, 2025.

9. Respondent, Robert K. Lynch, is the Field Office Director of the ICE Detroit Field Office. ICE is the arm of DHS responsible for detention and removal of aliens under immigration laws. Respondent has legal custody of Petitioner. Respondent is sued in his official capacity.

10. Respondent, Richard K. Jones, is the Butler County Sheriff. The Butler County Sheriff's Office has contracted with ICE and DHS to house detainees in the Butler County Correctional Complex in Hamilton, Ohio, where Petitioner is currently detained. Therefore, Respondent has direct legal custody of Petitioner. Respondent is sued in his official capacity.

11. Respondent, Nick Fisher, is the Warden of the Butler County Correctional Complex in Hamilton, Ohio, where Petitioner is currently detained. Therefore, Respondent has direct legal custody of Petitioner. Respondent is sued in his official capacity.

#### **STATEMENT OF FACTS**

12. Petitioner, Mr. Alem Woldeghergish, is a 48-year-old national and citizen of Eritrea who entered the United States in 2017. Mr. Woldeghergish submitted an application for asylum and withholding of removal to remain in this country based on his fear of returning to Eritrea.

13. The Immigration Judge denied Mr. Woldeghergish's asylum application and ordered removal 2,638 days ago, on April 11, 2018.

14. Respondent was detained between April and August of 2018. During this time, Mr. Woldeghergish fully cooperated with Respondents' efforts to obtain his travel documents from Eritrea.

15. After the 90 day removal period, Mr. Woldeghergish was released pursuant to 8 U.S.C. § 1231(a)(3).

16. On August 8, 2018, ICE issued Form I-220B, Order of Release on Supervision (OSUP). Mr. Woldeghergish has fully complied with the conditions of his OSUP by regularly attending ICE check-in appointments.

17. On or around June 10, 2025, Respondent Robert K. Lynch and his agents arrested Mr. Woldeghergish during a routine ICE check-in appointment.

18. Mr. Woldeghergish has now been in detention for approximately twenty days pending his removal. Respondents continue to detain Mr. Woldeghergish even though it is clear that Respondents cannot remove him.

19. Exactly 2,638 days have passed since Respondent was issued a final order of removal. To date, ICE has not been able to effectuate Respondents removal from the United States.

20. Mr. Woldeghergish is not a danger to the community or a flight risk. He does not have any pending criminal cases.

21. Mr. Woldeghergish has deep roots in his community. His wife and five children are all United States citizens.

22. Prior to his arrest, Mr. Woldeghergish had valid work authorization and provided for his family. His continued detention deprives his family of his companionship and income.

23. Respondents' decision to detain Mr. Woldeghergish is not legally justifiable and is capricious and arbitrary. There is no better time for the Court to consider the merits of Mr. Woldeghergish's request for release.

## **CLAIMS FOR RELIEF**

### **COUNT ONE CONSTITUTIONAL CLAIM**

24. Petitioner alleges and incorporates by reference paragraphs 1 through 23.

25. Petitioner's continued detention violates his right to procedural due process guaranteed by the Fifth Amendment to the United States Constitution.

26. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 322 (1976). Courts employ the *Eldridge* test when an alien's due process liberty interests are at stake. *Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1160-61 (9th Cir. 2004). The *Eldridge* test considers three factors: (1) the private interests that will be affected by the official action, (2) the risk of erroneous deprivation of such interest, and (3) the government's interest. *Mathews*, 424 U.S. at 335.

27. In the case of Petitioner, the private interest affected by the government is profound—the loss of his physical liberty. The risk of erroneous deprivation of Petitioner’s liberty is high, because he is neither a flight risk nor a danger. Petitioner has been detained under the custody of ICE for approximately one month and will likely remain in detention, as removal is not reasonably foreseeable.

**COUNT TWO  
STATUTORY CLAIM**

28. Petitioner alleges and incorporates by reference paragraphs 1 through 27.

29. Petitioner’s continued detention violates the Immigration and Nationality Act.

30. The removal period begins on the date the order of removal becomes administratively final and lasts for 90 days. INA §§ 241(a)(1)(A), (B)(i).

31. Once the removal period begins, DHS has 90 days to obtain travel documents and execute the final order of removal. If the individual is not removed by the end of the 90-day removal period, then they shall be released subject to supervision. 8 U.S.C. § 1231(a)(3); INA § 241(a)(3).

32. Section 1231(a)(6) authorizes DHS to hold individuals beyond the 90-day removal period in certain circumstances if determined to be unlikely to comply with the order of removal, found to be a risk to the community, or likely to be removed in the reasonably foreseeable future.

33. In *Zadyvdas v. Davis*, the Supreme Court held:

“In our view, [8 U.S.C. § 1231(a)(6)], read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. *It does not permit indefinite detention.* A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to deprive any person of liberty without due process of law. Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadyvdas v. Davis*, 533 U.S. 678, 689-90 (2001) (internal quotations omitted) (emphasis added).

34. The Immigration Judge issued a removal order 2,638 days ago. Although Petitioner complied with Respondents efforts to obtain travel documents from Eritrea, Respondents were unable to execute the final order of removal within 90 days. Thus, Respondents released Petitioner pursuant to 8 U.S.C. § 1231(a)(3).

35. Upon release, Petitioner has fully complied with the conditions of supervision. Petitioner does not have pending criminal cases. Petitioner has strong connections within his community.

36. For the foregoing reasons, Petitioner's continued detention is in violation of INA § 241(a), 8 U.S.C. § 1231(a).

### **COUNT THREE**

37. If he prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Declare that the actions of Respondents violate the statutory/constitutional/regulatory provisions that form the basis for the claims for relief;
3. Issue an order directing Respondents to show cause why the writ should not be granted;
4. Issue a writ of habeas corpus ordering Respondents to release Petitioner on his own recognizance;
5. Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while Petitioner remains in Respondents' custody;
6. Award Petitioner reasonable costs and attorney's fees; and,

7. Grant any other relief that this Honorable Court deems just and proper.

DATED: \_\_\_\_\_

Respectfully submitted,

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