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

ALEM WOLDEGHERGISH, Petitioner, vs. ROBERT K. LYNCH, *et al.*, Respondents.	Case No. 1:25-cv-461 Judge Susan J. Dlott Magistrate Judge Karen L. Litkovitz

PETITIONER'S REPLY TO RESPONDENTS' RETURN OF WRIT

COMES NOW, Petitioner, Mr. Alem Woldeghergish, by and through undersigned Counsel, and respectfully submits this Reply to Respondents' Return of Writ.

INTRODUCTION

Alem Woldeghergish (Petitioner) is a native and citizen of Eritrea. Petitioner fled Eritrea in 2000 and entered the United States in 2017. Despite building a productive life in the United States with his U.S. citizen family members, he now is unlawfully detained. Contrary to the Government's characterization, this Petition is not a straightforward effort to challenge a final removal order. Instead, the Petition seeks to challenge post-order detention actions that violate statutory and constitutional protections.

Specifically, the Petition challenges the continued detention of Petitioner when removal is not reasonably foreseeable. There is no meaningful alternative to judicial review because Petitioner has exhausted administrative remedies. Thus, absent federal court review, Petitioner is at risk of indefinite detention.

As such, this Court is the only venue that can address the issues raised in Petitioners' case and has authority to address these issues and order the requested relief. This includes review of whether the Government's post-order detention violates the Petitioner's constitutional and statutory rights.

ARGUMENT

I. This Court Has Jurisdiction to Review Petitioners' Claims

The Government fundamentally mischaracterizes Petitioner's claim. Petitioner does not challenge his years-old removal order to Eritrea. Rather, he challenges Respondents' post-proceeding actions, including detention where removal is not reasonably foreseeable. This distinction is not semantic but jurisdictional.

A. 8 U.S.C. § 1252(g) Does Not Preclude Review of Petitioner's Claims

Section 1252(g) does not preclude district court habeas review of ICE detention because its plain text confines jurisdictional stripping claims "arising from any decision or action ... to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). The REAL ID Act of 2005 does not preclude the use of the writ of habeas corpus to challenge detention by ICE. 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).

Moreover, the Sixth Circuit has held that the REAL ID Act 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) ("Where a habeas case does not address the final order, it is not covered by the plain language of the Act."); see also *INS v. St. Cyr*, 533 U.S. 289, 305 (2001) ("The writ of habeas corpus has always been available to review the legality of executive detention.").

Petitioner submits a detention-based claim because removal is not reasonably foreseeable. Accordingly, Section 1252(g) and the REAL ID Act do not strip the district courts of jurisdiction to review the claim and this Court should exercise jurisdiction to review Petitioner's detention.

B. 8 U.S.C. § 1252(g) Does Not Bar Review of Unlawful Removal Procedures

The Government's reliance on § 1252(g) fails because Petitioner challenges the lawfulness of post-proceeding actions, not discretionary execution decisions. Specifically, Petitioner challenges the lawfulness of Respondent's scheme to deprive him of his statutory and constitutional rights by detaining him when removal is not reasonably foreseeable.

Petitioner's claims are distinct from DHS's discretionary authority regarding the execution of removal orders, because Petitioner is not challenging the execution of his removal order; rather, he is challenging Respondents' efforts to continue to detain him when removal is not reasonably foreseeable. Petitioner was ordered removed on April 10, 2018 and the order became administratively final on May 10, 2018. After the 90-day removal period, Petitioner was released on supervision. As of today, it has been 2,640 days since Petitioner's removal order became administratively final; the Department has not been able to obtain travel documents and execute his removal.

Thus, Petitioner's claims do not fall within the narrow confines of Section 1252(g)'s jurisdiction stripping provisions, which are limited to claims "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). The Supreme Court has "narrow[ly]" construed this provision to apply only to these "three discrete actions." *Reno v. Am-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); see also *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion)

("Section 1252(g) does not sweep broadly. It reaches only these three specific actions, not everything that arises out of them.").

Moreover, the Sixth Circuit has explained that 8 U.S.C. § 1252(g) does not suspend habeas review as to challenging the "authority to indefinitely detain a non-citizen following the execution of a removal order." *Moussa v. Jenifer*, 389 F.3d 550, 554 (6th Cir. 2004) (citing Zadvydas v. Davis, 533 U.S. 678 (2001)); see also *Al Shimary v. Rayborn*, No. 2:24-CV-11646, 2024 WL 3625169, at *2 (E.D. Mich. July 31, 2024) (denying stay of removal on jurisdictional grounds but allowing detention-based claims to proceed); *Mingrone v. Adducci*, No. 2:17-CV-11685, 2017 WL 4909591, at *8 (E.D. Mich. July 5, 2017) (addressing merits of detention-based claim because petitioner "could be released and ICE could still proceed to remove him").

C. Sections 1252(a)(5) and (b)(9) Apply Only to Challenges to Removal Orders

The Government's invocation of §§ 1252(a)(5) and (b)(9) fails for a simple reason: Petitioner does not challenge his removal order, but rather is seeking to challenge unlawful post-proceeding actions taken by DHS. Section 1252(a)(5) channels "judicial review of a removal order" to the court of appeals, while § 1252(b)(9) consolidates review of questions "arising from any action taken or proceeding brought to remove an alien." 8 U.S.C. §§ 1252(a)(5), (b)(9).

As the statute is written, section 1252 applies to judicial review of the decisions made by Immigration Judges and the Board of Immigration Appeals in removal proceedings. It is not designated to apply to collateral decisions made by administrative officials outside the context of removal proceedings. Accordingly, 8 U.S.C. §§ 1252(a)(5) and (b)(9) do not reach post-proceeding decisions.

The Western District of Washington found jurisdiction despite 1225(a)(5) because the petitioner's "claims are independent of his removal order" since he "does not challenge the IJ's

determination that he is removable or claim any deficiency in the removal order itself." *See Aden v. Nielson*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019).

Ultimately, Petitioner is not requesting a review of his removal order nor is he seeking judicial intervention to determine whether he is more likely than not to experience persecution or torture if ultimately returned to Eritrea. Instead, Petitioner is seeking a determination that, based on evidence, that his removal is not reasonably foreseeable, and that Petitioner is entitled to release from detention pursuant to *Zadvydas*.

II. Petitioner Is Entitled to Relief

A. Petitioner Is Unlawfully Detained

Petitioner is unlawfully detained because removal is not reasonably foreseeable. Post-order immigration detention must be reasonably related to a legitimate purpose, such as effectuating removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001).

The removal period begins on the date the order of removal becomes administratively final. 8 U.S.C. § 1231(a)(1)(B)(i). 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). Detention beyond the statutory 90-day removal period is only permitted where removal is reasonably foreseeable and justified. 8 U.S.C. § 1231(a)(2), (a)(6); *Zadvydas*, 533 U.S. at 699.

Section 1231(a)(6) permits the detention of certain aliens beyond the initial 90-day statutory "removal period" in order to effectuate removal. Rather than authorizing "indefinite detention," this statute has been read to "limit[] an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal." *Zadvydas*, 533 U.S. at 689.

The District Court of New Jersey applied *Zadvydas* and ordered release where ICE re-detained the petitioner years after proceedings ended. *See Munoz-Saucedo v. Pittman*, 2025 WL 1750346, Case 25-2258, *9 (D.N.J. June 24, 2025). Despite the petitioner's detention being under 180 days, the court granted the writ of habeas corpus and ordered supervised release, reaffirming that prolonged detention without a viable removal plan could not be justified. *Id.* at *6 ("[T]he Court rejects Respondents' argument that Zadvydas precludes Petitioner from challenging his detention prior to the six-month mark.").

In the present case, Petitioner was re-detained by ICE over seven years after his final removal order. In the 2,640 days since Petitioner's removal order became administratively final, the government has not been able to obtain travel documents or been able to effectuate removal to Eritrea. Further, the federal government has recently recognized Eritrea's non-compliance in issuing travel documents. *See* Proclamation No. 10949, 90 Fed. Reg. 24497 (June 4, 2025) ("The United States questions the competence of the central authority for issuance of passports or civil documents in Eritrea … Eritrea has historically refused to accept back its removable nationals.").

Under these circumstances, continued detention violates 8 U.S.C. § 1231, as well as constitutional safeguards recognized in *Zadvydas* and reaffirmed by district courts. Petitioner must be released under appropriate conditions of supervision. Removal is not reasonably foreseeable. Detaining Petitioner without a lawful removal plan or individualized danger finding violates both the INA and the Due Process Clause. *See Zadvydas*, 533 U.S. at 699.

III. Administrative Remedies Are Inadequate

There is no statutory requirement for exhaustion of administrative remedies under 28 U.S.C. § 2241. However, exhaustion may be judicially required as a prudential matter unless specific exceptions apply. An alien detained seeking habeas corpus jurisdiction must first exhaust

all administrative remedies prior to requesting relief in federal court "unless exhaustion is excused". *See Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

District courts may waive prudential exhaustion if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *See Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

Petitioner is unable to access administrative remedies because his removal order was finalized seven years ago. Moreover, Petitioner is challenging post-proceeding detention-based decisions. Accordingly, Petitioner is unable pursue alternative avenues for relief.

CONCLUSION

For the foregoing reasons, the Court should grant the Petition for Writ of Habeas Corpus, and order the requested relief pursuant to 28 U.S.C. § 2241, including declaring that Respondents' actions violate statutory and constitutional protections and order Petitioner's immediate release from ICE custody.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
Western Division

CASE NO._____

MEDET BAKYT, PETITIONER

[redacted]

vs.

KRISTI NOEM, SECRETARY
DEPARTMENT OF HOMELAND SECURITY
c/o Office of the General Counsel
2707 Martin Luther King Jr. Ave SE,
Washington, DC 20528-0485

And
PAM BONDI
U. S. ATTORNEY GENERAL
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

RESPONDENTS
IN THEIR OFFICIAL CAPACITIES

PETITION FOR A WRIT OF *HABEAS CORPUS* & A JUDICIAL ORDER FOR RELEASE FROM DETENTION BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY

Comes now Medet Bakyt, by and through counsel, and states that he is currently detained by the Secretary of the U. S. Department of Homeland Security (hereinafter DHS) at the Butler County Jail, 705 Hanover Street, Hamilton Ohio 45011. Accordingly, he petitions this Honorable Court for a writ of *habeas corpus* and for a judicial order favoring his release from detention by the Immigration and Customs Enforcement of the U S

Department of Homeland Security. *Boumediene v. Bush*, 553 U.S. 723 (2008). This case arises under the Constitution of the United States and statutes of the United Sates. The petitioner alleges as follows:

I. JURISDICTION

1. That jurisdiction of this Honorable Court is vested by reason of 28 U.S.C. Sections 2241 *et seq* and the Suspension (Habeas Corpus) Clause, Article I Section 9 Clause 2 of the United States Constitution, and 8 U. S. C. 1252(g) *notwithstanding* because this petition challenges the right of the Secretary of Homeland Security to detain him unlawfully when he is lawfully present in the United States at the time of his detention and continuing to this time.
2. That 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.
3. That jurisdiction is also conferred by reason that there exists a federal question as the petitioner is being unlawfully detained by a federal agency under provisions of the Immigration and Nationality Act, *as amended*, and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (hereinafter USA PATRIOT ACT) Act of 2001, and that such unlawful detention violates the United States Constitution, in particular the Fourth Fifth, and Eighth Amendments to the United States Constitution and the applicable provisions of the Immigration and Nationality Act, *as amended.*
4. That petitioner has been detained by the Secretary since June 27, 2025 and continuing to this time.

II. PARTIES

5. Petitioner is a citizen of Kazakhstan whose address at the time of his detention is [redacted]

6. Kristi Noem in her official capacity is the Secretary of the U. S. Department of Homeland Security.

7. Pam Bondi in her official capacity is the Attorney General of the United States.

III. FACTS

8. Petitioner's A Number is [redacted]

9. Petitioner first arrived in the USA on or about August 24, 2024.

10. Petitioner was initially detained by Customs and Border Protection, DHS and was issued a Notice to Appear (DHS Form I-862) which notified him to appear for removal proceedings in U. S. immigration court in Cleveland, Ohio on December 14, 2025 at 2:00 PM, whereupon he was released into the United States. Please see Exhibit A for

copy of NTA.

11. Petitioner's NTA has never been docketed by any U. S. immigration court.

12. Petitioner affirmatively filed an Application for Asylum USCIS Form I-589 on May 27, 2025 with US Citizenship and Immigration Services (USCIS), an agency within DHS. See Exhibit B for a copy of the USCIS Receipt of the I-589 (Form I-797C). See Exhibit C for a copy of the I-589.

13. Upon filing of said I-589 with USCIS and for the reason that the his NTA has never been docketed in any U. S. immigration court, jurisdiction over the I-589 is properly vested with USCIS and his application for asylum was timely and properly filed and pending with USCIS.

14. At this juncture, Petitioner cannot be lawfully removed from the USA until his lawfully filed application for asylum I-589 is adjudicated by a USCIS asylum officer.

15. Petitioner was lawfully residing in Cincinnati Ohio when he presented himself to Immigration and Customs Enforcement (ICE) an agency of DHS on June 27, 2025 pursuant to the advice of Petitioner's former immigration attorney.

16. At the time Petitioner was detained by ICE, no explanation for his detention was given to him

17. Petitioner has since been transported to and is currently unlawfully detained at the Butler County Jail.

18. The failure of the U. S. immigration court in Cleveland, Ohio to docket the NTA does not render Petitioner subject to detention by ICE DHS and certainly does not give rise to a final order of removal.

IV. FOURTH AMENDMENT VIOLATED

19. The unlawful detention of Petitioner arises to unconstitutional seizure of his person under the Fourth Amendment to the United States Constitution.

V. FIFTH AMENDMENT VIOLATED

20. The unlawful detention of Petitioner arises to unconstitutional deprivation of liberty under the Due Procss Clause of the Fifth Amendment to the United States Constitution.

VI. EIGHT H AMENDMENT VIOLATED

21. The unlawful detention of Petitioner, arises to unreasonable punishment that is cruel and unusual and which violates Eighth Amendment to the United States Constitution.

VII. *LOPER BRIGHT* VIOLATED

22. Any immigration statute that Respondents may purport to interpret as authorizing the detention of Petitioner violates Loper Bright Enterprises v. Raimondo 603 U.S. 369,144 S. Ct. 2244 (2024).

PRAYER FOR RELIEF

WHEREFORE, your Petitioner Medet Bakyt respectfully prays that this Honorable Court issue a Writ of *Habeas Corpus* pursuant to 28 U.S.C. Section 2241 and to issue a judicial order commanding the person of your petitioner be brought before this Honorable Court, together with the complete administrative record to be ordered delivered to this court with his person. Further upon return of the writ, Petitioner prays for an Order of Release from unlawful detention if necessary after further discovery and hearing on the complete evidence. Petitioner also prays for all emergency relief at equity and at law Court deems appropriate for the protection of the constitutional and statutory rights of the Petitioner.

Respectfully submitted,

s// Charleston C K Wang
Charleston C. K. Wang
Trial Attorney for Petitioner
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513/793-7776 Fax: 513-793-7779
charlestonwang@wanglaw.net

Exhibit List

A	NTA to immigration court Cleveland Ohio.
B	USCIS Receipt of the I-589 (Form I-797C)
C	I-589 filed affirmatively with USCIS

PRAECIPE

To the Clerk of Court:

Please serve the Respondent as follows:

Kristi Noem Secretary of Homeland Security
c/o Office of the General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave SE,
Washington, DC 20528-0485

and

Pam Bondi United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

And

The U S Attorney
U.S. Attorney's Office
221 E. Fourth Street, Suite 400
Cincinnati, OH 45202

Respectfully submitted,

s// Charleston C K Wang
Charleston C. K. Wang
Trial Attorney for Petitioner