

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

BADRA KABA,)	
)	
Petitioner,)	
)	
v.)	Civil Action No.: 5:25-cv-68
)	
WARDEN MICHAEL BRECKON,)	
)	
Respondent.)	

MOTION TO DISMISS

COMES NOW, Respondent, by and through the United States Attorney for the Southern District of Georgia and the undersigned Assistant United States Attorney, and move to dismiss the Petition, Doc. 1, pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Petitioner Badra Kaba (“Petitioner”) filed this habeas corpus petition pursuant to 28 U.S.C. § 2241 to challenge his detention by Immigrations and Customs Enforcement (“ICE”). He alleges that his custody is based on faulty state charges. The Court should dismiss the Petition for failure to state a claim because Petitioner has failed to show that his detention violates any law or statute and because he is not entitled to habeas corpus relief.

FACTUAL BACKGROUND

Petitioner is a citizen of Guinea. Declaration of Erica Pensack (“Pensack Dec.”), ¶ 4. He has sometimes assumed the name of Aly K. Diakite. *Id.* At the time he filed his petition, he was detained at the Folkston ICE Processing Center (“Folkston”) in Folkston, Georgia. Doc. 1 at 1. His detention is pursuant to Immigration and

Nationality Act (“INA”) § 241(a), which is codified at 8 U.S.C. § 1231(a). Pensack Dec., ¶ 19.

Petitioner was admitted under a B1 non-immigrant visa on June 20, 1989, which permitted him to remain in the United States for not more than six months. Pensack Dec., ¶ 4. On March 27, 1998, he was served with a Notice to Appear (“NTA”) which charged him with removability under 8 U.S.C. § 1227(a)(1)(B). *Id.*

On March 11, 1999, an immigration judge granted Petitioner’s request for a voluntary departure. Pensack Dec., ¶ 5. He departed the United States on May 24, 1999. *Id.*

Petitioner returned to the United States on three months later and was admitted under his actual name, Badra Kaba. Pensack Dec., ¶ 6. *Id.* He was approved as a conditional resident because his spouse was a United States citizen. *Id.* However, in 2006, Petitioner was arrested by local law enforcement. *Id.*, ¶ 7. He was served with another NTA, which also charged him with removability. *Id.*, ¶ 8. He did not appear for his immigration hearing and the immigration judge ordered him removed to Guinea. *Id.*, ¶ 9.

On December 21, 2007, Petitioner was detained by Customs and Border Protection at the Atlanta Airport and ultimately transferred into ICE custody. Pensack Dec., ¶ 10. He was released on November 3, 2008, from ICE custody under an Order of Supervision. *Id.*, ¶ 12. He remained under the Order of Supervision until he failed to report on February 22, 2017, when he was declared a fugitive. *Id.*, ¶ 13.

On August 22, 2019, Petitioner was detained by ICE and entered Folkston, Pensack Dec., ¶ 13. He was released from ICE custody on March 23, 2020, due to the COVID-19 pandemic. *Id.*, ¶ 15.

On November 1, 2024, Petitioner was arrested for a probation violation in Savannah, Georgia. Pensack Dec., ¶ 16. He entered ICE custody on June 13, 2025, where he has remained since that time. *Id.*

Guinea is open for international travel, Enforcement and Removal Operations (“ERO”) is currently removing non-citizens to Guinea, and there appear to be no impediments to removal there. Pensack Dec., ¶ 20.

STANDARD OF REVIEW

“[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n. 20 (2020). District courts have jurisdiction under 28 U.S.C. § 2241 to hear federal habeas petitions. Yet the burden rests with the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treaties of the United States to warrant relief. *See Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011) (“We hold that it was error for the District Court to effectively impose on the Government the burden of proving that Skaftouros was *not* ‘in custody in violation of the Constitution or laws or treaties of the United States.’”) (emphasis in original). “[B]ecause the habeas proceeding is civil in nature, the petitioner must satisfy his burden of proof by a preponderance of the evidence.” *Id.*

ARGUMENT

This Petition brings a challenge against criminal charges Petitioner alleges are pending in Bryan County, Georgia. Doc. 1 at 7. He seeks release from immigration detention. *Id.* Although release is an appropriate form of habeas relief, Petitioner's request should be denied and his Petition dismissed.

I. This Court lacks jurisdiction to consider Petitioner's challenge to his state court charges.

Petitioner's chief complaint is a dispute about the validity of the charges pending against him in Bryan County. Doc. 1 at 1, 6. Respondent presumes for the sake of argument that these charges are in fact still pending. Nevertheless, these complaints should be disregarded, for two reasons.

First, this Court lacks jurisdiction over Petitioner's allegations related to Bryan County because he is not in Bryan County's custody. Habeas relief may extend to a prisoner who shows he "is *in custody* in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (emphasis added); *Clements v. Fla.*, 59 F.4th 1204, 1206 (11th Cir. 2023) ("Since 1874, a person seeking federal habeas corpus relief from a state court judgment must—among other things—be 'in custody.'"). The Supreme Court has held that § 2241 actions must establish that a petitioner's custody relate to "the conviction or sentence under attack at the time his petition is filed." *Maleng v. Cook*, 490 U.S. 488, 490–91 (1989). A sentence that has "fully expired" at the time the petition is filed does not qualify for habeas relief, even if that sentence has future consequences. *Id.* at 491–92. The "in custody" requirement of habeas is jurisdictional. *Clements*, 59 F.4th at 1209 (citing § 2254(a)); *Ridley v.*

Caldwell, No. 21-13504, 2022 WL 2800203, at *2 (11th Cir. July 18, 2022) (discussing § 2241).

Here, Petitioner has failed to establish that he is in the custody of Bryan County, which is the only entity whose action he challenges. He fails to identify any conviction in Bryan County for which he has been sentenced to a term of incarceration. Although he references pending charges, the status of those charges remains pre-trial—which means they do not relate to any conviction. *See* Doc. 1 at 6 (alleging he has filed motions for a speedy trial and to dismiss). This is sufficient for dismissal. *See Brown v. Sec’y of the U.S. Army*, 859 F. App’x 901, 902 (11th Cir. 2021) (affirming dismissal for lack of jurisdiction when § 2241 petition failed to identify any sentence petitioner received due to his court-martial). Petitioner has identified no relation between Petitioner’s current immigration detention and the charges he describes. Absent some showing that Petitioner is “in custody” related to his Bryan County charges, this Court lacks habeas jurisdiction over his claims.

Additionally, ICE records establish that Petitioner’s current immigration detention is not related to state criminal charges, and Petitioner has not alleged otherwise. Instead, Petitioner is detained pursuant to 8 U.S.C. § 1231(a), which mandates detention for aliens who have already been ordered removed from the United States. *See Pensack Dec.*, ¶ 19. Petitioner’s detention is therefore not based on any pending criminal charges but solely on his current removal status.¹ Even if Bryan County dropped the charges against Petitioner, as he appears to desire, such

¹ This places Petitioner in a different position than aliens who are detained pursuant to 8 U.S.C. § 1226(b), for example.

an event would have no effect on his immigration detention and therefore would not provide no relief from his current custody.

Therefore, this Court lacks habeas jurisdiction over Petitioner's allegations.

II. Petitioner's detention comports with applicable law.

The governmental authority to detain Petitioner is found in 8 U.S.C. § 1231(a). Pensack Dec., ¶ 19. This section applies to the detention of aliens who have been ordered removed. 8 U.S.C. § 1231(a). The language of § 1231(a) is mandatory. *Id.* ("During the removal period, the Attorney General shall detain the alien."); *see also* *S.C. v. Warden, Stewart Det. Ctr.*, No. 4:22-cv-159, 2023 WL 2534098, at *2 (M.D. Ga. Jan. 30, 2023) ("Detention during the ninety-day removal period is mandatory."), *report and recommendation adopted*, 2023 WL 2527869 (M.D. Ga. Mar. 15, 2023). Further, aliens detained under § 1231(a) are not entitled to bond hearings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021) ("We conclude that § 1231, not § 1226, governs the detention of aliens subject to reinstated orders of removal, meaning those aliens are not entitled to a bond hearing while they pursue withholding of removal.").

Here, Petitioner has been ordered removed. Pensack Dec., ¶ 9. He has been in ICE's custody since June 13, 2025. *Id.* His detention is therefore mandatory under 8 U.S.C. § 1231(a). Petitioner does not dispute that he has been ordered removed. Nor does he dispute that § 1231(a) applies to him.

Therefore, this Court should find that Petitioner's detention comports with applicable law.

III. Removal cannot be challenged in a habeas action.

It is not clear whether Petitioner is challenging a potential future removal from the United States. *See generally* Doc. 1. Even if he is, such a challenge should be dismissed.

When Congress passed the REAL ID Act in 2005, it expanded the jurisdiction of federal courts of appeals to review errors in removal errors, but it precluded relief under 28 U.S.C. § 2241 in federal district courts. *Fagan v. United States*, No. 21-13524, 2023 WL 2663239, at *2 (11th Cir. Mar. 28, 2023) (affirming United States District Court for the Southern District of Georgia). The statute is explicit:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C.A. § 1252(g). A petition for review in a court of appeals is the “exclusive means” for reviewing an order of removal. *Alexandre v. U.S. Att’y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006). Thus, challenges to removal proceedings are not cognizable under § 2241. *Themeus v. U.S. Dep’t of Just.*, 643 F. App’x 830, 832 (11th Cir. 2016).

Here, Petitioner is currently in ICE detention, pursuant to the authority of 8 U.S.C. § 1231(a). Pensack Dec., ¶ 19. He does not explicitly challenge his removal. But even if he had done so, challenges to Petitioner’s removal cannot be brought in this Court under 28 U.S.C. § 2241.

Therefore, this Court should dismiss any construed challenge to Petitioner's removal.

CONCLUSION

For the reasons set forth above, this Court should dismiss this Petition.

Respectfully submitted, this 16th day of September, 2025,

MARGARET E. HEAP
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

It is hereby certified that the following individual has been served with this document by depositing copies thereof, postage prepaid, in the United States mail addressed to the following address, which is Petitioner's current address of record in this habeas corpus action:

Badra Kaba
A# 
Folkston Ice Processing Center
P.O. Box 248
Folkston, GA 31537

Date: September 16, 2025,

/s/ O. Woelke Leithart
Assistant United States Attorney