

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT COURT OF MINNESOTA**

600 U.S. Courthouse Suite 202
300 South Fourth Street
Minneapolis, MN, 55415

SOMAH KOUCH ROBERTS

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Petitioner,

V.

James Mchenry and Lisa Monaco,
US ATTORNEY GENERAL;
Kristi Noem,
SECRETARY OF DEPARTMENT OF
HOMELAND SECURITY;
Peter Berg,
FIELD OFFICE DIRECTOR FOR THE
MINNEAPOLIS FIELD OFFICE
Warden of Freeborn County Detention Center,

Respondents,

RECEIVED BY MAIL

JUL 30 2025

CLERK, U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioner, **SOMAH KOUCH ROBERTS**, brings this habeas petition seeking relief pursuant to 28 U.S.C. § 2241 on the ground that his continued detention in post-removal-order custody is unlawful since it has exceeded the presumptively reasonable six-month period established under the due process standards set forth by the United States Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001) and that his removal to Liberia is unlikely to occur in the reasonably foreseeable future.



CUSTODY

1. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement (“ICE”). Petitioner is detained at the Freeborn County Adult Detention Center in Albert Lea, Minnesota. ICE has contracted with Freeborn County Jail to house immigration detainees such as Petitioner. Petitioner is under the direct control of Respondents and their agents. Petitioner was transfer to ICE custody on July 11, 2024.

Petitioner was transferred to Freeborn County Adult Detention Center in Albert Lea, Minnesota on July 11, 2024.

JURISDICTION

2. 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 Immigration Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedure Act (“APA”), 5 U.S.C. 701 et seq.

3. 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 the authority of the United States, and such custody is in violation of the Constitution, law, or treaties of the United State. 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.

4. Petitioner has exhausted any and all administrative remedies to extend require by law.

VENUE

5. Pursuant to Braden v. 30th Judicial Circuit Ct., 410 U.S. 484, 495-96, 93 S. Ct. 1123, 35 L. Ed. 2d 443 (1973); Roman v. Ashcroft, 340 F.3d 314, 318-20 (6th Cir. 2003). Thus, because the petition indicates that Petitioner is currently incarcerated at Freeborn County Adult

Detention Center in Minnesota, the proper venue for this action is the United States District Court for the **District of Minnesota**, the judicial district in which Petitioner resides.

PARTIES

6. Petitioner is a native and citizen of **Liberia**. Petitioner was taken into ICE custody on **July 11, 2024**, and has remained in ICE custody continuously since that date. Petitioner was ordered removed on **September 16, 2024**.

7. Respondent **James Mchenry and Lisa Monaco** is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Nationality Act (INA). As such, **James Mchenry and Lisa Monaco** has ultimate custodial authority over Petitioner.

8. Respondent **Kristi Noem** is the Secretary of the Department of Homeland Security. He is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Nationality Act (INA). As such, **Kristi Noem** is the legal custodian of Petitioner.

9. Respondent **Peter Berg** is one of the ICE Field Director of the Minnesota Field Office of ICE and is Petitioner's immediate custodian who has signed Petitioner's continued Detention Letters. **See Vasquez v. Reno** 233 F.3d 688, 690 (1st Cir. 2000), **cert. denied**, 122 S. Ct. 43 (2001).

10. Respondent Warden of **Freeborn County Detention Center**, where Petitioner is currently detained under the authority of ICE, alternatively, may be considered to be Petitioner's immediate custodian.

FACTUAL ALLEGATIONS

11. Petitioner, **SOMAH KOUCH ROBERTS**, is a native and citizen of **Liberia**. Petitioner has been in ICE custody since **July 11, 2024**. An Immigration Judge ordered the Petitioner removed on **September 16, 2024**.

12. Petitioner entered the United States on or about **2007** from Ghana as a refugee when he was a child, and he has not left since arriving. Petitioner became LPR in **2013**.

13. Petitioner was arrested in Minnesota and charged with Aggravated robbery, second degree assault and mail theft on **August, 2019**.

14. Petitioner was arrested in Minnesota and charged with a second Aggravated robbery on **December, 2020**. Petitioner pleaded guilty to the charge and was sentence to 60 months with the previous charge that run concurrently.

15. Petitioner was released on **July 11, 2024** to ICE custody and was transported to a county jail under ICE supervision in Minnesota.

16. An Immigration Judge ordered the Petitioner removed on **September 16, 2024**. Petitioner was granted deferral of removal under the convention against torture (CAT).

17. ICE reserved right to appeal and filed the appeal on time **October 15, 2024**. The appeal was remanded to the Immigration judge for further processing by the BIA on **July, 16 2025**.

LEGAL FRAME OF WORK FOR RELIEF SOUGHT

I. POST-REMOVAL-ORDER DETENTION UNDER 8 U.S.C. § 1231(A)

18. Detention, release, and removal of aliens ordered removed is governed by the provisions of 8 U.S.C. § 1231. Under § 1231(a), Once an alien is ordered removed, DHS must physically remove him from the United States within a 90-day "removal period." Id. §

1231(a)(1)(A); *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2281, 210 L. Ed. 2d 656 (2021). The removal period begins on the latest of three dates: (1) the date the order of removal becomes administratively final, (2) the date of the final order of any court that entered a stay of removal, or (3) the date on which the alien is released from non-immigration detention or confinement. 8 U.S.C. § 1231(a)(1)(B); *Guzman Chavez*, 141 S. Ct. at 2281.

19. At the conclusion of the ninety-day period, the alien may be held in continued detention, or may be released under continued supervision. 8 U.S.C. §§ 1231(a)(3) & (6). The statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States. It does not permit indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). "Once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. To establish uniformity in the federal courts, a period of six months was recognized as a "presumptively reasonable period of detention." *Id.* at 701.

20. Petitioner's detention during the post-removal-period is authorized by § 1231(a)(6) because he was found removable under § 1227(a)(2) due to his criminal conviction. See § 1231(a)(6) ("An alien ordered removed who is . . . removable under section . . . 1227(a)(2) . . . may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3)").

21. If at the conclusion of the six-month period the alien provides good reason to believe that there is no significant likelihood of deportation in the reasonably foreseeable future, the burden shifts to the government to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701.

22. Here, the presumptively reasonable six month period began running on September 16, 2024, the date the order of removal became administratively final. The six-month period has expired on March 16, 2025, and ICE has failed to remove Petitioner. He argues that no special circumstances exist to justify his continued detention and that there is no significant likelihood of removal in the reasonably foreseeable future and, thus, his detention violates statutes, regulations, and the Constitution.

23. Moreover, he has presented evidence satisfying his burden that there is no significant likelihood of his removal in the reasonably foreseeable future as required by *Zadvydas*, 533 U.S. at 701. Consequently, he has shown that his detention is statutorily unauthorized or violates due process. See, e.g., *Joseph v. United States*, 127 F. App'x 79, 81 (3d Cir. 2005)

ARGUMENT

I. STATUTORY VIOLATION

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

25. The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const, amend. V. "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, 690 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). It is well established that this protection extends to noncitizens, including in removal proceedings. *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).

Moreover, "due process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake... are both particularly important and more substantial

than mere loss of money. “ Cooper v. Oklahoma, 517 U.S. 348, 363, 116 S. Ct. 1373, 134 L. Ed. 2d 1 (1996).

II. TRIGGERING THE 90-DAY REMOVAL PERIOD

26. Petitioner argues that the language and reasoning in two recent Supreme Court cases, Nasrallah in 2020 and Guzman Chavez in 2021, compel the conclusion that his removal order became administratively final on September 16, 2024, thus triggering the 90-day removal period. In those decisions the Supreme Court emphasized the separate and distinct nature of a removal order versus a country-specific order of relief such as a CAT order. In Nasrallah the Court discussed those differences in the context of determining the scope of judicial review of a CAT order for aliens who have committed crimes specified in § 1252(a)(2)(C), as opposed to judicial review of a removal order. 140 S. Ct. at 1688. It stated that, “[i]n the deportation context, a final ‘order of removal’ is a final order ‘concluding that the alien is deportable or ordering deportation.’” Id. at 1691 (citing § 1101(a)(47)(A)). Thus, a “CAT order is not itself a final order of removal because it is not an order ‘concluding that the alien is deportable or ordering deportation.’” Id.

27. Accordingly, a CAT order “does not disturb the final order of removal,” “affect the validity of the final order of removal,” or otherwise “merge into the final order of removal.” Id. (quoted in Guzman Chavez, 141 S. Ct. at 2288). This is so even though a CAT order is reviewable as part of the review of a final order of removal. Id. at 1690-91 (“FARRA [Foreign Affairs Reform and Restructuring Act of 1998, which implements CAT] and § 1252(b)(9) simply establish that a CAT order may be reviewed together with the final order of removal, not that a CAT order is the same as, or affects the validity of, a final order of removal”). “A CAT order is

distinct from a final order of removal and does not affect the validity of a final order of removal." Id. at 1694.

28. In *Guzman Chavez* the Supreme Court reiterated the "whether" versus "where" distinction between a removal order and a country-specific relief order, this time in the context of the detention of aliens subject to reinstated orders of removal who then sought withholding of removal to a particular country. The Court explained that, notwithstanding the pendency of withholding-only proceedings, "DHS retains its authority . . . to remove the alien to any country other than the country that is the subject of those proceedings." 141 S. Ct. at 2291.

III. LIKELIHOOD OF REMOVAL IN THE FORESEEABLE FUTURE

29. There is no question that Petitioner was "ordered removed" from the United States and that the BIA remanded respondent appeal of the deferral of removal under the convention against torture on July 16, 2025. Thus, the question "whether" he was "to be removed" was not pending, it was administratively decided. At that point, DHS was free to remove him from the United States to any country authorized by statute, just not to Liberia, which was the subject of ongoing proceedings to determine whether removal to that country would be deferred under CAT. See *Abdisalan v. Holder*, 774 F.3d 517 (9th Cir. 2014); *Kouambo v. Barr*, 943 F.3d 205 (4th Cir. 2019).

30. In *Chuol P.M. v. Garland*, 2022 U.S. Dist. LEXIS 112653, 2022 WL 2302635 (D. Minn., June 27, 2022) the Court concluded that the habeas petition was not premature, because Petitioner is not within the 90-day removal period and not within the post-removal-period during which his detention is presumptively reasonable under *Zadvydas*.

31. As noted above, the Supreme Court in *Zadvydas* interpreted § 1231(a)(6), the post-removal-period detention statute, in light of the demands of the Due Process Clause of the Fifth

Amendment. It found that six months was presumptively the "period reasonably necessary to bring about [an] alien's removal from the United States." *Zadvydas*, 533 U.S. at 689, 701. "After that point, if the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must either rebut that showing or release the alien." *Guzman Chavez*, 141 S. Ct. at 2282 (citing *Zadvydas*, 533 U.S. at 701) (internal quotation marks omitted). This test reflects the Supreme Court's "conclu[sion] that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

32. Petitioner argues there is good reason to believe he is not likely to be removed in the reasonably foreseeable future. He asserts that he will be granted CAT and ICE will not be able to obtain a travel document from Liberia and removed him in the reasonable foreseeable future. Even if he is not granted the relief he sought, Petitioner alleges he will have an opportunity to appeal the adverse decision of the judge to the BIA and he intent to do so. And if the appeal is dismiss he will also have the opportunity to appeal to the eight circuit court of appeals which could take months or even years.

33. Petitioner asserts that permitting removal to a country not specified in the removal order is an unconstitutional denial of due process because it denies an alien proper notice and an opportunity to apply for additional relief based upon the proposed country of removal. See *She v. Holder*, 629 F.3d 958,965(9th Cir. 2010);*Romero v. Evas*, 280 F. Supp. 3d 835,847n.24(E.D. Va. 2017). If ICE decides to remove petitioner to a third country, ICE will first need to give petitioners notice and the opportunity to raise any reasonable fear claims.

CONCLUSION

Petitioner has met his burden and therefore is entitled to relief under *Zadvydas*.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Grant Petitioner a writ of habeas corpus directing Respondents to immediately release.
3. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
4. Award Petitioner attorney's fees and cost under Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. 504 and 28 U.S.C. 2412 and on any other basis justified under law;
and
5. Grant any other and further relief that this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted,



SOMAH KOUCH ROBERTS
A# 
Freeborn County Detention Center
Po Drawer 170
Albert Lea, MN 56007

Date: July 25, 2025