

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, 2025), 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 October 21, 2005, an Immigration Judge in Cleveland, Ohio ordered

removal. Subsequently, 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. Mamadou Diallo, is a national and citizen of Mauritania. Petitioner entered the United States in 1997, 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 August 25, 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. The ICE Field Office Director for the district in which the noncitizen is detained is the immediate custodian and proper respondent in a habeas action. *Roman v. Ashcroft*, 340 F.3d 314, 322 (6th Cir. 2003).

10. Respondent is sued in his official capacity.

STATEMENT OF FACTS

11. Petitioner, Mr. Mamadou Diallo, is a 51-year-old national and citizen of Mauritania who entered the United States in 1997. Mr. Diallo submitted an application for asylum and withholding of removal to remain in this country based on his fear of returning to Mauritania.

12. The Immigration Judge denied Mr. Diallo's asylum application and ordered removal 7,259 days ago, on October 21, 2005.

13. After the Immigration Judge ordered Mr. Diallo removed, ICE issued Form I-220B, Order of Release on Supervision (OSUP). Mr. Diallo has fully complied with the conditions of his OSUP by regularly attending ICE check-in appointments.

14. On or around August 25, 2025, Respondent Robert K. Lynch and his agents arrested Mr. Diallo during a routine ICE check-in appointment.

15. During Mr. Diallo's arrest, it became known to Mr. Diallo that Respondent did not intend to take him into custody at the time of arrest due to a mistake in identity. Respondent intended to arrest and detain another individual with a different name and A-number from Mr. Diallo.


16. Mr. Diallo objected to his arrest while in detention and confirmed his identity did not match the name or A-number of the other individual whom Respondent intended to arrest. Respondent's continued detention of Mr. Diallo is arbitrary.

17. Mr. Diallo has now been in detention for approximately 10 days pending his removal. Respondent continued to detain Mr. Diallo even though it is clear that Respondent did not intend to detain him upon his arrest.

18. Exactly 7,259 days have passed since Petitioner was issued a final order of removal. To date, ICE has not been able to effectuate Peititioner's removal from the United States.

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

20. Mr. Diallo has deep roots in his community. Mr. Diallo has sole custody of four minor children who are all United States citizens. Mr. Diallo's children are five, eight fourteen, and seventeen years of age.

21. Prior to his arrest, Mr. Diallo had valid work authorization and was the sole provider for his family. Mr. Diallo's young daughter, K  suffers from a heart condition, for which she received two open-heart surgeries, that require Mr. Diallo's financial and parental support. His continued detention deprives his family of his companionship and income.

22. Mr. Diallo suffers from high blood pressure for which he is prescribed daily medication to treat. Without his medication, Mr. Diallo is at risk of experiencing a health crisis (i.e. irreparable harm). Because Mr. Diallo is in detention, Mr. Diallo's family cannot confirm that he is receiving the proper treatment or medication.

23. Respondent's decision to detain Mr. Diallo is not legally justifiable and is *per se* arbitrary and capricious. There is no better time for the Court to consider the merits of Mr. Diallo 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. Petitioner's physical health and life are at risk should he remain untreated while detained. 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 10 days 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 7,259 days ago. Although Petitioner complied with Respondent’s efforts to obtain travel documents from Mauritania, Respondent was unable to execute the final order of removal within 90 days. Thus, Respondent 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 and immense responsibility for his four minor children.

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 Respondent violate the statutory/constitutional/regulatory provisions that form the basis for the claims for relief;
3. Issue an order directing Respondent to show cause why the writ should not be granted;
4. Issue a writ of habeas corpus ordering Respondent to release Petitioner on his own recognizance;

5. Order Respondent to refrain from transferring Petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while Petitioner remains in Respondent's custody;
6. Award Petitioner reasonable costs and attorney's fees; and,
7. Grant any other relief that this Honorable Court deems just and proper

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Respectfully submitted,



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