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

MAMADOU DIALLO, Petitioner, vs. ROBERT K. LYNCH, *et al.*, Respondent.	Case No. 1:25-cv-647 Judge Susan J. Dlott Magistrate Judge Stephanie K. Bowman

PETITIONER'S REPLY TO RESPONDENT'S RETURN OF WRIT

COMES NOW, Petitioner, Mr. Mamadou Diallo, by and through undersigned Counsel, and respectfully submits this Reply to Respondents' Return of Writ. For the reasons stated herein, the Court should reject Respondent's arguments, exercise jurisdiction, and grant the writ of habeas corpus pursuant to 28 U.S.C. § 2241.

INTRODUCTION

Mamadou Diallo (Petitioner) is a native and citizen of Mauritania. Petitioner was forcibly expelled from Mauritania in 1989 and entered the United States in 1997. Despite building a productive life in the United States with his U.S. citizen family members, he is currently 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 this Court has sole 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.

Petitioner's habeas petition does not involve a collateral attack on his final order of removal. Rather, it presents a core habeas challenge to the legality of the Petitoner's indefinite civil detention after nearly two decades of supervised release. Jurisdiction falls under 28 U.S.C. § 2241; the government's detention authority under § 1231 is limited by *Zadvydas v. Davis*, and constitutional due process requires more than a perfunctory revocation of liberty.

ARGUMENT

I. This Court Has Jurisdiction to Review Petitioners' Claims

Respondent fundamentally mischaracterizes Petitioner's claim. Petitioner does not challenge his years-old removal order to Mauritania. Rather, he challenges Respondent's post-proceeding actions, including the seizure of his person under a mistaken identity, detention where removal is not reasonably foreseeable, and continued detention after discovery of Petitioner's true identity. This distinction is not semantic but jurisdictional.

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

8 U.S.C. § 1252(g) does not preclude district court habeas review of Immigration and Customs Enforcement ("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 he was mistakenly arrested under the wrong name and A-number, and 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 Petitioner's 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 actions depriving Petitioner of his statutory and

constitutional rights by arresting him, processing him, and detaining him under a mistaken identity due to a mistake in identification when removal is not reasonably foreseeable.

Petitioner's claims are distinct from the Department's discretionary authority regarding the execution of removal orders. Petitioner is not challenging the execution of his removal order; rather, he is challenging Respondent's continued detention of him Notably, Petitioner was ordered removed on October 21, 2005. After the 90-day removal period, Petitioner was released under an Order of Supervision. As of today, it has been <u>7,286 days</u> since Petitioner's final order of removal; Respondent 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 does not 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.

In *Aden v. Nielson*, Western District of Washington held that it had jurisdiction despite 1225(a)(5). The *Aden* court found that 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 Mauritania. Instead, Petitioner is seeking a determination that, based on evidence, his removal is not reasonably foreseeable, and therefore, 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: (1) he was unlawfully taken into custody; and (2) he continues to be detained despite removal not being 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, the Department of Homeland Security ("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.

In *Munoz-Saucedo v. Pittman*, 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 detained by Respondent nearly twenty years after his final removal order. In the 7,286 days since Petitioner's removal order became final, the government has not been able to obtain travel documents or been able to effectuate removal to Mauritania. For all intents and purposes, this is due to the fact that Petitioner is stateless. Because he is a stateless person, the Mauritanian government refuses to recognize Petitioner as a Mauritanian citizen. As such, there is not reasonable likelihood that Respondent will obtain travel documents.

Further, Petitioner's detention by ICE was wrongful and unlawful due to the manner of the execution of his arrest. Petitioner completed his scheduled ICE check-in on August 25, 2025 with a female officer. Before he left the ICE office, a male officer apprehended and processed Petitioner under the identity of another individual. From the outset, Petitioner clearly informed the arresting officers of this mistaken identity. Nevertheless, ICE agents willfully disregarded this critical error and continued to detain Petitioner, even after becoming aware of his true identity.

Whether Respondent has authority to detain Petitioner based on his prior removal order is not dispositive. Rather, it is critical to acknowledge that Respondent unlawfully exercised authority through non-compliance with statutory and regulatory procedures at the time of Petitioner's arrest. See 8 U.S.C. § 1231(a)(1)–(2). Processing Petitioner under another person's identity (i.e. case file) is *ultra vires*: it prevents accurate service of notice, fails to follow proper the procedural posture, and undermines judicial review. ICE cannot simply detain individuals under the wrong identity and claim that eventual discovery of a prior order cures the defect.

It is concerning that Respondent has attached a declaration of Deportation Officer Luke Affholter as the *sole* account of Petitioner's arrest. Officer Affholter offered two short sentences to describe the process by which Petitioner was taken into custody. Officer Affholter neglected to discuss the error made with regard to Petitioner's identity. Paragraph (7) of the declaration of Officer Affholter merely states:

> **"On August 26, 2025, the petitioner resented to the ICE ERO office in Westerville, Ohio for a routine check-in. Following the appointment, ICE ERO placed the respondent in ICE custody at Butler County Jail."**

The Respondent's Return of Writ and the attached declaration of Officer Affholter do not address the manner of Petitioner's arrest or provide any defense of its legality. Respondent's failure to address the government's error is telling. Respondent has not made any attempt to argue that the manner of Petitioner's arrest complied with due process, or even with its own statutory authority under the INA. Respondent has not offered any valid justification.

Respondent has access to a multitude of resources yet completely failed to provide an account contesting Petitioner's rendition of events. In contrast, Petitioner, despite being detained, has demonstrated ICE's defective processing that led to his arrest and subsequent detention. Petitioner submits a signed declaration attesting to the circumstances of his arrest and the processing under the wrong name. Further, Petitioner provides photographs of his identification bracelet that was created for him during ICE detention processing. The name on Petitioner's identification bracelet is wrong depicting the name "Amadou Diallo" (i.e. the individual who Respondent intended to take into custody at the time Petitioner was taken into custody). *See* attached Exhibits.

Because Petitioner's current detention stems from constitutional and statutory defects, release is the appropriate remedy. 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 finding of individualized danger 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).

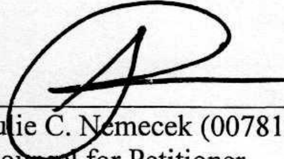
Petitioner is unable to access administrative remedies because his removal order was issued nearly twenty years ago. Moreover, Petitioner is challenging post-proceeding arrest and detention-based defects. Accordingly, Petitioner is unable pursue alternative avenues for relief.

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.

DATE :
10/2/2025

Respectfully submitted,



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