

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

ELHADJ FAILOU NIANG,
Petitioner

CASE NO: 1:25-cv-

vs.

Michael Nessinger, Warden,
Donald W. Wyatt Detention Facility,

Todd M. Lyons, Boston Field Office
Director, U.S. Immigration and Customs
Enforcement,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. The Executive Branch – acting through either U.S. Immigration and Customs Enforcement (“ICE”) or its predecessor the Immigration and Naturalization Service (“INS”) – has detained Petitioner – Elhadj Niang – no fewer than three times during the last 16 years for the purpose of effecting his removal to Senegal, but each time has been unable to do so.
2. The INS first detained Mr. Niang for approximately 9 months, with this release in June/July 2009 during which time the INS obtained an order authorizing Niang’s removal to Senegal.
3. However, the INS ultimately released Mr. Niang from immigration detention because the Republic of Senegal was not at that time accepting the repatriation of Senegal nationals from the United States.
4. ICE again detained Mr. Niang – for a few weeks in 2020 after he was held following an ICE check in and ultimately, he was released pending a relative petition being filed (Mr. Niang-130) but after which no green card issued to Ms. Niang.

5. Most recently, on July 22, 2025, ICE detained Mr. Niang for the purpose of effecting his removal to Senegal, detention which has continued to the present, but which has not resulted in the Republic of Senegal indicating that it will repatriate Niang.

6. At this juncture, ICE knows that it will be unable to remove Mr. Niang to Senegal in the foreseeable future.

7. Because the only constitutionally permissible reason for ICE to detain Mr. Niang is to effect his removal from the United States, or to ensure that Niang neither absconds nor poses a danger to the community prior to such removal, Niang's current immigration detention serves no legitimate purpose and thus violates the Substantive Due Process guarantee of the Fifth Amendment to the United States Constitution.

8. By this Petition, Mr. Niang seeks a Court order releasing him from his present unconstitutional detention.

JURISDICTION & VENUE

9. The U.S. District Court for the District of Rhode Island has jurisdiction to adjudicate the present Petition pursuant to Sections 2241 and 1331 of United States Code Title 28.

10. The U.S. District Court for the District of Rhode Island is the proper venue to hear the present Petition because Mr. Niang is presently detained in the Donald W. Wyatt Detention Facility within the State of Rhode Island.

PARTIES

11. Petitioner Niang is a resident of Rhode Island who immigrated to the United States in 1986 as a child and who is presently being detained for immigration purposes in the Donald W. Wyatt Detention Facility, at the direction of ICE.

12. Respondent Nessinger is the Warden of the Donald W. Wyatt Detention Facility and is

being sued in his official capacity as Warden.

13. Respondent Lyons is the ICE Boston Field Office Director and is being sued in his official capacity as Field Office Director.

FACTS

14. Mr. Niang was born in Senegal on ~~XXXXXXXXXX~~ (Ex A ¶ 1) (Sworn Declaration of Mr. Elhadj Niang).

15. In September 2000, Mr. Niang, at the age of 13, immigrated to the United States on a visitor visa with this mother for educational purposes. (Ex A ¶ 2-4)

16. In Rhode Island, Mr. Niang was charged and pled nolo contendere to driving without a license and obstructing a police officer in March 2007. Mr. Niang was fined \$250 for the driving without a license, and the obstruction charge was filed. (Ex A ¶ 5)

17. On February 20, 2008, Mr. Niang was sentenced for disorderly conduct and received six months' probation arising out of an incident on August 8, 2007. (Ex A ¶ 6)

18. On that same date, Mr. Niang was given a one year suspended sentence with 11 months' probation for obstructing a police officer arising out of an incident on November 27, 2007. (Ex A ¶ 7)

19. 8. Mr. Niang pled to driving without a license and received a fine on March 10, 2008. (Ex A ¶ 8)

20. 9. On March 14, 2018, Mr. Niang pled nolo contendere to misdemeanor conspiracy and given a six-month suspended sentence and eleven months' probation. (Ex A ¶ 9)

21. Mr. Niang was ordered removed by and immigration judge on December 18, 2008 and did not fight removal as Mr. Niang knew the government could not secure travel documents for him to return to Senegal and that Mr. Niang would be released under an order of supervision

which would allow him to get a work permit that Mr. Niang needed to support his family and himself. (Ex A ¶10)

22. Mr. Niang was held at the Bristol County Correctional Facility in Massachusetts for 9 months and then released in June/July 2009. (Ex A ¶11)

23. Upon his release Mr. Niang was put on an order of supervision with ICE which required check ins and allowed him to get his work permit. (Ex A ¶12)

24. To the best of his knowledge, Mr. Niang went to all of his appointments with ICE for check ins. (Ex A ¶13)

25. Mr. Niang was again detained by ICE and held custody in 2020 after Mr. Niang appeared at an ICE check-in in Warwick, Rhode Island and Mr. Niang was taken to a Louisiana jail. (Ex A ¶14)

26. Mr. Niang was granted an emergency stay from the BIA based on his marriage and a pending a relative petition (I-130). (Ex A ¶15)

27. Mr. Niang was released after about three weeks. (Ex A ¶16)

28. The petition was based on a marriage which ended and Mr. Niang did not get a green card. (Ex A ¶17)

29. On May 27, 2021, Mr. Niang was convicted of driving on a suspended license and given a fine. (Ex A ¶18)

30. In 2025, Mr. Niang plead nolo contendere to charges of Refusal to submit to a chemical test, DUI liquor, reckless driving and driving after denial or suspension. (Ex A ¶19)

31. Mr. Niang received a combined effective sentence of a total of 90 days to serve, with a suspended sentence of one year and one year probation, with a fine, community service and loss of license. (Ex A ¶20)

32. Mr. Niang served ninety days at Rhode Island Adult Correctional Institutes (ACI). Mr. Niang was released July 22, 2025. (Ex A ¶21)

33. Mr. Niang was transferred from the ACI to Wyatt where Mr. Niang have been held since July 22, 2025. (Ex A ¶22)

34. As far as Mr. Niang know, there has been no progress so far in securing a travel document from Senegal. (Ex A ¶23)

35. To his knowledge the Senegalese consulate has not replied to ICE requests for a travel documents. (Ex A ¶24)

36. Mr. Niang started a trucking business in Massachusetts in 2018, NDINDY Logistics LLC., and has paid his taxes. (Ex A ¶25)

37. Through the business Mr. Niang has had up to nine employees and three trucks. The business does home delivery and with him here, no one is running the business. (Ex A ¶26)

38. Mr. Niang have two children who are United States Citizens, ages 11 and 12 who Mr. Niang provides child support for. (Ex A ¶27)

39. Mr. Niang is very active in the children's lives, and his daughter is having a very difficult emotional time with him in detention. (Ex A ¶27-28)

40. Mr. Niang also provides for his uncle and takes him to doctor's appointments, ensure has meal, and provides him with all types of other care in an attempt to make sure he stays healthy. (Ex A ¶29)

41. Before Mr. Niang was detained, Mr. Niang was getting back with his ex-wife who has subsequently suffered a traumatic brain injury and is in the ICU. She could most definitely use his help financially and his support. (Ex A ¶30)

42. Mr. Niang stopped high school in the 12th grade. (Ex A ¶31)

43. Mr. Niang had to drop out of school to provide for his mom and his dad and their extended family. (Ex A ¶31)

44. Mr. Niang has been traumatized while in the United States and witnessed two of his friends get shot and testified in court about that event. He also had a good friend who drowned. All of that affected Mr. Niang and lead to some of the issues Mr. Niang has had. (Ex A ¶32)

45. In or about December 18, 2008, the ICE completed removal proceedings against Mr. Naing and received a final deportation order where the EOIR ordered Mr. Niang's removal to Senegal. (Ex A ¶10)

46. During this period, and prior to his release in June/July 2009, the Republic of Senegal declined to repatriate Mr. Niang from the United States.

47. In or about June/July 2009, the INS determined that it was unable to remove Mr. Niang from the United States and INS released Mr. Niang from immigration detention with an Order of Supervision. (Ex A ¶10-13)

48. On July 22, 2025, ICE determined that it would continue to detain Mr. Niang following his arrest and conviction of a DUI and sentence to serve ninety days in the Rhode Island Adult Correctional Institute. ((Ex A ¶19-22)

49. At present, ICE has no reason to believe that Niang's circumstances vis-à-vis the Republic of Senegal have significantly changed and that the Republic of Senegal or any other foreign government will likely accept Niang for repatriation.

50. As a result of Mr. Niang's detention, Niang's family has struggled to make ends meet because Niang had been the family's sole financial provider.

51. Mr. Niang is currently in the custody of the Respondents under or by color of the authority of the United States – that is, detained in the Donald W. Wyatt Detention Facility at the direction

of ICE.

52. Mr. Niang's detention violates the U.S. Constitution.

53. Specifically, Mr. Niang is being detained for immigration purposes when ICE knows that it cannot effect his removal from the United States and thus ICE has no constitutionally permissible basis for depriving Niang of his liberty, in violation of the Substantive Due Process guarantee of the Fifth Amendment to the United States Constitution.

54. A judicial order requiring Mr. Niang's release from such custody would effectively redress Respondents' unlawful conduct.

PRAYER FOR RELIEF

Wherefore, Mr. Niang respectfully requests that the Court:

- A. Order Respondents to immediately release Mr. Niang from the Donald W. Wyatt Detention Facility;
- B. Award to Mr. Niang his reasonable litigation costs and attorney's fees pursuant to the Equal Access to Justice Act; and
- C. Grant such other further relief that is deemed just and proper by the Court\

Dated: September 12, 2025.

Respectfully submitted,
ELHADJ NIANG,

By his attorney,

/s/ Sonja L. Deyoe
Sonja L. Deyoe #6301
Law offices of Sonja L. Deyoe
395 Smith Street
Providence, RI 02908
(401) 864-5877
SLD@the-straight-shooter.com