



## JURISDICTION

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, 2005), 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 April 15, 2019, an Immigration Judge 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. Yusuf Touray, is a national and citizen of Gambia. Petitioner entered the United States in 2016, 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 13, 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).

## STATEMENT OF FACTS

10. Petitioner, Mr. Yusuf Touray, is a 31-year-old national and citizen of Gambia who entered the United States in 2016. Mr. Touray submitted an application for asylum and withholding of removal to remain in this country based on his fear of returning to Gambia.

11. The Immigration Judge denied Mr. Touray's asylum application and ordered removal 2,346 days ago, on April 15, 2019.

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

13. On or around August 13, 2025, Respondent Robert K. Lynch and his agents arrested Mr. Touray during a routine ICE check-in appointment.

14. Mr. Touray has now been in detention for over one month pending his removal. Respondent continues to detain Mr. Touray but has not demonstrated an effort to execute the removal order in over six (6) years.

15. Exactly 2,346 days have passed since Mr. Touray was issued a final order of removal. To date, ICE has not effectuated Mr. Touray's removal from the United States.

16. Mr. Touray is now facing indefinite detention. The 2,346 days having elapsed since his removal order demonstrated that removal is not significantly likely in the foreseeable future

17. Mr. Touray is not a danger to the community or a flight risk. He does not have any pending criminal cases. He has demonstrated compliance and stability while obeying the OSUP.

18. Given his genuine fear of persecution and torture in Gambia, Mr. Touray remains in the United States for his own safety. Mr. Touray now has deep roots in his community. His wife, who is now pregnant, is a legal permanent resident of the United States and his child is a

United States citizen and his wife will give birth to his second child who will also be a United States citizen.

19. Prior to his arrest, Mr. Touray had valid work authorization and provided for his family. His continued detention deprives his family of his companionship and income.

20. In light of the considerable delay, his detention now seems both capricious and unjustified. Respondent's decision to detain Mr. Touray is not legally justifiable as six years have elapsed since his final order of removal.

21. Petitioner has complied with the terms of his Order of Supervision for well over six years. During this time, check-in after check-in Respondent elected not to detain him, implicitly acknowledging that removal was not imminent. Respondent's decision not to detain the Petitioner effectively shows that community supervision adequately safeguarded the government's interests. Petitioner's liberty interest grew more substantial with each passing year that he was allowed to live, work, and support his family in the community under DHS supervision. There is no better time for the Court to consider the merits of Mr. Touray's request for release.

## **CLAIMS FOR RELIEF**

### **COUNT ONE CONSTITUTIONAL CLAIM**

22. Petitioner alleges and incorporates by reference paragraphs 1 through 21.

23. Petitioner's continued detention violates his right to procedural due process guaranteed by the Fifth Amendment to the United States Constitution.

24. "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.

25. In the case of Petitioner, the private interest affected by the government is profound—the loss of his physical liberty. 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 over one month and will likely remain in detention, as removal is not reasonably foreseeable.

26. To now arrest and detain Petitioner without any new basis—such as a significant change in removability status, criminal conduct, or flight risk—is arbitrary and capricious, and inconsistent with the expectations of fair notice and rational government behavior guaranteed by due process. *Id.*

## **COUNT TWO STATUTORY CLAIM**

27. Petitioner alleges and incorporates by reference paragraphs 1 through 26.

28. Petitioner's continued detention violates the Immigration and Nationality Act.

29. 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).

30. 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).

31. 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.

32. 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).

33. The Immigration Judge issued a removal order 2,346 days ago. Respondent was unable to execute the final order of removal within 90 days. As such, Respondent released Petitioner on an Order of Supervision.

34. 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.

35. At no point in the past 2,346 days, has Respondent demonstrated the likelihood that Petitioner will be removed in the reasonably foreseeable future by failing to execute the final order of removal.

36. Moreover, detention following such prolonged supervised release resembles punitive action, rather than typical immigration enforcement. This is particularly egregious where, as here, the government has not demonstrated that Gambia is willing to accept Petitioner or demonstrated that removal is significantly likely in the reasonably foreseeable future, as required by *Zadyvdas*. Without such a showing, the government lacks a legal basis to detain Petitioner under § 1231(a)(6).

37. For the foregoing reasons, Petitioner's continued detention is in violation of INA § 241(a), 8 U.S.C. § 1231(a).

**COUNT THREE**

38. 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.

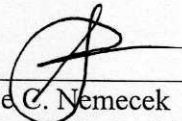
**PRAYER FOR RELIEF**

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. Alternatively, if immediate release is not granted, order that Respondent provide Petitioner with a bond hearing before an immigration judge, pursuant to 8 C.F.R. § 241.13 and principles of due process, to determine whether continued detention is justified;
6. 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' custody;
7. Award Petitioner reasonable costs and attorney's fees; and,
8. Grant any other relief that this Honorable Court deems just and proper.

DATED: 9/16/25

Respectfully submitted,



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Julie C. Nemecek  
Attorney for Petitioner (A216-209-221)  
The Nemecek Firm, Ltd  
471 East Broad Street, Suite 1200  
Columbus, Ohio 43215  
Telephone: (614) 459-2180  
Fax: (614) 340-7888  
Email: [julie@jnimmigration.com](mailto:julie@jnimmigration.com)