

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON**

Mor Maty Ndiaye,

Petitioner,

v.

Sam Olson, in his official capacity as Deputy Director, Chicago Field Office, Immigration and Customs Enforcement;

Kristi Noem, Secretary, in her official capacity as U.S. Department of Homeland Security;

Todd M. Lyons, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;

Pamela Bondi, in her official capacity as Attorney General of the United States;

Jason Maydak, in his official capacity as Warden of the Boone County Jail.

Respondents.

Case No. 2:25-cv-145-DCR

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

Petitioner, Mor Maty Ndiaye, was granted withholding of removal on February 14, 2025, more than 238 days ago. Yet despite this order granting him relief from removal, he remains in immigration custody over 8 months later. On October 7, 2025, Respondent Jason Maydak filed a response asserting that the case is moot based solely on Mr. Ndiaye's transfer from Boone County Detention Center to another Immigrations and Customs Enforcement (ICE) detention facility, while the remaining respondents failed to respond by the Court's deadline. Mr. Ndiaye submits this reply to make clear that his claims are not moot, that the named federal respondents continue to exercise authority over his custody and release, and that his continued detention remains unlawful. As such, this Court should order his immediate release.

ARGUMENT

I. Mr. Ndiaye's Case is Not Moot Because He Remains in ICE Custody and Continues to Suffer the Same Injury.

In his Response, Respondent Jason Maydak argues that this case is moot because, after Mr. Ndiaye filed his habeas petition, he was transferred from Boone County Detention Center to Campbell County Detention Center. Dkt. 5, p. 2-3. This argument fails.

A habeas petition is available to an individual if “[h]e is in custody under or by color of authority of the United States or is committed for trial before some court thereof.” *Diallo v. Adducci*, 444 F. Supp. 3d 815 (N.D. Ohio 2020). “[A] case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969). Thus, the critical question is whether Mr. Ndiaye remains “in custody” and continues to experience a restraint on his liberty.

Here, there is no dispute that Mr. Ndiaye remains in custody, as he is currently detained at the Cambell County Detention Center. Dkt. 5-1. For the reasons argued in his habeas petition, Dkt.

I, his continued detention is unlawful. He was granted withholding of removal over eight months ago. Yet, the government continues to detain him while it purportedly pursues removal to a third country. The Due Process Clause does not permit the government to detain him indefinitely while it conducts this exercise, which is likely to be all but futile in Mr. Ndiaye's case. His transfer from one ICE detention center to another did not remedy the underlying injury: his indefinite and unlawful detention. Accordingly, his habeas petition remains live and, contrary to Respondent's assertion, this case is not moot.

II. The Petition is Properly Filed and Names the Correct Respondents.

Mr. Ndiaye properly filed his habeas petition, as he named the Respondents legally responsible for his custody and for the decisions governing his continued detention. Specifically, the petition identifies the warden of the detention facility where Mr. Ndiaye was detained at the time of filing, the Deputy Director of the ICE Chicago Field Office, the Secretary of the Department of Homeland Security, the Acting Director of ICE, and the Attorney General of the United States. Together, these Respondents satisfy the statutory and jurisdictional requirements under 28 U.S.C. §§ 2242-2243 and well-established precedent in the Sixth Circuit.

At the time the petition was filed, Respondent Maydak was an immediate custodian, as Jailer of Boone County Detention Center where Mr. Ndiaye was detained. As recognized by the Supreme Court, naming the custodian at the time of filing is sufficient to meet the jurisdictional and filing requirements for habeas petitions. *See Padilla v. Rumsfeld*, 542 U.S. 426, 434–35 (2004) (“More narrowly, we agree that if jurisdiction was proper when the petition was filed, it cannot be defeated by a later transfer of the prisoner to another district.”). Thus, Mr. Ndiaye's transfer to

another detention facility does not alter the fact that Mr. Maydak was a proper immediate custodian named at the time of filing.

Further, as recognized in the Sixth Circuit, while the warden exercises physical, day-to-day control over a detainee, the *federal agency officials* retain the ultimate authority over detention and release decisions. *See Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003) (“Although the warden of each detention facility technically has day-to-day control over Immigration and Naturalization Service (INS) detainees, INS District Director for the district where a detention facility is located has power over alien habeas corpus petitioners, and therefore is the appropriate respondent in detainee’s habeas suit.”) Thus, while Respondent Maydak was properly named because he was Mr. Ndiaye’s custodian at the time of filing, the real authority to effectuate Mr. Ndiaye’s release lies with the federal respondents, who remain parties to this case.

The question, therefore, is not whether Mr. Ndiaye remains under the day-to-day control of Boone County. Instead, the relevant inquiry is whether the officials with authority over Mr. Ndiaye’s custody and release remain parties, which they do. On October 2, 2025, Mr. Ndiaye was transferred from Boone County Detention Center to Campbell County Detention Center, a facility that is also under the jurisdiction of the ICE Chicago Field Office. This transfer did not alter the controlling federal authority over Mr. Ndiaye’s custody or the nature of the underlying claims. He remains detained under the same ICE field office’s authority, subject to the same unlawful and indefinite detention he challenged in his petition.

By naming both the custodian at the time of filing and the federal officials responsible for custody decisions, Mr. Ndiaye has ensured the petition properly encompasses all necessary parties

and preserves the case for full adjudication on the merits. Accordingly, the filing remains proper and the named respondents remain correct.

However, should this Court determine that the current warden of Mr. Ndiaye's present detention facility must be named as a respondent, he respectfully requests leave to file an amended petition for the sole purpose of naming that official. *See* Fed. R. Civ. P. 15(a)(2) (court should freely grant leave when justice so requires).

CONCLUSION

Mr. Ndiaye's habeas petition presents a live and urgent controversy – he remains indefinitely detained by ICE long after receiving protection from removal. His transfer between facilities neither remedies the ongoing constitutional and statutory violations, nor does it moot it. For these reasons, and those stated in Mr. Ndiaye's petition, this Court should grant a writ of habeas corpus and order his immediate release.

Dated: October 13, 2025

Respectfully submitted,

s/ Sarah C. Larcade

Sarah C. Larcade
Larcade, Ficker, & Khubunaia, LLC
8190 Beechmont Avenue, Suite 334
Cincinnati, Ohio 45255
(513) 587-8765
sarah@larcadelaw.com

Counsel for Petitioner