

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

MOMOHU KARAGA,

Petitioner,

vs.

KEVIN RAYCRAFT,¹ Field Office Director
for Enforcement and Removal Operations,
United States Immigration and Customs
Enforcement.

Respondent.

Case No. 1:25-cv-735

District Judge Susan J. Dlott

Magistrate Judge Elizabeth Preston Deavers

PETITIONER'S REPLY TO RESPONDENT'S RETURN OF WRIT

Petitioner, Mr. Momohu Karaga, by and through undersigned Counsel, respectfully submits this Reply to Respondent's Return of Writ.

INTRODUCTION

The record reflects that Momohu Karaga (Petitioner) is a native and citizen of Gambia. Petitioner fled Gambia and entered the United States on or around May 2, 2022. Despite building a productive life in the United States with his U.S. citizen family members, he now is 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.

¹ Robert K. Lynch is no longer the Field Office Director for ERO, ICE. Kevin Raycraft is currently the Acting Field Office Director for ERO, ICE.

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 Petitioner's case and has 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.

FACTUAL BACKGROUND

Momohu Karaga (Petitioner or Mr. Karaga) is 22 years old. The government asserts that he is a citizen of Gambia. Petitioner is effectively stateless as Gambia has failed to issue Petitioner identity or travel documents. Petitioner fled Gambia and entered the United States on or around May 2, 2022, near Del Rio, Texas. Petitioner was detained by U.S border Patrol officials upon entry and remanded to U.S Immigration and Customs Enforcement (ICE) after being served with an expedited removal order.

ICE referred Petitioner to the asylum office for a Credible Fear interview on June 3, 2022. On June 7, 2022, the asylum office issued a negative credible fear determination. On June 29, 2022, an Immigration Judge affirmed the asylum office's negative credible fear determination. Petitioner's case was returned to DHS for petitioner's removal. On October 28, 2022, Petitioner was released on supervision, after having been detained for approximately 6 months. On or around February 2025, Petitioner contacted the Embassy of Gambia in Washington D.C. for a travel document, but he was not issued any official document. Petitioner diligently reported for his ICE check-ins after being released on supervision. On October 1, 2025, Petitioner reported to the ICE

Enforcement and Removal Office (ERO) in Westerville, OH for a routine check in and was detained by ICE again.

As of November 26, 2025, Petitioner has been detained for nearly two months. On October 16, 2025, Petitioner filed a Petition for a Writ of Habeas Corpus. Petitioner challenges his detention as unlawful because Respondents cannot remove him in the reasonably foreseeable future. Petitioner seeks release from ICE custody under appropriate supervision pursuant to 8 U.S.C. § 1231(a)(3).

ARGUMENT

I. THIS COURT HAS JURISDICTION TO REVIEW PETITIONER'S CLAIMS

The Government fundamentally mischaracterizes Petitioner's claim. Petitioner does not challenge his years-old removal order to Gambia. Rather, he challenges the government's post-proceeding actions, including detention where removal is not reasonably foreseeable. This distinction is not semantic but jurisdictional.

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

Section 1252(g) does not preclude district court habeas review of 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 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 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 scheme to deprive him of his statutory and constitutional rights by detaining him when removal is not reasonably foreseeable.

Petitioner’s claims are distinct from DHS’s discretionary authority regarding the execution of removal orders, because Petitioner is not challenging the execution of his removal order; rather, he is challenging Respondents’ efforts to continue to detain him when removal is not reasonably foreseeable. Petitioner was served with an expedited removal order on or around May 2, 2022. His negative credible fear interview was affirmed by an Immigration Judge on June 29, 2022. After the 90-day removal period, Petitioner was placed on supervision. As of today, it has been 1,305 days since Petitioner was initially served with the expedited removal order. Since Petitioner’s removal order became administratively final, DHS 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 is not designated to 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.

The Western District of Washington found jurisdiction despite 1225(a)(5) because 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 Gambia. Instead, Petitioner is seeking a determination that, based on evidence, that his removal is not reasonably foreseeable, and that 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 removal is not 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, 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.

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 re-detained by ICE over 3.5 years after his expedited removal order was issued. In the “1,305” days since Petitioner’s removal order was issued, the government has not been able to obtain travel documents or been able to effectuate removal to Gambia.

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 individualized danger finding violates both the INA and the Due Process Clause. See *Zadvydas*, 533 U.S. at 699.

Respondent contends that *Zadvydas* does not apply to Petitioner’s case because Petitioner has, amongst others, been detained for less than the 6-month cutoff of presumptive reasonableness. Petitioner, in response, contends that the 6-month presumption of reasonableness established in

Zadvydas should not apply to the circumstances of this case because Petitioner was re-detained over 3.5 years after his expedited removal order was issued and Respondent has not shown that removal is reasonably foreseeable. *Munoz-Saucedo v. Pittman*, No. 25-cv-2258, 2025 WL 1750346 (D.N.J. June 24, 2025); see also *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where alien is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future)).

Zadvydas dealt with the initial detainment of an alien awaiting removal whereas the present case deals with re-detention of Petitioner. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner's removal order was issued on or around May 2, 2022. Nevertheless, ICE detained Respondent for approximately 6 months before releasing him under supervision on October 28, 2022. On October 1, 2025, almost three years after ICE's previous detention of Petitioner, ICE arrested and detained Petitioner during a routine ICE check-in. Accordingly, the *Zadvydas* six-month presumption does not apply, as Petitioner - like the aliens in *Munoz-Saucedo*, *Nguyen*, and *Tadros* - was re-detained years after his initial re-detention and his removal is not likely in the reasonably foreseeable future.

Even assuming *arguendo* that the six-month presumption applies here, Petitioner's claim is not precluded. While *Zadvydas* established a presumptively reasonable period of six months for post-removal-order detention, 533 U.S. at 701, this presumption is rebuttable and does not create an absolute bar to habeas relief for those detained less than six months. See *Ali v. Dep 't of*

Homeland Sec., 451 F. Supp. 3d 703, 706-07 (S.D. Tex. 2020) ("This six-month presumption is not a bright line, ... and *Zadyvdas* did not automatically authorize all detention until it reaches constitutional limits."); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 894, 994 (C.D. Cal. 2018) ("The six-month *Zadyvdas* presumption is just that - a presumption ... not a prohibition on claims challenging detention less than six months." (internal quotations omitted)); *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008) ("*The Zadyvdas* Court did not say that the presumption is irrebuttable.").

Here, Respondent incorrectly contends that *Zadyvdas* does not apply to Petitioner's case because Petitioner has, amongst others, been detained for less than the 6-month cutoff of presumptive reasonableness. The Court described the six-month mark as a "guide", not a rigid threshold. *Zadyvdas*, 533 U.S. at 701; see also, *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, Case 25-2258, *9 (D.N.J. June 24, 2025) ("[A]s the period of post removal confinement grows, what counts as the reasonably foreseeable future conversely concurrently shrinks."). Accordingly, Petitioner's claim for habeas relief under *Zadyvdas* is not barred merely because Petitioner has been detained for less than 6 months.

B. Removal is not reasonably foreseeable

Ahmed v. Brott, No. CIV. 14-5000, 2015 WL 1542131, at *4 (D. Minn. Mar. 17, 2015), report and recommendation adopted, No. CIV. 14-5000, 2015 WL 1542155 (D. Minn. Apr. 7, 2015) (collecting cases), stipulated that a court should find a significant likelihood that removal is not reasonably foreseeable in the future where (1) where the detainee's country of origin refuses to issue a travel document; and (2) where the detainee is stateless and no country will accept him.

Here, Petitioner is a citizen of Gambia. On or around February 2025, Petitioner contacted the Embassy of Gambia in Washington D.C. for a travel document, but he was not issued any official document. Petitioner's previous request for travel documents and the failure of the Embassy to grant that request is cogent proof that Respondent is unlikely to procure travel documents to facilitate Petitioner's removal. Accordingly, this court should find that there is a significant likelihood that Petitioner's removal is not reasonably foreseeable in the future.

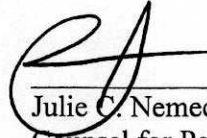
Moreover, Petitioner is effectively stateless because Gambia has failed to issue travel documents to him. Travel documents constitute evidence of Petitioner's nationality and identity. There is no evidence on record that any other country is willing to accept Petitioner. As a result, this court should find that Petitioner is stateless and there is a significant likelihood that Petitioner's removal is **not** reasonably foreseeable in the future.

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.

DATED: 11/26/2025

Respectfully submitted,



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