

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Mustafa HAMMAD,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; PAMELA BONDI, in her official capacity as United States Attorney General; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; DAVID EASTERWOOD, in his official capacity as the St. Paul Field Office Director for U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; ERIC TOLLEFSON, in his official capacity as the Kandiyohi County Sheriff; and MATTHEW AKERSON, in his official capacity as Kandiyohi County Jail Administrator.

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Mustafa Omer Mahmoud Hammad, is a 30-year-old Sudanese national who Respondents are unlawfully detaining. Respondents are currently unlawfully and unreasonably subjecting Mr. Hammad to prolonged and indefinite post-order detention, with no likelihood of removal in the reasonably foreseeable future.


2. Mr. Hammad was ordered removed from the United States and granted Withholding of Removal to Sudan under 8 U.S.C. § 1231(b)(3)(A) and the Convention Against Torture by an Executive Office of Immigration Review Immigration Judge at the Fort Snelling Immigration Court on November 19, 2024. Mr. Hammad's removal order became administratively final on December 19, 2024.
3. The U.S. Department of Homeland Security (DHS) is holding Mr. Hammad in civil immigration custody at the Kandiyohi County Jail in Willmar, Minnesota. Mr. Hammad has continuously been in civil immigration custody since entering the United States on July 2, 2024. DHS presently claims authority to jail Mr. Hammad under 8 U.S.C. § 1231(a), which governs the detention of noncitizens who have an administratively final order of removal.
4. It has now been well over six months – 326 days to be precise – since Mr. Hammad's removal order became final. Mr. Hammad asserts that his continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because there is not a substantial likelihood that DHS will be able to carry out his removal in the reasonably foreseeable future.
5. Accordingly, Mr. Hammad respectfully asks this Court to declare that his continued detention is unlawful under *Zadvydas* and to prohibit Respondent's from further detaining him by ordering his release.
6. Mr. Hammad also requests that this Court order Respondents to produce a copy of any valid travel document they possess for him, and evidence demonstrating the likelihood of an upcoming flight outside of the United States, should it exist.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, as Petitioner is currently in federal immigration custody and seeks habeas corpus relief for ongoing violations of the U.S. Constitution, federal statutes, and applicable regulations. The case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, the regulations implementing the INA, the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 103-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; and 5 U.S.C. § 552 *et. seq.* Jurisdiction is also proper under 28 U.S.C. § 1331, as this action arises under the laws and Constitution of the United States. Additional jurisdiction exists under the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, which guarantees the right to petition for habeas corpus to challenge unlawful executive detention.
8. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, and the Court has supplemental remedial authority under the All Writs Act, 28 U.S.C. § 1651, to issue such writs as may be necessary to preserve its jurisdiction and protect Petitioner’s rights. The government has waived its sovereign immunity pursuant to 5 U.S.C. § 702.
9. Venue is proper in this District pursuant to 28 U.S.C. § 2241 because Petitioner is detained within the District of Minnesota at Kandiyohi County Jail in Willmar, Minnesota. Venue is also proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events and omissions giving rise to this action occurred in this District. Venue further lies under 28 U.S.C. § 1391(e)(1), because Respondents are officers or employees

of the United States acting in their official capacities and reside or may be found in this District. The St. Paul Field Office of Immigration and Customs Enforcement (ICE), located at Fort Snelling, is the agency responsible for Mr. Hammad. Additionally, the Kandiyohi County Sheriff and Jail Administrator, who maintain day-to-day custody over Mr. Hammad, are located within this District and are considered his immediate custodians for habeas purposes.

PARTIES

10. Petitioner, Mustafa Omer Mahmoud Hammad, is a 30-year-old Sudanese national who fled his country after being detained and tortured  Mr. Hammad's removal order became final on December 19, 2024, when no appeal was filed by DHS during the 30-day appeal period following the issuance of a removal order and granting of Withholding of Removal to Sudan under 8 U.S.C. § 1231(b)(3)(A) and the Convention Against Torture by an Immigration Judge on November 19, 2024. Mr. Hammad has been in civil immigration custody continuously since July 2, 2024.
11. Respondent Donald J. Trump is named in his official capacity as President of the United States. In this role, he is ultimately responsible for the policies and actions of the executive branch, including those of the U.S. Department of Homeland Security.
12. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. As the head of the U.S. Department of Justice, she exercises oversight over immigration adjudications and prosecutions through delegated authority.
13. Respondent Kristi Noem is named in her official capacity as Secretary of the U.S. Department of Homeland Security. Under 8 U.S.C. § 1103(a), she is charged with the

overall administration of the Immigration and Nationality Act, including implementation of immigration enforcement policies and detention protocols.

14. Respondent Todd Lyons is named in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of United States Immigration and Customs Enforcement (ICE). He exercises nationwide authority over the administration and enforcement of U.S. immigration laws and is responsible for all ICE custody decisions.
15. Respondent David Easterwood is named in his official capacity as the Field Office Director for ICE Enforcement and Removal Operations (ERO) in the St. Paul Field Office. He has direct and immediate custody over Mr. Hammad and is responsible for decisions concerning his detention and removal.
16. Respondents Eric Tollefson, Sheriff of Kandiyohi County, and Matthew Akerson, Kandiyohi County Jail Administrator, are named in their official capacities as Mr. Hammad immediate custodians. They are responsible for his physical detention at Kandiyohi County Jail pursuant to an intergovernmental service agreement with ICE.

EXHAUSTION OF REMEDIES

17. Exhaustion is not required in this case because no alternative forum exists in which Petitioner can obtain relief on the claims presented here, nor is there any statutory requirement that Petitioner exhaust administrative remedies before seeking habeas relief under 28 U.S.C. § 2241. Courts have consistently recognized that constitutional claims are exempt from exhaustion requirements in the immigration context.
18. Moreover, even if some exhaustion doctrine were arguably applicable, it would be excused here because requiring further exhaustion would be futile, unavailable, and unreasonable. Petitioner challenges the legality of his post-final order detention and

violation of his Fifth Amendment right to liberty. None of these claims can be meaningfully addressed or remedied through administrative processes.

FACTUAL BACKGROUND

19. Mr. Hammad's habeas claim concerns his post-final order detention under 8 U.S.C. § 1231(a).
20. Mr. Hammad is a native and citizen of Sudan. Ex. 2 at 1. He was apprehended near the United States border by immigration officials on July 2, 2024, and placed into expedited removal proceedings under Section 235(b)(1) of the Immigration and Nationality Act. Ex. 1 at 2. He has been in civil immigration detention ever since.
21. On November 19, 2024, an Immigration Judge at the Fort Snelling Immigration Court ordered Mr. Hammad removed and granted him Withholding of Removal to Sudan under 8 U.S.C. § 1231(b)(3)(A) and the Convention Against Torture. Ex. 3.
22. DHS did not file a notice of appeal at the Board of Immigration Appeals before the expiration of the appeal deadline. As a result, Mr. Hammad's removal order became final administratively final on December 19, 2024.
23. DHS has continued to hold Mr. Hammad in civil immigration custody at the Kandiyohi County Jail in Willmar, Minnesota, claiming authority to do so under 8 U.S.C. § 1231(a), which governs the detention of noncitizens who have a final order of removal.
24. Mr. Hammad has been detained for 326 days since his removal order became administratively final. Respondents have, to date, been unable to execute Mr. Hammad's removal or obtain a travel document and do not appear to have definite plans to do so in the near future.

25. Mr. Hammad had custody reviews with DHS officials on February 17, 2025 and May 18, 2025. Exs. 4 and 5. Following those reviews, Mr. Hammad did not receive any written determinations of dangerousness or explanations for his further detention.
26. On information and belief, Mr. Hammad has complied with all requests by Respondents and has fully cooperated with Respondent's process. Mr. Hammad has not been given any specific information about a travel document or a flight plan for his removal.

LEGAL FRAMEWORK

27. 8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "may be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6).
28. To avoid indefinite post removal detention that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), construed § 1231(a)(6) to contain an implicit time limit. *Id.* at 682. The Court held that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the [non-citizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701. However, after six months of post-removal order detention, when a noncitizen provides "good reason to

believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the government to justify continued detention. *Zadvydas*, 533 U.S. at 701.

29. DHS regulations require that, before the end of the 90-day removal period, the ICE field office with jurisdiction over the noncitizen’s detention must conduct a custody review to determine whether the noncitizen should remain detained. See 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must then conduct a custody review before or at 180 days of post-removal order detention. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).
30. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established “special review procedures” to determine whether detained noncitizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4’s custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when “the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future.” *Id.* § 241.4(i)(7). Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as

the history of ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is "specially dangerous."

ARGUMENT

31. The Court should grant the petition and order release. DHS claims ongoing authority to detain Mr. Hammad under 8 U.S.C. § 1231(a), which governs the detention of noncitizens who have an administratively final order of removal. However, despite Mr. Hammad's cooperation, it has now been 326 days since his removal order became administratively final. Mr. Hammad asserts that his continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because there is not a substantial likelihood DHS will be able to carry out his removal in the reasonably foreseeable future.
32. After well over six months of post-final order removal, the government must now bear the burden to justify Mr. Hammad's continued detention because the government's lack of initiative to remove him presents "good reason[s] to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701

CLAIMS FOR RELIEF

COUNT I

UNLAWFUL DETENTION VIOLATION OF IMMIGRATION AND NATIONALITY ACT 8 U.S.C. § 1231(a)(6)

33. Mr. Hammad realleges and incorporates by reference the paragraphs above.
34. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 689, 701. Petitioner’s continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT II

UNLAWFUL DETENTION VIOLATION OF DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

35. Mr. Hammad realleges and incorporates by reference the paragraphs above.
36. The Fifth Amendment guarantees due process protections to all “persons” in the United States, including noncitizens, regardless of immigration status. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
37. *Zadvydas* authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 689, 701. Petitioner’s continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates due process, and he must be immediately released.

PRAYER FOR RELIEF

Accordingly, Petitioner asks this Court for the following relief:

1. Assume jurisdiction over this matter;

2. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
3. Pursuant to 28 U.S.C. § 2243 issue an order directing the Respondents to show cause within 3 days why the writ of habeas corpus should not be granted;
4. Order Respondents to produce to the Court and Petitioner any valid travel document for Petitioner in their possession;
5. Order Respondents to produce to the Court and Petitioner evidence demonstrating their ability to execute a removal flight outside of the United States in the near future;
6. Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody on an Order of Supervision with any conditions deemed necessary pursuant to 8 C.F.R. § 241.5; and
7. Grant any and all further relief this Court deems just and proper.

Dated: November 10, 2025

s/ Benjamin Gleekel
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