

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

ASSANE DIOUF,
A 

Petitioner,

vs.

Case No. 1:25-cv-834

**KEVIN RAYCRAFT, Immigration and
Customs Enforcement, Acting Director of
the Detroit Field Office, Enforcement and
Removal Operations,**

Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Petitioner, by and through undersigned Counsel, respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondent, Kevin Raycraft, Immigration and Customs Enforcement (ICE), Acting Director of the Detroit Field Office, Enforcement and Removal Operations (ERO).

INTRODUCTION

1. This case challenges the unlawful detention of Assane Diouf (Petitioner or Mr. Diouf), who is currently in the custody of ICE at the Butler County Correctional Complex. ICE has contracted with the facility to house detainees such as Petitioner. Petitioner is under the direct control of the Respondent and his agents.

2. Petitioner was ordered removed to Mauritania on March 30, 2012. Petitioner appealed the decision of the Immigration Judge. The Board of Immigration Appeals (BIA) denied the appeal on August 29, 2013.

3. Petitioner contends that he is unlawfully detained under 8 U.S.C. § 1231(a) because removal is not reasonably foreseeable, and that Respondent's actions violate the Due Process Clause of the Fifth Amendment to the United States Constitution, the Immigration and Nationality Act and implementing regulations.

PARTIES

4. Petitioner, Mr. Assane Diouf, entered the United States on or around June 2, 2003. Mr. Diouf was admitted to the United States at a port of entry in New York. Petitioner is currently detained at the Butler County Correctional Complex. Petitioner has been in the custody of ICE since October 28, 2025.

5. Respondent, Kevin Raycraft, is named in his official capacity as the Acting Director of Enforcement and Removal Operations for the ICE Field Office in Detroit, and within the United States Department of Homeland Security (DHS). In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is the immediate custodian of Petitioner.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, Article I, § 9, cl. 2 (the Suspension Clause) and Article III of the U.S. Constitution. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

7. Under 28 U.S.C. § 2241, district courts have the authority to grant a writ of habeas corpus to any petitioner “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).
8. The Court has jurisdiction to review Petitioner’s petition for writ of habeas corpus because Petitioner is incarcerated within Ohio’s southern federal judicial district. *See* 28 U.S.C. § 2241; *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.”).
9. 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 only deprives the district court of habeas jurisdiction to review orders of removal, not challenges to detention. *See* 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)); *see also Karki v. Jones*, Case No. 1:25-cv-281, 2025 WL 1638070, at *8 (S.D. Ohio June 9, 2025) (McFarland, J.) (finding that 8 U.S.C. § 1252(g) does not suspend habeas review of post-removal-order detention under Sixth Circuit precedent). Petitioner is not challenging the removal order itself or the Attorney General’s decision to execute it. Instead, Petitioner challenges his continued detention when removal is not reasonably foreseeable.
10. Venue is proper in the United States District Court for the Southern District of Ohio, specifically in the Western Division at Cincinnati, because Petitioner is currently detained in the Butler County Correctional Complex in Hamilton, Ohio. *See* 28 U.S.C. § 1391, 28 U.S.C. § 2241, S.D. Ohio Civ. R. 82.1(b).

EXHAUSTION

11. Exhaustion is not statutorily required for *Zadvydas* relief. See *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018), *vacated on other grounds*, *Hamama v. Adducci*, 946 F.3d 875 (6th Cir. 2020); *Shurney v. I.N.S.*, 201 F. Supp. 2d 783, 788 (N.D. Ohio 2001) (“Under the INA, exhaustion of administrative remedies is only required for appeals of final orders of removal.” (citing 8 U.S.C. § 1252(d)(1)); *Nassar v. Clausen*, No. 1:07-cv-1066, 2008 WL 314698, at *1 (W.D. Mich. Feb. 4, 2008) (“[T]here is no administrative exhaustion requirement as to this kind of habeas challenge.” (citation omitted)). Petitioner is not appealing a final order of removal. Instead, Petitioner challenges his post-removal order detention when removal is not reasonably foreseeable.
12. When, as here, exhaustion is not statutorily required, courts must examine whether exhaustion should be required as a matter of prudence. See, e.g., *Salad v. Department of Corrections*, 769 F. Supp. 3d 913, 921 (D. Alaska 2025) (“Administrative exhaustion is prudential rather than a jurisdictional requirement for habeas review under § 2241.”) (citing *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004)). The Supreme Court has recognized three “broad sets of circumstances in which the interests of an individual weigh heavily against requiring administrative exhaustion: (1) where such requirement would subject an individual to an unreasonable or indefinite time frame for administrative action; (2) where the administrative agency lacks competence to resolve the particular issue presented; or (3) the exhaustion of administrative remedies would be futile because the administrative body is shown to be biased or has

predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992); *see also Shurney*, 201 F. Supp. 2d at 788-89.

13. Petitioner is currently unable to access administrative remedies due to the fact that his removal order was finalized over 12 years ago. Thus, requiring exhaustion would impose undue delay.

STATEMENT OF FACTS

14. Petitioner, Mr. Assane Diouf, entered the United States on or around June 2, 2003. Mr. Diouf was admitted to the United States at a port of entry in New York. (Notice to Appear, Ex. A).
15. Mr. Diouf submitted an application for asylum and withholding of removal to remain in this country based on a fear of returning to Mauritania. On March 30, 2012, approximately 4,977 days ago, the Immigration Judge denied Petitioner’s asylum application and ordered his removal to Mauritania.
16. Mr. Diouf appealed his case to the Board of Immigration Appeals (BIA). On August 29, 2013, approximately 4,460 days ago, the BIA denied the appeal. On October 15, 2020, approximately 1,849 days ago, the BIA dismissed the appeal. On February 27, 2018, ICE issued Form I-220B, Order of Release on Supervision (OSUP) to Petitioner.
17. Among other conditions, the OSUP required that “[Petitioner] provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.” (Copy of OSUP, Ex. B). On June 7, 2023 and May 8, 2024, respectively, ICE confirmed Mr. Diouf’s OSUP compliance. (Letters of Compliant Reporting, Ex. C).
18. Petitioner had been regularly reporting to ICE via video call. However, at the request of ICE, Petitioner appeared in-person for his ICE check-in on October 28, 2025.

There, ICE apprehended and detained Petitioner. It is unclear why ICE revoked Mr. Diouf's order of release on supervision, and subsequently detained him.

19. Mr. Diouf has now been in ICE custody for approximately 17 days pending his removal. It is unclear whether Mauritania accepts deportees.
20. Since fleeing Mauritania, Petitioner has been unable to obtain travel documents. To Petitioner's knowledge, the government of Mauritania has not issued travel documents for him.
21. Respondent's decision to detain Mr. Diouf is not legally justifiable because it is unlikely that he will be removed to Mauritania in the reasonably foreseeable future. To date, Mr. Diouf has been unable to obtain travel documents from Mauritania. For this reason, Petitioner's detention may be indefinite and potentially permanent. There is no better time for the Court to consider the merits of Petitioner's request for release.

LEGAL FRAMEWORK

22. "[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Id.* at 690.
23. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the U.S. Supreme Court held that 8 U.S.C. §1231(a)(6), when "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." 533 U.S. at 689. If the individual's removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute." *Id.* at 699-700.

24. In *Jama v Immigration & Customs Enforcement*, 543 U.S. 335, 347 (2005), the Supreme Court found that the petitioner had satisfied his burden of showing that a significant likelihood of removal is not reasonably foreseeable because the petitioner established that no country would accept him. Aliens under those circumstances are deemed “removable-but-unremovable” because their detention would be indefinite and potentially permanent in defiance of the letter and spirit of *Zadvydas*. See also *Demore v. Kim*, 538 U.S. at 527 (touchstone inquiry is whether removal is “no longer practically attainable.”).

Statutes and Regulations

25. A non-citizen with a final order of removal “who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”).
26. A non-citizen may only be detained past the 90-day removal period following a removal order if found to be “a risk to the community or unlikely to comply with the order of removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).
27. But even where initial detention past the 90-day removal period is authorized, if “removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances” *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

28. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: “(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision if a non-citizen “violates any of the conditions of release”).

CLAIMS FOR RELIEF

COUNT 1 CONSTITUTIONAL CLAIM Substantive Due Process

29. Petitioner re-alleges and incorporates by reference all paragraphs above as if fully set forth here.
30. Petitioner’s continued detention violates Petitioner’s right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint. *See e.g., Tam v. INS*, 14 F.Supp.2d. 1184 (E.D. Cal. 1998) (aliens retain substantive due process rights).
31. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner’s liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a

period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest – to effect the alien's removal. *See Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention – executing removal – is nonsensical.")

32. Petitioner is unable to obtain travel documents, therefore, there is no significant likelihood of removal in the reasonably foreseeable future. As such, Petitioner is effectively "removable-but-unremovable". Respondent's detention of Petitioner would be indefinite and potentially permanent.

COUNT 2
CONSTITUTIONAL CLAIM
Procedural Due Process

33. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
34. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. Petitioner in this case has been denied that opportunity.
35. Petitioner's continued detention without a significant likelihood of removal in the reasonably foreseeable future violates his due process rights guaranteed by the Fifth Amendment to the United States Constitution. *See Zadvydas v. U.S.*, 533 U.S. 678.
36. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the

probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

37. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690. Petitioner is currently detained.
38. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, the statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondent did not adhere to the regulations, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondent to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.
39. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a

habeas corpus petition in federal court to compel Respondent to comply with law, requiring Respondent to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

40. For these reasons, revoking Petitioner's order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

41. The government's action in detaining Petitioner pending his removal profoundly impacts his private interest in physical liberty and could result in indefinite detention because his removal is not reasonably foreseeable.

COUNT 3 STATUTORY CLAIM

42. 8 U.S.C. § 1231(a)(6) authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances" *Zadvydas v. Davis*, 533 U.S. 678, 699-700. Petitioner's continued detention by Respondent is unlawful and contravenes 8 U.S.C. § 1231(a)(6), as interpreted by the U.S. Supreme Court in *Zadvydas*.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

1. **Assume jurisdiction** over this Petition pursuant to 28 U.S.C. § 2241;

2. **Issue an Order to Show Cause** requiring Respondent to justify why the writ should not be granted within three (3) days, or another timeframe the Court deems just;
3. **Enjoin** Respondent from transferring the Petitioner from the jurisdiction of this District pending the adjudication of this Petition;
4. **Declare** that Respondent's actions to arrest and detain Petitioner violate 8 U.S.C. § 1231(a) and the Due Process Clause of the Fifth Amendment;
5. **Order Petitioner's immediate release** from ICE custody under appropriate supervision pursuant to 8 U.S.C. § 1231(a)(3);
6. **Award attorneys' fees and costs** to Petitioner pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or other applicable authority; and
7. **Grant such further relief** as this Honorable Court deems just, necessary, and appropriate to preserve Petitioner's statutory and constitutional rights.

DATED: 11/14/2025

Respectfully submitted,



Julie C. Nemecek (0078104)
Counsel for Petitioner
The Nemecek Firm, Ltd.
471 East Broad Street, Suite 1200
Columbus, Ohio 43215
(614) 459-2180
julie@jnimmigration.com