

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

ASSANE DIOUF,

Petitioner,

v.

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

Respondent.

Case No. 1:25-cv-00834

District Judge Susan J. Dlott

Magistrate Judge Chelsey M. Vascura

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**RETURN OF WRIT**

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The Court should deny and dismiss the Petition for Writ of Habeas Corpus filed by Petitioner Assane Diouf under 28 U.S.C. § 2241. (Petition, ECF No. 1). The Court lacks subject matter jurisdiction to interfere with the discretionary decision to revoke release to execute the removal order, and Petitioner has made no verifiable claims that his removal will not happen in the reasonably foreseeable future. As such, Petitioner is lawfully detained pursuant to 8 U.S.C § 1231(a), and this Court should not enjoin action taken to remove the Petitioner from the United States. Therefore, this Court should dismiss the petition under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted.

## I. FACTUAL BACKGROUND

The Petitioner, Assane Diouf (“Petitioner” or “Diouf”), brings this action as a petition for habeas corpus under 28 U.S.C. § 2241. (Petition, ECF 1, PageID 1). Diouf is a citizen of Mauritania and claims he “entered the United States on or around June 2, 2003” and “admitted to the United States at a port of entry in New York.” (*Id.*, PageID 2). On June 19, 2002, the petitioner fraudulently entered the United States at New York, New York by presenting a French passport to an Immigration and Naturalization Service (INS) Officer. (Wissel Decl., Ex. A, at 1, ¶4). On October 25, 2002, the petitioner applied for asylum with INS. (*Id.*, at 2, ¶5). Subsequently, on August 1, 2003, United States Citizenship and Immigration Services (USCIS), formerly INS, referred the petitioner’s asylum application to the Immigration Court and issued the petitioner a Form I-862, Notice to Appear (NTA). (*Id.*, ¶6).

On June 23, 2008, an Immigration Judge ordered the petitioner removed in absentia from the United States to Mauritania after he failed to appear for a scheduled Individual Merit Hearing. (*Id.*, ¶7). On or about July 31, 2008, the petitioner timely filed a motion to reopen and rescind in-absentia order with the Immigration Court. (*Id.*, ¶8). On August 19, 2008, an Immigration Judge granted the petitioner’s motion to reopen, the in absentia removal order was rescinded, and the petitioner was placed back into removal proceedings. (*Id.*, ¶9). On March 30, 2012, an Immigration Judge ordered the petitioner removed from the United States to Mauritania denying all forms of relief. (*Id.*, ¶10). On April 16, 2012, the petitioner timely appealed the decision of the Immigration Judge to the Board of Immigration

Appeals (BIA). (*Id.*, ¶11). On August 29, 2013, the BIA dismissed the appeal. (*Id.*, ¶12). On September 27, 2013, the petitioner filed a timely petition for review with the United States Court of Appeals for the Sixth Circuit challenging the BIA's decision. (*Id.*, ¶13). On December 2, 2013, the petitioner was placed on an Order of Supervision (OSUP). (*Id.*, ¶14). On December 12, 2014, the United States Court of Appeals for the Sixth Circuit denied the petition for review. The mandate was issued on February 10, 2015. (*Id.*, ¶15).

On October 28, 2025, the petitioner reported to ICE ERO, and he was taken into custody, pursuant to a Form I-205, Warrant of Removal/Deportation, based on his final order of removal. (*Id.*, ¶16). This is the first time that ICE has detained the petitioner since his order of removal became administratively final on August 29, 2013. (*Id.*, at 3, ¶17). On November 7, 2025, ICE ERO requested a travel document for the petitioner from the government of Mauritania. (*Id.*, ¶18). On November 17, 2025, ICE served the petitioner with a Form I-229a, Warning for Failure to Depart, and then, on November 22, 2025, he was served with a Notice to Alien of File Custody Review informing him that his custody status will be reviewed by ICE on or about January 26, 2026. (*Id.*, ¶19).

Since October 28, 2025, the Petitioner has been in the custody of ICE at the Butler County Jail in Hamilton, Ohio. (Wissel Decl., Ex. A., ¶¶3, 16; Petition, ECF 1, PageID 2). At the time of the filing of this Return of Writ, the Petitioner has been detained for 44 days. (*Id.*, ¶¶3, 16; Petition, ECF 1, PageID 2).

ICE has successfully removed individuals to Mauritania, and there is no reason to believe that ICE will be unable to continue doing so. (Wissel Decl., Ex. A, at 3, ¶20). ICE is unaware of any institutional barriers that would prevent ICE from obtaining a travel document for the petitioner from Mauritania or that would prevent ICE from removing him to Mauritania once it receives a valid travel document. (*Id.*, ¶21). ICE is unaware of any institutional barriers that would prevent the petitioner's removal from occurring in the reasonably foreseeable future. (*Id.*, ¶22).

This Petition was filed on November 14, 2025, alleging that Diouf has been unlawfully taken into custody and detained, in violation the Due Process Clause of Fifth Amendment to the United States Constitution, and the Immigration and Nationality Act ("INA") § 241(a), 8 U.S.C. § 1231(a)(6). (Petition, ECF 1, PageID 8-12).

## II. LEGAL AND STATUTORY BACKGROUND

"The Immigration and Nationality Act (INA) establishes procedures for removing aliens living unlawfully in the United States." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). "If the immigration judge decides that the alien is inadmissible or deportable and that the alien is not entitled to any of the relief or protection that he requested, the immigration judge will issue an order of removal." *Id.* at 528 (citing 8 U.S.C. § 1229a(c)(5)).

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances

of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

The statute referring to a 90-day removal period, 8 U.S.C. § 1231(a)(1)(A), holds: “Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the ‘removal period’).” *Martinez v. Larose*, 968 F.3d 555, 559 (6th Cir. 2020).

“The removal period is defined as beginning on the latest of three events: (1) “[t]he date the order of removal becomes administratively final”; (2) “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order”; or (3) “[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” *Id.* at 559–60 (citing 8 U.S.C. § 1231(a)(1)(B)).

Regarding detaining an alien beyond the 90-day period, 8 U.S.C. § 1231(a)(6) states:

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

“§ 1231(a)(3) allows for supervised release after the 90-day removal period expires ‘[i]f the alien does not leave or is not removed’ during that time period.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 538 (2021).

Once the 90-day removal period has elapsed, the alien becomes subject to 8 U.S.C. § 1231(a)(6) which makes detention discretionary. *Arizona v. Biden*, 40 F.4th 375 (6th Cir 2022); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 639 (D. Mass. 2018). “Continued detention under this provision creates the ‘post-removal-period.’” *Johnson*, 594 U.S. at 529. “[I]n enacting § 1231, Congress and the President anticipated that not all aliens ordered removed would be deported during the removal period. See § 1231(a)(3) (referring to ‘an alien’ who ‘does not leave ... within the removal period’).” *Jimenez*, 317 F. Supp. 3d at 651. Thus, 8 U.S.C. § 1231 expressly anticipates detention beyond the 90-day removal period.

### III. LAW AND ARGUMENT

Petitioner seeks declaratory relief and release from detention and for this Court to enjoin his pending removal. Despite having a valid final order of removal, Diouf argues that he is unlawfully detained under 8 U.S.C. § 1231(a)(6) as his “removal is not reasonably foreseeable . . . .” (Petition, ECF 1, PageID 2). Petitioner concedes, however, that individuals may be detained beyond the removal period pursuant to 8 U.S.C. § 1231(a)(6), if they are 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. (*Id.*, PageID 7-8). He claims that “Petitioner is unable to obtain travel documents, therefore, there is no significant likelihood of removal in

the reasonably foreseeable future.” (*Id.*, PageID 9). Petitioner therefore claims that the “detention of Petitioner would be indefinite and potentially permanent.” (*Id.*).

However, this is incorrect as ICE ERO requested a travel document for Diouf from the government of Mauritania, and ICE has successfully removed individuals to Mauritania, and there is no reason to believe that ICE will be unable to continue doing so. (Wissel Decl., Ex. A, at 3, ¶¶18, 20). Further, ICE is unaware of any institutional barriers that would prevent ICE from obtaining a travel document for Diouf from Mauritania or that would prevent ICE from removing Diouf to Mauritania once it receives a valid travel document. (*Id.*, ¶21). Importantly, ICE is unaware of any institutional barriers that would prevent the Petitioner’s removal from occurring in the reasonably foreseeable future. (*Id.*, ¶22).

In sum, there is no authority supporting Diouf’s assertion. Petitioner is asking this Court to stop his removal, which this Court has no jurisdiction to do. Thus, the Court should deny and dismiss his Petition.

#### **IV. STANDARD OF REVIEW**

This Court should begin its analysis with the threshold issue of “whether this the Court has subject matter jurisdiction.” *See e.g., Zhen v. Doe*, Case No. 3:25-cv-01507, 2025 WL 2258586 (N.D. Ohio Aug. 7, 2025) (citing *Karki v. Jones*, Case No. 1:25-cv-281, 2025 WL 1638070, at \*3 (S.D. Ohio June 9, 2025) (“The fundamental question of subject matter jurisdiction must precede any analysis of the merits on this matter.”)).

The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts are courts with limited jurisdiction and may only hear cases that are “authorized by Constitution and statute.” *Id.* If at any time, the court determines that it lacks subject-matter jurisdiction, that court must dismiss the action in front of them. *Mich. Emp’t Sec. Comm’n v. Wolverine Radio Co.*, 930 F.2d 1132 (6th Cir. 1991).

The requirement that a plaintiff establish subject-matter jurisdiction “as a threshold matter ‘spring[s] from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 95 (1998) (some internal quotation marks omitted).

A motion under Fed. R. Civ. P. 12(b)(1) can raise facial or factual attacks. *W6 Rest. Grp., Ltd v. Loeffler*, 140 F.4th 344, 349 (6th Cir. 2025). Regardless of which attack is used, the plaintiff bears the burden of persuading the Court that subject matter jurisdiction exists. *Dismas Charities, Inc. v. U.S. Dep’t of Justice*, 401 F.3d 666, 671 (6th Cir. 2005).

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests whether that plaintiff has pleaded a cognizable claim in his or her complaint. “To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory.” *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass’n*, 176 F.3d 315, 319 (6th Cir. 1999) (internal quotation omitted).

A court should dismiss a claim under Rule 12(b)(6) when the plaintiff/petitioner has failed to plead “sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face.’” *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “A claim has facial plausibility when the plaintiff [has pleaded] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). A complaint need not contain detailed factual allegations but must raise a right to relief above the speculative level. *Twombly*, 550 U.S. at 555.

The Court should deny the Petition because this Court lacks subject-matter jurisdiction over his claims because 8 U.S.C. § 1252, *et seq.*, precludes the review. Even if the Court had jurisdiction, however, Petitioner still fail to plead plausible claims for relief.

## **V. THIS COURT LACKS JURISDICTION**

### **A. This Court Lacks Jurisdiction Pursuant to 8 U.S.C. § 1252.**

Petitioner’s challenge to his detention challenges his imminent removal. The Court lacks jurisdiction to hear a challenge to Petitioner’s removal under 8 U.S.C. § 1252. As such, this Court should deny the Petition and dismiss this action for lack of subject matter jurisdiction. In enacting the REAL ID Act, Congress limited the jurisdiction of federal courts through 8 U.S.C. § 1252(g) as follows:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), *including section 2241 of title 28*, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or

claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.

8 U.S.C. § 1252(g) (emphasis added). “In the REAL ID Act, Congress decided that, as a matter of public policy, [federal courts] do not have jurisdiction to decide claims that arise from the decision of the Executive Branch to execute a removal order.” *Rranxburgaj v. Wolf*, 825 F. App’x 278, 283 (6th Cir. 2020). This holds true “whether or not [federal courts] agree with ICE’s decision to execute [a petitioner’s] removal order.” *Id.*

These types of claims are barred under 8 U.S.C. §1252(g). This statute bars claims arising from the three discrete actions identified in § 1252(g), including, as relevant here, the decision or action to “execute removal orders.” Congress spoke clearly, emphatically, and repeatedly, providing that “no court” has jurisdiction over “any cause or claim” arising from the execution of removal orders, “notwithstanding any other provision of law,” whether “statutory or nonstatutory,” including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to “execute” a final order of removal. *See Reno v. American-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 482 (1999).

The Sixth Circuit, and including other Courts of Appeals, have consistently held that similar petitioners’ challenges to removal are barred by § 1252(g). *Hamama v. Adducci*, 912 F.3d 869, 874–77 (6th Cir. 2018) (vacating district court’s injunction

staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *see also Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) (“[W]e do not have jurisdiction to consider ‘any’ cause or claim brought by an alien arising from the government’s decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government’s authority to execute a removal order rather than its execution of a removal order.”); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting the argument that jurisdiction remained in similar circumstances because petitioner was challenging, DHS’s legal authority as opposed to its “discretionary decisions”); *Tazu v. Att’y Gen., U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that “the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it” and that “[b]oth are covered by the statute”) (emphasis in original); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring “any cause or claim” made it “unnecessary for Congress to enumerate every possible cause or claim”).

Title 8 U.S.C. § 1252(g) therefore limits jurisdiction as it relates to claims arising from such execution of removal orders—even if federal question jurisdiction would otherwise be proper. *See Elgharib v. Napolitano*, 600 F.3d 597, 607 (6th Cir. 2010). By its terms, this statutory limitation also applies to habeas relief under 28 U.S.C. § 2241, which would typically provide jurisdiction over cases where an alien is

held in custody in violation of the Constitution or the laws of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

**B. Sections 1252(a)(5) and (b)(9) Bar Review of the Petitioner’s Claims.**

This Court also lacks jurisdiction over the Petitioner’s claims concerning removal orders issued under section 1229a given 8 U.S.C. § 1252(a)(5) and (b)(9). Section 1252(b)(9) provides:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9). Section 1252(a)(5) provides that [n]otwithstanding any other provision of law (statutory or nonstatutory) . . . or any other habeas corpus provision . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal. . . .”

In relation to Section 1252(a)(9), the Sixth Circuit has explained that district courts “are prohibited from reviewing and vacating a removal order.” *Hamdi v. Napolitano*, 620 F.3d 615, 625 (6th Cir. 2010); *see also Lopez-Meija v. Lynch*, Case

No. 1:16-cv-549, 2017 WL 25501, at \*5 (S.D. Ohio Jan. 3, 2017). In fact, the First Circuit has noted that § 1252(b)(9)'s "expanse is breathtaking." *Aguilar v. U.S. Immigration & Customs Enft Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 9-12 (1st Cir. 2007).

The Petitioner could have appealed his removal order pursuant to the administrative process, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c), or seek an emergency stay of removal as a part of the administrative process. *See generally* 8 C.F.R. § 1003.2(f), 1003.23(b)(v). Because the Petitioner requested relief arises from and "action taken . . . brought to remove" the Petitioner "from the United States" and is a petition for habeas corpus, this Court lacks jurisdiction. § 1252(b)(9).

Thus, to obtain habeas relief, the Petitioner must not merely show that he is "in custody," but rather that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see also Dickerson v. United States*, 530 U.S. 428, 439, n.3 (2000) ("Habeas corpus proceedings are available only for claims that a person 'is in custody in violation of the Constitution or laws or treaties of the United States,'" quoting 28 U.S.C. § 2254(a)). The Petitioner does not meet that burden. Therefore, this Court lacks jurisdiction to consider the Petitioner's challenge to his detention and pending removal. Thus, the Petition should be denied and dismissed.

## **VI. THE PETITIONER'S DETENTION PENDING REMOVAL IS LAWFUL**

### **A. There is No Time Limit on Enforcing the Petitioner's Order of Removal, and the Petitioner Will be Removed in the Reasonably Foreseeable Future.**

The Petitioner does not contest the fact that he has valid removal order. He also does not contest that he is inadmissible under 8 U.S.C. § 1182. He claims, instead, that the “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. (Petition, ECF 1, at PageID 6). The Petitioner argues that “Mr. Diouf has been unable to obtain travel documents from Mauritania. For this reason, Petitioner’s detention may be indefinite and potentially permanent.” (*Id.*). However, as explained further below, this is inaccurate as ICE ERO requested a travel document for Diouf from the government of Mauritania, and ICE has successfully removed individuals to Mauritania, and there is no reason to believe that ICE will be unable to continue doing so. (Wissel Decl., Ex. A, at 3, ¶¶18, 20). Further, ICE is unaware of any institutional barriers that would prevent ICE from obtaining a travel document for Diouf from Mauritania or that would prevent ICE from removing Diouf to Mauritania once it receives a valid travel document. (*Id.*, ¶21). Importantly, ICE is unaware of any institutional barriers that would prevent the Petitioner’s removal from occurring in the reasonably foreseeable future. (*Id.*, ¶22). Accordingly, the Petitioner’s argument that travel documents cannot be obtained and there is no significant likelihood of removal in the reasonably foreseeable future is without merit.

Moreover, there is no question that ICE has authority to detain the Petitioner during the removal process. “Detention during removal proceedings is a constitutionally permissible part of [the removal] process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003).

Moreover, immigration officials retain discretion not to execute a final order of removal within 90 days. *Arizona v. Biden*, 40 F.4th 375, 391 (6th Cir. 2022). “Immigration authorities, as the Supreme Court has made clear, have considerable discretion over whom to arrest and remove.” *Id.* (citing *Arizona v. U.S.*, 567 U.S. 387, 396 (2012)). Just because immigration authorities did not remove the Petitioner within 90 days of his removal order, does not mean they cannot remove him now. His final order of removal remains valid.

As best as Respondent can discern, the Petitioner claims that the language in 8 U.S.C. § 1231 limits the removal period to 90 days. (Petition, ECF 1, PageID 11). § 1231(a)(1)(A) provides that, “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” The Sixth Circuit addressed this issue and explained:

“Except as otherwise provided,” it says that, “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” *Id.* But Congress itself appreciated that removal would not always occur within 90 days. It permitted supervised release—release from custody—“[i]f the alien does not leave or is not removed within the removal period.” *Id.* § 1231(a)(3). Combined with the basic principle that “[a]t each stage” of the removal process, “the Executive has discretion to abandon the endeavor” to remove someone, *Reno*, 525 U.S. at 483, 119 S.Ct. 936, *all of this means that immigration officials retain some discretion not to execute a final order of removal within 90 days.*

*Arizona*, 40 F.4th at, 391 (emphasis added). Indeed, “the use of ‘shall’ does not automatically create a judicially enforceable mandate, especially when criminal or civil law enforcement is at issue.” *Id.* citing *Town of Castle Rock v. Gonzales*, 545 U.S.

748, 761–62, (2005). The Petitioner relies upon *Zadvydas v. Davis*, 533 U.S. at 689-90, and the statutory language to support his Petition. (Petition, ECF 1).

DHS regulations permit ICE to detain Petitioner in order to effectuate his removal. See 8 C.F.R. § 241.4. Addressing the procedure of revocation of release after the removal period, § 241.4(l)(2)(iii), states: “Release may be revoked in the exercise of discretion when, in the opinion of the revoking official . . . it is appropriate to enforce a removal order. . . .” 8 C.F.R. § 241.4(l)(2)(iii). That is precisely what happened here. ICE is enforcing Diouf’s Removal Order and removing him to his home country, Mauritania, in the reasonably foreseeable future once it receives a valid travel document. (Wissel Decl., Ex. A, at 3, ¶¶18, 20-22). Indeed, ICE is authorized to end Petitioner’s supervised release and detain him while processing his removal. 8 C.F.R. § 241.4(l)(2)(iii). See *Zhen v. Doe*, Case No. 3:25-cv-01507, 2025 WL 2258586, at \*11 (N.D. Ohio Aug. 7, 2025) (8 C.F.R. § 241.4(l)(2)(iii) expressly permits detaining an alien when enforcing removal order and recognizing “requests for travel documents support finding of reasonably foreseeable removal.”).

Further, the Supreme Court’s decision in *Zadvydas v. Davis* does not create a time limitation to Diouf’s Removal Order. See 533 U.S. 678. In fact, *Zadvydas* does not apply to the Petitioner’s case at all because he has only been detained for less than two months, 44 days to be exact as of the date of filing this Return of Writ, and his removal is reasonably foreseeable. (Wissel Decl., Ex. A, at 3, ¶¶18, 20-22). Indeed, “[w]hen a removal is foreseeable, detention does not violate due process as set out in *Zadvydas*. . . .” *Martinez v. Larose*, 968 F.3d 555, 557 (6th Cir. 2020).

The Petitioner's 44-day detention does not violate due process because *Zadvydas* analysis only applies where there is a "danger of indefinite detention [with] no significant likelihood of removal in the reasonably foreseeable future." *Jiang Lu v. U.S. ICE*, 22 F. Supp. 3d 839, 843 (N.D. Ohio 2014). Here, ICE ERO requested a travel document for the petitioner from the government of Mauritania, ICE has successfully removed individuals to Mauritania, and there is no reason to believe that ICE will be unable to continue doing so. (Wissel Decl., Ex. A, at 3, ¶¶18, 20). Further, ICE is unaware of any institutional barriers that would prevent ICE from obtaining a travel document for the petitioner from Mauritania or that would prevent ICE from removing him to Mauritania once it receives a valid travel document." (*Id.*, ¶21). Importantly, ICE is unaware of any institutional barriers that would prevent the petitioner's removal from occurring in the reasonably foreseeable future. (*Id.*, ¶22). Thus, *Zadvydas* does not apply here, and the Petitioner's detention is not in violation of the Constitution or laws or treaties of the United States. Consequently, this Court lacks subject matter jurisdiction, and the Petition should be denied and dismissed.

**B. The Petitioner was Afforded Due Process.**

The Supreme Court has also long recognized that immigration-related decisions of executive branch officers as in this case afford due process in the absence of judicial review. "[A]s to 'foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law,' 'the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.'" *Dep't of*

*Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). “Since then, the [Supreme] Court has often reiterated this important rule.” *Id.* (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953), and *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.”).

The essential requirements of procedural due process are: (1) notice; and (2) an opportunity to be heard. *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970); *Gorman v. Univ. of R.I.*, 837 F.2d 7, 12 (1st Cir. 1988). The Petitioner does not contest that he entered the United States without a valid visa or entry document. Further, the Petitioner appealed his removal to the BIA, and requested review of the BIA’s decision, and both were denied. The Petitioner therefore has notice of why he was detained and has had ample opportunity to be heard. Accordingly, his due process argument is without merit.

Further, the Petitioner’s detention, in order to effectuate his removal pursuant to section 241.4(l)(2), does not require formal notice and an opportunity to be heard. Only subsection (l)(1) mandates notice and an informal interview, and that section applies exclusively to aliens who have violated the conditions of their release. There are no claims that Diouf violated the conditions of his release. By contrast, and applicable here, subsection (2) of the regulation allows ICE to use its discretion to

revoke release and does not expressly provide for notice or an interview. 8 C.F.R. § 241.4(l)(2).<sup>1</sup> ICE revoked the Petitioner's supervision here, in its discretion, to enforce his removal order pursuant to 8 C.F.R. § 241.4(l)(2)(iii) because removal is significantly likely to occur in the reasonably foreseeable future.

To be sure, it makes sense that the notice and informal interview requirement in section 241.4(l)(1) is necessary for aliens who have violated the conditions of their release: those provisions provide such aliens with the opportunity to contest the alleged violations of their release, just as criminal defendants are entitled to notice and an opportunity to be heard when their supervision is revoked. *See* Federal Rule of Criminal Procedure 32.1. But the notice and informal interview requirement in section 241.4(l)(1) is unnecessary when revoking supervision in order to effectuate an alien's removal because an alien subject to a removal order already has notice that he or she is subject to removal, having been through removal proceedings and been ordered removed. Indeed, requiring notice and an informal interview for those, with a removal order, who have not violated their conditions of release results in re-litigation of the alien's removal orders. Petitioner is no doubt aware he is detained to

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<sup>1</sup> The government recognizes that certain district courts in this Circuit have decided that the notice and informal interview provisions in section 241.4(l)(1) apply to revocations under section 241.4(l)(2). *Mbonga v. Raycraft*, No. 4:25-CV-2315, 2025 WL 3122829, at \*4 (N.D. Ohio Nov. 7, 2025) ("Respondents argue that [the notice and opportunity due process safeguards in] 241.4(l)(1) do[] not apply to Mr. Mbonga because he did not violate the conditions of his release. However, it does not make sense that someone who does not violate the conditions of their release would be afforded less procedural safeguards than someone who does. Other courts agree."); *K.E.O. v. Woosley*, No. 4:25-CV-74, 2025 WL 2553394, at \*5-7 (W.D. Ky. Sept. 4, 2025) (rejecting government's argument that notice and interview not required, stating that "Respondents cite no authority for this proposition and the Court can find none. In fact, the caselaw is directly to the contrary."). This authority is non-binding and contrary to the language and structure of the regulation, as argued herein.

effectuate his removal order. Due process does not entitle him to relitigate his removal order.

The Petitioner received the required due process. As such, his due process claim should fail.

## VII. CONCLUSION

The Petitioner's detention pending removal is lawful. The Petitioner's removal is lawful and this Court lacks jurisdiction to enjoin action taken to effect the Petitioner's removal to Mauritania. Therefore, this Court must deny relief and dismiss the action.

Respectfully submitted,

DOMINICK S. GERACE II  
United States Attorney

*s/Adam C. Tieger*

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ADAM C. TIEGER (0093932)  
Assistant United States Attorney  
200 W. Second Street, Suite 600  
Dayton, Ohio 45402  
Office: (937) 531-6795  
Fax: (937) 225-2564  
E-mail: [adam.tieger@usdoj.gov](mailto:adam.tieger@usdoj.gov)

*Attorney for Respondent*