

Magistrate Judge Grady J. Leupold

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MAFOUZE DIALLO,

Petitioner,

v.

BRUCE SCOTT,¹ *et al.*,

Respondents.

Case No. 2:26-cv-00975-GJL

FEDERAL RESPONDENTS'
RETURN

Noted for Consideration:
April 13, 2026

I. INTRODUCTION

This Court should deny Petitioner Mafouze Diallo's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner is subject to a final order of removal and is detained at the Northwest Immigration Processing Center ("NWIPC") pursuant to 8 U.S.C. § 1231(a)(6). The challenge to his post-order detention is premature as he has only been detained one day over the 90-day removal

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Julio Hernandez for Laura Hermosillo.

Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting United States Attorney General Todd Blanche for Pamela Bondi.

Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Secretary Markwayne Mullin for Kristi Noem.

1 period, and this period of detention is within the six-month reasonably presumptive period under
2 *Zadvydas v. Davis*, 533 U.S. 678 (2001). U.S. Immigration and Customs Enforcement's ("ICE")
3 Enforcement and Removal Operations ("ERO") is currently pursuing third country removal
4 options for Petitioner. Previously, ERO had provided Petitioner with a notice of removal to Ghana,
5 but United States Citizenship and Immigration Services ("USCIS") made a positive fear claim
6 determination for this third country.

7 Further, Petitioner cannot challenge the constitutionality of his pre-order detention, and he
8 is not entitled to relief outside of the scope of a habeas petition.

9 Accordingly, Federal Respondents respectfully request the Court deny the Petition without
10 an evidentiary hearing. This return is supported by the pleadings and documents on file in this
11 case, the Declaration of Deportation Officer Karl Douglas ("Douglas Decl."), and the Declaration
12 of Jennifer Wong ("Wong Decl."), with accompanying exhibits.

13 II. BACKGROUND

14 A. Legal Background

15 The Immigration and Nationality Act ("INA") governs the detention and release of
16 noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594
17 U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order"
18 (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning
19 after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order
20 detention) *with* § 1231(a) (authorizing post-order detention).

21 When a final order of removal has been entered, a noncitizen enters a 90-day "removal
22 period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
23 "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for
24 removal and to protect the community from noncitizens who may present a danger, Congress has

1 mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2). Section 1231(a)(6)
2 authorizes ICE to continue detention of noncitizens after the expiration of the removal period.
3 Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any
4 temporal limit on the length of detention under that provision. 8 U.S.C. § 1231(a)(6).

5 During the removal period, ICE is charged with attempting to effect removal of a
6 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
7 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be
8 detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from
9 the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six
10 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701.

11 **B. Petitioner Mafouze Diallo**

12 Petitioner is a native and citizen of Senegal, who entered the United States without
13 inspection and was encountered by United States Border Patrol on December 17, 2023, near
14 Lukeville, Arizona. Douglas Decl. ¶ 4; Wong Decl. at Ex. 1 (Form I-213). On December 18, 2023,
15 he was issued a Notice to Appear (“NTA”), charging removability under INA § 212(a)(6)(A)(i), 8
16 U.S.C. § 1182(a)(6)(A)(i), and placed in removal proceedings. Douglas Decl. ¶ 5; Wong Decl. at
17 Ex. 2 (Notice to Appear). On the same day, he was released on an Order of Release on
18 Recognizance (“OREC”) and enrolled in the Alternatives to Detention (“ATD”) program. Douglas
19 Decl. ¶ 6; Wong Decl. at Ex. 3 (OREC). As part of his OREC conditions of release, Petitioner was
20 required to check in through the Smart Link application. Douglas Decl. ¶ 7.

21 On October 6, 2025, Petitioner reported to the Spokane ICE field office. *Id.* ¶ 8. At this
22 check-in, ICE informed Petitioner that he failed to follow the ATD instructions and failed to check
23 in through the Smart Link Application on March 16, 2025, August 17, 2025, September 7, 2025,
24

1 September 14, 2025, September 21, 2025, and October 5, 2025. *Id.* He was taken into federal
2 custody and transferred to the NWIPC. *Id.*

3 On November 20, 2025, Petitioner was ordered removed to Senegal, and the Immigration
4 Judge (“IJ”) granted Petitioner’s application for withholding of removal under INA § 241(b)(3), 8
5 U.S.C. § 1231(b)(3). Douglas Decl. ¶ 10; Wong Decl. at Ex. 4 (Order of Removal). Petitioner did
6 not timely appeal the order of removal to the Board of Immigration Appeals (“BIA”), making this
7 order of removal administratively final on December 22, 2025, the appeal deadline. Douglas Decl.
8 ¶ 10; 8 C.F.R. § 1241.1(c).

9 ERO is currently pursuing third country removal options for Petitioner. Douglas Decl.
10 ¶¶ 11-14. On March 26, 2026, ERO believed that there was a significant likelihood of Petitioner’s
11 removal to Ghana in the reasonably foreseeable future, and served Petitioner with a Notice of
12 Removal, advising him that ICE intended to remove him to Ghana. Douglas Decl. ¶ 11; Wong
13 Decl. at Ex. 5 (Notice of Removal). On the next day, ERO referred Petitioner’s fear claim to
14 USCIS, and USCIS made a positive determination of his fear claim on April 2, 2026. Douglas
15 Decl. ¶ 12.

16 At this time, ERO is continuing to pursue other options for third country removal. *Id.* ¶ 15.

17 III. ARGUMENT

18 A. Petitioner’s post-order detention is lawful and not indefinite.

19 Petitioner improperly challenges the constitutionality of both his pre-order and post-order
20 detention. Pet. at 7; *see also id.* ¶ 11 (“Petitioner’s prolonged civil detention for 169 days now
21 includes more than 90 days since his final order of removal . . .”). First, Petitioner argues that he
22 was unlawfully subject to mandatory detention under 8 U.S.C. § 1225(b) from October 6, 2025,
23 through December 22, 2025, despite being detained under 8 U.S.C. § 1226(a). *See* Pet. ¶ 81.
24 Second, Petitioner contends that his post-order detention pursuant to 8 U.S.C. § 1231(a) from

December 22, 2026 (when his order of removal became final) to March 23, 2026 (when he filed his habeas petition) is unlawful, alleging that there is no good reason to believe that there is a significant likelihood of removal because U.S. Department of Homeland Security (“DHS”) did not appeal Petitioner’s order of removal granting withholding under the INA; (2) DHS did not yet designate a country of removal for him; and (3) DHS did not perform a “post-order custody review” under 8 C.F.R. § 241.4(k)(1)(i).

1. Petitioner may only challenge the constitutionality of his post-order detention, not his pre-order detention.

Petitioner was initially subject to mandatory detention under 8 U.S.C. § 1225(b) because he was an applicant for admission. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026) (affirming the government’s position that aliens who have not been admitted or are not entitled to be admitted to the United States are “applicants for admission” who are subject to mandatory detention under Section 1225(b)(2)(A)).² Once Petitioner’s order of removal became administratively final on December 22, 2025, he became subject to post-order detention under 8 U.S.C. § 1231(a).

Because he is now detained under a different framework and subject to a final order of removal, he cannot challenge his pre-order detention. A habeas petition with respect to the latter cannot be applied to the former. *Mosquera Camacho v. Hermosillo*, No. 2:25-cv-02457-TL-SKV, 2026 WL 628297, at *3 (W.D. Wash. Mar. 6, 2026) (citing *United States v. Arnette*, 329 F. App’x

² As the Fifth Circuit recently found, aliens who are present without admission in the United States are “applicants for admission” as defined in Section 1225(a)(1). *Buenrostro-Mendez*, 166 F.4th at 502. The court clarified that an “applicant for admission” is a person “seeking admission” regardless of whether that person is actively engaged in admissions procedures when detained. *Id.* at 502-06. The Eighth Circuit has agreed that the two terms are the same. *Avila v. Bondi*, No. 25-3248, 2026 WL 819258, at *3 (8th Cir. Mar. 25, 2026) (“[W]hile an alien remains an ‘applicant for admission’ so long as he is ‘present in the United States [and] has not been admitted,’ 8 U.S.C. § 1225(a)(1), he is also ‘presently seeking admission’ during this time, regardless of whether he takes ‘any further affirmative steps to gain admittance,’ *Buenrostro-Mendez*, 166 F.4th at 402.”).

1 714, 715 (9th Cir. 2009) (finding that petitioner's habeas claim challenging prior detention
2 "became moot when he was placed in custody pending disposition of the new charges"). Petitioner
3 himself recognizes the shift in detention framework across the two separate periods of detention.
4 *See* Pet. at 24-25. Therefore, Petitioner's claim challenging his pre-order detention from October 6,
5 2025, through December 22, 2026 is moot. The Court should also deny Petitioner's requests for
6 relief pertaining to his claim challenging his pre-order detention.

7 **2. Petitioner's post-order detention is constitutional under *Zadvydas*.**

8 Petitioner's post-order detention is constitutionally and statutorily lawful because he is
9 detained pursuant to 8 U.S.C. § 1231(a)(6). A noncitizen may be detained only "for a period
10 reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*,
11 533 U.S. at 689. In *Zadvydas*, the Supreme Court determined that it is "presumptively reasonable"
12 for DHS to detain a noncitizen for six months following entry of a final removal order while it
13 works to remove the noncitizen from the United States. *Id.* at 701. The *Zadvydas* Court recognized
14 that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing
15 lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain
16 reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably
17 foreseeable future' conversely would have to shrink").

18 Here, Petitioner has only been detained for almost exactly three months after his final order
19 of removal since the filing of his habeas petition on March 23, 2026 – just one day over three
20 months. While the 90-day removal period under 8 U.S.C. § 1231(a)(1) may have ended,
21 Petitioner's detention is well-within the presumptively reasonable six-month period under
22 *Zadvydas*.

23 Petitioner has the initial burden to demonstrate that there is "good reason to believe that
24 there is no significant likelihood of removal in the reasonably foreseeable future." *See, e.g.,*

1 *Nguyen v. Field Office Director et al.*, No. 2:26-cv-00394-DGE, 2026 WL 538487, at *4 (W.D.
 2 Wash. Feb. 26, 2026) (“*Zadvydas* ‘places the burden on the [noncitizen] to show, after a detention
 3 period of six months, that there is ‘good reason to believe that there is no significant likelihood of
 4 removal in the reasonably foreseeable future.’”); *Nguyen v. Hermosillo, et al.*, No. 2:26-cv-00335-
 5 GJL, 2026 WL 538497, at *3 (W.D. Wash. Feb. 26, 2026) (“[T]he noncitizen carries the initial
 6 burden of providing ‘good reason to believe that there is no significant likelihood of removal in
 7 the reasonably foreseeable future.’”); Only after the noncitizen meets this burden to provide good
 8 reason that there is no significant likelihood of removal in the reasonably foreseeable future does
 9 the burden shift to the government to show that removal remains likely within a reasonable
 10 timeframe. *Id.* If the government fails to submit sufficient rebuttal evidence showing that removal
 11 is likely to occur within the reasonably foreseeable future, then the noncitizen is entitled to habeas
 12 corpus relief. *Id.*

13 Petitioner has failed to meet his initial burden, and does not provide sufficient evidence or
 14 argument to overcome the presumption that his continued detention is reasonable. *Sun v.*
 15 *Hermosillo*, No. 2:26-cv-00215-LK, 2026 WL 510666, at *3 (W.D. Wash. Feb. 24, 2026).

16 First, he alleges that there is no significant likelihood in the reasonably foreseeable future
 17 of his removal because DHS did not appeal Petitioner’s order of removal granting withholding of
 18 removal under the INA. Pet. ¶ 12. DHS’ decision to not appeal the final order of removal does not
 19 affect ERO’s ability to effectuate Petitioner’s removal to a third country.

20 Second, he alleges that there is no significant likelihood in the reasonably foreseeable
 21 future of his removal because DHS did not yet designate a country of removal for him. *Id.* Just
 22 four days after the 90-day removal period, Petitioner was provided a notice of removal to Ghana
 23 on March 27, 2026, after ERO believed that there was a significant likelihood of removal to Ghana
 24 in the reasonably foreseeable future. Douglas Decl. ¶ 11. After Petitioner was served the Notice of

1 Removal, he was referred to USCIS for his fear claim on March 28, 2026, and USCIS made a
 2 positive determination of his fear claim on April 2, 2026. *Id.* ¶¶ 12-13. ERO intends and continues
 3 to pursue other options for Petitioner's third country removal. Petitioner will have notice and a
 4 meaningful opportunity to respond – like he has already – under DHS policy for a future fear claim
 5 as other third country options may be selected for him.³

6 Third, Petitioner alleges that there is no significant likelihood in the reasonably foreseeable
 7 future of his removal because DHS did not perform a “post-order custody review” under 8 C.F.R.
 8 § 241.4(k)(1)(i).⁴ Pet. ¶ 59. Although DHS did not conduct this review, ERO believed that there
 9 was a significant likelihood of Petitioner's removal in the reasonably foreseeable future a few days
 10 after 90-day removal period had passed, serving Petitioner with a Notice of Removal to Ghana.
 11 Further, Petitioner's post-order detention is within the six-month presumptive period, and ERO
 12 believed – and it is reasonable that ERO continues to believe – that there was a significant
 13 likelihood of Petitioner's removal to a third country.

14 Additionally, the fact that Petitioner does not yet have a specific date of anticipated removal
 15 does not make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008).
 16 Detention becomes indefinite in situations where the country of removal refuses to accept the
 17 noncitizen or if removal is legally barred. *Id.* There is no reason to believe that is the situation here.

18 Therefore, Petitioner is lawfully detained under 8 U.S.C. § 1231(a)(6), and his post-order
 19 detention has not become indefinite under *Zadvydas*.

21 ³ See U.S. Department of Homeland Security, “Guidance Regarding Third Country Removals,” Kristi Noem,
 22 March 30, 2025, available at
 23 https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf (last visited
 24 Feb. 6, 2026) (“DHS Memo”).

⁴ Pursuant to 8 C.F.R. § 241.4(k)(1)(i), the Director of the Detention and Removal Field Office shall conduct a custody
 review for the noncitizen prior to the expiration of the removal period to assess whether his removal “cannot be
 accomplished during this period, or is impracticable or contrary to the public interest.” 8 C.F.R. § 241.4(k)(1)(i).

B. Petitioner is not entitled to relief outside of the scope of a habeas petition.

Petitioner also seeks relief outside of this Court's purview, such as "immediate release under supervision, or, at a minimum, a [post-order custody review] justifying Petitioner's continued detention so that Petitioner may have the opportunity to challenge the [post-order custody review] before an immigration court." Pet. ¶ 69.

Under 8 U.S.C. § 1252(g), this Court lacks jurisdiction to review "the decision or action by the Attorney General to . . . execute removal orders. . . ." This bars review of the executive's discretion to decide both "whether" and "when" to execute a valid removal order. *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (quoting *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020)). DHS determines whether it is appropriate to release a noncitizen under a final order of removal with an Order of Supervision ("OSUP") and conducts the post-order custody review for a noncitizen under a final order of removal prior to the end of the removal period. *See* 8 C.F.R. § 241.13(h); 8 C.F.R. § 241.4(k)(1)(i). Further, this Court lacks jurisdiction to reopen removal proceedings and cannot "allow Petitioner the opportunity to challenge any denial [of the post-order custody review] before the Immigration Court." Pet. at 26, Relief Requested ¶ 3.

Accordingly, this Court lacks jurisdiction to provide relief that is outside of the scope of Petitioner's habeas petition.

IV. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition.

1 DATED this 7th day of April, 2026.

2 Respectfully submitted,

3 s/ Jennifer Wong

4 JENNIFER WONG, CA No. 341634

5 Assistant United States Attorney

6 United States Attorney's Office

7 Western District of Washington

8 700 Stewart Street, Suite 5220

9 Seattle, Washington 98101-1271

10 Phone: 206-553-7970

11 Fax: 206-553-4067

12 Email: jennifer.wong@usdoj.gov

13 *Attorney for Federal Respondents*

14 I certify that this memorandum contains 2,664
15 words, in compliance with the Local Civil Rules.