

FILED MAY 18 2026
MDA-CL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ABEL NIRERE

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Petitioner,

v.

WARDEN, STEWART DETENTION
CENTER,

Respondent.

Case No:

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

Background

Petitioner, a native and citizen of Democratic Republic of Congo, he entered the United States on November 20th of 2012 as a refugee, and on that day he became a permanent resident of the United States. Petitioner was transferred to the ICE custody on December 13th, 2024 after he was given time served for 340 days that he was incarcerated in the county jail. He fought his immigration case for 9 months, but ultimately he was ordered removed on September 15th, 2025 by an IJ to D.R. Congo. Petitioner has been in ICE custody since December 13th, 2024. His removal became administratively final on September 15th, 2025. Petitioner has met his burden for complying with ICE fully and by being detained for 90-day "mandatory" and 180-day "presumptively reasonable" periods, and therefore, Petitioner's continued detention are in violation of the United States' Constitution, and he is asking this Court respectfully to grant his petition and order his immediate release from detention.

GROUND

First, Substantive and Procedural Due Process violations. Second, Respondent's failure to comply with their own regulations of , 8 C.F.R. § 241.4(2), 8 C.F.R. § 241.4(d) are in violation of procedural Due Process under the Fifth Amendment. Third, Petitioner's order of removal dated back to September 15th, 2025 therefore, the "six-month presumptively reasonable" period under Zadvydas has long passed, and his continued detention is inconsistent with Zadvydas.

JURISDICTION

This case arises under the Constitution of the United States, and the Immigration Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110 Stat. 1570, and the administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

This Court has jurisdiction under 28 U.S.C. § 2241; art. I § 9, cl. 2, of the United States Constitution ("Suspension Clause"); and 28 U.S.C. § 1331, as Petitioner is presently in custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S.C. 484, 493 - 500 (1973), venue lies in the United States District Court for the Columbus Division , the judicial district in which the Petitioner currently resides.

I. Substantive and Procedural Due Process violations

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. 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 likely to be removed in the reasonably foreseeable future. Zadvydas recognized that ICE may continue to detain aliens only for a period reasonably necessary to secure the alien's removal. The presumptively reasonable period during which ICE may detain an alien is only six months. Petitioner has been detained 8 months and he has met his burden under Zadvydas, that his removal is not foreseeable in the near future. See Zadvydas, 533 U.S. at 690.

II. Respondent's failure to comply with their own regulations.

ICE violated these regulations to provide the Petitioner with a copy of decision of custody review and they are followed;

Service of decision and other documents. All notices, decisions, Or other documents in connection with the custody review conducted under this section by the District director, director of the Detention and Removal Field Office, or Executive Associate Commissioner shall be served on the alien.

8 C.F.R. § 241.4(2)

Custody determination. A copy of any decision by the district director of the Detention and Removal Field Office, or Executive Associate Commissioner to release or to detain an alien shall be provided to detained alien. A decision to retain custody shall briefly set forth the reasons for the continued detention.

Petitioner's 90-day and 180-day detention long passed, and he was not provided a copy of the decision(s) set forth in provisions to protect Due Process rights, and to provide the alien with these notices and decisions is the bare minimum ICE could and should do to comply with the Supreme Court's order that "ICE cannot incarcerate someone without basic due process protection." But, Petitioner was never given the said notices or copies of the said decision(s), after his 90-day and 180-day custody review re-determination. Petitioner believes that he is protected under the United States Constitution, and he stands firm by his liberty which is in the heart of the Constitution of The United States. ICE's ongoing violations of Petitioner's Due Process rights stripped him from his liberty which is clearly protected under the Fifth Amendment.

Petitioner's continued detention has violated provisions within 8 C.F.R. § 241.4 that are designed to provide procedural due process. Mr. Nirere has never received notification of the reasons for his continued detention which is in violation for the requirements within 8 C.F.R. § 241.4 that "a copy of any decision ... to detain an alien shall be provided to the detained alien." and that the decision "set forth the reasons" for that detention. 8 C.F.R. § 241.4(d), see *Ruiz v. Mattivelo* (noting that the petitioner who was detained under 8 U.S.C. § 1231(a)(6) was "constitutionally entitled" to the due process set forth in 8 C.F.R. § 241.4(d) which require that a "decision to retain custody beyond the removal period must briefly set forth the reasons for the continued detention.") Just like every district in the United States this Court must come to the same conclusion that when the Petitioner's Due Process have been violated, his detention is unlawful and his release must be ordered.

III. Petitioner's six-month period under Zadvydas long passed, and his continued detention is inconsistent with Zadvydas.

Under §1231 (a), "when an alien ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231 (a)(1)(A). this removal removal period begins on the latest of three triggering dates:

- (i) the date of the order of removal becomes administratively final
- (ii) if the removal order is judicially reviewed and if a court orders stay of the removal of the alien, the date of the court's final order
- (iii) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement

It is further instructed to habeas courts by the Supreme Court that this 90-day "removal period" is mandatory, and this removal period shall be extended "and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." *Id. at § 1231 (a)(1)(c)*. Detention may continue beyond the 90-day period if it is "reasonably necessary" to effectuate removal. *Zadvydas*, 533 U.S. at 689; 8 U.S.C. § 1231(a)(6).

Petitioner in this case have cooperated with ICE in every way humanly possible to help ICE effectuate his removal, but even though 8 months have passed there is still no sign of a travel document. Therefore, his continued detention is in violation of *Zadvydas*.

CONCLUSION

Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he/she should not be detained. Petitioner in this case has been denied that opportunity. ICE does not make decisions concerning aliens' custody status in a neutral and impartial manner. The failure of Respondents to provide a neutral decision-maker to review the continued custody of Petitioner violates Petitioner's right to procedural due process.

The Supreme Court has unequivocally stated that “the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here lawful, unlawful, temporary, or permanent.” Zadvydas, 533 U.S. at 693. The violation of Constitutional rights shows clear findings of irreparable harm, and “it is well established that the deprivation of Constitutional rights unquestionably irreparable injury.” *see*. Elrod v. Burns, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed 547 (1976), and Jolly v. Coughlin, 76 F.3d 468, 482 (2d Cir. 1996).

The failure to provide Petitioner with a copy of his 90-day and 180-day determination, or to otherwise provide a meaningful opportunity to contest the reasons for his continued detention violates both ICE's own regulations and Due Process Clause of Fifth Amendment.

All these facts pointing out that Petitioner's continued detention is in clear violations of his constitutional rights.

VIOLATIONS

(1) Mr. Nirere's continued detention by the Respondents violates 8 U.S.C. § 1231 (a)(6), which was interpreted in *Zadvydas*, Because he has been detained close to 8 months.

(2) Respondents are in violation of Petitioner's right to substantive due process by depriving him of his core liberty interest to be free from bodily restraint. *See e.g., Tam v. INS*, 14 F.Supp.2d 1184 (E.D. Cal 1998).

(3) Under the Due Process Clause of the United States' Constitution, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. In this case Petitioner has been denied that opportunity as there is no administrative mechanism in place for him to demand a decision, ensure that a decision will ever be made, or appeal a custody decision that violates *Zadvydas*.

(4) Respondent's failure to comply with their own regulations of 8 C.F.R. § 241.4(2), 8 C.F.R. § 241.4(d) are in violation of procedural due process for Fifth Amendment, under the Constitution of the United States of America.

PRAYERS FOR RELIEF

1. Assume jurisdiction over this matter;
2. Grant Mr. Nirere a writ of habeas corpus directing the Respondents to immediately release him from custody under an order of supervision;
3. Order the Respondents to refrain from transferring Mr. Nirere out of the Jurisdiction of this Court during the pendency of these proceedings and while the Petitioner remains in Respondent's custody; and
4. Refrain Respondents from re-arresting Mr. Nirere unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community.
5. Grant any other relief which this Court deems just and proper.

Pursuant to title 28, U.S. Code Section 1746, I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Respectfully submitted this 6th day of May, 2026.



ABEL NIRERE
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