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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 Case No.: 3:26-cv-2206-CAB-BLM

13 MODU SARR,

14 Petitioner,

15 v.

16 MARKWAYNE MULLIN, Secretary of
17 the Department of Homeland Security,
18 TODD BLANCHE, Acting Attorney
19 General, TODD M. LYONS, Acting
20 Director, Immigration and Customs
21 Enforcement, JESUS ROCHA, Acting
22 Field Office Director, San Diego Field
23 Office, JEREMY CASEY, Warden of
24 Imperial Regional Detention Facility

25 Respondents.

26 **Traverse in Support of**
27 **Petition for**
28 **Writ of**
Habeas Corpus

[Civil Immigration Habeas,
28 U.S.C. § 2241]

Introduction

Respondents agree that Mr. Sarr was ordered removed on August 13, 2019. They also agree that they detained Mr. Sarr on November 21, 2025, and that his order of removal is administratively final.

Finally, they acknowledge that they have not heard *anything* from Gambia about Mr. Sarr's removal in three months. *See* ECF No. 6-1 at 2 ¶ 10.

That is sufficient to grant Petition.

Respondents appear to realize as much because one of their officers recently interviewed Mr. Sarr on or around May 4 because he was "it has been almost six months and they might release you." Ex. A ¶ 1. The officer asked Mr. Sarr where he would be living and who he knew in the United States. *Id.* ¶ 2. The officer did not even discuss the prospect of getting a travel document. *Id.* ¶ 1.

That makes sense because release is appropriate no matter when one starts the shot clock under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

First, take when Mr. Sarr's removal order became administratively final: August 13, 2019. It unquestionably has been six months since then, and there is no indication that Respondents were able to obtain a travel document during the intervening six years. Thus, detention is no longer presumptively reasonable, and the record shows that there is no reason to believe that Respondents will remove Mr. Sarr in the reasonably foreseeable future.

Next, take when Mr. Sarr was detained—November 21, 2025. As discussed below, Mr. Sarr maintains that this is the wrong start date for the start of the removal period. Nevertheless, it has been six months—almost to the day as of this filing—since he entered Respondents' custody. Again, the burden flips to Respondents.

Finally, even if Mr. Sarr's filing of a motion to reopen on December 28, 2025, stayed his removal until January 16, 2025, that does not alter the removal period under 8 U.S.C. § 1231(a). The government provides no authority for the

1 proposition that the less-than three weeks during which Mr. Sarr's motion was
 2 pending affected whether the order was "administratively final."

3 § 1231(a)(1)(B)(i). The undersigned is unaware of any, and—as discussed
 4 below—§ 1231 cannot support such a reading.

5 At absolute most, even under the government's misreading of what counts
 6 as the removal period, it was merely suspended for *three weeks* while Mr. Sarr's
 7 motion was pending. But even if that is so, that does not change that Mr. Sarr has
 8 been detained for more than five months while Respondents appear to have all but
 9 given up on removing him. Again, the Return confirms that there has been no
 10 contact with Gambia since February. Again, Respondents recently interviewed
 11 Mr. Sarr to determine where he will be living because he may soon be released.

12 Thus, no matter how one counts the days, there is "no significant likelihood
 13 of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This
 14 Court should grant the Petition.

15 Argument

16 **I. This Court has jurisdiction.**

17 Respondents claim that this Court lacks jurisdiction is at odds with decades
 18 of precedent. The Supreme Court, the Ninth Circuit, and courts of his district have
 19 made it clear repeatedly that district court have jurisdiction to consider habeas
 20 petitions under 8 U.S.C. § 2241 when a noncitizen is subject to prolonged detention
 21 following a final order of removal. *See, e.g., Zadvydas*, 533 U.S. at 702. The matter
 22 is beyond settled.

23 **II. The removal period began in 2019 and ended in 2020.**

24 The government agrees that Mr. Sarr was ordered removed in August of
 25 2019. Nor does it dispute that the order was administratively final when it was
 26 entered. That is sensible.

27 Thus, as relevant here, the *Zadvydas* removal period begins when an alien is
 28 "'ordered removed,' and the removal order becomes 'administratively final.'"

1 *Johnson v. Guzman Chavez*, 594 U.S. 523, 533–34 (2021); 8 U.S.C.
 2 § 1231(a)(1)(B). That is because the statute defining the beginning of the removal
 3 period is linked to the latest of several dates: (1) “[t]he date the order of removal
 4 becomes administratively final;” (2) “[i]f the removal order is judicially reviewed
 5 and if a court orders a stay of the removal of the alien, the date of the court’s final
 6 order;” or (3) “[i]f the alien is detained or confined (except under an immigration
 7 process), the date the alien is released from detention or confinement.”
 8 § 1231(a)(1)(B). And only the first of those options applies here.

9 That is because government does not and cannot claim that the immigration
 10 order was “judicially reviewed.” *See* 8 U.S.C. § 1231(a)(1)(B)(ii). That is because,
 11 under the INA, judicial review means proceedings before an Article III court, not
 12 an IJ or BIA, which are part of the “administrative record.” *See, e.g.*, 8 U.S.C.
 13 § 1252(b)(3)(C); *see also Kucana v. Holder*, 558 U.S. 233, 237 (2010). Thus, even
 14 if the motion to reopen triggered an administrative stay, it did not affect the start of
 15 the removal period under § 1231(a)(1)(B). Furthermore, the government does not
 16 and cannot claim that Mr. Sarr was detained under § 1231(a)(1)(B). Thus, the
 17 removal period began when Mr. Sarr’s removal order became administratively final
 18 in 2019. *See* § 1231(a)(1)(B)(i).

19 And if that is so, precedent dictates that *Zadvydas* provides a “‘presumptively
 20 reasonable’ detention period of *six months* after a final order of removal—that is,
 21 *three months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*,
 22 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Thus, detention is no longer presumptively
 23 reasonable. And, for reasons discussed below, the government cannot demonstrate
 24 a “significant likelihood of removal in the reasonably foreseeable future.”
 25 *Zadvydas*, 533 U.S. at 701.

26 **III. Even if the removal period began when Respondents detained**
 27 **Mr. Sarr, his detention is no longer presumptively reasonable because**
 28 **it has been more than six months.**

Respondents point to a smattering of courts holding that the *Zadvydas* clock

1 does not start until ICE detains a person. That conflicts with Ninth Circuit
 2 precedent. *See Rodriguez v. Hayes*, 591 F.3d 1105, 1115 (9th Cir. 2010), *overruled*
 3 *in other part by Jennings v. Rodriguez*, 583 U.S. 281 (2018) (“The [*Zadvydas*]
 4 Court determined that *for six months following the beginning of the removal period*
 5 *an alien’s detention was presumptively authorized.*” (emphasis added)).

6 Thus, the majority position is that the *Zadvydas* clock is not calculated based
 7 on the latest length of detention. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 721
 8 (W.D. Wash. 2025) (collecting cases and rejecting that “the clock has restarted”);
 9 *see also Pena-Gil v. Lyons*, No. 25-CV-03268-PAB-NRN, 2025 WL 3268333, at
 10 *2 (D. Colo. Nov. 24, 2025) (collecting more cases).

11 If it were otherwise, *Zadvydas* would be a nullity. The government need only
 12 release an immigrant every six months before redetaining them an infinite number
 13 of times. *See Siguenza v. Moniz*, No. 25-CV-11914-ADB, 2025 WL 2734704, at *3
 14 (D. Mass. Sept. 25, 2025) (“Most courts to consider the issue have concluded that
 15 the *Zadvydas* period is cumulative, motivated, in part, by a concern that the federal
 16 government could otherwise detain noncitizens indefinitely by continuously
 17 releasing and re-detaining them.”).

18 Regardless, even if one accepts Respondents reading, it does not change the
 19 bottom line. Respondents detained Mr. Sarr on November 21, 2025. That was six
 20 months and one day ago. And, as discussed below, respondents cannot show a
 21 “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
 22 533 U.S. at 701.

23 **IV. Mr. Sarr’s filing of a motion to reopen did not restart or suspend the**
 24 **removal period, but even if this Court disagrees, release remains**
 25 **proper under *Zadvydas*.**

26 Respondents make much of the fact that Mr. Sarr filed a motion to reopen
 27 his removal proceedings on December 28, 2025, which was denied on January 16,
 28 2026. But no matter how one treats that three-week period, it does not change the
 proper resolution of this case.

1 First, as discussed above, the motion to reopen does not fall under
 2 § 1231(a)(1)(B) and so thus cannot mark the beginning of the removal period. That
 3 is because that statute’s “three specific triggers” of the removal period are
 4 exclusive. *Guzman Chavez*, 594 U.S. at 545. Thus, to the extent that the removal
 5 period had already not concluded by December 28, 2025, it continued to run.

6 Second, filing a motion to reopen does not “suspen[d]” the removal period
 7 because Mr. Sarr did not “fail[] or refuse[] to make timely application in good faith
 8 for travel or other documents necessary to the [his] departure or conspire[] or act[]
 9 to prevent [his] removal subject to an order of removal.” § 1231(a)(1)(C). Mr. Sarr
 10 filed his motion to reopen in good faith and did not seek judicial review. It was
 11 quickly resolved and nothing prevented Respondents from seeking a travel
 12 document while the motion was pending.

13 Finally, even if this Court concludes otherwise, Mr. Sarr’s motion at most
 14 suspended the removal period for three weeks while the motion was pending. In
 15 other words, even if this Court rejects every one of Mr. Sarr’s legal arguments,
 16 Respondents still have detained Mr. Sarr for *five months and 12 days as of this*
 17 *filing*.

18 And as the government does not dispute, Mr. Sarr, under *Zadvydas*, can rebut
 19 the presumption that their detention is reasonable before six months have elapsed
 20 by showing that “it is ‘no longer reasonably foreseeable’ that [she] will actually be
 21 removed, [and] detention ‘is no longer authorized.’” *Cruz Medina v. Noem*, 794 F.
 22 Supp. 3d 365, 376 (D. Md. 2025) (quoting *Zadvydas*, 533 U.S. at 699–700). As
 23 discussed below, that very much is the case here.

24 **V. There is no significant likelihood of removal in the reasonably**
 25 **foreseeable future.**

26 Finally, the Return and recent developments confirm that, under any
 27 framework, there is “no significant likelihood of removal in the reasonably
 28 foreseeable future.” *Zadvydas*, 533 U.S. at 701.

1 In addition to the facts provided in the original petition, the Return confirms
2 that there have been no developments in Mr. Sarr’s case since February 23, 2026.
3 Indeed, Respondents have not even reached out to Gambia since January 27. *Id.*
4 What is more, while Respondents challenge their own statistics showing that
5 Gambia is “at risk of noncompliance,” Return 6 (quoting Pet. 11), they fail to
6 provide any data or even assurances showing that Gambia has repatriated any of tis
7 citizens recently. All they can say is that, three months ago, someone from
8 Gambia’s consulate interviewed Mr. Sarr. That does not suffice.

9 Respondents do not even assert that a significant *proportion* of Gambian
10 citizens are successfully removed when ICE seeks travel documents. Without
11 knowing “the total number of requests that were made to” Gambia, this Court
12 cannot “gauge how likely it is that Petitioner would be removed” as well. *Nguyen*
13 *v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025).

14 All the Court has is Respondents own data, showing that Gambia is “at-risk
15 of noncompliance” when it comes repatriating its citizens. Pet. 11; *see also* Ex. B
16 to Petition at 7; *see also Drammeh v. Noem*, No. 25-CV-3412 JLS (JLB), 2026 WL
17 36078, at *3 (S.D. Cal. Jan. 6, 2026) (discussing in another § 2241 case in which
18 Respondents failed to obtain a travel document from Gambia).

19 And that is not all. As mentioned above, Respondents recently approached
20 Mr. Sarr not to update him on his removal, but to ask him where and how he would
21 be living in the United States. Ex. A ¶¶ 1–2. That was because, in Respondents
22 words, “it has been almost six months, and they might release you.” *Id.* ¶ 1. That
23 suggests that Respondents, in practice, are no longer even trying to remove Mr. Sarr
24 in the foreseeable future.

25 Mr. Sarr thus satisfies the *Zadvydas* standard no matter when this Court
26 starts—and ends—the statutory removal period. There indeed is “no significant
27 likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at
28 701.

Prayer for relief

For the foregoing reasons, Mr. Sarr respectfully requests that this Court:

1. Order and enjoin Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner without first obtaining a travel document and following all applicable statutory and regulatory procedures;
3. Enjoin Respondents from removing Petitioner unless they provide the following process:
 - a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
 - b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
 - c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
 - d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.
4. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 22, 2026

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