Edward Neufville, III
Appearing Pro Hac Vice
Law Office of Edward W. Neufville, III, LLC
8121 Georgia Avenue, Suite 650
Silver Spring, MD, 20910
Tel. 301.562.7995
Fax. 301.562.8199
Email: edward@neufvillelaw.com

Attorney for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

FATOU TOURE **A** [redacted]	Case No. _____
Petitioner,	**PETITION FOR WRIT OF HABEAS CORPUS**
v.	
MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security;	
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement;	
Christopher McGregor, Director of Phoenix Field Office, U.S. Immigration and Customs Enforcement; and	
Respondents.	

MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Petitioner Fatou Toure has lived in the United States since 1998 and is the mother of U.S. citizen daughters, including a medically fragile child, and a United States citizen son in the United States military. She has been subject to a final order of removal since December 13, 2017. For years, the Department of Homeland Security ("DHS") did not remove her and instead allowed her to live in the community under an Order of Supervision ("OSUP").

On March 4, 2026, long after the 90-day statutory removal period and the presumptively reasonable six-month Zadvydas period had expired, Immigration and Customs Enforcement ("ICE") abruptly arrested and detained Ms. Toure under 8 U.S.C. § 1231. ICE did so without any documented, regulation-compliant revocation of her OSUP and without any showing that her removal is significantly likely in the reasonably foreseeable future.

The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), held that post-order detention under 8 U.S.C. § 1231(a)(6) is constitutionally permissible only as long as reasonably necessary to effectuate removal and may not be potentially indefinite. Once a noncitizen shows good reason to believe that removal is not significantly likely in the reasonably foreseeable future, the government bears the burden to rebut that showing with evidence.

Here, more than eight years have passed since the order of removal became final. DHS did not remove Petitioner during that time, opted instead to release her under supervision, and only recently chose to re-detain her. She has now filed with the Board of Immigration Appeals ("BIA") a Motion to Reopen and an Emergency Motion for Stay of Removal, which remain pending and further undercut any claim that removal is imminent. Respondents have not demonstrated any concrete progress toward her removal, nor have they followed mandatory procedures for revoking her OSUP and conducting custody reviews.

Petitioner therefore respectfully requests that this Court grant her Petition for Writ of Habeas Corpus, order her immediate release under appropriate conditions, and issue declaratory and injunctive relief to prevent further unlawful detention.

STATEMENT OF FACTS

The facts are set forth in detail in the Petition and are summarized here for the Court's convenience.

1. Petitioner is a native and citizen of Senegal who entered the United States lawfully on or about August 8, 1998, in B-2 visitor status. She has resided here for over 25 years and is the mother of U.S. citizen daughters and a son in the United States military.
2. DHS placed Petitioner in removal proceedings under INA § 240. In Immigration Court, she sought asylum, withholding of removal, protection under the Convention Against Torture, and cancellation of removal for certain nonpermanent residents, based substantially on:

a. Her fear that her U.S. citizen daughters [redacted] and

b. The exceptional and extremely unusual hardship that her removal would cause her U.S. citizen children, particularly her medically fragile child.

3. On January 24, 2017, an Immigration Judge denied all relief and ordered Petitioner removed to Senegal. Petitioner timely appealed.
4. On December 13, 2017, the BIA dismissed Petitioner's appeal, making the removal order administratively final under 8 U.S.C. § 1101(a)(47)(B)(i).

5. Under 8 U.S.C. § 1231(a)(1)(A), DHS was required to remove Petitioner within 90 days, i.e., by approximately March 2018. The six-month period that *Zadvydas* describes as presumptively reasonable for post-order detention expired in approximately June 2018.

6. During and after this time, DHS did not remove Petitioner. Instead, DHS released her under an OSUP under 8 U.S.C. § 1231(a)(3). Petitioner complied with supervision conditions and cooperated with ICE. DHS nonetheless did not carry out removal at any time between 2017 and early 2026.

7. On or about March 4, 2026, ICE arrested Petitioner and placed her in civil immigration detention at the Eloy Federal Contract Facility in Eloy, Arizona. ICE did not provide contemporaneous written notice terminating her OSUP, did not specify any violation of her supervision conditions, and did not provide any individualized determination that re-detention was necessary due to danger or flight risk.

8. Petitioner's re-detention has imposed severe hardship on her and her U.S. citizen children, particularly her child with serious medical issues who depends heavily on her care.

9. On or about April 13–14, 2026, Petitioner, through counsel, filed with the BIA a Motion to Reopen removal proceedings, based on humanitarian and public-interest grounds, including an approved I-130 petition filed on her behalf, updated medical evidence regarding her U.S. citizen child, and additional evidence concerning [redacted] She also filed an Emergency Motion for Stay of Removal Pending Adjudication of the Motion to Reopen. Both motions remain pending.

10. Despite having had more than eight years since the final order of removal to effectuate removal, DHS has not presented evidence that it has obtained travel documents for Petitioner, scheduled a removal flight, or otherwise arranged for her removal in the reasonably foreseeable future.

11. Since March 4, 2026, Petitioner has not received a meaningful, regulation-compliant post-order custody review, and Respondents have not provided any written decisions explaining the basis for her continued detention, the purported revocation of her OSUP, or why less restrictive alternatives would not suffice.

LEGAL STANDARDS

I. Jurisdiction and Habeas Review

Habeas corpus under 28 U.S.C. § 2241 is the traditional vehicle to challenge civil immigration detention. *See Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez,* 583 U.S. 281 (2018). Petitioner challenges only her current detention, not the underlying removal order. Such detention challenges are not barred by 8 U.S.C. § 1252(a)(5) or § 1252(b)(9) because they do not seek review of the removal order itself. *Jennings,* 583 U.S. at 287–88.

The Court reviews de novo questions of law, including the proper construction of 8 U.S.C. § 1231(a)(1) and (a)(6), as well as whether Respondents' actions comport with due process and their own regulations. To the extent factual disputes bear on the legality of custody, the Court may consider evidence beyond the pleadings and, if warranted, hold an evidentiary hearing. 28 U.S.C. § 2243.

II. Statutory Framework – 8 U.S.C. § 1231

Once a removal order becomes administratively final, 8 U.S.C. § 1231(a)(1) requires DHS to remove the noncitizen within 90 days. Section 1231(a)(2) generally mandates detention during

this 90-day "removal period." The removal period begins, as relevant here, on "the date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i).

After the 90-day removal period expires, 8 U.S.C. § 1231(a)(6) provides that certain noncitizens "may be detained beyond the removal period" or released subject to conditions of supervision. That authority is discretionary and is constrained by the Constitution.

III. Zadvydas v. Davis and Limits on Post-Order Detention

In *Zadvydas,* the Supreme Court construed § 1231(a)(6) to authorize detention only for a period "reasonably necessary" to effect removal. 533 U.S. at 689. To avoid serious constitutional problems, the Court held that once the period of post-order detention extends beyond six months, "the alien is entitled to be released" if he or she can show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," unless the government rebuts that showing with evidence. Id. at 701.

The six-month period in *Zadvydas* is a presumption, not a rigid jurisdictional bar to judicial review. Courts assess all circumstances, including the time since the order became final, the length of detention and/or supervision, the government's efforts to secure travel documents, and any legal impediments to removal.

IV. Due Process and the Accardi Doctrine

The Fifth Amendment's Due Process Clause protects all persons in the United States, including noncitizens, from arbitrary detention. Detention must bear a reasonable relation to its purpose and be accompanied by fair procedures, including notice and an opportunity to be heard.

Under 8 U.S.C. § 1231(a)(3) and its implementing regulations, DHS may release a noncitizen subject to a final order under an OSUP, and may revoke that supervision and re-detain

the person only by following specified procedures. Regulations such as 8 C.F.R. §§ 241.4, 241.5, and 241.13 govern post-order custody reviews and supervision.

The Accardi doctrine requires agencies to follow their own binding regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Agency action contrary to such regulations, especially when those regulations are intended to confer important procedural protections, is invalid.

Additional statutory and regulatory provisions, including 8 U.S.C. § 1232 and 8 C.F.R. § 1208.31(g), reflect Congress's and the Executive's recognition of heightened obligations when children's interests and potential persecution risks are at stake. While those provisions focus in part on unaccompanied children and credible fear procedures, they underscore the government's duty to account for child welfare and protection concerns in removal and detention decisions, including where removal would expose U.S. citizen children to serious harm.

ARGUMENT

I. Petitioner's Detention Violates 8 U.S.C. § 1231(a)(6) as Interpreted in Zadvydas Because There Is No Significant Likelihood of Removal in the Reasonably Foreseeable Future.

A. The Relevant Removal Period Began in 2017 and Has Long Since Expired.

Petitioner's removal order became administratively final on December 13, 2017, when the BIA dismissed her appeal. 8 U.S.C. § 1101(a)(47)(B)(i). Under 8 U.S.C. § 1231(a)(1)(B)(i), the 90-day removal period began on that date and expired in or about March 2018. The six-month presumptively reasonable period for post-order detention recognized in *Zadvydas* expired in or about June 2018.

Nothing in § 1231 permits DHS to restart the statutory removal period or extend the Zadvydas "clock" by releasing and later re-detaining a noncitizen years after a final order was entered. The statute keys the removal period to the date the order becomes administratively final, not to the date of each detention episode. To hold otherwise would allow DHS to circumvent Zadvydas by repeatedly releasing and re-detaining individuals and thereby creating a regime of rolling, effectively indefinite detention.

Here, DHS had full legal authority to remove Petitioner between 2017 and 2026 but chose not to do so. Instead, it released her under supervision. The government cannot now invoke a supposed "new" 90-day removal period beginning on March 4, 2026, to justify detention as though the order had just become final.

B. Petitioner Has Shown Good Reason to Believe Removal Is Not Significantly Likely in the Reasonably Foreseeable Future.

Once detention extends beyond six months, *Zadvydas* requires release if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," absent rebuttal by the government. 533 U.S. at 701. Petitioner has made this showing:

1. Passage of Time and Government Inaction. More than eight years have passed since the order became final. Throughout this period, DHS neither removed her nor presented evidence of persistent, unsuccessful efforts to do so. A lengthy period of non-removal despite a final order is strong evidence that removal is not reasonably foreseeable.
2. Pendency of Motion to Reopen and Emergency Stay. Petitioner has a Motion to Reopen and Emergency Motion for Stay of Removal pending before the BIA. These filings create legal and practical obstacles to removal. The BIA may grant reopening and/or stay removal,

affecting the executability of the order. Courts routinely treat pending legal challenges as relevant to the foreseeability of removal under *Zadvydas*.

3. Lack of Travel Documents and Concrete Removal Plans. Upon information and belief, ICE has not obtained travel documents from Senegal, has not scheduled a removal flight, and has not set a removal date despite having had years to do so. Petitioner specifically requests that Respondents provide documentation of any such efforts; their failure to do so underscores the lack of concrete steps toward removal.
4. Petitioner's Cooperation. Petitioner has cooperated with ICE, complied with her OSUP, and has not acted to obstruct removal. Thus, any difficulty in effectuating removal is not attributable to Petitioner.

These facts establish more than "good reason to believe" that removal is not significantly likely in the reasonably foreseeable future. Under *Zadvydas,* the burden therefore shifts to the Government to rebut this showing with evidence, not mere assertions.

C. The Government's Anticipated Reliance on a "Fresh" 90-Day Period from March 4, 2026 Is Legally Unsound.

Respondents are likely to argue that Petitioner's detention is permissible because she has been in custody only since March 4, 2026, i.e., less than 90 days, and that § 1231(a)(2) mandates detention during this supposed new 90-day period. That argument fails for several reasons:

1. Statutory Text. The removal period begins when the order becomes administratively final. 8 U.S.C. § 1231(a)(1)(B)(i). Nothing in the statute authorizes restarting this period years after finality based on re-detention.

2. Purpose of *Zadvydas*. *Zadvydas* was designed to prevent potentially indefinite detention. Allowing DHS to reset the clock by cycling individuals between custody and supervision would subvert this purpose and enable de facto indefinite detention.
3. Nature of the *Zadvydas* Presumption. The six-month period is a presumption, not a jurisdictional bar. Courts may consider the totality of circumstances, including years of non-removal and current legal impediments, in assessing whether detention is unreasonable even if less than six months have elapsed since the latest detention episode.

Given the long-expired removal period, the eight-plus years since the order became final, the government's failure to remove Petitioner during that time, and the pending motion to reopen and stay, any reliance on a "new" 90-day period is inconsistent with both § 1231 and *Zadvydas*. Petitioner's claim is fully ripe.

D. Respondents Have Not Met Their Burden Under Zadvydas.

Once Petitioner presents good reason to believe that removal is not significantly likely in the reasonably foreseeable future, the Government must "respond with evidence sufficient to rebut that showing." Zadvydas, 533 U.S. at 701. Conclusory assertions that Senegal generally accepts returnees, without individualized evidence of active repatriation efforts and a realistic timetable, are insufficient.

To date, Respondents have not:

a. Produced evidence of any travel document requests and responses specific to Petitioner;
b. Identified a scheduled removal flight or removal date;
c. Explained why Petitioner was not removed in the years between 2017 and 2026; or
d. Addressed the impact of her pending BIA motions on the timing and feasibility of removal.

Absent such proof, Respondents cannot meet their burden. Petitioner is therefore entitled to release under *Zadvydas*.

II. Respondents' Revocation of Petitioner's Order of Supervision and Continued Detention Violate Due Process, 8 U.S.C. § 1231, and the Accardi Doctrine.

A. DHS Must Follow Its Own Regulations Governing Supervision and Custody Review.

Following expiration of the statutory removal period, § 1231(a)(3) authorizes DHS to release noncitizens subject to final orders under conditions of supervision. Regulations, including 8 C.F.R. §§ 241.4, 241.5, and 241.13, govern when and how DHS may continue detention or release individuals under OSUPs, and the procedures for revoking supervised release.

These regulations are binding and are designed to structure agency discretion and protect individuals' liberty interests. Under the Accardi doctrine, agencies must follow such regulations, and failure to do so renders their actions invalid. *Accardi*, 347 U.S. at 267–68.

B. Respondents Failed to Follow Required Procedures in Revoking Petitioner's OSUP and Re-Detaining Her.

DHS placed Petitioner under an OSUP after the expiration of the 90-day removal period. That OSUP remained in effect until ICE suddenly re-detained her on March 4, 2026.

Upon information and belief, Respondents:

1. Did not provide Petitioner with written notice identifying any alleged violation of supervision conditions or other grounds for revocation of her OSUP.
2. Did not conduct a meaningful, individualized custody review considering critical factors such as her long-term residence, family ties, history of compliance, absence of dangerousness, and the lack of progress toward removal.

3. Did not meaningfully consider less restrictive alternatives to detention, such as continued supervision, periodic reporting, or electronic monitoring, despite their availability.
4. Did not issue written custody determinations explaining the rationale for re-detention and continued confinement, thereby depriving Petitioner of the ability to challenge or respond to the basis for detention.

By failing to follow their own regulations, Respondents violated the Accardi doctrine and deprived Petitioner of procedural protections that the regulations are designed to afford. This arbitrary revocation of supervised release and imposition of detention violates due process.

C. Respondents Have Not Adequately Considered Statutory and Regulatory Obligations Regarding Child Welfare and Protection from Persecution.

While 8 U.S.C. § 1232 and 8 C.F.R. § 1208.31(g) focus in part on unaccompanied children and credible-fear procedures, they reflect broader congressional and regulatory concern for the safety and welfare of children and for ensuring that individuals are not removed to places where they or their family members face persecution or serious harm. In this case, Respondents have not demonstrated that, in detaining Petitioner and seeking to effectuate removal, they have meaningfully considered:

a. The welfare and best interests of Petitioner's U.S. citizen children, especially her United States citizen son in the United States military.
b. The risk that removal would expose them to [redacted] and
c. Their obligations under statutes and regulations reflecting the need to protect children and assess fear-based claims, including potential third-country removal issues.

The failure to consider these factors further underscores the arbitrary nature of Petitioner's detention and contravenes due process and the structure of the governing statutory and regulatory scheme.

D. Petitioner's Continued Detention Is Arbitrary and Violates Substantive and Procedural Due Process.

Civil immigration detention must bear a reasonable relation to its purpose and must be accompanied by fair procedures. Here:

a. The asserted purpose of detention—effectuating removal—is undermined by years of government inaction, the long-expired removal period, the pending motion to reopen and stay, and the lack of concrete removal plans.

b. The procedures used—revocation of an OSUP and re-detention without notice, individualized explanation, or meaningful custody review—fail to satisfy the requirements of due process and DHS's own regulations.

c. Less restrictive alternatives are plainly available and were previously used successfully when Petitioner was under supervision without incident.

Under these circumstances, Petitioner's continued detention is arbitrary and therefore violates both substantive and procedural due process. She is entitled to release and to declaratory and injunctive relief ensuring that Respondents comply with constitutional, statutory, and regulatory safeguards before any future attempt to detain her.

REQUESTED RELIEF

For the reasons set forth above and, in the Petition, Petitioner respectfully requests that the Court:

1. Grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release from ICE custody under reasonable conditions of supervision or other appropriate terms;
2. Declare that Respondents' continued detention of Petitioner under 8 U.S.C. § 1231(a)(6), in light of *Zadvydas*, violates the Due Process Clause because Respondents have failed to demonstrate a significant likelihood of removal in the reasonably foreseeable future;
3. Declare that Respondents violated 8 U.S.C. § 1231, 8 U.S.C. § 1232, and implementing regulations, including 8 C.F.R. §§ 241.4, 241.5, 241.13, and 1208.31(g), as well as the Accardi doctrine, by revoking or disregarding Petitioner's OSUP and detaining her without following required procedures;
4. Enter a permanent injunction preventing Respondents from detaining Petitioner again under 8 U.S.C. § 1231(a)(6) unless and until they can: (a) demonstrate a significant likelihood of removal in the reasonably foreseeable future; and (b) show full compliance with all applicable statutory and regulatory requirements;
5. Direct Respondents to provide to the Court and to Petitioner's counsel: (a) a copy of her removal order; (b) the dates and results of all post-order custody reviews; and (c) the dates any travel documents have been requested and responses received, including the identity of any countries to which removal has been sought;
6. Require Respondents to certify their compliance with 8 U.S.C. § 1232 and 8 C.F.R. § 1208.31(g), as applicable, including steps taken to assess and protect the interests of Petitioner's U.S. citizen children; and
7. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Edward W. Neufville, III

Silver Spring, MD, 20910
Tel.: 301-562-7995
Fax: 301-562-8199
Email: edward@neufvillelaw.com

Attorney for Petitioner

Dated: April 23, 2026