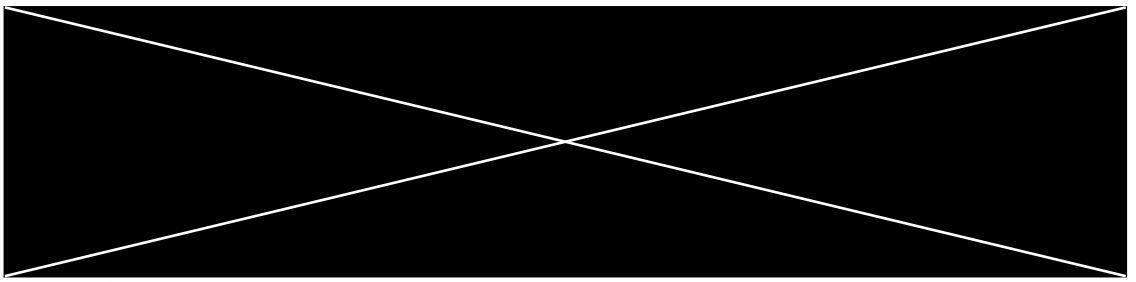
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Divine Asoba Njukeng Petitioner, vs. KEVIN RAYCRAFT, Acting Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; TODD BLANCHE, U.S. Attorney General, Respondents.	Case No. District Judge _____ Magistrate Judge _____

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Petitioner, Mr. Divine Asoba Njukeng, brings this petition for a Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief to this Court, pursuant to 28 USC § 2241, U.S.C. §§ 705-06, 28 U.S.C. §1651, 28 U.S.C. §§ 2201–02, 28 U.S.C. § 2241 to remedy his continued unlawful detention by Respondents. Petitioner hereby requests immediate release. In support of this Petition, Petitioner alleges as follows:
2. Petitioner, Divine Asoba Njukeng, is a citizen of Cameroon. He was born in 1997 in Mmockmbie, Cameroon. (**Exhibit 1**, Decl. of Divine Asoba Njukeng ¶ 1).
3. Mr. Njukeng fears for his life if he is removed to Cameroon. (*Id.* ¶ 8). He has previously



4. Mr. Njukeng entered the United States on February 6, 2025. (*Id.* ¶ 2). He was placed in removal proceedings in approximately March 2025. (*Id.* ¶ 3). On November 21, 2025, an IJ denied Mr. Njukeng's asylum application due to the Circumvention of Legal Pathways rule. (*Id.* ¶ 4). But the IJ granted Mr. Njukeng Withholding of Removal (WOR) to Cameroon under 8 U.S.C. § 1231(b)(3). (*Id.* ¶ 5). Because Mr. Njukeng reserved the right to appeal, but ultimately did not file an appeal, the decision became final on November 22, 2025. (*Id.* ¶ 9).
5. On March 20, 2026, Mr. Njukeng, through counsel, filed a habeas petition in the United States District Court for the District of Arizona (**Exhibit 2**, Verified Petition for Writ of Habeas Corpus, *Abdul Wahab Adeli, et. al v. Rokosky, et al.* CV-26-01949-PHX-DJH).
6. In the previously filed petition, Mr. Njukeng argued that (1) his continued detention is unlawful under 8 U.S.C. § 1231(a), *Zadvydas v. Davis*, 533 U.S. 678 (2001), 8 C.F.R. § 241.4, the Administrative Procedure Act ("APA") under 5 U.S.C. § 706, and the Fifth Amendment's Due Process Clause, and (2) he was in imminent danger of being unlawfully removed to dangerous third countries where he was likely to either be persecuted and tortured or else be repatriated back to his home countries, where he is objectively likely to be persecuted, tortured, or even killed (*Id.* ¶ 2-3).
7. On June 29th, 2026—less than two months ago—the District Court in Arizona issued an order on Mr. Njukeng's petition finding that Respondents did not carry their evidentiary

burden and that Respondents provided "no evidence" that they had even identified a third country for possible removal. (**Exhibit 3**, Final Order *Abdul Wahab Adeli, et. al v. Rokosky, et al.* CV-26-01949-PHX-DJH). As such, the District Court in Arizona ordered Mr. Njukeng's immediate release.

8. After release, Mr. Njukeng moved to Ohio to live closer to family. On August, 13th 2026, Mr. Njukeng was given an appointment at the local ICE office in Westerville, Ohio. At this appointment Mr. Njukeng was (1) once again detained by ICE, and (2) informed by ICE that they plan to effectuate his removal to Equatorial Guinea. Mr. Njukeng was then transferred to Butler County Correctional Complex where he remains detained today.
9. Since his previous release pursuant the District Court in Arizona's order, there has been no change in circumstances from when was originally detained. Respondents were previously seeking to unlawfully remove him to a 3rd country and Judge Humetawa found that inadequate to justify his ongoing detention. And now, just weeks later, Respondents have re-detained him and are doing the exact same thing now.
10. Mr. Njukeng has no legal status in Equatorial Guinea nor has ever travelled through or been to Equatorial Guinea. Recently, the *Arizona Republic* reported that another man who was sent to Equatorial Guinea as a third country has been held under armed guard in a decommissioned hotel. He fears for his safety. Emily Bregel, *Arizona Man Languishes in African Hotel After Third-Country Deportation*, Ariz. Daily Star (Aug. 2, 2026), https://tucson.com/news/local/border/article_c92af28c-a8f2-4795-abd3-e72e0f94c24e.html.
11. Mr. Njukeng's detention is not authorized by 8 U.S.C. § 1231(a)(6) and he faces unlawful detention because ICE effectuated his detention in violation of its own regulations, namely

8 C.F.R. § 1231(b)(3). Mr. Njukeng's *lawful* removal is not imminent. As such, if Respondents argue that removal is imminent they are doing so in an unlawful way. As such, his removal to Equatorial Guinea is not reasonably foreseeable and Respondent's actions violated Mr. Njukeng's due process rights.

12. If DHS designates a new country of removal after the completion of removal proceedings, the INA, the Due Process Clause, and binding international agreements obligate DHS to provide reasonable notice and an opportunity to prevent a fear-based claim prior to carrying out deportation (8 U.S.C. 1231(b)(3)(A), the Due Process Clause, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See 8 C.F.R. 208.18).
13. In sum, Mr. Njukeng's detention violates the Immigration and Nationality Act and implementing regulations, as well as the Due Process Clause of the Fifth Amendment, and is subject to review and correction by this Court pursuant to 28 U.S.C. § 2241.
14. The Court should expeditiously grant this Petition and order Mr. Njukeng's immediate release as well as:

- 14 days' notice of any proposed third country of removal in writing to both Devine and counsel,
- An opportunity to present testimony and evidence of a fear-based claim and at 10 days written notice of any scheduled interview, and
- A reasonable opportunity to file and have adjudicated a Motion to Reopen in EOIR before any removal can be effectuated.

II. JURISDICTION

15. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Butler County Correctional Complex in Hamilton, Ohio.

16. This Court has jurisdiction under 28 U.S.C. § 2241 (Habeas Corpus); 28 U.S.C. § 1331 (Federal Question); Article I, section 9, clause 2 of the United States Constitution (Suspension Clause).

17. This Court may grant relief pursuant to 28 U.S.C. § 2241 *et. seq.*, and declaratory and injunctive relief pursuant to 5 U.S.C. §§ 705-06, 28 U.S.C. §1651, 28 U.S.C. §§ 2201–02, 28 U.S.C. § 2241, and its equitable powers.

III. VENUE

18. Venue is proper in the United States District Court for the Southern District of Ohio, specifically in the Western Division, because Petitioner is currently detained in the Butler County Correctional Complex in Hamilton, Ohio. 28 U.S.C. § 2241; 28 U.S.C. § 1391; S.D. Ohio Civ. R. 82.1(b).

19. Venue is also proper in this Court because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims and relevant facts occurred in the Northern District. 28 U.S.C. § 1391(e).

IV. REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondent must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

21. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Nola*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

V. PARTIES

22. Petitioner, Mr. Divine Asoba Njukeng, is a native and citizen of Cameroon who was granted WOR and was previously detained by Respondents at the Eloy Detention Center in Eloy, Arizona. Petitioner was since ordered released from Respondents custody on June 29th, 2026. On August 13th, 2026, Respondents once again detained Petitioner in Westerville, Ohio at an ICE check-in appointment. Petitioner is currently being detained by Respondents at the Butler County Correctional Complex in Hamiliton, Ohio.
23. Respondent Kevin Raycraft is the Acting Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division. As such, Acting Director Raycraft is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. *See Roman v. Ashcroft*, 340 F.3d 314, 320-21 (6th Cir. 2003). He is named in his official capacity.
24. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

25. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

VI. LEGAL FRAMEWORK

26. "[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001). "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Id.* at 690.

27. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the U.S. Supreme Court held that 8 U.S.C. §1231(a)(6), when "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal form the United States." 533 U.S. at 689. If the individual's removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute." *Id.* at 699-700.

28. In *Jama v Immigration & Customs Enforcement*, 543 U.S. 335, 347 (2005), the Supreme Court found that the petitioner had satisfied his burden of showing that a significant likelihood of removal is not reasonably foreseeable because the petitioner established that no country would accept him. Aliens under those circumstances are deemed "removable-but-unremovable" because their detention would be indefinite and potentially permanent in defiance of the letter and spirit of *Zadvydas*. *See also Demore v. Kim*, 538 U.S. at 527 (touchstone inquiry is whether removal is "no longer practically attainable.").

Statutes and Regulations

29. A non-citizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period").

30. A non-citizen may only be detained past the 90-day removal period following a removal order if found to be "a risk to the community or unlikely to comply with the order of removal" or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).

31. But even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

32. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4.

VII. CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE FIFTH AMENDMENT
Substantive Due Process

33. Petitioner re-alleges and incorporates by reference all paragraphs above as if fully set forth here.

34. 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. *See e.g., Tam v. INS*, 14 F.Supp.2d. 1184 (E.D. Cal. 1998) (aliens retain substantive due process rights).

35. 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 significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest – to effectuate the alien's removal. *See Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention – executing removal – is nonsensical.")

36. In the case of Mr. Njukeng, he has never been to and never had legal status in Equatorial Guinea. Further, he has not been provided with an opportunity to present a fear-based claim about being removed to Equatorial Guinea. As such, should his procedural due process rights be protected—as he argues for in Count II below—his substantive due process right of freedom from bodily restraint is currently being violated. There is no justified reason for

DHS to currently have Mr. Njukeng detained if they plan to provide him with a fair opportunity to be heard as to why removal to Equatorial Guinea would be improper—especially in light of the fact that Mr. Njukeng was just ordered released on a previous habeas petition on nearly identical grounds.

COUNT II

VIOLATION OF THE FIFTH AMENDMENT
Procedural Due Process

37. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

38. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. Petitioner in this case has been denied that opportunity.

39. Petitioner's continued detention without a significant likelihood of removal in the reasonably foreseeable future violates his due process rights guaranteed by the Fifth Amendment to the United States Constitution. *See Zadvydas v. U.S.*, 533 U.S. 678.

40. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

41. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart

of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690. Petitioner is currently detained.

42. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, the statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard (8 U.S.C. 1231(b)(3)(A), the Due Process Clause, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See 8 C.F.R. 208.18). Respondents did not adhere to the regulations, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior detention is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

43. Moreover, the IJ denied Mr. Njukeng's asylum application due to the Circumvention of Legal Pathways (CLP) rule. Since this decision, the United Stated District Court for the Northern District of California in *East Bay Sanctuary Covenant v. Trump* entered two orders invalidating CLP and thus giving Mr. Njukeng grounds to request a motion to reopen his asylum case. *East Bay Sanctuary Covenant v. Trump*, No. 4:18-cv-06810-JST, slip op. (N.D. Cal. May 7, 2026). Mr. Njukeng is in the process of obtaining counsel to do this but has only recently been released pursuant to the previous habeas order from the District Court in Arizona. Should the motion to reopen be granted, Mr. Njukeng is highly likely to be granted asylum in the United States due to IJ's previous finding of withholding of

removal from Cameroon—the country he would be claiming asylum from. As such, his continued detention creates a significant risk of erroneous deprivation of liberty as the only ground that prevented him from being granted asylum in the first place has now been vacated. His new detention impedes his ability to find meaningful representation to continue to pursue he legal process he had previously pursued, but according to two new court orders, was denied on erroneous grounds.

44. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous, *especially when an individual has been already granted immigration relief.* This is even more true in this matter as Petitioner has just been ordered released on a separate habeas petition less than two months ago. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government. As the length of confinement increases… the emotional and financial toll of continued detention for… the Government become substantially greater. *Mulet-Zaldivar v. Acting Dir. of Enf't & Removal Operations, Detroit Field Off., Immigr. & Customs Enf't*, No. 1:26-CV-00143, 2026 WL 1911462, at *3 (S.D. Ohio July 2, 2026).

45. For these reasons, detaining Petitioner and attempting to remove him to a third country to which he has no meaningful connection, without providing notice and a meaningful opportunity to respond, violated procedural due process under the Fifth Amendment to the U.S. Constitution. In Petitioner's case, withholding of removal has already been granted. DHS may be attempting to reopen removal proceedings and designate a new country of removal, but at the time of this filing they have not done so. Thus, Petitioner has been detained without having a legally enforceable removal order, nor has he been placed back into removal proceedings.

46. The government's action in detaining Petitioner pending after being granted immigration relief profoundly impacts his private interest in physical liberty and could result in indefinite detention because his removal is not reasonably foreseeable.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Honorable Court will:

a. Assume jurisdiction over this matter;

b. Order that Petitioner not be transferred outside of this District pending the adjudication of this Petition;

c. Issue an Order to Show Cause requiring Respondents to show cause why this Petition should not be granted within three days;

d. Declare that Petitioner's detention is unlawful;

e. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner from custody;

f. Issue an Order for Declaratory Relief requiring Respondents provide:

1. 14 days' notice of any proposed third country of removal in writing to both Devine and counsel,
2. An opportunity to present testimony and evidence of a fear-based claim and at 10 days written notice of any scheduled interview, and
3. A reasonable opportunity to file and have adjudicated a Motion to Reopen in EOIR before any removal can be effectuated;

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant any other and further relief that this Court deems just and proper to preserve Petitioner's statutory and constitutional rights.

Dated: August 14, 2026

Respectfully submitted,

/s/Vincent Wells
Vincent W. Wells (0101765, Ohio)
Community Refugee & Immigration Services
4645 Executive Drive
Columbus, Ohio 43220
P: 614-955-9505
E: vwells@cris-ohio.org