

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

SEMERE GHEREZGIHER,

Petitioner,

v.

KRISTI NOEM, in their official capacity
as Secretary of the United States
Department of Homeland Security;
PAMELA BONDI, in their official
capacity as Attorney General of the
United States;
TODD M. LYONS, in their official
capacity as Acting Director of the United
States Immigration and Customs
Enforcement;
DAVID EASTERWOOD, in their official
capacity as St. Paul Acting Field Office
Director for Enforcement and Removal
Operations, United States Immigration
and Customs Enforcement; and,
**WARDEN OF McCOOK DETENTION
CENTER**, in their official capacity;

Respondents.

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Semere Gherezgiher (“Petitioner”) has been incarcerated since May 20, 2025, over eight months ago. Petitioner’s detention became unconstitutional six months after the removal order in his case because removal is not reasonably foreseeable. Petitioner’s removal order was final on March 12, 2024. Ex. 1, Amended Order of the Immigration Judge. Accordingly, to vindicate Petitioner’s statutory and constitutional rights and to put an end to his continued arbitrary detention, this Court should grant the instant petition for a writ of habeas corpus.

2. In Petitioner's removal order, he was granted withholding of removal to Eritrea under the Convention Against Torture, 8 CFR § 208.16-18, for his fear that the Eritrean government will detain and torture him for his assumed anti-government posture. *See* Ex. 1 at 1. In the alternative to removal to Eritrea, Petitioner was ordered removed to Germany. *Id.* at 3. He was not ordered to be detained following the order of removal.

3. Petitioner was apprehended in Minnesota by DHS on May 20, 2025, to effectuate the removal order and held at Sherburne County Jail in Elk River, Minnesota.

4. On, or about, June 18, 2025, Petitioner was served a Notice to Alien of File Custody Review informing him that his continued detention would be reviewed on August 18, 2025. Ex. 2, Notice to Alien of File Custody Review.

5. On, or about, July 24, 2025, Petitioner submitted an ICE Detainee Request Form stating that he "applied for [his] travel documents over a month ago" and that he would like to know the status. Ex. 3, ICE Detainee Request Form.

6. On, or about, August 4, 2025, an agent of Respondents (listed as "cbp1804c") responded to Petitioner's request form stating that the "German consulate denied [the US government's] travel document request." *Id.*

7. On, or about, August 20, 2025, Petitioner was served a Decision to Continue Detention informing him that he would not be released from detention at that time. Ex. 4, Decision to Continue Detention. This notice did not provide any information as to where petitioner would be removed to or any guidance on securing

travel documents.

8. Petitioner is unable to be removed to his home country of Eritrea under the Convention Against Torture for his fear of persecution. *See* Ex. 1.

Petitioner is unable to be removed to Germany, the alternative country listed in his order of removal (*Id.*), as the German consulate did not provide the needed travel documents. Ex. 3.

9. Despite complying with all attempts to facilitate removal, Petitioner remains detained with no reasonably foreseeable removal in sight. Absent an order from this Court, Petitioner will likely remain detained for many more months, if not years.

10. Petitioner asks this Court to find that his prolonged incarceration is unreasonable and to order his immediate release.

JURISDICTION

11. Petitioner is currently detained in civil immigration custody at McCook Detention Center in McCook, Nebraska. He has been in immigration detention continuously since, on or about, May 20, 2025. He has not received an individualized bond hearing before an immigration judge (“IJ”). He has no criminal convictions.

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the

United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Venue is proper because Petitioner is detained in McCook, Nebraska, which is within the jurisdiction of this District.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to his claims occurred in this district, and no real property is involved in this action.

PARTIES

16. Petitioner is a citizen of Eritrea, was ordered removed following immigration proceedings granting withholding of removal and denying him asylum. He has been detained for over eight months and is currently detained at the McCook Detention Center in McCook, Nebraska. He is in the custody, and under the direct control, of Respondents and their agents.

17. Respondent Kristi Noem is sued in their official capacity as the Secretary of the U.S. Department of Homeland Security (“DHS”). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act (“INA”), and oversees Immigration and Customs Enforcement (“ICE”), the component agency responsible for Petitioner’s detention. Respondent Noem is empowered to carry out any administrative order against

Petitioner and is a legal custodian of Petitioner.

18. Respondent Pamela Bondi is sued in their official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (“DOJ”). In that capacity, they have the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review (“EOIR”), which administers the immigration courts and the Board of Immigration Appeals. Attorney General Bondi is responsible for continuing a custody case against a noncitizen under 8 CFR § 1003.6(d).

19. Respondent Todd M. Lyons is the Acting Director of ICE. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner. They are sued in their official capacity.

20. Respondent David Easterwood is named in their official capacity as the Field Office Acting Director for the St. Paul Field Office of ICE. Director Easterwood is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency’s policies and procedures. Director Berg is a legal custodian of Petitioner.

21. Respondent Warden of McCook Detention Center is named in their official capacity and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens and is a legal custodian of Petitioner.

STATEMENT OF FACTS

22. Petitioner is a thirty-two-year-old citizen of Eritrea. He fled Eritrea in 2016 as a young student to avoid forced military conscription and hostile and unsafe living environments under a thirty-four year-long dictatorship. Petitioner and his mother were both detained by the Eritrean government based on Petitioner's opposition to military conscription into the national service. The Eritrea National Service violates human rights by depriving military members of speaking to family, freedom to visit with family, and a salary, with no known end to their military service. Petitioner had to drop out of high school to help his mother with farming after his father and other members of his family were taken by the government to join the national service.

23. After leaving Eritrea, Petitioner spent six years trying to find a country where he would be safe. During that time, he resided in at least the following countries in hopes of safety: Ethiopia, Sudan, Germany, Brazil, Peru, Ecuador, Columbia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, and Mexico. *See* Ex. 5, Supplemental Declaration of Petitioner (Jan. 9, 2024).

24. Petitioner entered the United States on, or around, July 2022, and was served a Notice to Appear ("NTA") by DHS placing him in removal proceedings. Ex. 6, Notice to Appear. Petitioner was not detained during his removal proceedings.

25. In removal proceedings, Petitioner was represented by counsel who filed an I-589, Application for Asylum and for Withhold of Removal. Ex. 7, Application for Asylum and for Withhold of Removal.

26. At Petitioner's individual hearing on removal, his counsel submitted

evidence that Petitioner fled Eritrea based on political persecution: specifically, continued opposition the oppressive Eritrean regime; fear of forced indefinite military conscription; association with the Eritrean American Justice Seekers group; and unmitigated concerns about the profound human rights abuses of the Eritrean government. Ex. 8, Respondent's Pre-Hearing Statement (August 22, 2023).

27. While Petitioner was denied asylum, the IJ did order withholding of removal to Eritrea based on his fear and likelihood of facing persecution and torture if removed to his country of birth. *See* Ex. 1. In the alternative, Petitioner was ordered removed to Germany. *Id.*

28. Despite complying with all attempts to facilitate removal, Petitioner remains detained with no reasonably foreseeable removal in sight. Respondents have had over eight months to secure removal for Petitioner but have been unable to do so. Absent an order from this Court, Petitioner will likely remain detained for many more months, if not years.

LEGAL FRAMEWORK

29. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” 28 U.S.C. § 2243 (emphasis added).

30. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “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 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

31. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.”). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

32. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he date the order of removal becomes administratively final”; “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court’s final order”; or “[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.”

33. Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal period” of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued

detention. In *Zadvydas*, the Supreme Court held that “the statute, read in light of the Constitution’s demands, limits [a noncitizen’s] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

34. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen’s due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

35. The Court’s ruling in *Zadvydas* is rooted in due process’s requirement that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

36. The first justification of preventing flight, however, is “by definition . . . weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

37. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period.” *Id.* at 700.

38. Petitioner has not been charged, nor have Respondents alleged within his immigration proceedings, any criminal charges, convictions, or facts that would substantiate any claims of dangerousness. *See* Ex. 6.

39. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring

the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

40. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

41. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

42. Petitioner has been detained by Respondents for over eight months *after* his removal period began.

43. Petitioner’s removal order was final on March 12, 2024. Ex. 1
Petitioner was detained to effectuate the removal on May 20, 2025. The removal period began on the day he was apprehended and thus elapsed on November 20, 2025, six months later.

44. Petitioner’s prolonged detention is not likely to end in the reasonably foreseeable future. He cannot be removed to Eritrea under the Convention Against Torture, the German consulate failed to provide travel documents to remove him to the alternatively ordered country, and over six months have elapsed without identifying a third country to removal Petitioner to or attempting secure travel documents to facilitate removal. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating

removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

45. For these reasons, Petitioner’s ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Violation of 8 U.S.C. § 1231(a)

46. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

47. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention “beyond the removal period” only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 (“[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.”). Because Petitioner’s removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- a. Assume jurisdiction over this matter;
- b. Issue an order preventing Respondents from removing Petitioner from the jurisdiction;
- c. Declare that Petitioner’s ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a);
- d. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

- e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- f. Grant any further relief this Court deems just and proper.

	Dated: February 3, 2026 Respectfully submitted,
	Semere Gherezgiher, Petitioner.
	By: <u>/s/ Grant L. Friedman</u> Grant L. Friedman, #27862 Jennifer M. Houlden, #23611 Jamel J.W. Connor, #27108 ACLU of Nebraska Foundation 134 S. 13th St. Ste. #1010 Lincoln, NE 68508 gfriedman@aclunebraska.org jhoulden@aclunebraska.org jconnor@aclunebraska.org (402) 476-8091 Attorneys for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Complaint for Declaratory and Injunctive Relief; Petition for Habeas Corpus are true and correct.

Executed this 2nd day of February, 2026.

A handwritten signature in black ink, consisting of several loops and a horizontal line, positioned above a solid horizontal line.

Semere Gherezgiher