

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION**

**MOUHAMET NDIAYE,** )  
 )  
 **Petitioner,** )  
 )  
 v. )  
 )  
 **SCOTT HASSELL et al.,** )  
 )  
 **Respondents.** )

**Case No.: 4:14-cv-02289-RDP-JEO**

**MEMORANDUM OPINION**

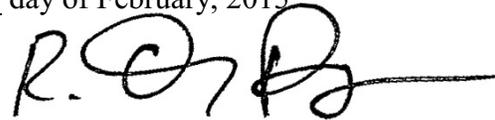
On November 25, 2014, Petitioner Mouhamet Ndiaye, who is presently detained at the Etowah County Detention Center, filed the current habeas corpus petition pursuant to 28 U.S.C. § 2241. (Doc. 1). Ndiaye is a citizen of Senegal who has been ordered removed from the United States to Senegal. In his petition, Ndiaye contends that he should be immediately released from custody because he has been detained for more than six months following his removal order. (Doc. 1 at 2, 16). *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (holding that six months is a presumptively reasonable period of time to allow the government to remove an alien after the removal period has commenced).

On January 6, 2015, the court ordered Respondents to show cause why the relief requested by Ndiaye should not be granted. (Doc. 4). Respondents answered the show cause order on January 27, 2015. (Doc. 5). In their response, they argue, in part, that Ndiaye’s habeas petition should be dismissed as premature because his removal period has not begun to run due to his filing of a petition for review (and a corresponding motion for stay) in the United States Court of Appeals for the Second Circuit. That petition challenges his removal and is pending before the Second Circuit. (Doc. 5 at 3, 6-8). *See Achouatte v. Holder*, 2013 WL 3608156 at \*1, n. 1 (W.D.N.Y. Aug. 12,

2011) (noting that the Second Circuit has a “forbearance policy” under which the government “abstains from removing aliens who have filed petitions for review with corresponding motions for stay in the Second Circuit”).

After receiving the response to the show cause order, Ndiaye filed a voluntary withdrawal of his habeas petition on February 2, 2015. (Doc. 6). In light of Ndiaye’s voluntary withdrawal of his petition, this case is due to be dismissed without prejudice. In particular, the court notes that the case is also due to be dismissed without prejudice as a result of Ndiaye’s pending petition for review with the Second Circuit. A separate order of dismissal will be entered.

**DONE and ORDERED** this 13th day of February, 2015

A handwritten signature in black ink, appearing to read "R. David Proctor", written over a horizontal line.

**R. DAVID PROCTOR**  
UNITED STATES DISTRICT JUDGE