

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

EMMANUEL STEPHANE RUKIRANDE	)	
MUKIZA	)	
	)	Case No. 3:25-cv-02081-E-BT
Petitioner.	)	
	)	
v.	)	
	)	
THOMAS BERGAMI, WARDEN,	)	
Prairieland Detention Center, et al.	)	
	)	
Respondents.	)	

**PETITIONER’S REPLY TO RESPONDENTS’ RESPONSE IN OPPOSITION TO  
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner-Plaintiff files this Reply to Respondent-Defendants’ Opposition to Petition for Writ of Habeas Corpus (ECF No. 13) and would respectfully show:

**I. 8 U.S.C. §1231(a) does not allow ICE to unlawfully re-detained Petitioner by not following its own regulations enacted post-*Zadvydas v Davis***

Respondent already went through a *Zadvydas* review in 2012 and ICE made a finding that there was no significant likelihood of his removal and it was not reasonable foreseeable, and therefore released him under an Order of Supervision. The *Zadvydas* framework does require that the detention be a consecutive 180 days.

Respondents concede that Petitioner is outside the 90 day mandatory removal period but argues that he is still eligible for detention under 8 U.S.C. § 1227(a)(1)(B) as an alien with a final order of removal who is present in the country illegally. (ECF 13, pg. 3). However, § 1227(a)(1) merely identifies the classes of deportable aliens, among which are (B) “any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documents authorizing admission into the U.S. as a nonimmigrant)

has been revoked under section 1201(i) of this title, is deportable.” It does not provide an alternative or separate basis for detention of noncitizens independent of 8 U.S.C. §1231(a), under which Petitioner was previously detained, and then released. There is no basis or provision under 8 U.S.C. § 1227(a)(1)(B) that allows the re-detention of noncitizens under Orders of Supervision.

**II. Petitioner’s Current Detention is not proper because it has exceeded both the previous 90 removal period as well as an additional 90 days for a total of 180 days and removal remains unlikely for the foreseeable future, and the government bears the burden of proof to show a substantial likelihood of removal in the foreseeable future**

Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), courts typically presume that six months of post-removal order detention is reasonable. However, Petitioner was previously released after 90 days in 2012 because his removal was not “reasonably foreseeable.” Petitioner has been re-detained after no material change in circumstances, and at this point has been detained an *additional* 90 days for a total of 180 days, still with no proof from ICE that his removal is foreseeable (see below). This re-detention is a violation of his constitutional right to due process.

At some point some paperwork was filed by Respondent’s parents for Respondent to become a citizen of Gabon, where the family resided at the time, but that process was never completed. See Exhibit B. According to the Declaration submitted by Deportation Officer Aaron Nation (ECF No. 14, pg. 3-4), the Gabon embassy, when contacted by Respondent and ICE in 2012, did not acknowledge Respondent as a citizen, or ever indicate they would accept Respondent as a citizen. Additionally, when Officer Nation contacted the Congolese Embassy, the Embassy declined to issue travel documents on the basis that Petitioner was from Gabon. (ECF No. 14, pg. 4).

In fact, the Gabon embassy has stated that they will not accept Respondent because he traveled on a passport from the Democratic Republic of Congo and “has never been registered in

the consular records of the Embassy of the Gabonese Republic...The certificate of Gabonese nationality appears to indicate that [Respondent] was naturalized as a Gabonese citizen. However, it is further noted that he departed Gabon approximately two weeks following said naturalization, once again utilizing a Congolese passport as his travel document.” See Exhibit A. The Embassy then explicitly states “the Embassy is unable to establish any prior legal Gabonese Citizenship status granted to [Respondent] by Gabon. Until such verification, the Embassy of the Gabonese Republic is not able to provide any consular assistance for this individual. The Embassy is regrettably unable to issue the requested travel document.” There is no evidence that Respondent’s removal to Gabon, or any other country, “is reasonably foreseeable:” and the evidence actually demonstrates quite the contrary.

Respondents argue that Petitioner must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. ECF13, pg. 5. Petitioner provides such evidence attached as Exhibit A, a letter from the Gabon embassy stating that they will not accept him because they can not confirm that he is a citizen of Gabon. Additionally, Respondents’ own evidence,

Recently some courts have held that when a non-citizen released pursuant to an Order of Supervision is re-detained for purposes of removal, the government immediately bears the burden to show a substantial likelihood of removal in the now foreseeable future. *Escalante v. Noem*, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025); See also *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at \*4 (D. Minn. Aug. 25, 2025) (applying the “default rule” that the burden falls on the party who generally seeks to change the present state of affairs and that is ICE that seeks to change the present state of affairs by revocation of an OSUP); *Tadros v. Noem*, 2025 WL 1678501 (D.N.J. June 13, 2025) (finding individual had “the better argument” that the burden

shifts to the government upon re-detention, although individual also presented un rebutted evidence that removal was not likely in the foreseeable future).

The Declaration submitted by Deportation Officer Aaron Nation (ECF No. 14, pg. 5) states that he believes Petitioner will be removed to Gabon in the reasonably foreseeable future due to Gabon's acceptance of flights and the record of acceptance of Gabon's nationals to Gabon, but Petitioner is not, in fact, a citizen or national of Gabon, nor does Gabon recognize him as such, and Gabon has already explicitly stated that they will NOT accept Petitioner until such time as they can confirm that he is a citizen. Exhibit A.

The Declaration of Victor Figueroa (ECF 14 pgs 7-8) does not contain any evidence that Petitioner's removal to Gabon, or any other country, is reasonably foreseeable.

Respondents are not able to show that there is a significant likelihood of removal in the reasonably foreseeable future as required, and Petitioner's continued detention is improper.

**III. ICE's purported "Revocation of Release" allegedly to enforce his removal order was unlawful because there was no likelihood of removal and they did not follow their own procedures as required**

Respondents claim that the revocation of Petitioner's release was under ICE's discretion found at 8 C.F.R. § 241.4(l)(2) to enforce his removal order because "there is now a likelihood of removal to Gabon." (ECF 13, pg. 7). Respondents also claim that revocation under this regulation has no requirement of notice. However, Respondents did not in fact follow their own regulations as required under the *Accardi* doctrine for the revocation, nor was the basis for the revocation valid.

As discussed above, at the time of Petitioner's re-detention, as well as up to the present, there was no likelihood of Petitioner's removal to Gabon. See Exhibit A. The Gabonese Embassy does not recognize Petitioner as a citizen, nor will the Embassy issue travel documents. *Id.* As no

travel documents are forthcoming, there is no likelihood of imminent removal to Gabon, and Petitioner was unlawfully re-detained.

The Supreme Court decision in *Accardi v. Shaughnessy*, 347 U.S. 240 (1954), held that the government is required to follow its own regulations. Later, its holding was extended to other agency rules, short of regulation, that protect a fundamental right. Courts have referenced *Accardi* to support vacatur of agency action on both Due Process and Administrative Procedure Act grounds where an agency has deviated from established procedure. Respondents, as government agencies, are still required to follow their own regulations.

At least one court has found that ICE's failure to follow its own regulations may warrant the release of a detainee. In *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. May 2, 2025), in a similar situation where ICE re-detained a noncitizen with a long standing Order of Supervision without notice or changed circumstances the court held that the petitioner's due process rights were violated and he was entitled to release.

The regulation 8 C.F.R. § 241.4(l)(2) cited by Respondents as the basis for the revocation of release states that the "Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner."

Prior to 2003, immigration proceedings were under the purview of the agency known as the Immigration and Naturalization service but in 2003, after Congress passed the Homeland Security Act, regulations made clear that the title 'commissioner' in the former INS amounts to the title 'director' in ICE. The Executive Associate Commissioner of INS is equivalent to the

position of Executive Associate Director of ICE.

There is no evidence that the purported “revocation” of Petitioner’s release was done by the proper authority, namely the Executive Associate Director of ICE, or even the “district director” as required under the regulation cited by Respondents. The declarations attached to Respondents’ Response in Opposition are signed by Aaron Nation, employed as a Deportation Officer (ECF No. 14, pg. 2) and Victor Figueroa, also employed as a Deportation Officer (ECF No. 14, pg. 7). Neither are district directors or Executive Associate Directors. As Respondents did not properly follow their own regulations regarding the “revocation” of Petitioner’s release was unlawful.

#### **IV. Conclusion**

For the foregoing reasons, Petitioner was unlawfully re-detained by Respondents, and remains so. The Court should grant Petitioner’s Writ of Habeas Corpus and order his release immediately.

Respectfully submitted,

/s/Amy Hsu  
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**CERTIFICATE OF SERVICE**

I certify that I served the foregoing Petitioner's Reply to Respondent's Response in Opposition to Petition for Writ of Habeas Corpus via ECF and mail on October 30, 2025.

/s/ Amy Hsu \_\_\_\_\_  
AMY HSU