

1 JON M. SANDS  
Federal Public Defender  
2 KEITH J. HILZENDEGER #023685  
Assistant Federal Public Defender  
3 250 North 7th Avenue, Suite 600  
4 Phoenix, Arizona 85007  
(602) 382-2700 voice  
5 keith\_hilzendeger@fd.org  
6 *Attorneys for Petitioner Joseph*

7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**

9 Frandy Joseph,

10 Petitioner,

11 vs.

12 David R. Rivas, Warden, San Luis Regional  
13 Detention Center;

14 Gregory J. Archambeault, San Diego Field  
15 Office Director, Bureau of Immigration and  
Customs Enforcement;

16 Pamela Jo Bondi, Attorney General of the  
17 United States; and


18 Kristi Noem, Secretary of Homeland  
19 Security,

20 Respondents.

No.

**Petition for a Writ of Habeas Corpus  
Under 28 U.S.C. § 2241**

21 **Technical Data**

- 22 1. Mr. Joseph is challenging the validity of his detention in immigration custody. His A-  
23 number is .
- 24 2. Mr. Joseph is challenging the decision to detain him pending removal to Haiti, to which  
25 he was ordered removed last year.
- 26 3. Mr. Joseph is presently detained at the San Luis Regional Detention Center in San Luis,  
27 Arizona. Upon information and belief, Mr. Joseph has been in immigration detention for  
28

1 approximately two years. Because he is being detained under the authority of 8 U.S.C.  
2 § 1231, there are no administrative remedies available to him to exhaust

### 3 **Parties, Jurisdiction, and Venue**

- 4 4. Petitioner Frandy Joseph is a native and citizen of Haiti. He came to the United States in  
5 1995 as a lawful permanent resident. Upon information and belief, he lost that status in  
6 2024 when he was ordered removed from the United States by virtue of a criminal  
7 conviction in Miami-Dade County, Florida. He is presently detained at the San Luis  
8 Regional Detention Center in San Luis, Arizona.
- 9 5. Respondent David R. Rivas is the warden of San Luis Regional Detention Center, where  
10 Mr. Joseph is being detained. He is Mr. Joseph's immediate legal custodian and thus a  
11 proper respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).
- 12 6. Respondent Gregory J. Archambeault is the San Diego Field Office Director for U.S.  
13 Immigration and Customs Enforcement. He is responsible for Mr. Joseph's detention,  
14 and thus a legal custodian of Mr. Joseph.
- 15 7. Respondents Pamela Jo Bondi and Kristi Noem are, respectively, the Attorney General of  
16 the United States and the Secretary of Homeland Security. As such, they are responsible  
17 for maintaining the immigration detention system. They are thus legal custodians of Mr.  
18 Joseph.
- 19 8. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment  
20 Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Fifth  
21 Amendment to the U.S. Constitution.
- 22 9. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a  
23 substantial part of the events or omissions giving rise to the claims set forth herein  
24 occurred in this district.

### 25 **Background**

- 26 10. Mr. Joseph was born in 1975 in Haiti. In 1995 he came to the United States and, on  
27 information and belief, was granted lawful permanent resident status. His sister and his  
28

1 son currently live in Florida. His father also lived there until earlier this year, when he  
2 passed away.

3 11. A search of publicly available court records revealed the following criminal history for Mr.  
4 Joseph.

5 a. On November 12, 1998, Mr. Joseph was arrested in Miami, Florida. The next day  
6 he was charged in the Eleventh Judicial Circuit Court of Florida with third-degree  
7 grand theft of a vehicle, in violation of Fla. Stat. § 812.014(c). The court dismissed  
8 the case a month later.

9 b. On January 1, 2007, Mr. Joseph was arrested in Miami, Florida. The next day he  
10 was charged in the Eleventh Judicial Circuit Court of Florida with aggravated  
11 assault with a deadly weapon, in violation of Fla. Stat. § 784.021. The court  
12 transferred the case to county court for misdemeanor disposition three weeks  
13 later.

14 c. On October 18, 2023, Mr. Joseph was arrested in Miami, Florida. He was charged  
15 in the Eleventh Judicial Circuit Court of Florida with aggravated assault with a  
16 deadly weapon, in violation of Fla. Stat. § 784.021. The court closed the case on  
17 November 27, 2023.

18 d. While he was in pretrial detention for this charge, Mr. Joseph was also charged in  
19 the Eleventh Judicial Circuit Court of Florida with battery by a detainee, in  
20 violation of Fla. Stat. § 784.082. The court closed the case on December 11, 2023.

21 12. Upon information and belief, Mr. Joseph was released from the Miami-Dade County Jail  
22 in late 2023 and transferred to the Krome Detention Center in Miami based on a detainer  
23 issued by ICE. He was placed in removal proceedings under 8 U.S.C. § 1229a. Upon  
24 information and belief, he was charged with being removable based on some or all of the  
25 criminal history set forth here.

- 1           13.    On September 9, 2024, an immigration judge in Miami, Florida, ordered him removed to  
2           Haiti and, on information and belief, denied his request for cancellation of removal. The  
3           Board of Immigration Appeals dismissed his appeal from that order on February 26, 2025.
- 4           14.    Mr. Joseph filed a timely petition for review to the United States Court of Appeals for the  
5           Eleventh Circuit on March 17, 2025. *See generally* 8 U.S.C. § 1252.
- 6           a.     That court docketed the petition as No. 25-10855. The Eleventh Circuit denied  
7           Mr. Joseph a stay of removal on April 3, 2025.
- 8           b.     The Eleventh Circuit dismissed the petition for review on August 1, 2025, for  
9           want of prosecution after Mr. Joseph did not file a brief in support by the deadline  
10          the court set for him to do so.
- 11          c.     Mr. Joseph was unaware of the deadline because on or about April 17, 2025, he  
12          was transferred to the San Luis Regional Detention Center. At the time the  
13          Eleventh Circuit dismissed his appeal, the docket in that court indicated that he  
14          was being detained at the Krome Detention Center in Miami.
- 15          d.     On September 19, 2025, the Eleventh Circuit docketed a *pro se* motion from Mr.  
16          Joseph asking to reinstate judicial review of his removal order, along with a notice  
17          of change of address. On October 7, 2025, the Eleventh Circuit issued a notice  
18          explaining that it would take no action on the *pro se* motion because the “filing is  
19          deficient for failure to comply with this Court’s rules on Certificates of Interested  
20          Parties and Corporate Disclosure Statements.” Docket Text of Order, *Joseph v.*  
21          *Attorney General*, No. 25-10855 (11th Cir. Oct. 7, 2025) (Dkt. #18). [The actual  
22          order itself is not publicly available on PACER.]
- 23          15.    Because Mr. Joseph has a final removal order, respondents are detaining him under the  
24          authority of 8 U.S.C. § 1231. Under that statute, Mr. Joseph was subject to mandatory  
25          detention during the “removal period,” a 90-day period that began, as relevant here, on  
26          February 26, 2025, when the Board of Immigration Appeals dismissed his appeal of the  
27          immigration judge’s removal order and order denying cancellation of removal. *See* 8  
28

1 U.S.C. § 1231(a)(1)(A), (B)(ii) (explaining that the removal period ends when a federal  
2 court issues its final order on review of a removal order only if the court issues a stay of  
3 removal).

- 4 16. The removal period ended on May 27, 2025. Mr. Joseph is thus eligible for release on  
5 supervision under 8 U.S.C. § 1231(a)(6).
- 6 17. Upon information and belief, respondents have never conducted the custody reviews  
7 required by 8 C.F.R. § 241.3 and 241.4.
- 8 18. Nor have respondents ever assessed whether there is a significant likelihood of removing  
9 Mr. Joseph to Haiti in the reasonably foreseeable future, as required by 8 C.F.R. § 241.13.

### 10 Grounds for Relief

11 **Ground One: Mr. Joseph's detention in immigration custody violates the Due Process**  
12 **Clause of the Fifth Amendment because there is no likelihood that he will be**  
13 **removed in the reasonably foreseeable future.**

- 14 19. The Due Process Clause of the Fifth Amendment limits "an alien's post-removal-period  
15 detention to a period reasonably necessary to bring about that alien's removal from the  
16 United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Because of this  
17 constitutional limitation, § 1231 "does not permit indefinite detention." *Id.*
- 18 20. Detention following the removal period is presumptively limited to six months. "After  
19 this 6-month period, once the alien provides good reason to believe that there is no  
20 significant likelihood of removal in the reasonably foreseeable future, the Government  
21 must respond with evidence sufficient to rebut that showing." *Id.* at 701.
- 22 21. The showing of "good reason to believe" that there is no significant likelihood of removal  
23 in the reasonably foreseeable future "does not place a burden on the detainee to  
24 demonstrate *no* reasonably foreseeable, significant likelihood of removal or show that his  
25 detention is indefinite; it is something less than that." *Senor v. Barr*, 401 F. Supp. 3d 420,  
26 430 (W.D.N.Y. 2019) (quoting *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 404  
27 (W.D.N.Y. 2009)) (cleaned up and emphasis added). The "passage of time combined  
28 with the government being no closer to repatriating a detainee than they were once they

1 first took him into custody” is “sufficient to meet that initial burden.” *Id.* (quoting *Singh*  
2 *v. Whitaker*, 362 F. Supp. 3d 93, 102–03 (W.D.N.Y. 2019)) (cleaned up).

3 22. Here, Mr. Joseph has been detained under a final order of removal for over seven months.  
4 Respondents are no closer to effecting his removal than they were on the day his removal  
5 order became final.

6 23. Upon information and belief, respondents cannot rebut Mr. Joseph’s showing that there  
7 is no significant likelihood of removal in the reasonably foreseeable future.

8 a. If respondents should assert, by relying on the declaration of a detention officer,  
9 that “DHS is expecting the travel documents to be issued in the near future,” that  
10 assertion is insufficient to rebut Mr. Joseph’s showing. *See id.* at 431. Such an  
11 assertion is not evidence that respondents are taking any further action to obtain  
12 travel documents beyond whatever initial efforts they made when Mr. Joseph was  
13 first taken into ICE custody.

14 b. If respondents should assert that Mr. Joseph’s removal is likely in the reasonably  
15 foreseeable future because they have recently been able to remove others to Haiti,  
16 that assertion does not rebut Mr. Joseph’s showing. Such an assertion would shed  
17 little light on why Mr. Joseph’s removal has not yet been accomplished. *Cf. id.*  
18 (“The government observes that many other individuals have been removed to  
19 Haiti. Docket Item 11-1 at 5. That might well be true, but it sheds little light on  
20 why *Senor’s* removal has been delayed and what that means for *Senor’s* prospects  
21 for removal occurring in the reasonably foreseeable future.”). On the contrary—  
22 the fact that the government has recently succeeded in removing *other people* to  
23 Haiti “may underscore the problems it has had attempting to remove” Mr.  
24 Joseph. *Id.* (quoting *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C.  
25 2002)).

26 c. If the government should assert, or demonstrate through the discovery process,  
27 that officials at the Haitian Embassy are slow to respond to ICE’s requests for  
28

1 travel documents, or that those officials are completely *unresponsive*, that would  
 2 be powerful evidence in support of Mr. Joseph's claim that his removal is not  
 3 likely in the reasonably foreseeable future. For detention after the removal period  
 4 expires to remain reasonable, "as the period of prior post-removal confinement  
 5 grows, what counts as the 'reasonably foreseeable future' conversely would have  
 6 to shrink." *Zadvvydas*, 533 U.S. at 701. Slow responses from the Haitian Embassy,  
 7 no less than a complete lack of a response, leaves the Court to guess whether Mr.  
 8 Joseph's deportation "might occur in ten days, ten months, or ten years." *Senor*,  
 9 401 F. Supp. 3d at 432. (quoting *Singh*, 362 F. Supp. 3d at 102).

10 d. In the face of any one of these three assertions, this Court can only conclude that  
 11 Mr. Joseph's detention is unreasonably prolonged, and thus unauthorized by 8  
 12 U.S.C. § 1231.

13 **Ground Two: Mr. Joseph's detention in immigration custody pending removal to any third**  
 14 **country violates the Due Process Clause of the Fifth Amendment because**  
 15 **ICE has not given him sufficient notice of the proposed third country and an**  
 16 **opportunity to request relief from removal to that country, either from an**  
 17 **immigration officer, an immigration judge, or a federal court.**

18 24. "It is well established that the Fifth Amendment entitles aliens to due process of law in  
 19 the context of removal proceedings." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per  
 20 curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Mr. Joseph thus is entitled to  
 21 "notice and an opportunity to be heard appropriate to the nature of the case." *Id.*  
 22 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). As  
 23 relevant here, this means that Mr. Joseph is entitled to notice that he is to be removed to a  
 24 third country "within a reasonable time and in such a manner as will allow [him] to  
 25 actually seek habeas relief in the proper venue before such removal occurs." *Id.*

26 25. Upon information and belief, Mr. Joseph has not been formally ordered removed to any  
 27 country other than Haiti. As such, he has never had an opportunity to contest removal to  
 28 any third country on the ground that he may face persecution or torture if he is removed  
 to that country.

1 26. To the extent that Mr. Joseph's detention is meant to facilitate his removal to a third  
2 country, *see generally Zadvydas*, 533 U.S. at 690 (suggesting that detention following a  
3 removal order is intended to facilitate removal), if such a removal is accomplished in  
4 violation of his due-process rights, then his detention is illegal. This due-process claim  
5 "necessarily impl[ies] the invalidity of [his] confinement and removal" to a third country  
6 not yet named in any removal order. *J.G.G.*, 145 S. Ct. at 1005. Thus his due-process  
7 claim is properly brought in a habeas petition, and a court order that he be released from  
8 detention is a proper remedy for such a violation.

9 **Prayer for Relief**

10 27. Mr. Joseph is being illegally detained, in violation of the Due Process Clause of the Fifth  
11 Amendment. He respectfully asks the Court to:

- 12 a. order respondents to answer this petition;  
13 b. permit him to file a reply in support;  
14 c. allow him to conduct discovery in support of his claims for relief;  
15 d. convene an evidentiary hearing, if necessary to resolve disputed facts;  
16 e. order respondents to release him from their custody under supervision; and  
17 f. grant him any other relief that is just and practicable.

18 Respectfully submitted:

October 10, 2025.

19 JON M. SANDS  
20 Federal Public Defender

21 *s/Keith J. Hilzendege*  
22 KEITH J. HILZENDEGER  
23 Assistant Federal Public Defender  
24 *Attorney for Petitioner Joseph*  
25  
26  
27  
28