

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Karim Hamed Ahmed)	
Petitioner,)	
)	
v.)	
)	Cause No 4:25-cv-5639
Kristi Noem)	
Secretary, U.S. Department of)	
Homeland Security et al.)	
)	
)	
)	

REPLY TO FEDERAL DEFENDANTS’ RESPONSE TO WRIT OF HABEAS CORPUS

The Petitioner files the foregoing Response to the Federal Respondents’ Response to Petition for Writ of Habeas Corpus. (*Dkt 5*)

I. NATURE OF PROCEEDINGS

Petitioner Karim Hamed Ahmed (4), through counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2241, challenging the legality of his continued detention by Immigration and Customs Enforcement (“ICE”). Petitioner citizen of Eritrea who has resided in the United States since 2010. He originally surrendered himself at a United States port of entry to claim asylum.

The immigration court and BIA conclude his removal proceeding in 2013 and Respondents have been unable to effectuate the removal since that date. Petitioner has been in custody, constructive or physical, since his final order of removal. Petitioner began reporting on an Order of Supervision “OSUP” in 2015. In November of 2025, Petitioner’s manner of custody was arbitrarily changed from constructive to physical. Accordingly, the Petitioner is left with no recourse but to file this a writ of habeas corpus and seek his release from physical custody.

II. JURISDICTION

This Court has jurisdiction to hear this case under *28 U.S.C. § 2241* and *28 U.S.C. § 1331*, Federal Question Jurisdiction, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to *28 U.S.C. § 2241*, and the *All Writs Act*, *28 U.S.C. § 1651*.

III. FACTS

Petitioner is a citizen of Eritrea who first entered on April 24, 2010, surrendering himself at the Hidalgo, Texas port of entry to claim asylum. (*Dkt. 1-2 Notice to Appear*). He was designated and arriving alien by DHS. *Id.* Petitioner was placed in removal proceedings in which the immigration judge

ordered his removal on July 1, 2011. An appeal to the Board of Immigration Appeals (“BIA”) was filed and dismissed on April 5, 2013. (*Dkt. 1-3 EOIR Case Tracker*). The Petitioner filed a Petition for Review with the Circuit Court and was denied. Following the denial of his appeal the Petitioner was detained. (*Dkt. 5-1 at 4 ¶ 21*) After being held in immigration custody and unsuccessfully applying for a travel document the Petitioner was released after the Government underwent a post order custody review. (*Dkt. 5-1 at 4 ¶ 27-29*)

On January 12, 2015, the Petitioner was issued form I-220b Order of Supervision “OSUP” by DHS and was required to regularly report. (*Dkt. 1-4 OSUP*). On May 18, 2018, the Petitioner’s OSUP was again extended and continued his regular reporting as required. (*Dkt. 1-5 OSUP Extension*) On February 4th, 2021, the Petitioner married a United States Citizen, Fatima Izzeldeen Abdelwahab. (*Dkt. 1-6 Marriage Certificate*)

On October 18, 2021, pursuant to his marriage to a United States Citizen an I-130 Petition for Alien Relative was filed by his wife. (*Dkt. 1-7 I-130 Receipt Notice*). This petition remains pending with USCIS. On November 4, 2025, Petitioner was taken into custody by DHS. No reason was provided for his re-detention other than a shift in Government Policy. (*Dkt. 5-1 at 6 ¶ 46*)(*See also Petitioner’s Declaration*). The Petitioner had not violated the conditions of his OSUP or been arrested or charged with any violation or

state, federal or immigration law. No informal interview was given to the Petitioner to explain why he was retained and his OSUP was revoked nor was he provided the ability to contest the revocation. (*Dkt. 5-1 Declaration*)(*See also Petitioner's Declaration*) Prior to his re-detention the Government did not have a travel document for the Petitioner and did not actually apply for one until after he was re-detained. (*Id. at 6 ¶¶ 48-49*) On November 12, 2025, a Writ of Mandamus was filed with the Southern District of Texas to compel a decision on the Petitioner's I-130. *See Abdelwahab v Noem et al.* 4:25-cv-05416 (S.D. Tex. Nov. 11, 2025) This matter remains pending before the Court. Additionally, as the Petitioner was deemed and arriving alien an application for adjustment of status to permanent resident was sent to USCIS and now remains pending with the Federal Defendants.¹

IV. ARGUMENT

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that post-removal-order detention is limited to six months, and continued detention is only lawful if removal is reasonably foreseeable.

i. Reporting on an Order of Supervision is Considered Custody under a Zadvydas analysis.

As an initial matter, the Federal Respondents suggest that this suit is not ripe

¹ Pursuant to *Matter of Yauri*, 25 I&N Dec. 103 (BIA 2009) jurisdiction for an application for adjustment of status lies solely with USCIS for arriving aliens. Even if a removal order exists an arriving alien can still adjust status with USCIS.

as the Petitioner has not been in physical custody for over six months. (*See Dkt 5 at 4-5*) Under the 5th Circuit precedential *Rosales v. BICE*, 426 F.3d 733, 735 (5th Cir. 2005), the Petitioner would be considered to be in custody since his order of removal was “final” and his reporting on “OSUP” is considered constructive custody. The Petitioner has been under a final order of removal since 2015 and has been reporting successfully to ICE on OSUP check-ins since 2011. The final order paired with the restrictions on his liberties through OSUP and therefore would be considered constructive custody under *Rosales v. BICE*.

ii. The Manner in which the Respondents Changed Custodial Status of the Petitioner, from Constructive Custody to Physical Custody Violated Federal Regulations and the Petitioners Due Process Under 8 C.F.R. § 241.

The Supreme Court recently weighed in on the revoking of conditional release on OSUP. In *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025), Justice Sotomayer stated that in order to revoke conditional release under 8 C.F.R. § 241, “the [g]overnment must provide adequate notice and ‘promptly’ arrange an ‘initial informal interview . . . to afford the [noncitizen] an opportunity to respond to the reasons for the revocation stated in the notification.” It is in this light that the Government violated the Petitioner’s due process rights. Here, Petitioner has faithfully reported to his order of supervision, for eleven years. (*Dkt. 1-4, 1-5 OSUP*) There is no change in circumstances regarding the Petitioner’s matter; he is not a flight risk, and there

is no significant likelihood of removal of the Petitioner in the foreseeable future. There are no allegations of changed circumstances that are even alleged by the Government. The Government only asserts a change in presidential policy. (*Dkt. 5-1 at ¶ 45*). In fact, the Federal Respondents' declaration actually provides credence to the Petitioner's position that he has not violated his OSUP, there is no change in circumstances that necessitate re-detention and that they have no actual ability to remove the Petitioner in the foreseeable future. (*Id.*)

Recent case law in identical Habeas Petitions have all favored the Petitioner in matters of re-detention following many years of OSUP reporting where ICE failed to provide adequate notice of changed circumstances and a significant likelihood that removal is reasonable in the foreseeable future. *See Van Nguyen v. Hyde* No. 25-cv-11470, 2025 U.S. Dist. LEXIS 117495, 2025 WL 1725791 (D. Mass. June 20, 2025), *Escalante v. Noem* 9:25-cv-00182 MJT 2025 U.S. Dist. LEXIS 148899 *; 2025 LX 363146; (E.D. Tex. August 2, 2025), *Roble v Bondi*, No. 25-cv-3196 (LMP/LIB) 2025 U.S. Dist. LEXIS 164108 (D. Minn August 25, 2025), *Sarail A. v. Bondi* No 25-cv-2144 (ECT/JFD) 2025 U.S. Dist. LEXIS 171005 (D. Minn. September 3, 2025), *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025), *Abuelhawa v. Noem et al*, 4:25-cv-04128 (S.D. Tex. Oct. 17. 2025), *Salgar v. Noem*, 4:25-cv-04797 (S.D. Tex. Nov. 14, 2025)

On October 17, 2025, the Southern District of Texas issued a decision granting a Petition for Habeas Corpus for a very similar factual scenario as the

Petitioner. See *Abuelhawa v. Noem et al*, 4:25-cv-04128 (S.D. Tex. Oct. 17, 2025) Judge Eskridge cited the same Federal District Court decisions noted above by the Petitioner. Specifically, *Abuelhawa* states:

A number of recently decided cases applying §241.13(i)(2) are in accord that, upon revocation of release, the Government bears the burden to show a significant likelihood that the alien may be removed in the reasonably foreseeable future. See *Escalante v. Noem*, 2025 WL 2206113 at *3; *Balouch v. Bondi*, 2025 WL 2871914, *2 (ED Tex); *Roble v Bondi*, 2025 WL 2443453, *4 (D Minn); *Van Nguyen v. Hyde*, 2025 WL 1725791, *3 (D Mass). *Abdelhawa* at 16.

Judge Eskridge noted that the declarations submitted by the Government in *Abuelhawa*, like the declaration submitted in the instant matter, “baldly” state that there is a significant likelihood of removal but lack any explanation of what the change in circumstance is. This evidences a lack of compliance with 8 C.F.R. § 241.13(i)(2). *Id* at 16.

Further, *Abdelhawa* explains the due process rights owed to a re-detained alien by DHS. *Id* at 18-19. The Respondents, at minimum, owed the Petitioner an informal interview with explanation of the reasons for re-detention and the ability to respond under 8 C.F.R. § 241.13. It is clear from the record that this never happened. (*See Dkt. 5-1 Declaration of Deportation Officer George Maple Jr.*)(*See also Petitioner’s Declaration*). The Declaration provides no evidence of changed circumstances that would necessitate re-detention or even an explanation why the Government believes removal is imminent in the foreseeable future. The Defendants do not have a passport or travel document

in which they can remove the Petitioner with, nor did they even bother to apply for one prior to his re-detention. With the Government being unsuccessful in removing the Petitioner for years their ability to now remove him is highly speculative. The Declaration evidences clear violations of 8 C.F.R. § 241.13 and the Petitioner's due process rights.

Similarly, Judge Bennett in *Salgar v. Noem*, 4:25-cv-04797 (S.D. Tex. Nov. 14, 2025) found for the Petitioner in a very similar habeas matter. He stated:

Under the governing regulations, an Order of Supervision may be revoked if the noncitizen violates its conditions. See 8 C.F.R. §§ 241.4(1)(1), (1)(2)(ii). In addition, an Order of Supervision may be revoked when it is appropriate to enforce a removal order or when "(t)he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. §§ 241.4(1)(2)(iii), (1)(2)(iv). ... Upon revocation, the noncitizen must "be notified of the reasons for revocation of his or her release" and must be afforded a prompt "initial informal interview" to allow the noncitizen an opportunity to respond to and contest the reasons for revocation. 8 C.F.R. § 241.4(1)(1). These procedures and safeguards provide protection "where the detention or re-detention of noncitizens is necessarily an action that results in the loss of personal liberty that requires due process protections," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025)...

Respondents do not allege, nor have they provided any evidence to demonstrate, that ICE complied with the required procedural safeguards... Absent any evidence that Petitioner's Order of Supervision was revoked for a legally permissible reason by an official with proper authority, Respondents have not shown that they afforded Petitioner with due process in connection with the purported revocation of his Order of Supervision... Here, the record is clear that ICE violated its own regulations by failing to have an authorized official make the revocation decision, failing to provide Petitioner with notification of the reasons for

his re-detention, and failing to provide Petitioner with an informal interview. ICE's failure to follow the procedural requirements for revoking Petitioner's Order of Supervision renders Petitioner's detention unlawful. Accordingly, the Court grants the Petition for Writ of Habeas Corpus and orders Petitioner's immediate release

The recent decisions in *Abuelhawa* and *Salgar* are incredibly instructive as they detail the evidence the Government must put forward to establish changed circumstances. Like *Abuelhawa* and *Salgar*, the Government in the Petitioner's matter has not provided an iota of evidence of changed circumstances nor their ability to actually remove the Petitioner. The Declaration by Officer Maple omits whether a passport or suitable travel document was even requested from the Petitioner's home country prior to his re-detention. (*Dkt 5-1*) The Petitioner cannot be returned home, even assuming removal was possible, without a passport or travel document. No evidence, not even a statement, was provided that a passport or like travel document was obtained or even requested from the Eritrean Consulate prior to re-detention. The Declaration also fails to mention whether similar individuals from Eritrea were removed or whether the Government of Eritrea is even accepting its own nationals. (*Id.*) The declaration is also absent of the explanation of the procedural safeguards for alien detainees in 8 CFR 241. With all the above considered the re-detention of the Petitioner and revocation of his OSUP is unlawful and in violations of Federal Regulations and his Due Process Rights.

V. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be granted.

December 9, 2025

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CERTIFICATE OF SERVICE

I certify that on December 9, 2025, the foregoing document was filed with the Court through the Court CM/ECF system on all parties and counsel registered with the Court CM/ECF.

Dated this 9th day of December 2025.

/s/ Javier Rivera
Javier Rivera