UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BASHIR JAMA ISSE

Petitioner

v.

KEVIN RAYCRAFT, et al.

Respondents

Case No. 1:25-cv-872

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND OPPOSITION TO RESPONDENTS' RETURN OF WRIT AND MOTION TO DISMISS

I. INTRODUCTION

This case challenges Petitioner's post-order custody. It does not challenge ICE's discretion to execute a removal order. Petitioner has been detained for nearly nine months. As courts in Ohio and elsewhere have recognized, when ICE fails to follow its own regulations, habeas relief is warranted and release must be ordered. *See Mbonga v. Raycraft,* No. 4:25-cv-2315 (N.D. Ohio Nov. 7, 2025). "Meticulous care must be exercised lest the procedure by which [a person] is deprived of liberty not meet the essential standards of fairness." *Bridges v. Wixon*, 326 U.S. 135, 154 (1945). For the reasons detailed below, Respondents' motion should be denied, and the Petition granted.

II. ARGUMENT

A. Section 1252(g) Does Not Bar Habeas Review of ICE's Procedural Noncompliance and Lawfulness of Detention

Respondents argue 8 U.S.C. § 1252(g) strips jurisdiction because Petitioner seeks to limit execution of a removal order; however Petitioner challenges only his continued detention, not the bare discretion "to execute" removal. Courts "distinguish between challenges to ICE discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 152 (W.D.N.Y. 2025) (2025 U.S. Dist. LEXIS 84258, at *152). Petitioner seeks release from unlawful detention, not perpetual interference with removal.

Ceesay confirms that while § 1252 strips district courts of jurisdiction to review or enjoin removal orders, it does not bar a habeas petition challenging *detention* itself or the manner in which ICE revokes supervised release. The court in *Ceesay* relied on *Zadvydas* and *Jennings v. Rodriguez* to hold that § 2241 remains available for "statutory and constitutional challenges to

post-removal-period detention," and that reading § 1252(b)(9) to funnel such claims only into petitions for review would yield "staggering results."

The Supreme Court has made clear that § 2241 authorizes review of continued custody after a removal order becomes final. *Zadvydas,* 533 U.S. at 687–88. Section 1252(g) targets three discrete actions: (1) commencing proceedings; (2) adjudicating cases; and (3) executing removal orders. It does not bar review of whether continued detention under § 1231(a)(6) is lawful. *See id.* at 688–89. Petitioner is not seeking to enjoin his removal. He only challenges the legality of his continued detention, which falls squarely under the purview of § 2241.He seeks release because his detention is procedurally unlawful under 8 CFR § 241.4 and unreasonable under *Zadvydas.*

B. Under Accardi, ICE's OSUP Revocation and Subsequent Detention Are Unlawful Because ICE Failed to Follow Binding Regulations.

1. No Proof of Lawful Delegation or Required Public Interest Findings (8 C.F.R. § 241.4(l)(2))

Regulation authorizes revocation of an Order of Supervision by the Executive Associate Director, the Field Office Director (FOD), or a properly delegated official, and requires an express finding that revocation is "in the public interest" with an explanation why referral to the Executive Associate Director was not practicable. 8 C.F.R. § 241.4(l)(2). The delegation must explicitly include the power to revoke release; otherwise it is insufficient. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d at 161 (citing 8 C.F.R. §§ 1.2, 241.4(l)(2)) (holding that a delegation order limited to other Part 241 powers does not authorize revocation of OSUP). Here, Respondents have produced no delegation order authorizing the May 21, 2025, revocation and no public-interest findings. (ECF No. 1, ¶ 25) That omission is fatal under *Accardi* – agencies must

follow their own rules, including internal delegation requirements. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Morton v. Ruiz*, 415 U.S. 199 (1974).

Respondents argue that Petitioner has not shown prejudice by ICE's failure to follow the applicable regulations. The prejudice in this case is clear. The prejudice is the deprivation of Petitioner's liberty for nearly nine months while he sits inside of Butler County Jail. The prejudice is Petitioner not receiving the specialized medical care that he needs. *See* Ex. A, Petitioner's affidavit. The prejudice is Petitioner's United States citizen spouse's loss of his consortium for the past nine months. The prejudice is Petitioner's United States citizen minor children's loss of his financial support for the past nine months. This prejudice to Petitioner and his United States citizen family members is invaluable

2. *ICE Failed to Provide Notice of Specific Reasons and a Prompt Informal Interview Required By 8 C.F.R. § 241.4(l)(1)*

It is required that "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation." 8 C.F.R. § 241.4(l)(1). Multiple courts agree that notice and an informal interview are required even when there has been no violation. *See K.E.O. v. Woosley,* 2025 U.S. Dist. LEXIS 172361, at *13 (W.D. Ky. Sept. 4, 2025); *Orellana v. Baker,* 2025 U.S. Dist. LEXIS 164986; 2025 WL 2444087 (D. Md. Aug. 25, 2025); *Zhu v. Genalo*, 2025 U.S. Dist. LEXIS 166176; 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 U.S. Dist. LEXIS 162519, at *29 (D. Or. Aug. 21, 2025). *See also Ceesay*, 781 F. Supp. 3d at 169 (under *Accardi*, ICE must honor procedural and instructional commitments associated with supervised release, including "orderly departure"). Here, ICE violated § 241.4(l)(1) when it failed to give

Petitioner contemporaneous notice stating specific reasons for revocation and conducted no informal interview. As stated above, the prejudice that Petitioner and his United States citizen family members have suffered due to his unnecessarily prolonged detention is invaluable.

3. ICE Detained Petitioner Without Travel Documents and Without Showing Immediate Practicability Required By 8 C.F.R. § 241.4(g)(3))

Section 241.4(g)(3) requires ICE to consider the availability of travel documents. Even if ICE believes a document is forthcoming, release must be maintained unless immediate removal is practicable or in the public interest. *Id.* On May 21, 2025, ICE detained Petitioner without first having obtained a travel document. Indeed, ICE detained Petitioner when he appeared as his interview at USCIS to adjudicate his marriage-based immigrant visa petition that his United States citizen wife filed for him, although Petitioner had just reported to the Columbus ICE ERO office the week before. *See* Ex. A. The "Notice of Revocation of Release," filed by Respondents asserts that the case is under review by Somalia for a travel document, even though Respondent is from Ethiopia, and is not a Somali citizen. See ECF No. 9-7 at PageID 119.

From Respondent's return of Petitioner's writ, it appears that ICE likely did not begin trying to obtain travel documents for Petitioner from the correct country until several months after his Order of Supervision was revoked. Although Petitioner consistently asserted his Ethiopian nationality throughout his case, ICE charged him in removal as being a Somali citizen, and the Immigration Judge ordered him removed to Somalia. Petitioner was detained on May 21, 2025, and the Notice of Revocation of Relief states ICE would attempt to get him a Somali travel document. *Id.* Then, the declaration of ICE ERO Officer Stephanie Parker, included with Respondents' return of writ, indicates that Petitioner allegedly refused to complete travel

document applications in June and September of 2025, yet the country is not specified. See ECF No. 9-1 at PageID 100.

Petitioner direct rebuts ICE's allegation that he failed to cooperate with the application for Somali travel documents in June and September of 2025. *See* Ex. A, Petitioner's affidavit of February 10, 2026. Petitioner maintains that he has cooperated with ICE and completed the applications for the Somali travel document per ICE's request. It was only on December 10, 2025, that ICE began requesting an Ethiopian travel document for Petitioner. *Id.*

Courts routinely find such generalized "progress" insufficient to rebut a *Zadvydas* showing, particularly where months pass without tangible developments. *See Yaghoubi Yeganeh* (N.D. Tex. Dec. 15, 2025) (after nine months, Iran denied documents and third-country efforts lacked substantiation; ordered OSUP release); *Surovtsev v. Noem,* No. 3:25-cv-03065 (N.D. Tex. Dec. 19, 2025) (denying TRO but directing show-cause given removal uncertainty). And while courts give due weight to Executive expertise, "deference has limits," and courts may not abdicate review of continued detention's legality. *Zadvydas,* 533 U.S. at 700.

C. Detention Is Unreasonable Under Zadvydas Because ICE Has Not Shown a Significant Likelihood of Removal in the Reasonably Foreseeable Future

Zadvydas limits post-order detention to the period reasonably necessary to effect removal and deems six months presumptively reasonable; after that, the Government must show a significant likelihood of removal in the reasonably foreseeable future. 533 U.S. at 699–701. Petitioner has been detained well beyond six months, yet the record shows no issued travel document, uncertainty regarding the country of removability, and non-documented assurances. Destination uncertainty makes removability speculative, not reasonably foreseeable. Respondents cite *Demore v. Kim*, 538 U.S. 510 (2003), to assert Petitioner's detention is

constitutional. (ECF No. 11 at PageID 138). But *Demore* concerns detention under § 1226(c) during ongoing removal proceedings and does *not* govern post-final-order detention. Post-order detention under § 1231(a)(6) is constrained by *Zadvydas* and requires a significant likelihood of removal in the reasonably foreseeable future. Respondents have not presented any evidence of such a likelihood. There is no laissez-passer, no booked itinerary, and no receiving-country clearance in the record. This record alone satisfies *Zadvydas*'s burden shifting. Petitioner has provided "good reason to believe" removal is not significantly likely in the reasonably foreseeable future, and the Government has not rebutted that showing with concrete evidence. 533 U.S. at 701

III. CONCLUSION

"[I]t is the province of the federal judiciary to ensure that the government obeys the law, particularly when it chooses to deprive someone of their liberty." *Mbonga v. Raycraft*, slip op. at 5. The record establishes that Petitioner's continued detention is both procedurally unlawful under *Accardi* and unreasonable under *Zadvydas.* Respondents have repeatedly violated their own Post-Order Custody Regulations, including: (1) no written delegation or public-interest finding authorizing revocation as required by 8 C.F.R. § 241.4(l)(2); (2) no contemporaneous notice of specific reasons and no prompt informal interview under § 241.4(l)(1); and (3) no travel document and no showing that immediate removal is practicable under § 241.4(g)(3). Nearly nine months into Petitioner's continuous detention at Butler County Jail, the Government still offers mere speculation, confirming that removal is not significantly likely in the reasonably foreseeable future under *Zadvydas*. Petitioner maintains that he has fully cooperated with ICE's attempts to get him travel documents. The Court should therefore deny Respondents' Motion to

Dismiss, grant the Petition, and order Petitioner's immediate release under appropriate conditions of supervision.

Respectfully submitted,

/s/ Amy Bittner

DATED: February 10, 2026

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CERTIFICATE OF SERVICE

I, Amy Bittner, hereby certify that on February 10, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of filing to all parties receiving electronic notice

/s/ Amy Bittner
Amy Bittner