UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

R.O.A. A# [redacted]	)	
Petitioner, vs.	)	CASE NO.: 4:25-cv-00164-GNS
MIKE LEWIS, *in his official capacity as Hopkins County Jailer*, and SAMUEL OLSEN, *Field Office Director ICE Chicago Field Office*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*, And KRISTI NOEM, *Secretary of Homeland Security*) and PAMELA BONDI, *U.S. Attorney General*	)	
Respondents.	)	

PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

Petitioner, R.O.A., has been unlawfully detained in civil immigration detention for more than six months, after Respondents unlawfully and arbitrarily revoked his Order of Supervision (OSUP), without notice, individualized assessment, or opportunity to be heard. From Respondents' Return (Response to Order to Show Cause) it is clear that Respondents do not have any legal justification to have detained Petitioner back in June and this Writ of Habeas could be granted outright even without waiting for an evidentiary hearing.[1] However, Petitioner is ready to conduct an evidentiary hearing on December 16 if the Court wishes to continue with the trial.

Petitioner was previously released from immigration detention on an OSUP in 2009, and thereafter he consistently complied with conditions of release for the following 15 years. Despite

[1] In another case before this Court that undersigned counsel filed, judge Hale granted the writ of habeas (even though the government failed to produce petitioner for the evidentiary hearing), because they could not locate the required OSUP revocation. See ECF Dkt. 24 in *Y.J.F.R. v. Woosley, et al.*, Case 4:25-cv-00142-DJH (W.D. KY Nov. 21, 2025).

this, in June 2025, DHS arbitrarily and unlawfully re-detained Petitioner at a routine check-in, without providing any written notice of revocation of his OSUP, nor explanation of any changed circumstance to justify the revocation, nor any opportunity to contest the action. This abrupt and procedurally deficient revocation violated Petitioner's constitutional right to due process, as well as governing statutes and regulations warranting immediate release.

I. FACTS AND PROCEDURAL HISTORY

Petitioner resided in the United States for more than 25 years and is the father of three United States citizen children, ages 6, 8, and 9, who depend on him for financial, emotional, and moral support. Petitioner's LPR status was revoked when he was ordered removed following a criminal conviction and was released on an OSUP in 2009. In 2022, Petitioner filed two petitions for immigration benefits USCIS. ECF Dkt. 1-2. Petitioner also filed in the U.S. District Court for the District of Vermont a motion for preliminary injunction related to those pending petitions for relief, Case No. 2:25-cv-723. On August 27, 2025, the District of Vermont granted Petitioner a Temporary Restraining Order and Preliminary Injunction in that action, which specifically enjoins Immigration and Customs Enforcement (ICE) from removing him from the United States throughout the pendency of the Federal Court action. That order remains in effect and bars his removal for the foreseeable future. *See* ECF Dkt. 1-3.

Previously, in June 2025, DHS detained Petitioner without properly revoking the OSUP. Respondents admit in their Response to the Order to Show Cause that "they have attempted to identify and locate all relevant records, but a notice of revocation of supervision issued at the time of Petitioner's detention has not been located." Respondents then claim that "a revocation of supervision was issued and served on Petitioner by ICE on December 4, 2025." That post-hoc notice, issued nearly six months after his detention, cannot cure the preceding six months of

unlawful detention. Petitioner's current detention is procedurally and constitutionally infirm, and he should be released immediately.

II. ARGUMENT

A. ICE FAILED TO FOLLOW REGULATORY AND PROCEDURAL REQUIREMENTS TO REVOKE PETITIONER'S OSUP.

ICE failed to comply with the procedural and regulatory requirements, rendering the revocation of Petitioner's OSUP and his re-detention unlawful and warranting his immediate release. Respondents' response does not refute this reality and does not offer any argument that they did comply with the regulations. Thus, they have waived any challenge to these arguments.

ICE's authority to revoke an OSUP is strictly limited by federal regulations at 8 C.F.R. §§ 241.4 and 241.13, which require individualized findings, specific notice, and a meaningful opportunity to respond—none of which are optional. None of these conditions occurred in Petitioner's case and Respondent's only response admits as much: that "[Respondents] have attempted to identify and locate all relevant records, but a notice of revocation of supervision issued at the time of Petitioner's detention has not been located." ECF No. 11.

1. Revocation was not Prompt or Valid

Here, ICE/ERO did not revoked Petitioner's OSUP at all and the post-hoc December 4 revocation (ECF 11-4) is ultra vires. Instead, they detained Petitioner for six months without providing him any notice of revocation or reason for his re-detention at all. In fact, Form I-213 submitted by Respondents at ECF 11-1, states no reason at all. In the middle of page 3 it says:

> "On 06/04/2025, at approximately 1000 .... Reported to their scheduled appointment at the ICE ERO Office located at 7355 Woodland Dr, Indianapolis, IN 46278. ..... was placed under arrest and escorted into the processing area of the ICE Field Office without incident."

However, it is clear that Petitioner's OSUP was not revoked at that time of arrest (or prior to) and it is also clear that Petitioner was not given notice of the OSUP being revoked upon redetention and was not afforded an opportunity to argue against the revocation and detention.

The regulation at 8 C.F.R. § 214.4(l)(1) requires this notice be provided upon revocation and that he be afforded an initial information interview promptly after his return to custody. 8 C.F.R. § 214.4(l)(1).[2] Respondents utterly ignore their failure to provide Petitioner with prompt notice of his revocation. *See generally*, ECF No. 11. At best, Respondents seem to assert that after unlawfully detaining Petitioner for six months, they finally served him with a standardized letter (having nothing to do with his individual circumstances) purporting to be "notice" of his OSUP revocation. *See* ECF Nos. 11 and 11-4. As explained *infra* at B., this after-the-fact notice letter cannot excuse Respondents' complete failure to follow the clear regulatory procedures on how DHS may revoke and OSUP.

2. Revocation Decision Was Not Made by the Appropriate Official at the Time of Re-detention

Next, because Respondents failed to issue a timely revocation notice at all, the OSUP revocation decision could not have been made by the appropriate official in further violation of 8 C.F.R. § 241.4(l)(2). Under 8 C.F.R. § 241.4(1)(2), an OSUP can be revoked by the service if, and only if, the Executive Associate Commissioner[3] (district director) decides to revoke it when, in the opinion of the revoking official:

> (i) The purposes of release have been served;
> (ii) The alien violates any condition of release;

[2] 8 C.F.R. § 214.4(l)(1) states in relevant part that: Upon 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 stated in the notification.

[3] Under 8 C.F.R. § 241.4(l)(2), only the Executive Associate Commissioner or District Director may make the determination to revocation an OSUP. The regulation explicitly states that authority is vested exclusively in a limited set of high-level officials—such as the district director or acting district director.

> (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
> (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

Clearly where Respondents did not provide any revocation notice to Petitioner upon his re-detention, it reasons that Respondents also failed to have the appropriate official make the required analysis and ultimate decision to revoke the OSUP.[4] In addition to ICE's failure to have the proper official determine the revocation of Petitioner's OSUP, the "notice" letter, Respondents ignore the importance of the additional safeguard requirement that if a "district director" revokes an OSUP, he or she may only do so "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.**" 8 C.F.R. § 241.4(l)(2). Respondents completely ignore this requirement and nothing in the letter addresses how Petitioner's OSUP revocation is in the public interest. Respondents also did not address these failures in their response.

Notably, district courts have held that revocations of release by officials not named in the regulation are invalid and require restoration of release status.[5]

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[4] The Supreme Court has repeatedly affirmed that when Congress or an agency regulation enumerates particular officials to exercise a power, only those officials may act. In *United States v. Giordano*, 416 U.S. 505, 514–16 (1974), the Court held that delegation to others was not permitted where the statute authorized only the Attorney General or specially designated Assistant Attorneys General to approve wiretap applications (wiretap found unlawful when ordered by unauthorized person). The Court explained that the enumeration of authorized officials is both exclusive and exhaustive; delegation to others is impermissible absent **explicit authorization**. This principle was reaffirmed in *FEC v. Cruz*, 596 U.S. 289, 301 (2022), which held that an agency "literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute."

[5] *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. 2023); *Zhu v. Genalo*, 2025 WL 2452352, at *2–3 (S.D.N.Y. Aug. 26, 2025); *see also United States. v. Wyder*, 674 F.2d 224, 227 (4th Cir. 1982); *Santamaria Orellana v. Baker*, 2025 WL 2841886, at *3 (D. Md. Oct. 7, 2025) (holding that regulation that gave Executive Associate Commissioner authority to revoke an alien's release and require return to ICE custody could not be exercised by Deportation Officer). The court in *Santamaria Orellana*, citing *Giordano*, noted that "[a] statutory or regulatory provision requiring that a decision affecting personal rights be made only by a designated senior official is fairly deemed to be an important procedural safeguard". *Id.* at *5. The court also directly addressed Due Process: "Respondents nevertheless argue that the failure to adhere to this regulation does not amount to a due process violation. This Court, however, has already found in its earlier ruling in this case that the identified violations of the requirements of 8 C.F.R. § 241.4, including the requirement that an authorized official approve a Notice of Revocation of Release under 8 C.F.R. § 241.4(l)(2), implicate due process." *Id.* at *4.

3. The Government's Stated Reason for Revocation is Pretextual.

Federal regulations require written notice detailing the specific reasons for an OSUP revocation. 8 C.F.R. § 241.4(l)(1). ICE provided no such notice when it detained Petitioner in June. The after-the-fact notice served six months later is substantively baseless. The justification offered six months later—that "changed circumstances" permit "expeditious[] remov[al]" because [country redacted] "issued a travel document"—is insufficient and pretextual. ECF No. 11-4.

This justification is a pretext. First, the notice fails to assert that a travel document existed in June, when the detention began. Second, and dispositively, a federal court injunction has barred Petitioner's removal since August 2025, rendering "expeditious removal" a legal impossibility. The government's justification ignores this binding court order, as well as ongoing litigation over Petitioner's T-visa and APA claims that independently make his removal not reasonably foreseeable.[6] A boilerplate notice that is factually unsupported and legally impossible cannot satisfy due process. A conclusory notice so divorced from the actual legal and factual circumstances of the case is invalid. Also, courts have repeatedly held that boilerplate or conclusory notices are insufficient; the notice must state individualized, case-specific reasons to allow a meaningful response.[7]

4. ICE Failed to Afford Petitioner a Meaningful Opportunity to Respond.

Finally, Respondents do not make any claim that upon re-detaining Petitioner, he was informed of the reason for his re-detention at all, especially where ICE failed to issue him the

[6] See also ECF 21 in that case, Respondents' Stipulated Motion for Extension of Time to file Response to Complaint, through January 30, 2026. If Petitioner's pending T visa is approved, it will give him valid status in the U.S. and enable him to reopen and rescind the removal order against him. Even if USCIS denies the T visa, Petitioner's APA claims in Vermont would not be mooted and will take a long time to resolve as the case involves an APA claim against ICE' unlawful revocation of the crime victim memo. Thus, Petitioner's removal is still not likely in the reasonably foreseeable future.

[7] *See Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at 3 (D. Minn. Aug. 25, 2025) (Providing a notice that simply recites the language of the regulation does not satisfy the Government's obligation to provide the "reasons" why Roble's Order of Supervision was revoked); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), ECF

required revocation letter. Additionally, even if Respondents claim that serving this after-the-fact notice was sufficient to revoke his OSUP, they have utterly failed to comply with the regulation that requires they conduct an informal interview with Petitioner to afford him the opportunity to respond to the notice. *See* ECF Nos. 11, 11-4. Further, the after-the-fact notice appears to have been served by Jillian Tremble, a Supervisory Detention and Deportation Officer (SDDO), who would not have the authority to conduct the requisite interview where she lacks the authority to evaluate Petitioner's response and decide whether to approve reinstatement of the OSUP pursuant to the relevant regulations. This would constitute a further violation of the regulations because they call for a high level official such as the Field Office Director, to make such determinations. Courts have held that the absence of a meaningful interview or opportunity to respond renders the revocation unlawful.[8] This Court should find the same here.

Recent district court decisions in similar habeas petitions have strictly enforced all of these requirements, holding that ICE's failure to provide individualized notice, make a bona fide finding

No. 9 at 5 (D. Minn. June 17, 2025) (recommending habeas relief when ICE similarly provided a notice that only parroted the regulatory text). In *Sarail A. v. Bondi*, the court explained that the purpose of the interview is to allow the petitioner to respond to reasons already given, and without those reasons, the petitioner cannot know what evidence is responsive (*Id.*, at 4). In *Roble v. Bondi*, the court found that ICE's notice merely parroted regulatory language and failed to state any individualized reasons for revocation and then concluded that this lack of specific reasons deprived the petitioner of a meaningful opportunity to respond, violating due process and regulatory requirements. *Roble v. Bondi*, --- F.Supp.3d ----, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453 at *3 (D. Minn, Aug 25, 2025). The Roble court explained that a petitioner cannot be expected to "respond to the reasons for revocation stated in the notification" if the notification does not actually state any reasons for revocation. Id. "Not only does this scenario border on the Kafkaesque; it is also contrary to law." *Id.* Because ICE violated its own regulations here, just as in Roble's case, when it detained Petitioner without notifying him of the reasons why he was being detained, Petitioner is entitled to habeas relief and immediate release from custody.

[8] *See Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSHVET, 2025 WL 2646165, at 3 (S.D. Cal. Sep. 15, 2025). The essence of due process is notice and an opportunity to respond. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Baldwin v. Hale*, 68 U.S. 223, 233 (1863) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence.").

of changed circumstances, or conduct a meaningful interview renders revocation unlawful.[9] The courts reaffirmed that these regulatory and constitutional requirements apply to OSUP revocation. The courts have then invalidated OSUP revocations where the agency did not follow the requirements because these protections are essential to prevent arbitrary deprivations of liberty and to ensure that the agency exercises its discretion within the bounds of law and due process.

Clearly, Petitioner was re-detained without notice and without a *meaningful* opportunity to respond. ICE did not lawfully revoke Petitioner's OSUP where they failed to issue a revocation letter upon Petitioner's re-detention or follow any of the procedures to guarantee him an explanation for his re-detention and an opportunity to respond. Thus, this Court should order Petitioner's immediate release and restore him to the status quo of release per his valid OSUP.

B. AN AFTER-THE-FACT NOTICE, ISSUED SIX MONTHS LATER, CANNOT CURE THE DEFECTIVE REVOCATION

The Court should reject any assertion that Respondents have now properly revoked Petitioner's OSUP by providing him with revocation letter on December 4, 2025—nearly six months after they took him into custody.

Several courts have determined that Respondents cannot cure these defects **after the fact** and the only remedy here is release and reinstatement to the prior OSUP status. In the context of immigration detention, courts have emphasized that strict compliance with regulatory assignments of authority and procedural safeguards is a substantive requirement, not a mere technicality that can be excused or remedied after the fact.

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[9] *See, e.g., ISA Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369 (W.D. Wash. Nov. 17, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398-TMC, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025); *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at 3 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673, at *3–4 (D. Minn. Sep. 3, 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017).

Further, the Supreme Court has recognized that the loss of liberty, even for minimal periods, constitutes irreparable injury and cannot be remedied by later proceedings or monetary damages. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'"). Where, as here, the agency fails to provide timely notice, an opportunity to respond, or a meaningful informal interview, the deprivation of liberty is arbitrary and capricious, and the only adequate remedy is immediate release under the original OSUP improperly revoked.

Courts have repeatedly held that the risk of erroneous deprivation is greatest when the government acts without process, and that only through notice and a hearing can the reliability of the government's justification be tested. *See Balouch v. Bondi*, NO. 9:25-CV-216-MJT, 2025 WL 2871914 (E.D. Tex., Oct 9, 2025) (habeas granted because procedures were not followed and government could not prove there is a significant likelihood of removal in the reasonably foreseeable future); *Romero v. Kaiser*, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022). In Petitioner's case, the government's post hoc revocation—after detention and transfer, and without prior notice or hearing—was constitutionally and procedurally defective, regardless of any substantive justification the government may assert.

Even if the government asserts that it properly revoked his OSUP with the after-the-fact notice in December, and had good reasons to revoke it, this does not excuse the failure to provide the procedural protections required by the Constitution in June, which is additional and separate rights and protections to those provided by DHS regulations. The existence of an alleged violation does not permit the agency to bypass the fundamental requirements of due process: advance

written notice of the alleged violation, a statement of reasons for revocation, and a meaningful opportunity for Petitioner to contest the allegations before a neutral decisionmaker. These procedural safeguards are not mere formalities; they are essential to ensure that any claimed breach is subject to fair and reliable adjudication, rather than unilateral executive action. As the Supreme Court has emphasized, "The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews*, 424 U.S. at 348. To add insult to injury, in November 2025, Petitioner received a "Notice to Alien of File Custody Review" from Respondents advising him that since he has been detained longer than 90 days: "Your custody will be reviewed on or about November 13, 2025." No such review was completed and undersigned attorney was not notified even though she submitted her G-28 Form (indicating attorney representation) in Petitioner's case with Respondents previously. Not only the proper review was not conducted, but an after-the-fact and defective OSUP revocation was conducted about a month later after this Complaint was filed. See Exhibit 1.

C. RESPONDENTS VIOLATED THE APA AND *ACCARDI* DOCTRINE

Under the Administrative Procedure Act (APA) and the doctrine from *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), federal agencies must follow their own regulations. An action that violates an agency's procedural rules is unlawful and must be set aside.. Courts have repeatedly held that ICE's disregard for these requirements—including the failure to provide meaningful, individualized notice and an opportunity to respond in reopened proceedings—renders revocation and re-detention unlawful and warrants immediate injunctive relief.[10] Here, Respondents have deprived Petitioner of proper notice and an opportunity to

[10] *See Accardi; Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017); *Ceesay*, 781 F. Supp. 3d at 162; Zhu v. Genalo, 2025 WL 2452352, at *2–3; *ISA Abubaka*, 2025 WL 3204369 at *6–7; *Nguyen v. Scott*, No. 2:25-CV-01398-TMC, 2025 WL 2419288 at *19–28.

meaningfully respond in violation of their own regulations and in excess of their own authority. Given these blatant violations, the appropriate remedy is Petitioner's immediate release from custody and restoration of his OSUP.

D. RESPONDENTS VIOLATED PETITIONER'S DUE PROCESS

Finally, Petitioner's claims are cognizable immediately upon the deprivation of liberty, as the Supreme Court has made clear that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner'" (*Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Due process prohibits ICE/DHS from re-detaining noncitizens released on an OSUPs without notice, or a change in circumstances, and judicial oversight is required to prevent arbitrary agency action. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025); *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575 (E.D. Cal. Sept. 5, 2025). These cases confirm that revocation of liberty interests must comply with agency regulations, including notice and an opportunity to be heard, and that actions taken without proper authority are void.

Further, ICE previously determined that Petitioner is neither a flight risk nor a danger to the community, and Petitioner has complied with all conditions of his OSUP for approximately 15 years. Petitioner relied on that protected liberty interests from 15 years ago when he was released, continued to live his life in the U.S., got married to a U.S. citizen, had three U.S. citizen children and built himself a life in the U.S. Therefore, in addition to the regulations above, procedural due process imposes constraints on governmental decisions which deprive individuals of liberty like the decision to revoke Petitioner's OSUP. No new facts or changed circumstances justify revocation of his OSUP or re-detention.

Thus, Petitioner's continued detention now thus lacks any legitimate, nonpunitive purpose and violates substantive due process. By releasing Petitioner on an OSUP approximately 15 years ago there was an "implied promise" that Petitioner's liberty would not be revoked unless they "failed to live up to the conditions of [their] release. This principle is reinforced by Supreme Court precedent, that reliance interests created by government action cannot be disregarded arbitrarily or capriciously, and that any change in policy must be accompanied by a reasoned explanation and consideration of those interests. *See Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020), which addressed the issue of reliance interests in the context of the rescission of the Deferred Action for Childhood Arrivals (DACA) program.

E. EVEN IF RESPONDENTS HAD NOT UNLAWFULLY REVOKED THE OSUP, PETITIONER'S DETENTION WOULD STILL BE UNLAWFUL BECAUSE THE GOVERNMENT HAS NOT DEMOSTRATED THAT HIS REMOVAL IS SIGNIFICANTLY LIKELY IN THE REASONABLY FORESEABLE FUTURE.

1. *Zadvydas* and the Non-Resetting of the Removal Period.

There is no statutory or precedential authority permitting the government to restart the 90- or 180-day removal period each time it re-detains a noncitizen who has already been subject to a final order and released under supervision.[11]

[11] *See Bailey v. Lynch*, No. 16-2600, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (the removal period does not restart simply because an alien who has previously been released is taken back into custody). Courts across the country have rejected the government's "reset" theory, holding that the six-month presumptively reasonable period under *Zadvydas* does not restart with each re-detention. *See e.g.*, *Siguenza v. Moniz*, No. 25-CV-11914-ADB, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025) ("Most courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern that the federal government could otherwise detain noncitizens indefinitely by continuously releasing and re-detaining them."); *Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (citing *Nhean v. Brott*, No. 17-28 (PAM/FLN), 2017 WL 2437268, at *2 (D. Minn. May 2, 2017) (report and recommendation) (holding that when the government detains an alien for 90 days, releases him, and then re-detains him, the second detention "was presumptively reasonable for an additional 90 days (six months in total)," not an additional six months), adopted, 2017 WL 2437246 (D. Minn. June 5, 2017)); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025) (concluding that Petitioner's re-detention after previous detention beyond six months years before, was not presumptively reasonable); *Hamama v. Adducci*, 2019 WL 2118784 at *2 (E.D. Mich. May 15, 2019) (finding the government's argument that the statutory removal period reset was not supported by the record where Younan was ordered removed years ago and the removal period has likely come and gone based on the date his order of removal became administratively final).

As explained in *Diaz-Ortega v. Lund*, 2019 WL 6003485 (W.D. La. Oct. 15, 2019):

> A plain reading of the existing text disfavors the restarting approach. Section 1231 references "[t]he" removal period, a single period triggered exclusively by the latest of three possible events. No other contingencies are provided. Absent a later triggering event – which would, by definition, begin "the" removal period – § 1231(a)(1)(B) dictates that the removal period necessarily begins when a removal order becomes final, and necessarily ends 90 days later.[12]

Allowing the government to restart the clock with each re-detention would render the limitations imposed by *Zadvydas* meaningless and would be contrary to the plain language and purpose of § 1231(a)(6) and Supreme Court precedent (*Zadvydas*). *See Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *5 (S.D. Tex. Oct. 16, 2025) ("[A] uniform rule that counts and sums prior time in detention is appropriate. It is, after all, liberty at issue.").

In Petitioner's case, the removal period began and expired nearly 15 years ago, after which he was released on an OSUP in 2009.[13] Therefore, under the plain language of § 1231, Petitioner's re-detention does not restart the clock and his present detention violates the relevant statute and due process at day zero. Petitioner did not need to wait 180 days. Alarmingly here, Petitioner has now been detained for an additional 180 days, still without the government demonstrating changed circumstances pertaining to Petitioner and that warrant his re-detention or that his detention is now in the public interest. Thus, under *Zadvydas*, he must be released from detention.

2. There is No Significant Likelihood of Petitioner's Removal in the Reasonably Foreseeable Future.

Even if the government could re-detain Petitioner, it may do so only upon a showing of "changed circumstances" that make his removal significantly likely in the reasonably foreseeable

[12] The only recognized exception to this rule is where the noncitizen is the impediment to his own removal, such as by refusing to cooperate with travel document requirements.

[13] This case is not about ICE's authority to detain in the first place upon an issuance of a final order of removal as in *Zadvydas*. This case is about ICE's authority to re-detain Mr. Owusu after he was issued a final order of removal, detained for the 180-days, and subsequently released on an OSUP after removal could not be effectuated.

future (SLRFF). *See* 8 C.F.R. § 241.13(i). This is not a mere formality: courts have repeatedly held that ICE must identify specific, individualized changes—such as new evidence of flight risk, danger to the community, or a concrete development making removal newly feasible.[14]

In most of these cases, courts have granted habeas relief after finding that the government failed to identify sufficient changed circumstances or demonstrate a significant likelihood of removal in the reasonably foreseeable future.[15]

Here, there is no evidence that Petitioner was found to be a risk or noncompliant with his OSUP, and the government's justification—"changed circumstances"—does not satisfy the statutory requirements here for the reasons stated above regarding the invalid revocation notice and because Petitioner cannot be removed at all due to the federal court order in Vermont.

A remote possibility of eventual removal does not satisfy the regulatory standard required for OSUP revocation. *See Escalante*, 2025 WL 2206113, at *4 (citation omitted). The government has failed to carry its burden under 8 C.F.R. § 241.13(i)(2). That regulation embodies the Executive Branch's own procedural requirements, and agencies must comply with the rules they promulgate (*Accardi)*. Therefore, the Court should order Petitioner's immediate release.

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[14] *Roble*, 2025 WL 2443453, at *4 (the regulations place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[ ] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed."). Vague or generic assertions, or the mere passage of time, are insufficient. *See Phongsavanh v. Williams*, No. 4:25-CV-00426-SMR-SBJ, 2025 WL 3124032, at *4 (S.D. Iowa Nov. 7, 2025); *Liu v. Carter*, 2025 WL 1696526 (D. Kan. Jun. 17, 2025); *Sun v. Noem*, 2025 WL 2800037 at *2 (S.D. Cal. Sep. 30, 2025) ("vague assertions—akin to promising the check is in the mail—insufficient to meet ICE's own requirement to show 'changed circumstances' or 'a significant likelihood that the alien may be removed in the reasonably foreseeable future'"); *Sarail A. v. Bondi*, 2025 WL 2533673 (D. Minn. Sep. 3, 2025) (notification of "changed circumstances" without explanation is insufficient).

[15] *See id*; *see also Phan v. Noem*, Case No. 3:25-cv-024220RBM-MSB, 2025 WL 2898977 (S.D. Cal. Oct. 10, 2025); *Villanueva v. Tate*, —— F. Supp. 3d ——, 2025 WL 2774610 (S.D. Tex. Sept. 26, 2025); *Zavvar v. Scott*, Civil Action No. 25-2104-TDC, 2025 WL 2592543 (D. Md. Sept. 8, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771 at *4 (E.D. Cal July 16, 2025) (rejecting the government's assertion that ICE's intent to apply for a travel document constituted changed circumstances, explaining that the government failed to provide "any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is more likely this time around."); *Tadros v. Noem*, No. 2:25-cv-04108-EP, Order, ECF No. 17 (D.N.J. June 17, 2025); *Balouch v. Bondi*, NO. 9:25-CV-216-MJT, 2025 WL 2871914 (E.D. Tex., Oct 9, 2025).

III. CONCLUSION

Here, ICE impermissibly revoked Petitioner's OSUP in violation of their own regulations, policies, procedures, and the Fifth Amendment's due process clause. Because of this, Petitioner should be immediately released from detention and the revoked OSUP should be declared invalid in order to remedy his illegal arrest and continued deprivation of his liberty interest. To prevent a future unlawful rearrest, Petitioner also requests the Court to enter the following order:

(1) Enjoining Respondents from altering or revoking Petitioner's Order of Supervision (OSUP) without first complying with all the mandatory procedural requirements of 8 C.F.R. §§ 241.4, 241.13, and the Due Process Clause of the Fifth Amendment.

(2) Ordering that any future attempt to deprive Petitioner of his liberty be preceded by (i) advance, individualized written notice of the factual and legal grounds for the action, and (ii) a pre-deprivation hearing before a neutral decision-maker as specified in 8 C.F.R. § 241.13 and 8 C.F.R. § 241.4.

Respectfully Submitted,

This 11th day of December, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December 2025, this Document was served, via electronic delivery to Respondents' counsel via the CM/ECF system, which will forward copies to Counsel of Record.

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