

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AHMAD SHAKOOR,

Petitioner,

v.

TODD M. LYONS, Acting Director, U.S.
Immigration and Customs Enforcement, U.S.
Department of Homeland Security, in his official
capacity;
Daren K. MARGOLIN, the Director of Executive
Office for Immigration Review, in his official
capacity;
KRISTI NOEM, Secretary of U.S. Department of
Homeland Security, in her official capacity;
and
PAMELA BONDI, Attorney General of the
United States, in her official capacity,
WARDEN of South Texas ICE Processing Center
in Pearsall, Texas, in his or her official capacity,

Respondents.

Case No.: 5:25-cv-1628-OLG

PETITIONER'S REPLY

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INTRODUCTION

Respondents filed their Response to Petitioner's Petition for Habeas Corpus. Respondents argue that Petitioner's Petition for Habeas Corpus should be denied for three reasons A) Section 1231(a) mandates Petitioner's detention for 90 days, B) Petitioner's claim is premature since he has been in post-order detention for less than six months, and C) the OSUP revocation does not violate Petitioner's due process rights. Each argument fails. Petitioner replies to each one separately below:

A. Section 1231(a) does not mandate Petitioner's detention for 90 days

First, Respondents conflate two issues: that of OSUP revocation and that of 90-day detention. Respondents are correct that they *could have* detained Mr. Shakoor for 90 days if they had followed the proper procedures to cancel his OSUP. *See* 8 C.F.R. § 241.13(i). But they did not.

Section 1231(a) is not a license for Respondents to detain non-citizens without any due process of law. Courts have found that, when Respondents do not follow their own regulations for cancelling OSUP, then the non-citizen should be released, even if the non-citizen has been detained for fewer than 90 days. *Nguyen v. Hyde*, 778 F. Supp. 3d 144 (D. Mass. 2025); *Funes v. Francis*, No. 25 CIV. 7429 (PAE), 2025 WL 3263896 (S.D.N.Y. Nov. 24, 2025); *Phetsadkone v. Scott*, No. 2:25-cv-01678, 2025 WL 2579569 (W.D. Wash. Sept. 5, 2025); *R.O.A. v. Lewis*, 4:25-CV-00164-GNS (W.D.K.Y. Dec. 18, 2025).

Because Respondents failed to follow their own regulations for cancelling the OSUP, the only appropriate remedy is Mr. Shakoor's immediate release from custody.

B. Petitioner's claim is not premature even though he has been detained for less than six months

Again, Respondents conflate post-removal detention with the proper procedures for cancelling OSUP. The procedural requirements for revoking an order of supervision are found at 8 C.F.R. § 241.13(i). Mr. Shakoor does not seek release under *Zavydas* because his detention has become prolonged. Instead, Mr. Shakoor challenges his detention because Respondents did not follow the proper procedures for cancelling his order of supervision. *Id.*

Respondents argue that they should be able to detain Mr. Shakoor so that they may search for a third country to which they can remove him. But they have put the cart before the horse. The regulations only allow Respondents to revoke a non-citizen's OSUP if there is a "significant

likelihood" that ICE would be able to effectuate removal to a third country "in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

But at the time of Mr. Shakoor's detention and cancellation of his OSUP, there was no "significant likelihood" that he would be removed to a third country "in the reasonably foreseeable future." In Respondents' declaration, they state that they did not even begin to search for a third country until November 14th or forty-three days after they detained him at the internal checkpoint. Dkt. 7-1 at ¶ 23. When Respondents detained Mr. Shakoor, they did not understand his case, and thought that he had " no immigration status or paperwork that would allow him to be or remain in the United States," despite having been granted Withholding of Removal. *Id.* at ¶ 21. After Mr. Shakoor was detained, ICE issued a new Notice to Appear to him and attempted to initiate brand new proceedings until the Immigration Judge told them that it was improper since an Immigration Judge had already granted Mr. Shakoor Withholding of Removal in 2023.

The regulations do not allow the Respondents to restrain Mr. Shakoor's liberty while they so poorly bungle his case. There was no significant likelihood of removal to a third country at the time of his detention because Respondents failed to investigate that Mr. Shakoor even had Withholding of Removal. Because Respondents did not properly take him into custody, he must be released.

C. The the OSUP revocation does violate Petitioner's due process rights

Respondents argue that, while an agency is required to follow its own regulations, "there is no procedural due process violation where the Constitutional minima of due process is otherwise met." *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). But Respondents do not even attempt to explain what "minima of due process" they provided to Mr. Shakoor. Detaining him, failing to provide notice and an informal interview, and then scheduling him for a brand

new removal hearing is not due process of law. Fumbling around and recklessly detaining people is not due process.

At no point was Mr. Shakoor able to contest the revocation of his OSUP or receive notice about the revocation process. He was simply whisked away to a detention facility. "The Supreme Court has recognized that a federal agency's failure to comply with its own regulations generally renders the associated agency action unlawful." *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at *5 (D. Md. Aug. 25, 2025) (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). The appropriate remedy is therefore release.

The timing of the notice and interview is also an important factor to consider. The regulations state that it should be done upon revocation. 8 C.F.R. § 241.13(i)(3). But Mr. Shakoor was detained for over 30 days before anyone even realized that he had Withholding of Removal, Mr. Shakoor was detained on October 2nd, and at his removal hearing on November 5th, the Immigration Judge informed Respondents that they could not initiate a new proceeding against him because he had Withholding of Removal. It also does not appear that he was ever given any interview. Although there is no clear definition of 'upon revocation,' courts have admonished Respondents in other cases for waiting twenty-seven days to provide notice and an interview. *K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at *6 (W.D. Ky. Sept. 4, 2025) (citing *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025)).

Because Mr. Shakoor has been deprived of any due process and any removal to a third country remains speculative at best, he must be released from detention immediately.

Respectfully submitted on this 19th day of December 2025,

/s/ Jennifer Scarborough
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CERTIFICATE OF SERVICE

Counsel for Petitioner filed this attached filing on all parties through the Court's electronic filing system.

Dated: 19 Dec. 2025

/s/ Jennifer Scarborough
Jennifer Scarborough