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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Eddy Othoman JOSEPH,  
  
Petitioner,  
  
v.  
  
Jeremy CASEY, et al,  
  
Respondents.

Case No.: 25-cv-03560-JES-KSC  
**PETITIONER'S TRAVERSE  
SUPPORTING PETITION FOR  
WRIT OF HABEAS CORPUS**

Hon. James E. Simmons

1 Petitioner Eddy Othoman Joseph, by and through counsel, traverses the  
2 government's Response in Opposition ("Response") and respectfully states as follows:<sup>1</sup>

3 **I. INTRODUCTION**

4 In its Response, the government does not challenge this Court's jurisdiction under  
5 any provision of 8 U.S.C. § 1252, thus conceding this Court's authority to grant a writ of  
6 habeas corpus here.

7 Instead, on the petition's merits, the government conflates decades of failure with  
8 present-day "progress" and ignores the statutory and procedural foundations of  
9 Petitioner's claim. Mr. Joseph challenges the lawfulness of his detention, which began on  
10 May 29, 2025, more than seventeen years after his removal order became final and the  
11 government's statutory authority to detain him expired. The 90-day removal period under  
12 8 U.S.C. § 1231(a)(1)(B)(i) ended on August 10, 2008. The six-month presumptively  
13 reasonable detention period established by *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001),  
14 expired on November 12, 2008. Since that time, and until his unlawful re-detention, §  
15 1231(a)(3) required that Petitioner be maintained under supervision, not confinement.  
16 The government's attempt to justify this seventeen-year-later detention relies on  
17 speculative assurances and a wholesale disregard for ICE's own regulations, which  
18 voided the revocation of Petitioner's supervision and requires his immediate release.

19  
20  
21 <sup>1</sup> Petitioner notes and seeks to correct two minor clerical errors in the Petition to  
22 ensure the accuracy of the record. First, Paragraph 23 of the Petition incorrectly states the  
23 year of Petitioner's misdemeanor conviction for driving under the influence as 2017. The  
24 correct year is 2007. Second, Paragraph 20 of the Petition incorrectly identifies the "ICE  
25 Marlton Sub-Office" as the issuer of the Order of Supervision. The OSUP was, in fact,  
26 issued by ICE Enforcement and Removal Operations in St. Louis, Missouri, on  
27 January 27, 2011, as correctly noted in the government's own Arredondo Declaration at  
28 ¶ 13. Petitioner apologizes for these oversights and any confusion they may have caused.  
These corrections do not affect the legal arguments presented herein. The DUI offense  
remains a single, non-violent misdemeanor from two decades ago, and the identity of the  
ICE office that issued the OSUP in 2011 does not alter the fact that Petitioner complied  
with its terms for over fourteen years until ICE detained him unlawfully.

1 **II. RESPONDENTS IGNORE THAT THE SIX-MONTH ZADVYDAS**  
2 **PRESUMPTION WAS TRIGGERED IN 2008 AND THEY FAIL TO**  
3 **REBUT IT**

4 The government argues that it would be “premature to conclude that there is no  
5 significant likelihood of removal in the reasonably foreseeable future before permitting  
6 ICE an opportunity to complete its diligent efforts to effect Petitioner’s removal.”

7 Response at 5.<sup>2</sup> This argument misstates the issue and ignores the controlling timeline.  
8 The challenge is not premature; the government’s authority to detain is long expired.

9 Under § 1231(a)(1)(B)(i), the 90-day removal period began when the Ninth Circuit  
10 issued its mandate on May 12, 2008, and irrevocably ended on August 10, 2008.

11 Respondents concede this timeline. Response at 2, 3. The Supreme Court in *Zadvydas*  
12 held that continued detention beyond six months is constitutionally permissible only if  
13 the government demonstrates that there is a “significant likelihood of removal in the  
14 reasonably foreseeable future.” 533 U.S. at 701. For Petitioner, that six-month threshold  
15 passed on November 12, 2008.

16 At that moment, the record showed good reason to believe that there was no  
17 significant likelihood of removal in the reasonably foreseeable future and the burden  
18 shifted to the government to justify continued custody. *See Zadvydas*, 533 U.S. at 701.  
19 For the subsequent seventeen years, while Petitioner lived in the community under  
20 supervision, the government failed to meet this burden. Its decision to detain him in May  
21 2025 does not reset the clock or revive its lapsed authority. Rather, it represents a new,  
22 unconstitutional assertion of custody based on a removal order that has been dormant for  
23 nearly two decades. Respondents’ reliance on *Sereke v. DHS*, No. 19-cv-1250-WQH-  
24 AGS, ECF No. 5 (S.D. Cal. Aug. 15, 2019), and *Marquez v. Wolf*, No. 20-cv-1769-  
25 WQH-BLM, 2020 WL 6044080, at \*3 (S.D. Cal. Oct. 13, 2020), is misplaced. Those  
26 cases involved detention months—not years—after the final removal order; were decided  
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<sup>2</sup> Petitioner cites the ECF-generated page numbers for the Response.

1 before the passage of time rendered removal a remote, speculative possibility; and the  
2 government demonstrated meaningful individualized progress.

3 As a judge in this District recently observed,

4 In *Marquez*, the respondents “set forth evidence that  
5 demonstrates progress and the reasons for the delay in [the  
6 petitioner’s] removal.” Specifically, they had obtained travel  
7 documents for the petitioner and were ensuring the petitioner  
8 was medically cleared to board his flight to Peru. In *Sereke*, the  
9 “ERO San Diego field office submitted a travel document (TD)  
10 packet to the Embassy of Eritrea,” “confirmed that [the  
11 petitioner’s] travel document (TD) is in process for renewal,”  
12 and “prepare[d] an itinerary for [the petitioner’s] removal from  
13 the United States via commercial airline.” These cases may  
14 support the proposition that the government need not  
15 “prearrange a noncitizen’s removal or have a travel document  
16 in hand before detaining them,” but they do not support  
17 Respondents’ position that mere generalizations, divorced from  
18 any documentary support, suffice for *Zadvydas* purposes.

12 *Azzo v. Noem*, No. 3:25-cv-03122-RBM-BJW, 2025 U.S. Dist. LEXIS 256030, at \*12 n.3  
13 (S.D. Cal. Dec. 10, 2025) (internal citations omitted).

14 Here, the government’s seventeen-year history of futility—and that Angola and  
15 South Africa have refused to provide travel documents—proves removal is *not*  
16 reasonably foreseeable.

17 **III. ICE VIOLATED ITS OWN REGULATIONS, VOIDING THE**  
18 **REVOCATION UNDER THE ACCARDI DOCTRINE**

19 The government contends that ICE complied with its regulations and that any  
20 failure was harmless (Response at 5-6), citing *Brown v. Holder*, 763 F.3d 1141, 1148–50  
21 (9th Cir. 2014). This reliance is misplaced. The violations here are not mere  
22 technicalities; they are substantive failures that strike at the heart of ICE’s limited  
23 authority to revoke release. The violations “implicate[] due process concerns even  
24 without a prejudice inquiry.” See *Azzo*, 2025 U.S. Dist. LEXIS 256030, at \*14 (quoting  
25 *United States v. Raya-Vaca*, 771 F.3d 1195, 1205 (9th Cir. 2014), *abrogated on other*  
26 *grounds by Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020)).

27 And although unnecessary, the violation caused Mr. Joseph prejudice. See *Azzo*,  
28 2025 U.S. Dist. LEXIS 256030, at \*15-17. ICE previously released Mr. Joseph subject to

1 8 C.F.R. §§ 241.4, 241.13, provisions intended to provide due process to those in his  
2 position. As a district judge in Maryland held,

3           These regulations plainly provide due process protections to  
4 aliens following the removal period as they are considered for  
5 continued detention, release, and then possible revocation of  
6 release by, among other things, requiring that only certain  
7 designated officials make custody determinations; mandating  
8 that a noncitizen receive a copy of any decision to release or  
9 detain that individual; establishing criteria and factors  
10 applicable to detention, release, and revocation determinations;  
and requiring certain procedural safeguards upon revocation to  
allow a noncitizen to have an opportunity to be heard to contest  
the reasons for revocation, including informal interviews and  
custody reviews. *See* 8 C.F.R. § 241.4. This conclusion is  
particularly true 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.

11 *Orellana v. Baker*, Civil Action No. 25-1788-TDC, 2025 U.S. Dist. LEXIS 164986, at  
12 \*18 (D. Md. Aug. 25, 2025) (citing *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (“The  
13 essence of due process is the requirement that ‘a person in jeopardy of serious loss (be  
14 given) notice of the case against him and opportunity to meet it.’” (citation omitted));  
15 *see also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government  
16 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that  
17 [the Due Process] Clause protects.”)).

18           These regulations are designed to protect noncitizens’ liberty and property  
19 interests, so the failure to follow them constitutes a per se violation of procedural due  
20 process. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954).  
21 And a habeas court can apply agency-compliance principles derived from *Accardi* to  
22 invalidate revocations or custody determinations made contrary to 8 C.F.R. §§ 241.4,  
23 241.13. *See, e.g., Rokhfirooz v. Larose*, No. 25-cv-2053-RSH-VET, 2025 U.S. Dist.  
24 LEXIS 180605, at \*12 (S.D. Cal. Sep. 15, 2025) (“Government agencies are required to  
25 follow their own regulations.” (citing *Accardi*, 347 U.S. at 268; *Nat’l Ass’n of Home*  
26 *Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003)); *Rombot v. Souza*, 296 F. Supp. 3d  
27 383, 388–89 (D. Mass. 2017) (“ICE claims that the Field Office Director has unfettered  
28 discretion to incarcerate Rombot. While ICE does have significant discretion to detain,

1 release, or revoke aliens, the agency still must follow its own regulations, procedures, and  
2 prior written commitments in the Release Notification. As described above, ICE failed to  
3 follow its own regulations in at least three ways. The Supreme Court has recognized that  
4 an ‘alien may no doubt be returned to custody upon a violation of [supervision]  
5 conditions,’” *Zadvydas*, 533 U.S. at 700, but it has never given ICE a carte blanche to re-  
6 incarcerate someone without basic due process protection.”).

7 **A. The Revocation Violated 8 C.F.R. § 241.4(l)(2) by Lacking Proper**  
8 **Authority**

9 Section 241.4(l)(2) limits the authority to revoke release to “the Executive  
10 Associate Commissioner for Enforcement and Removal Operations” or a district director,  
11 but only in the limited circumstance “when, in the district director's opinion, revocation is  
12 in the public interest and circumstances do not reasonably permit referral of the case to  
13 the Executive Associate Commissioner.”

14 Respondents offer no declaration, affidavit, or any other evidence that such a high-  
15 level official as the Executive Associate Commissioner for Enforcement and Removal  
16 Operations, or the current equivalent, authorized Petitioner’s revocation. Instead, they  
17 present a notice signed by a Field Office Director, and which does not assert—much less  
18 justify—why that officer made the decision instead. *See* Response, at Ex. 3. And that  
19 officer cites a cause—a summary conclusion on a putative change in circumstances for  
20 § 241.13(i)(2)—not discretion for § 241.4(l)(2)(iii). And the government does not address  
21 it in its Response.

22 This is not a harmless error; it is a fatal jurisdictional defect. A revocation executed  
23 without the proper authority or process is unlawful and requires the alien’s immediate  
24 release. *See, e.g., Rasakhamdee v. Noem*, No. 3:25-cv-02816-RBM-DEB, 2025 U.S. Dist.  
25 LEXIS 219217, at \*8-16 (S.D. Cal. Nov. 6, 2025); *Rokhfirooz*, 2025 U.S. Dist. LEXIS  
26 180605, at \*12 (“[W]here ICE fails to follow its own regulations in revoking release, the  
27 detention is unlawful and the petitioner’s release must be ordered.”).

**B. The Revocation Violated 8 C.F.R. § 241.13 by Lacking an Individualized Determination**

Even if a proper official had authorized the revocation, the process still failed. Section 241.13(i)(3) requires the revoking official to make an individualized factual “determination . . . whether there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” This is not a rubber-stamp exercise. The regulation demands a fact-specific analysis of the changed circumstances, including efforts to secure travel documents and the noncitizen’s amenability to removal. *See Bunthoeun Kong v. United States*, 62 F.4th 608 (1st Cir. 2023) (recognizing that ICE’s regulation at 8 C.F.R. § 241.13(i)(2) expressly requires “an individualized determination”).

The May 29, 2025 Notice of Revocation of Release (*see* Response, Ex. 3) and the November 19, 2025 custody denial (*see* Petition, Ex. B) are templates devoid of any such analysis. The former contains only the conclusory statements that “circumstances have changed” and “there is now a significant likelihood of your removal in the reasonably foreseeable future.” And the latter has only the conclusory statement that there is “no significant information that would warrant a change in your client’s custody status.” And neither addresses Angola’s refusal, South Africa’s refusal, the lack of any third-country options, or Petitioner’s extensive family ties in the United States.

The regulation was designed to prevent this type of non-individualized, arbitrary decision. *See Rokhfirooz*, 2025 U.S. Dist. LEXIS 377518, at \*5-12 (finding a revocation unlawful where ICE failed to conduct the required prompt informal interview and factual finding). As a judge in this District recently held on similar facts—there, “[t]he Notice of Revocation of Release indicate[d] there was “a determination that there are changed circumstances in [Petitioner’s] case” and that he is to remain in ICE custody “pursuant to 8 C.F.R. § 241.4/ 8 C.F.R. § 241.13,”

“[s]imply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough.” *Sarail A. v. Bondi*, --- F. Supp. 3d ---, 2025 U.S. Dist. LEXIS 171005, 2025 WL 2533673, at \*10 (D. Minn. 2025). “Petitioner must be told what circumstances had changed or why there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in

1 opposition.” *Id.* Indeed, ICE’s conclusory explanations for  
2 revoking Petitioner’s release “did not offer him adequate notice  
3 of the basis for the revocation decision such that he could  
4 meaningfully respond at the post-detention informal interview.

5 *Phakeokoth v. Noem*, No. 3:25-cv-02817-RBM-SBC, 2025 U.S. Dist. LEXIS 220365, at  
6 \*11-12 (S.D. Cal. Nov. 7, 2025).

#### 7 **IV. THE GOVERNMENT’S “PROGRESS” ARGUMENT IS A** 8 **SPECULATIVE PRETEXT FOR UNLAWFUL DETENTION**

9 The government’s central factual assertion is that it has “worked diligently to  
10 execute his removal” and that this “progress” justifies detention. Response at 5. This  
11 argument collapses under scrutiny. Respondents’ proof of “progress” is a December 5,  
12 2025, email from HQ-RIO stating it is “actively working” with other agencies.  
13 *Arredondo Decl.* ¶ 22. Courts have rejected this kind of vague assurance as insufficient to  
14 meet the *Zadvydas* burden. *See Vaskanyan v. Janecka*, No. 5:25-cv-01475-MRA-AS,  
15 2025 U.S. Dist. LEXIS 137846, at \*16 (C.D. Cal. July 18, 2025) (“Respondents’  
16 nonspecific removal efforts may be ongoing, see *id.*, but as the Court previously  
17 explained, ‘good faith efforts to effectuate . . . deportation’ do not demonstrate the  
18 lawfulness of continued detention” (quoting *Zadvydas*, 533 U.S. at 702.”); *Conchas-*  
19 *Valdez v. Casey*, No. 25-cv-02469-DMS-JLB, 2025 U.S. Dist. LEXIS 202410, at \*10  
20 (S.D. Cal. Oct. 6, 2025) (“Even if the Court were to accept Respondents’ efforts as  
21 ‘diligent’ and in good faith, ‘the [G]overnment cannot detain someone just because ICE  
22 is still making good faith efforts to remove them.’ “[T]he reasonableness of Petitioner’s  
23 detention does not turn on the degree of the [G]overnment’s good faith efforts. . . .  
24 Rather, the reasonableness of Petitioner’s detention turns on whether and to what extent  
25 the [G]overnment’s efforts are likely to bear fruit.”) (quoting petition and *Hassoun v.*  
26 *Sessions*, No. 18-CV-586-FPG, 2019 U.S. Dist. LEXIS 451, 2019 WL 78984, at \*5  
27 (W.D.N.Y. Jan. 2, 2019)).

28 More damning is the “cart-before-the-horse” nature of ICE’s actions, which proves  
the May 29, 2025 revocation was a pretext. The government admits it did not even begin  
contacting Angola until July 3, 2025—more than a month *after* detaining Petitioner—and

1 that it did not begin to contact third countries until July 30, 2025—more than two months  
2 *after* detaining him. Arredondo Decl. ¶¶ 16, 19. ICE did not conduct the required prompt  
3 informal interview until October 24, 2025—148 days after ICE detained him unlawfully.  
4 Petition ¶ 33. This is not a coincidence; it is policy. ICE’s own Assistant Director for  
5 Enforcement and Removal Operations, Thomas Giles, testified that under the  
6 administration’s policy, the agency does not begin working on identifying a third country  
7 until *after* taking an individual into custody:

8 Q: To what extent, if at all, does that work [to identify a third  
country] begin prior to ICE taking custody of the alien?

9 A: That does not happen until the individual is in ICE custody.  
10 We don’t work these cases that are in other jurisdictions. They  
are not worked until they arrive in ICE custody.

11 Evid. Hr’g Tr. at 26–27, *Abrego Garcia v. Noem*, No. 8:25-cv-00951-PX (D. Md. July  
12 10, 2025) (attached as Exhibit A).

13 This testimony proves that on May 29, 2025, ICE had no factual basis to determine  
14 that Mr. Joseph’s removal was reasonably foreseeable. It detained him first and only then  
15 began the work required to justify the detention. This is the opposite of the individualized  
16 determination mandated by 8 C.F.R. § 241.13(i) and violates the Due Process Clause.

17 V. **THE GOVERNMENT’S RELIANCE ON THIRD-COUNTRY  
18 REMOVAL IS UNFOUNDED AND DOES NOT SATISFY ITS  
ZADVYDAS BURDEN**

19 Respondents hang their hat on the possibility of third-country removal, citing  
20 “recent developments in international relations.” Response at 4. This is pure speculation.  
21 The record shows that two countries, Angola and South Africa, have explicitly refused to  
22 accept Petitioner. Arredondo Decl. ¶¶ 17-20. Respondents offer no agreement with a third  
23 country, no travel documents, and no timeline for securing either. Their request that the  
24 Court “grant the Government appropriate leeway” (Response at 5, citing *Zadvydas*, 533  
25 U.S. at 700) is a request to ignore the facts and the law. *Zadvydas* requires deference to  
26 foreign policy judgments, not a suspension of the constitutional prohibition on indefinite  
27 detention. To allow detention on this basis of a hypothetical solution would be to sanction  
28 the indefinite detention regime that *Zadvydas* and the INA were designed to prevent.

1 VI. CONCLUSION

2 The government's Response fails to address the fundamental statutory and  
3 procedural defects in Petitioner's detention. The government's authority to detain expired  
4 in 2008, the revocation of supervision was void under the *Accardi* doctrine, and the  
5 government cannot meet its burden under *Zadvydas* to show that removal is reasonably  
6 foreseeable. Petitioner asks the Court to grant the writ of habeas corpus and order his  
7 immediate release.

8 Dated: December 19, 2025 Respectfully submitted,

9  
10 /s/ Teodora D. Purcell  
Teodora D. Purcell

11  
12 By: /s/ Joshua A. Altman  
Joshua A. Altman

13 Attorneys for Petitioner  
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