

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

MUSSA BABBA EMMANUEL)
)
 Petitioner,)
)
 v.)
)
JASON STREEVAL, Warden, Stewart)
 Detention Center; **GEORGE STERLING**,)
 Acting Director of Atlanta U.S. Immigration)
 and Customs Enforcement; **KRISTI)
 NOEM**, Secretary of the U.S. Department)
 of Homeland Security; and **PAM BONDI**,)
 Attorney General of the United States,)
 in their official capacities,)
)
 Respondents.)
 _____)

**PETITION FOR WRIT OF
HABEAS CORPUS**

Case No.: 4:25-cv-00486-CDL-AGH

**PETITIONER’S RESPONSE IN OPPOSITION TO RESPONDETS’
MOTION TO DISMISS**

COMES NOW Petitioner, by and through the undersigned counsel, and hereby files his Opposition to Respondents’ Motion to Dismiss. Petitioner respectfully submits the following in support thereof, demonstrating that this Court retains jurisdiction to review the lawfulness of his continued detention and that the Petitioner states a viable claim for relief under *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L.Ed.2d 653 (2001) and the Fifth Amendment of the US

Constitution.

FACTUAL AND PROCEDURAL HISTORY

Petitioner Mussa Baba Emanuel, is a native and national of Liberia who has been continuously detained by the Department of Homeland Security (hereinafter “DHS”), Immigration and Customs Enforcement (hereinafter “ICE”), the Stewart Detention Center since June 15, 2025. Petitioner was taken into ICE custody while reporting for a scheduled ICE check-in appointment pursuant to a longstanding Order of Supervision, since 2004 under which he had remained fully compliant for more than twenty years. See generally Doc. 1 and 3, Petition for Habeas Corpus and Amended Petition; see also Exhibit 1, Declaration of Mussa Baba Emmanuel, attached and incorporated herein.

Petitioner entered the United States in October 1995 after being displaced by the Liberian civil war. Due to the conflict, he entered without identity documents. He was later ordered removed *in absentia*, but was taken into immigration custody in 2003 and after not being able to execute he was released on an Order of Supervision on March 17, 2004. From that time until June 2025, Petitioner faithfully reported to ICE, complied with all supervision requirements, and committed no violations. Id.

Petitioner has always cooperated with ICE requests to obtain travel and/or

identity documentation and never refused to cooperate with removal efforts. To the contrary, he has consistently attempted to establish his Liberian nationality. The Embassy of Liberia has repeatedly refused to acknowledge him as a Liberian citizen, despite his cooperation and repeated efforts to obtain documentation. Petitioner has no known family members in Liberia who can assist in identity verification, having lost contact with his parents during the civil war, whom he believes are deceased. Id.

On July 16, 2025, Petitioner was interviewed via video by representatives of the Liberian Embassy while detained. Id., Doc. 6-1 paragraph 25. Petitioner stated, as he always has, that he is Liberian and answered all questions to the best of his ability. Id. No travel document was issued and according to ICE, the Liberian Government allegedly refused to issue Petitioner a travel document and “concluded Petitioner was not a citizen of Liberia” on December 15, 2025. Doc. 6-1. However, from July 16, 2025 until January 6, 2026, ICE had no meaningful communication with Petitioner regarding progress toward removal, nor provided him with the required 90 and 180-day custody reviews as required by 8 CFR § 241.4. See Exhibit 1.

Petitioner filed the instant habeas petition on December 18, 2025 and an Amended Petition on December 22, 2025 (Doc. 3). The Court issued a show cause

order on December 23, 2025 (Doc. 4). Prior to the response to the Show Cause Order being due, Respondents organized a video interview with Petitioner where he was interviewed by representatives of the Consulate of Ghana, a country he has never lived in or visited. See Exhibit 1. The interview was purportedly conducted to determine Petitioner's Ghanaian and/or Liberian nationality. The Ghanaian Officials purported to ask questions of Petitioner in Liberian English (Kreyol).¹ Petitioner answered questions truthfully in English and explained that while he understands, he is no longer proficient in speaking it after more than forty years outside Liberia. Id.

Petitioner did not refuse to answer questions or decline to cooperate but rather answered truthfully in English and explained that he has no living relatives that he is in contact with in Liberia. Id. He has been unable to provide any documentation to prove his Liberian Citizenship for the last 24 years and the Liberian Government has refused to acknowledge his citizenship or provide him with travel documents. Id. Petitioner is not from Ghana and logically cannot provide any information or documentation to prove citizenship from a country he does not come from. DHS has previously released him on an order of supervision due to these facts. See Doc. 3-3;

¹ Liberian English, "Kreyol" the creolized variety spoken by most Liberian speakers of English. It is the Liberian descendant of the West African Pidgin English that developed all along the West African coast in the eighteenth century. Singler, John Victor (1997). "The configuration of Liberia's Englishes". *World Englishes*. 16 (2): 205-231. <https://onlinelibrary.wiley.com/doi/10.1111/1467-971X.00060>

Doc. 6-11, Order of Supervision dated March 17, 2004. He has not violated his conditions of release and no material events justifying his re-detention have occurred.

On January 13, 2026, after nearly 7 months in ICE detention and several weeks after he filed the instant Habeas Petition, ICE served him with a “Notice of Revocation of Release.” See Doc. 6-13. Said document informed him that his “case was under review by the Liberia for the issuance of a travel document.” Id. Furthermore, on January 9, 2026 ICE served Petitioner with a “Notice of Failure to Comply Pursuant to 8 CFR 241.4(g).” Said document alleged that he was “uncooperative in answering questions from the consulate of Ghana.” See Doc. 6-12. However, the questions asked by the consulate of Ghana, where he is not from, were all allegedly regarding his Liberian citizenship. Moreover, as explained by Petitioner in his attached Declaration, he did answer the questions asked of him in Kreyol, he just answered in English. The other “uncooperative” behavior was his inability to provide the Ghanaian consular officials information about his relatives in Liberia, when he is unable to do so due to the fact that he is an only child and lost contact with his family over 40 years ago. See Exhibit 1. Any allegation that he “failed to comply” rests solely on ICE’s speculation regarding his nationality, not on any refusal or obstruction by Petitioner.

Throughout his most recent detention, ICE has failed to provide Petitioner with required 90-day and 180-day post-order custody review under 8 CFR § 241.4. Petitioner was detained, despite having complied with supervision for decades. He has completed all criminal probations, has not been arrested for more than twenty years, and poses no danger to the community. See Exhibit 2, copy of letter from Douglasville Probation Office, dated July 22, 2008.

Respondents filed their answer to the order to show cause, on January 13, 2026. The response, aside from providing Petitioner's criminal history from 25 years ago, purports to show that Petitioner's supervised release has revoked on January 9, 2026, nearly seven months after he was re-detained and based upon supposed uncooperative behavior with officials from the Ghanaian consulate, a country he is not from, who allegedly asked about his citizenship from Liberia, the completely different country from their own. See generally Doc. 6. The "Revocation of Release" dated January 13, 2026 appears to falsely allege that Petitioner can be "expeditiously removed" to Liberia. See Doc. 6-13. This is despite the fact that ICE has not been able to do so for approximately 24 years, after previously holding him for well over 2 years until releasing him in March of 2004.

Petitioner has substantial ties to the United States, including a U.S. citizen spouse and two U.S. citizen children, twins age nine. His spouse has obtained

approval of an immigrant visa petition filed on his behalf. See Doc. 3-4. Despite an additional more than six months of post-order detention, DHS has not demonstrated a significant likelihood of removal in the reasonably foreseeable future.

Petitioner remains detained solely because DHS has been unable to establish his nationality or obtain travel documents—circumstances entirely outside Petitioner’s control—resulting in prolonged detention that no longer bears a reasonable relation to the purpose of removal.

Petitioner therefore filed this action to challenge his continued post-order detention, which now exceeds six months without a significant likelihood of removal in the reasonably foreseeable future. Because Petitioner has cooperated with all removal efforts and has plausibly alleged ongoing detention in violation of *Zadvydas v. Davis* and the Fifth Amendment, Respondents’ Motion to Dismiss should be Denied.

ARGUMENT AND CITATION OF AUTHORITY

- 1. Petitioner states a viable claim under *Zadvydas* because he has cooperated with removal efforts and there is no significant likelihood of removal in the reasonably foreseeable future.**

A) Petitioner has fully cooperated with all removal efforts

The basis of Respondents’ Motion to Dismiss [Doc. 6] rests on the contention that Petitioner’s *Zadvydas* claim is premature or barred because he allegedly failed

to comply with removal efforts, thereby tolling the presumptively reasonable six-month detention period under 8 U.S.C. § 1231(a)(1)(C). This argument fails as a matter of both law and fact.

Under *Zadvydas v. Davis*, post-order detention becomes unconstitutional if it exceeds six months, and there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L.Ed.2d 653 (2001). While DHS may continue detention beyond six months where a noncitizen affirmatively acts to prevent removal, tolling applies only when the detainee's conduct is the actual cause of the failure to remove. See *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019).

Here, Petitioner has not refused to cooperate, declined to sign travel documents, or otherwise obstructed removal. To the contrary, the record shows that Petitioner has consistently stated that he is Liberian, has answered all questions posed by foreign consular officials, and has repeatedly attempted—unsuccessfully—to obtain confirmation of his nationality from the Liberian Embassy. The inability to effectuate removal stems from foreign government refusal and uncertainty regarding nationality, not from any obstruction by Petitioner.

The Eleventh Circuit cases relied upon by DHS are distinguishable. In *Vaz v. Skinner*, 634 F. App'x 778 (11th Cir. 2015), the petitioner explicitly refused to sign

travel documents. In *Linares v. Dep't of Homeland Sec.*, 598 F. App'x 885, 887 (11th Cir. 2015), and *Oladokun v. U.S. Attorney Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012), petitioners affirmatively thwarted removal through noncooperation. No such facts are present here.

Where, as here, removal is delayed because receiving countries refuse to issue travel documents; detention is not justified under *Zadvydas*. See *Zadvydas*, 533 U.S. at 684-86 (finding detention unlawful where no country would accept petitioner); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.4 (11th Cir. 2002) (tolling applies only where alien's actions prevent removal). Mere speculation by DHS regarding nationality, or compliance with Petitioner's answers during consular interviews, does not constitute noncompliance under § 1231(a)(1)(C).

DHS's claim that the Petitioner failed to comply with removal efforts is based on speculation not evidence. Petitioner declares under penalty of perjury that he has consistently asserted his Liberian nationality, participated in consular interviews with both Liberia and Ghana, and answered all questions to the best of his ability. He explained that while he understands Liberian English (Kreyol), he is no longer proficient in speaking it after more than forty years outside Liberia and therefore responded in English. He also explained that he has no known family in Liberia who can assist with identity verification due to separation during civil war. These facts

demonstrate cooperation, not obstruction, and DHS's disagreement with Petitioner's answers does not constitute noncompliance under 8 U.S.C. § 1231(a)(1)(C).

Moreover, it would appear put the Respondents have attempted to manufacture a reason for non-compliance weeks after Petitioner filed his habeas corpus Petition with this Court and the Court ordered respondents to show cause why the petition should not be granted. That Respondents have attempted to use officials from the Ghanaian Consulate to ask questions of petitioner regarding his Liberian citizenship in order to try to show that he is not from Liberia and is somehow therefore not cooperating is at the very least disingenuous.

B) There is no significant likelihood of removal in the reasonably foreseeable future.

Just as DHS was unable to obtain travel documents for Petitioner more than twenty years ago, it remains unable to do so today. Petitioner was previously detained for over two years before being released under supervision in 2004 due to the government's inability to effectuate removal. Despite renewed detention beginning in June 2025, DHS has not obtained travel documents from Liberia or any other country, nor has it demonstrated that removal is more likely now than it was at the time of Petitioner's prior release. The underlying impediment to removal—a foreign government refusal or inability to confirm nationality—has not changed.

Accordingly, DHS has not shown significant likelihood of removal in the reasonably foreseeable future as required to justify continued post-order detention under *Zadvydas*.

2. This Court has jurisdiction to review petitioner's detention and DHS's failure to comply with governing regulations.

DHS argues that the Court lacks subject matter jurisdiction because Petitioner challenges ICE/ERO's discretionary decision to revoke his Order of Supervision (hereinafter "OSUP") and re-detain him. This argument misconstrues both the nature of Petitioner's claim and the scope of the jurisdiction-stripping provisions on which DHS relies.

A. Petitioner does not seek review of a discretionary enforcement decision but challenges the lawfulness of his detention and DHS's failure to follow mandatory regulations.

Petitioner does not ask this Court to second-guess ICE/ERO's discretionary weighing of evidence or to substitute its judgement for that of the agency. Rather, Petitioner alleges that DHS failed to comply with binding regulations governing post-order supervision and re-detention, and that this failure resulted in unlawful detention in violation of the Fifth Amendment.

Specifically, Petitioner alleges that he was re-detained after decades of

compliance with an Order of Supervision without cause or appropriate reason as required by 8 C.F.R. § 241.4(1)(2), and without adherence to the procedural safeguards set forth in 8 C.F.R. § 241.4. Claims alleging that an agency failed to follow its own regulations state a cognizable procedural due process claim and fall squarely within habeas jurisdiction. See *Orellana*, 2025 LX 369492, 2025 WL 2444087, at *5 (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954))

Courts have long recognized that “where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.” *Id.* Petitioner’s claim is therefore not a challenge of discretion, but to the legality of the process by which he was deprived of liberty.

B. Section 1252(g) does not bar review of Petitioner’s procedural due process claim.

DHS’s reliance on 8 U.S.C. § 1252(g) is misplaced. That provision is narrowly limited to challenges arising from the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. AADC*, 525 U.S. 471, 482 (1999). It does not bar constitutional or statutory challenges to the conditions or legality of detention itself.

Petitioner does not challenge the government's authority to execute his

removal order. He challenges the lawfulness of his continued civil detention, including DHS's failure to follow its own regulations governing supervision and re-detention. The Supreme Court has repeatedly confirmed that such claims remain subject to habeas review. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001); *Jennings v. Rodriguez*, 138 S. Ct. 830, 852 (2018). Accepting DHS's position would impermissibly expand § 1252(g) to bar any detention challenge merely because a final order of removal exists—an interpretation the Supreme Court has expressly rejected. *See AADC*, 525 U.S. at 482 (emphasizing narrow scope of § 1252(g)).

C. Section 1252(a)(2)(B)(ii) does not strip jurisdiction over procedural due process or legal claims.

Nor does 8 U.S.C. § 1252(A)(2)(B)(ii) deprive this Court of jurisdiction. That provision bars review only of decision that Congress expressly committed to agency discretion, and it does not preclude review of constitutional claims or questions of law. *Kucana v. Holder*, 588 U.S. 233 (2010).

Petitioner's claim does not contest ICE/ERO's discretionary authority under 8 U.S.C. § 1231(a)(6) to detain certain noncitizens. Instead, Petitioner alleges that DHS failed to comply with the regulatory limits it placed itself in exercising that authority. Courts routinely retain jurisdiction to review whether an agency complied

with its own regulations, even where the underlying decision involves discretion. See *Accardi*, 347 U.S. at 268. Moreover, as previously pointed out above: “[t]he Supreme Court has recognized that a federal agency’s failure to comply with its own regulations generally renders the associated agency action unlawful.” *Orellana*, 2025 WL 2444087, at *5 (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)).

Furthermore, as quoted in *Y.J.F.R. v. Woosley*, 4:25-cv-142-DJH, KYWD (Nov. 12, 2025):

“[8 USC] Section 1231 generally governs the process for when noncitizens are detained, issued an order of removal, and subject to removal and supervision.” *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *3 (W.D. Ky. Sep. 4, 2025). Specifically, that provision permits certain noncitizens, pending their order of removal and after a statutorily defined removal period, to be “subject to supervision under regulations prescribed by the Attorney General.” § 1231(a)(3).

“Absent the noncitizen’s violation of [her] conditions of release, in very limited circumstances, certain [U.S. Immigration and Customs Enforcement (ICE)] officials have the ‘authority, in the exercise of discretion, to revoke release and return to [ICE] custody an alien previously approved for release.’” *K.E.O.*, 2025 WL 2553394, at *3 (third alteration in original) (quoting 8 C.F.R. § 241.4(l)(2)). Release may be revoked when, in the revoking official’s judgment,

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

8 C.F.R. § 241.4(l)(2).

None of the these narrow circumstances apply here. “These regulations plainly provide due process protections to [noncitizens] following the removal period as they are considered for continued detention, release, and then possible revocation of release.” *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025). Respondents have failed to follow their regulations in this case and therefore their actions in detaining Petitioner without due process are clearly unlawful and in violation of the Constitution of the United States.

Section 1252(g) is narrowly limited to three discrete actions: the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. AADC*, 525 U.S. 471, 482 (1999). Courts have repeatedly held that § 1252(g) does not bar constitutional or statutory challenges to prolonged detention. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (recognizing continued habeas jurisdiction over detention challenges); *Zadvydas*, 533 U.S. at 688.

Accordingly, because Petitioner challenges the legality of his continued detention and DHS’s failure to comply with mandatory regulatory and constitutional limits—rather than any discretionary enforcement judgment—this Court retains jurisdiction to review his claims.

Conclusion

Therefore, for the reasons noted above, Petitioner has plausibly alleged that

his continued post-order detention exceeds the limits recognized in *Zadvydas v. Davis* and that DHS failed to comply with its own regulations governing re-detention after release on an Order of Supervision. Because Petitioner challenges the lawfulness of his detention, a significant likelihood of removal in the reasonably foreseeable future, Respondents' Motion to Dismiss should be denied.

This 27th day of January, 2026.

THE FOGLE LAW FIRM, LLC

/S/ H. Glenn Fogle, Jr.

by: H. Glenn Fogle, Jr.

Georgia Bar. No. 266963

Attorney for the Petitioner

75 14th Street NE, Suite 3050
Atlanta, GA 30309
Tel.: (404) 522-1852
Fax.: (470) 592-6989
Email: glenn@foglelaw.com

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1D, that the foregoing has been prepared using New Times Roman, 14-point font.

This 27th day of January, 2026.

THE FOGLE LAW FIRM, LLC

/S/ H. Glenn Fogle, Jr.
by: H. Glenn Fogle, Jr.
Georgia Bar. No. 266963
Attorney for the Petitioner

75 14th Street NE, Suite 3050
Atlanta, GA 30309
Tel.: (404) 522-1852
Fax.. (470) 592-6989
Email: glenn@foglelaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via the court's electronic case filing system on January 27, 2026, which automatically sends an electronic copy of the attached to the counsel for Respondents:

Michael P. Morrill michael.morrill@usdoj.gov

This 27th day of January, 2026.

THE FOGLE LAW FIRM, LLC

/S/ H. Glenn Fogle, Jr.
by: H. Glenn Fogle, Jr.
Georgia Bar. No. 266963
Attorney for the Petitioner

75 14th Street NE, Suite 3050
Atlanta, GA 30309
Tel.: (404) 522-1852
Fax.: (470) 592-6989
Email: glenn@foglelaw.com