

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MEYERS DIVISION

STEPHEN O. BANJOKO,

Plaintiff-Petitioner,

v.

KEVIN J. RAMBOSK, *et al.*,

Defendants-Respondents.

Civil No. 2:26-cv-00058-KCD-DNF

REPLY IN SUPPORT OF HABEAS PETITION

COMES NOW Plaintiff-Petitioner Stephen Olusegun Banjoko, in accordance with Local Rule 3.01(e), and this Court's Order granting leave to file this Reply (Dkt. No. 11), and respectfully provides as follows:

I. DHS Has Not Demonstrated a Significant Likelihood of Removal in the Reasonably Foreseeable Future ("SLRRFF").

DHS avers that removal is reasonably foreseeable based on ongoing diplomatic engagement and asserted cooperation by Nigeria. *See* Response to OSC (Dkt. 9) at pp. 4–6. That assertion is materially indistinguishable from the speculative representations rejected in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and by district courts across the Nation.

The factual record alleged in the Petition demonstrates otherwise. *See* Habeas Petition (Dkt. 1) at ¶¶ 20–24, 36–40. DHS detained Mr. Banjoko for approximately nine (9) months under § 1231(a)(6) from July 2012 through

April 2013 but failed to effectuate his removal to Nigeria. *Id.* ¶ 20; Exh. A at 4–5. DHS then released Mr. Banjoko under an Order of Supervision (“OSUP”) because removal was not significantly likely in the reasonably foreseeable future. *Id.* ¶ 21. Mr. Banjoko was compliant with OSUP for over twelve (12) years. *Id.* at ¶¶ 22–24.

Nothing has changed. Nigeria has not issued travel documents; no third country has agreed to accept Mr. Banjoko; and DHS identifies no issued passport, confirmed acceptance, scheduled removal date, or individualized timeline. *See* Dkt. No. 1 ¶¶ 39, 69, 73. Abstract possibility is not SLRRFF.

Under *Zadvydas*, once a noncitizen provides good reason to believe removal is not significantly likely, “the Government must respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701. Conclusory declarations do not suffice. *Id.* at 690–91.

The Eleventh Circuit has repeatedly recognized that detention under § 1231(a)(6) is constitutionally constrained. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002); *Madu v. U.S. Att’y Gen.*, 470 F.3d 1362, 1366–67 (11th Cir. 2006). Courts within this District have rejected materially identical arguments by DHS in recent months. *See Beltran v. Ripa*, No. 2:25-cv-01174-SPC-NPM, 2026 U.S. Dist. LEXIS 273, at *3–6 (M.D. Fla. Jan. 5, 2026); *Barrios v. Ripa*, 2025 U.S. Dist. LEXIS 153228, at *17–22 (S.D. Fla. Aug. 8, 2025). For instance, in *Joseph v. Rhoden*, the Court rejected DHS’s

reliance on a generalized third-country removal theory unsupported by documentation or acceptance, finding such “general procedure” insufficient to establish SLRRFF. *See Joseph v. Rhoden*, No. 3:25-cv-01579-MMH-PDB, 2026 U.S. Dist. LEXIS 20518, at *8–10 (M.D. Fla. Feb. 2, 2026). The same deficiency exists here.

II. Re-Detention Does Not Reset the *Zadvydas* Clock.

DHS implies that because Mr. Banjoko was re-detained in December 2025, the *Zadvydas* clock begins anew. *See* Response to OSC (Dkt. 9) at pp. 6–7. But district courts overwhelmingly reject the notion that DHS may evade constitutional limits through serial release and re-arrest. *See Akinwale*, 287 F.3d at 1052 n.3; *Beltran*, 2026 U.S. Dist. LEXIS 273, at *5–6; *Siguenza v. Moniz*, 2025 U.S. Dist. LEXIS 188746, at *7–9 (D. Mass. Sept. 25, 2025) (“permitting DHS to reset the detention clock upon re-detention would allow the Government to evade constitutional limits through serial release and re-arrest, resulting in de facto periods of indefinite detention”).

In *Joseph*, the Court expressly rejected the argument that the presumptively reasonable period “restarts with each new detention,” concluding that prior detention beyond six months counted toward the constitutional analysis. *Joseph*, 2026 U.S. Dist. LEXIS 20518, at *7–8.

As alleged in Petition, Mr. Banjoko’s removal order became final in 2010. *See* Dkt. 1 ¶¶ 18–19. DHS exercised § 1231(a)(6) authority in 2012, and

released him in 2013, after failing to effectuate removal for over nine (9) months. *Id.* ¶¶ 20–21. For more than twelve (12) years thereafter, DHS permitted him to remain at liberty under supervision without incident. *Id.* ¶¶ 22–24. Allowing DHS to reset the removal period would eviscerate *Zadvydas*.

III. DHS Has Not Demonstrated Materially Changed Circumstances Justifying Revocation of Supervision.

DHS avers its revocation of Mr. Banjoko's Order of Supervision was lawful. *See* Response to OSC (Dkt. 9) at pp. 7–8. It was not. The governing regulations are explicit. Revocation is permissible only upon: (1) violation of release conditions; (2) materially changed circumstances rendering removal significantly likely; or (3) newly discovered information showing the original release was erroneous. *See* 8 C.F.R. §§ 241.4, 241.13; *see Barrios*, 2025 U.S. Dist. LEXIS 153228, at *17–22.

None of those predicates exist. Mr. Banjoko complied fully with supervision for over twelve years. *See* Dkt. No. 1 at ¶¶ 22–24; Exh. B. DHS alleges no violation and identifies no materially changed circumstances. *Id.* ¶¶ 36–40, 69, 72–74. Revocation absent a regulatory predicate is *ultra vires*. *See Grigorian v. Bondi*, 2025 U.S. Dist. LEXIS 175489, at *14–20 (S.D. Fla. Sept. 9, 2025); *Zongbo Zhu v. Genalo*, 2025 U.S. Dist. LEXIS 166176, at *18–23 (S.D.N.Y. Aug. 26, 2025).

Additionally, DHS failed to comply with mandatory procedural safeguards. Federal regulation requires written notice and a prompt informal

interview. *See* 8 C.F.R. § 241.4(l)(1). This case presents an absence of pre-deprivation notice and meaningful opportunity to respond. *See* Dkt. No. 1 ¶¶ 29–31, 83–86. Under *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), agencies must follow their own regulations when liberty is at stake. DHS detained first and papered later. Clearly *post hoc* rationalization does not amount to regulatory compliance mandating pre-deprivation notice.

IV. Same Jurisdictional Arguments Have Been Repeatedly Rejected.

DHS invokes 8 U.S.C. § 1252(g) and § 1252(b)(9). *See* Response to OSC (Dkt. 9) at pp. 3–4. Those arguments have been rejected where the petitioner challenges detention—not the validity of the removal order.

The Supreme Court has narrowly construed § 1252(g). *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Section 1252(b)(9) does not bar detention challenges. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). The Eleventh Circuit recognizes habeas jurisdiction over unlawful detention claims. *Madu*, 470 F.3d at 1366–67. District courts across the nation have rejected DHS’s expansive jurisdictional theory in materially identical cases. *See Joseph*, 2026 U.S. Dist. LEXIS 20518, at *3–4 (exercising jurisdiction); *see also Beltran*, 2026 U.S. Dist. LEXIS 273, at *3–4 (“The INA does not strip the Court of jurisdiction over this action.”); *Escalante v. Noem*, 2025 U.S. Dist. LEXIS 148899, at *9–11 (D. Ariz. Aug. 7, 2025); *Roble v. Bondi*,

2025 U.S. Dist. LEXIS 164108, at *6–9 (D. Minn. Aug. 25, 2025); *Tadros v. Noem*, 2025 U.S. Dist. LEXIS 113198, at *10–14 (D.N.J. June 12, 2025).

Moreover, it is axiomatic that under the longstanding *Accardi* doctrine, federal agencies are bound to follow their own regulations, and that district courts have jurisdiction to enforce that obligation where liberty is at stake. *See Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954). This Court has jurisdiction under 28 U.S.C. § 2241, the Suspension Clause, and long-settled precedent. Habeas remains the historic remedy for unlawful executive detention including immigration detention as here. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

V. Continued Detention Serves No Legitimate Purpose.

DHS waves toward past criminal history. *See* Response to OSC (Dkt. 9) at pp. 2–3. But detention under § 1231(a)(6) is regulatory, not punitive. *Zadvydas*, 533 U.S. at 690.

Mr. Banjoko’s conviction is over two (2) decades old; he has already repaid any debt he owed to society. *See* Dkt. 1 ¶ 17. Moreover, since his release in 2013, Mr. Banjoko built and operates with his U.S. citizen spouse a successful business supporting their three (3) U.S. citizen children and complied faithfully with supervision for over a decade. *Id.* ¶¶ 25–34.

The Due Process Clause protects “freedom from imprisonment—from government custody, detention, or other forms of physical restraint.”

Zadvydas, 533 U.S. at 690. When removal is not significantly likely, continued detention no longer bears a reasonable relation to its purported purpose. *Id.* at 699. It becomes punishment without trial; confinement untethered from statutory objective; and liberty restrained absent constitutional justification.

WHEREFORE, Plaintiff-Petitioner respectfully requests the Court enter an Order: (1) issuing a writ of habeas corpus directing Defendants-Respondents to immediately release him from custody under reasonable conditions of supervision; (2) declaring unlawful and permanently enjoining re-detention of Petitioner-Plaintiff by DHS absent (i) evidence of materially changed circumstances and (ii) sufficient prior written notice to Plaintiff-Petitioner and a constitutionally adequate individualized opportunity to be heard; (3) awarding Plaintiff-Petitioner his reasonable costs and attorneys' fees incurred in this action in accordance with the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(2); and (4) granting such other and further relief as this Court deems appropriate, just, or equitable under the circumstances.

Date: February 27, 2026

Respectfully,

By: /s/ Christopher W. Dempsey
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