IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOUSSA DIAW,

Petitioner

v.

JAMAL L. JAMISON, et al.,

Respondents.

Civil Case No.: 2:26-cv-761

PETITIONER'S REPLY TO RESPONDENTS' ANSWER AND SUPPLEMENTAL BRIEFING

I. INTRODUCTION

Petitioner, Moussa Diaw, has filed the instant Petition for Writ of Habeas Corpus seeking release from detention. Petitioner entered the United States in February 2022 and received an expedited removal order following a negative credible fear interview. Petitioner was released and placed on an Order of Supervision ("OSUP") with U.S. Immigration and Customs Enforcement ("ICE") on March 4, 2022. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention under an order of supervision. Despite his compliance with his supervision requirements, on February 5, 2026, ICE again detained Petitioner at a routine check-in in Philadelphia, Pennsylvania.

Petitioner asserts that his detention does not comport with federal regulations. *See* 8 C.F.R. §§ 241.4, 241.13. Specifically, Petitioner's position is that Michael Rose did not have authority pursuant to § 8 C.F.R. §§ 241.4(l)(2) to revoke Petitioner's release, as the Executive Associate Commissioner of ICE has sole authority to revoke an OSUP, absent conditions which were not met in this situation. Accordingly, Petitioner should be immediately released from ICE Custody, as his OSUP was not properly revoked and should be reinstated.

Additionally, Petitioner reincorporates the arguments raised in the original Petition alleging that Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the Accardi doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

In their Response, Respondents offer no case-specific facts as to why Petitioner was re-detained. Respondents merely allege Petitioner has a "significant likelihood of removal in the

future" – which is not elaborated on by Respondents. Petitioner's detention resulted after appearing for his scheduled check-in, in compliance with OSUP protocols as he had since March 7, 2022.

The government argues that the instant petition should be denied for three reasons: 1) Petitioner's detention is lawful under 8 U.S.C. § 1231 and *Zadvydas v. Davis*, 533 U.S. 678 (2001); 2) revocation of Petitioner's order of supervision complied with the regulations at 8 C.F.R. § 241.4; and 3) Petitioner's detention comports with the Fifth Amendment's Due Process Clause.

Petitioner's detention is unlawful, and in particular, fails to comply with 8 C.F.R. § 241.4 based on the plain wording of the regulation itself and the facts presented. Based upon the foregoing arguments, Petitioner avers that his Petition for Writ of Habeas Corpus be granted, and he should be immediately released from ICE custody.

II. REVOCATION OF PETITIONER'S OSUP WAS UNLAWFUL BASED ON APPLICABLE REGULATIONS

a. Applicability of 8 C.F.R. § 241.13

Respondents first argue that the regulations under 8 C.F.R. § 241.13 do not apply in Petitioner's case, and that 8 C.F.R. § 241.4 is instead applicable here. Respondents contend that 241.13 only applies to aliens who are detained "after the expiration of the removal period, where alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." ECF 4, p. 11 n.4. Respondent state that "Petitioner has been detained for only six days and has not provided any evidence that his removal is not reasonably foreseeable." *Id.*

However, Petitioner was detained in January 2022 upon his entry and remained detained until his release on OSUP in March 2022. His Order of Supervision dated March 4, 2022, stated, "Because the agency has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large" subject to

certain conditions (emphasis added). Thus, ostensibly, the government was unable to remove Petitioner at after he was ordered removed in 2022. Once released under this regulation, the regulations under 8 C.F.R. § 241.13(i) govern the revocation of the individual's release.

Thus, the regulations under 8 C.F.R. § 241.13(i) govern Petitioner's release and revocation. *See Lecky v. Bondi*, No. 2:25-CV-02637-TLF, 2026 WL 266066, at *5 (W.D. Wash. Feb. 2, 2026) ("Here, the government already decided there was no likelihood of removal for Mr. Lecky and allowed him to be released on an OSUP for 10 years. Thus, any revocation must fall under § 241.13.").

b. Requirements under 8 C.F.R. § 241.13

The government failed to follow the governing regulations under 241.13. Regulations under 8 C.F.R. § 241.13 state that ICE may only revoke an order of supervision and re-detain a noncitizen "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

If ICE revokes a noncitizen's Order of Supervision and detains the noncitizen, ICE must notify that noncitizen "of the reasons for revocation of his or her release." 8 C.F.R. § 241.13(i)(3). ICE must "conduct 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." *Id.* The noncitizen has the opportunity to "submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision." *Id.* Finally, "The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a

determination whether the facts as determined warrant revocation and further denial of release." *Id.*

If the noncitizen is not released from custody following the interview, 8 C.F.R. § 241.4 provides purported regulations governing continued detention pending removal. *See* 8 C.F.R. § 241.13(i)(2). These regulations state that an order of supervision may be revoked and a noncitizen may be re-detained past the removal period if: "(1) the purposes of release have been served; (2) the alien violates the condition of release; (3) it is appropriate to enforce a removal order…' or (4) 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). Notably, courts have questioned whether these regulations are ultra vires of statutory authority. *See e.g. You v. Nielsen*, 321 F. Supp. 3d., 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if a person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specific grounds).

Respondents violated governing regulations for revoking Petitioner's conditions of release. *See* 8 C.F.R. § 241.13(i)(2). Petitioner has complied with the conditions of his supervised release, including attending check-ins and providing the information and documentation requested of him. His release may be revoked only if changed circumstances make his removal reasonably foreseeable. Upon such a determination, several procedural steps are required to revoke release, *id.* § 241.13(i)(3), none of which were followed here.

c. Requirements under 8 C.F.R. § 241.4

Further, even if this Court finds that section 241.4 governs instead of 241.13, Respondents failed to comply with the applicable regulations. Respondents argue that the revocation of Petitioner's OSUP was compliant with 8 C.F.R. § 241.4. *See* ECF 5, pp. 10-12. In support of their

argument, Respondents originally stated that an alien's supervised release may be revoked in three instances and attempted to paraphrase the language of 8 C.F.R. § 241.4(l)(2) for the court. *See* ECF 5, p. 3. In this summary, Respondents allege that revocation may occur "if an ICE director, in his discretion, finds revocation is in the public interest to enforce a removal order or if he deems release would no longer be warranted." *Id*. However, the full text of the pertinent regulations reads as follows:

> *Determination by the Service.* The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, **revocation is in the public interest <u>and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner</u>**. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:
>
> > (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) (emphasis added).

Clearly, based on a plain reading of the statue, the district director (Respondent, Michael Rose) has no authority to revoke an OSUP absent: 1) public interest; **<u>and</u>** 2) no ability to refer the case to the Executive Associate Commissioner ("EAC"). This Honorable Court asked Respondents to provide evidence that the above criteria were met in the Court's Order dated February 7, 2026. *See* ECF 7, p. 2. In response, the government simply stated "[a]t this time, the Government does not have any evidence to submit regarding the reasonableness of referral of Petitioner's case to the Executive Associate Director." *See* ECF 8, p. 4.

As stated above, the regulation establishes a clear framework for revocation decisions. The Executive Associate Commissioner has authority to "revoke release and return to Service custody an alien previously approved for release under the procedures in this section." 8 C.F.R. § 241.4. In contrast, district directors possess authority that may only be exercised under specific conditions. A district director may revoke release "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. This provision creates two mandatory prerequisites: the district director must form an opinion that revocation serves the public interest, and circumstances must make referral to the Executive Associate Commissioner impractical.

The equivalent of Executive Associate Commissioner is the Executive Associate Director of Enforcement and Removal Operations. The Executive Associate Commissioner referenced in 8 C.F.R. § 241.4 no longer exists as a distinct position. Under 8 C.F.R. § 1.2, references to "Commissioner" after March 1, 2003, mean "the Director of U.S. Citizenship and Immigration Services, the Commissioner of U.S. Customs and Border Protection, and the Director of U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears." 8 C.F.R. § 1.2. Courts have recognized that the Executive Associate Commissioner position is now equivalent to the Executive Associate Director of ICE. *See Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137 (W.D.N.Y. 2025). For purposes of 8 C.F.R. 241.4, the relevant position would be the Executive Associate Director of Enforcement and Removal Operations, as this directorate oversees immigration detention and removal functions.

In addition, ICE's Notice of Revocation states that under 8 C.F.R. 241.4(l), Petitioner's release was revoked because it is "has the ability and means to effectuate [his] removal." ECF 4-3. Its stated reasons are that ICE "is seeking a travel document to effect your expeditious removal

to Senegal" and "On March 1, 2022, you were ordered removed to Senegal." *Id.* Yet, Respondents did not possess a travel document for Petitioner at that time. Further, ICE separately notified Petitioner that would "not conduct a custody review at this time" pursuant to 8 C.F.R. 241.4(g)(4). Under section (g)(4), a Service will not conduct a custody review under relevant procedures "when the Service notifies the alien that it is ready to execute an order of removal." Yet, the Release Revocation clearly states that ICE was "seeking a travel document to effect" removal, and was not "ready to execute an order of removal." Thus, the government followed to fail the relevant regulations and afford Petitioner adequate notice.

d. Federal Case Law Interpretation of Regulatory Requirements

Federal courts have interpreted 8 C.F.R. § 241.4 as creating strict authority limitations that cannot be circumvented through informal delegation. In *Ceesay v. Kurzdorfer*, the Western District of New York held that an assistant field office director lacked authority to revoke supervised release because ICE's delegation order "refers only to a limited set of powers under part 241 that do not include the power to revoke release." *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137 (W.D.N.Y. 2025). The court emphasized that the regulation "specifically limits the power of anyone who is not the Executive Associate Director to revoke release." *Id.*

The Southern District of New York reached the same conclusion in *Funes v. Francis*, holding that assistant field office directors were not authorized to revoke orders of supervision, stating:

> "The Delegation Order, issued July 25, 2019, delegates authority over certain actions from Nathalie R. Asher, ICE's Executive Associate Director, to 'assistant field office directors.' It gives assistant field office directors '[a]uthority under INA § 241 [8 U.S.C. § 1231] and 8 C.F.R. Part 241, relating to warrants of removal, reinstatement of removal, self-removal, and release of aliens from detention.' Absent from this list of delegated authority, however, is revocation of OSUPs. . . . Respondents have thus not carried their burden to show that the Delegation Order authorized Folajaiye, an acting assistant field office director, to

> revoke Funes' OSUP." *Funes v. Francis*, 25-CV-7549, 2025 WL 3263896, (S.D.N.Y. 2025).

Courts have also scrutinized the procedural requirements for district director involvement. In *Zhang v. Genalo*, the Eastern District of New York found that the assistant field office director did not make the required findings that revocation was in the public interest and circumstances did not reasonably permit referral to the Executive Associate Director, as required by 8 C.F.R. § 241.4(l)(2). 25-CV-06781, 2025 WL 3733542 (E.D.N.Y. 2025). The court noted that "Respondents do not allege, and the record does not reflect, that Robinson made such a determination here." *Id.* at *10.

Ultimately, it is clear that Respondents did not follow the protocols established in 8 C.F.R. § 241.4. As the court in *Ceesay* stated, "this Court cannot conclude that [Respondent] had the authority to revoke release, finds that [Petitioner]'s release was not lawfully revoked, and holds that he is entitled to release on that basis alone." *Ceesay*, 781 F.Supp.3d at 162.

Similarly, a petitioner was released from custody in the Eastern District of Pennsylvania under circumstances strikingly similar to Petitioner here. *See Stewart Rodriguez Dudamel v. JL Jamison*, CV-26-361, 2026 WL 498612 (E.D.P.A. 2026). There, the Court stated:

> "In this case, the Government detained Petitioner in violation of the INA, its regulations, and his due process rights. Given the lack of any factual support that Petitioner's re-detention serves an important governmental interest, the Court finds it unlikely that the same outcome would materialize had the proper procedures been followed. Therefore, Petitioner today is "in custody in violation of the Constitution." 28 U.S.C. § 2241(c)(3). **Accordingly, the Court finds that law and justice requires his immediate release.**" *Id* at *9 (emphasis added).

Accordingly, Petitioner in this matter requests the same determination from this Honorable Court.

III. PETITIONER'S DETENTION AND REVOCATION VIOLATED DUE PROCESS

In addition, Petitioner's detention and revocation of OSUP were a violation of due process. Petitioner has lived in the United States for nearly four (4) years – establishing himself as a law-abiding member of the community. His presence in the United States was birthed by Respondents themselves, who on March 7, 2022, analyzed Petitioner's individualized facts and circumstances, and thereafter granted him release detention pursuant to his OSUP.

Then, abruptly, and without *any specific* reason proffered by Respondents, and certainly without any prior notice to Petitioner, that freedom was ripped away from Petitioner on February 5, 2026, when Petitioner, while continuing to follow Respondents' orders in lockstep, appeared for his scheduled check-in and was detained without notice.

a. Violation of Substantive Due Process

Petitioner's detention and OSUP revocation violated his substantive due process rights. "To show a violation of substantive due process, a plaintiff must demonstrate that his detention served no legitimate government purpose by demonstrating 'a misuse of governmental power that shocks the conscience.'" *Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 42 (E.D. Pa. 2025) (quoting *Desousa v. Garland*, No. CV 21-3961, 2022 WL 1773604, at *3 (E.D. Pa. May 31, 2022)). "In the immigration context, 'the Court must determine whether Plaintiffs' detention is rationally connected to a legitimate government purpose and whether it is excessive in relation to that purpose.'" *Id.* (quoting *Malam v. Adducci*, 469 F. Supp. 3d 767, 790 (E.D. Mich. 2020)). Importantly, the Supreme Court instructs that, "read in light of the Constitution's demands, [Section 1231(a)(6)] limits a [noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States. It does not permit indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

In *Zadvydas*, the Supreme Court established six months as a presumptively reasonable period of detention pursuant to Section 1231(a)(6). *Id.* at 701. However, the Supreme Court made clear that the presumption is rebuttable where "a set of particular circumstances amounts to a detention . . . beyond[ ] a period reasonably necessary to secure removal." *Id.* at 699. To a district court tasked with determining "whether the detention in question exceeds a period reasonably necessary to secure removal[,]" the Supreme Court provides the following guidance:

> [T]he *habeas* court . . . should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the [noncitizen's] presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. In that case, of course, the [noncitizen's] release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the [noncitizen] may no doubt be returned to custody upon a violation of those conditions. And if removal is reasonably foreseeable, the *habeas* court should consider the risk of the [noncitizen's] committing further crimes as a factor potentially justifying confinement within that reasonable removal period. *Zadvydas*, 533 U.S. at 699–700.

Here, Petitioner is being detained because of an immigration official's determination that there is a reasonably foreseeable probability of his removal and some nondescript "changed circumstances." *See* ECF 4, Exh. C. There are no facts to suggest that Petitioner's continued re-detention is required to assure his presence at the moment of removal. Throughout his years of compliance with his OSUP, Petitioner has demonstrated that he will appear to immigration-related proceedings and apprise ICE of his place of residence.

Respondent's allegation that Petitioner's removal is reasonably foreseeable is vague. They have not asserted that any conditions have changed since Petitioner's release, such as having secured a travel document. Respondent makes a baseless assertion to support the detention of Petitioner. There are no facts that justify Respondent's detention, and pursuant to *Zadvydas*, his substantive due process rights have been violated. 533 U.S. at 699-700.

b. Violation of Procedural Due Process

Petitioner's recent detention also violates the Due Process Clause with respect to his procedural Due Process rights, as Petitioner's constitutional rights were solidified when he was, on March 7, 2022, permitted to "pass through our gates." The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. U.S. CONST. amend. V. The Due Process Clause extends to all "persons" regardless of status, including non-citizens, whether here lawfully, unlawfully, temporarily, or permanently. *Zadvydas* at 693. "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." *Matthews v. Eldridge*, 424 U.S. 319, 348 (1976). An alien who is "on the threshold of initial entry" stands on a footing different from those who have "passed through our gates." *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 396 (3d Cir. 1999), amended (Dec. 30, 1999), quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544, 70 S.Ct. 309, 94 L.Ed. 317 (1950)).

To determine whether detention violates procedural due process, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Further, government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances "where a special justification ...

outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas* at 690.

i. Petitioner's Private Interest

First, Petitioner's "private interest . . . affected by the official action is the most elemental of liberty interests—the interest in being free from physical detention." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, (2004). "It is clear that commitment for *any* purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States,* 463 U.S. 354, 361, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (emphasis added; internal quotation marks omitted).

Respondent's reliance on Congress's interest in regulating immigration does little to tip the scales. At this stage in the *Mathews* calculus, the Court must consider the interest of the *erroneously* detained individual. *See Carey v. Piphus,* 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.").

ii. The Risk of an Erroneous Deprivation

As to the second prong of the *Mathews* balancing test, the Court should find that the risk of erroneous deprivation is particularly high here. The issues with compliance with 8 C.F.R. § 241.4 have been outlined at length above. Additionally, Petitioner has provided his own statement regarding the lack of notice and explanation he has been given regarding his detention. *See* ECF 9. Petitioner has raised significant and supported legal arguments against Respondents' detention of Petitioner.

A noncitizen may only be detained beyond the 90-day removal period following a removal order if found to be "a risk to the community or unlikely to comply with the order of removal" or if the order of removal was on specified grounds. 8 U.S.C. § 1231(a)(6). "[W]hen a particular

statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413, 144 S. Ct. 2244, 2273, 219 L. Ed. 2d 832 (2024).

In Petitioner's case, Respondents have presented no evidence in the record suggesting that Petitioner's detention is necessary for any purpose. There is no evidence that Respondent's removal is reasonably foreseeable or that any circumstances have changed that warrant Petitioner's detention. Respondents should not be permitted to exceed the bounds of their authority under 8 U.S.C. § 1231 and 8 C.F.R. § 241.4, 241.13, and this Court must ensure proper application of the laws to Petitioner.

iii. The Government's Interest

The final *Mathews* factor concerns the United States' interest in the proceedings, as well as any financial or administrative burdens associated with permissible alternatives. *See Mathews*, 424 U.S. at 335. Petitioner recognizes that the United States has an interest in meaningful immigration laws that advance its stated policies. However, the United States has an equal and countervailing interest in consistent application of its laws and ensuring that those laws are applied under the proper means. It is not appropriate to circumvent statutes and/or regulations with respect to any person to ensure their continued detention. Respondents may not choose unilaterally when and how to apply duly enacted laws.

The Government's interests in detaining noncitizens are (1) ensuring that noncitizens do not abscond and (2) ensuring they do not commit crimes. *Zadvydas,* 533 U.S. at 690, 121 S.Ct. 2491. Respondents have provided no evidence or argument that Petitioner is either a flight risk or a danger, and the record would indicate that he is neither: he has no criminal record whatsoever, and he has attended all his OSUP check-ins. Respondents used the fact that Respondent reliably

showed up to his ICE appointments *against him*, and chose to detain him at that time. Respondents cannot show that their interest in detaining Petitioner outweighs Petitioner's liberty interests; nor can they show that the effort and cost of providing Petitioner with procedural safeguards is burdensome. Accordingly, all *Mathews* factors weigh heavily in support of Petitioner.

IV. SIGNIFICANCE OF PETITIONER'S PENDING I-130

Finally, Petitioner addresses the significance of his pending I-130 on his ability to regularize his status. Petitioner married his U.S. citizen wife on December 15, 2024, and Petitioner's wife filed an I-130 *Petition for Alien Relative* for him on January 31, 2025. The petition remains pending at this time. Together, they have a five-month-old daughter, who was born in Philadelphia, Pennsylvania on [redacted] They reside together in Philadelphia.

If and when the I-130 petition is approved, Petitioner has a pathway to seek lawful permanent resident status. Respondents point out that Petitioner will be unable to *adjust* his status in the United States. However, USCIS allows individuals with removal orders to file two separate waivers, an I-212 waiver and an I-601A waiver, to overcome eligibility issues associated with the removal order and unlawful presence and to pursue permanent residence at a U.S. Embassy.

Applicable regulations allows for pre-adjudication in the United States of the 3/10 year bar waiver for all persons with qualifying relatives (United States Citizens and Legal Permanent Residents) under the waiver provision. *See* 8.C.F.R. § 212.7. It permits USCIS to grant a Provisional Unlawful Presence Waiver to applicants who qualify, by allowing them to await processing of the waiver while remaining with their family in the United States. A person with a final order of removal who obtains an I-212 waiver first may apply for the provisional waiver, I-601A. *See* 81 FR at 50256. If denied, the applicant may refile or may may refile a waiver request at the U.S. consulate in accordance with current procedures. *See* 8 CFR §212.7(e)(9). Thus,

approval of the I-212 and I-601A waivers will allow Petitioner to obtain a permanent residence through consular processing, after approval of his pending I-130 petition. Thus, while Petitioner will not be able to adjust status within the United States, he may seek waivers while awaiting their adjudication while in the United States, and if approved, he will be eligible to seek lawful permanent resident status through consular processing.

Notably, the government states that ICE conducted a series of checks to "confirm that OSUP revocation was warranted" including that "Petitioner had no hearings, appeals, applications, petitions, or waivers pending." ECF 8, p. 5. This cites the government's I-213, which states that "[n]umerous checks" with DHS and DOJ showed "no hearings, appeals, applications, petitions, or waivers pending." ECF 4-1, p. 2. Yet, on the same page, ICE states that Petitioner's spouse had filed an I-130 petition on January 31, 2025, and that the "petition is in process." *Id.*

Petitioner's adherence to the immigration regulations and diligence in pursuing Lawful Permanent Residence in the United States show that he is a person of good moral character and well intentioned. Moreover, the fact that Petitioner had his release revoked unlawfully is dispositive in this matter, and his eligibility for lawful status is a tangential issue in this matter and does not override the fact that Petitioner has been unlawfully detained.

V. CONCLUSION

Petitioner respectfully requests that this Honorable Court grant this petition for writ of habeas corpus because he is detained in violation of federal law and/or the Constitution. Petitioner further requests this court order his immediate release from custody.

Respectfully Submitted,

Date: February 27, 2026

s/Caitlin Costello

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