Natalie M Richman, Esq.
Global Immigration Legal Team, LLC
150 Strafford Avenue, Suite 115
Wayne, PA 19087
p. 610-975-4599
f. 610-687-2100
natalie@giltlaw.com

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

KWADWO HUMPHREY

Petitioner,

v.

JOHN RIFE, Acting Field Office Director of Enforcement and Removal Operations, Philadelphia Field Office, IMMIGRATION AND CUSTOMS ENFORCEMENT;

Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY;

Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

Jamal LAWRENCE, Warden of PHILADELPHIA FEDERAL DETENTION CENTER.

Respondents.

Case No. 26-1822

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This case challenges the unlawful detention of Kwadwo Humphrey, who is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Philadelphia Federal Detention Center. Petitioner is neither a flight risk nor a danger to the community. But on March 18, 2026, ICE detained him without notice or opportunity to be heard, on, upon information and belief, the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.
2. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously reviewed the Petitioner's case at a recent ICE check-in on January 20, 2026, less than two months ago. Since then, Petitioner has fully abided by the order's terms, as he has been doing for approximately sixteen (16) years, the period of time that he has been under an Order of Supervision. *See* Exh. A.
3. Despite this fact, on March 18, 2026, Respondents suddenly revoked Petitioner's order of supervision and arrested him. He was arrested at a check-in at the Dover, DE ICE office.
4. Upon information and belief, the Petitioner is detained at the Federal Detention Center in Philadelphia, Pennsylvania. *See* Exh. B.
5. Respondent's actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, and the Administrative Procedure Act.
6. Petitioner brings this action for injunctive, habeas, and declaratory relief ordering Respondents to release him.

JURISDICTION

7. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Philadelphia Federal Detention Center in Philadelphia, Pennsylvania. *See* Exh. B.

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of Pennsylvania, the judicial district in which Petitioner currently is detained.

11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the

writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

14. Petitioner Humphrey is a citizen of Ghana who has lived in the United States for approximately twenty-four (24) years. Prior to Petitioner's detention on March 18, 2026, he was residing at [redacted]. He and his wife, and their two young daughters have been living there for approximately ten (10) years.

15. Respondent John Rife is the Acting Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operations division. In this capacity he is responsible for the custody of all noncitizens detained by ICE at FDC, Philadelphia, where the Petitioner was initially detained, and has the authority to order the release Petitioner or transfer him to a different facility. Respondent Rife is one of the Petitioner's immediate custodians and is sued in his official capacity.

16. Respondent Todd Lyons is the Acting Director of ICE. In this capacity he is responsible for enforcing immigration laws, and as such is a legal custodian of the Petitioner. He is sued in his official capacity.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. In this capacity she runs the Department of Homeland Security and is charged pursuant to 8 U.S.C. § 1103(a)(l) with administering and enforcing immigration laws. She is the ultimate legal custodian of the Petitioner and is sued in her official capacity.

18. Respondent Department of Homeland Security (DHS) is the agency of the federal government responsible for enforcing the immigration laws. DHS is also the Petitioner's legal custodian.

19. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice. Ms. Bondi shares responsibility for the implementation and enforcement of immigration laws along with Respondent Noem. Ms. Bondi is a legal custodian of the Petitioner. She is sued in her official capacity.

20. Respondent Jamal Lawrence is the Warden of the Federal Detention Center. In this capacity, he is responsible for the custody of all individuals detained at the facility, where, upon information and belief, the Petitioner is currently located. In this capacity, he is responsible for the custody of the Petitioner. He is sued in his official capacity.

FACTS AND PROCEDURAL HISTORY

21. Petitioner is fifty-six (56) years old and came to the United States from Ghana approximately twenty-four (24) years ago. Petitioner has resided in the United States continuously since then.

22. Petitioner originally entered the United States on a B1/2 visitor visa on May 19, 2003. *See* Exh. C.

23. He was placed into removal proceedings on or around 2009, and a Notice to Appear was issued, indicating that a hearing would be set and that he would be apprised of the time and the date for said hearing. See Exh. D

24. Petitioner was ordered removed on November 12, 2009. *See* Exh. E.

25. Petitioner, through prior counsel, sought to have the removal order reopened by the Immigration Judge, who denied the motion on October 24, 2018. *See* Exh. F.

26. Petitioner, through prior counsel, appealed the Immigration Judge's denial to the Board of Immigration Appeals, who denied the appeal on April 26, 2019. *See* Exh. G.

27. Petitioner is also the beneficiary of an approved immediate relative petition (Form I-130) filed on his behalf by his wife, a US citizen, and Petitioner will be eligible to obtain an immigrant visa based upon that approved petition once his I-601-A waiver is approved. *See* Exh. H.

28. As noted previously, Petitioner had a check-in with ICE on January 20, 2026, where his case was reviewed, and he was scheduled for another appointment at ICE's Dover office on March 18, 2026.

29. Since ICE released Petitioner on a continuing order of supervision, Petitioner has complied with all conditions of the order. He has never missed a check in with ICE over the sixteen (16) or so years that he has been reporting.

30. More importantly, since his last check in on January 20, 2026, no circumstances have changed that make Petitioner a flight risk or danger to the community.

31. Upon information and belief, at no time following Petitioner's arrest did ICE explain why it revoked Petitioner's order of supervision or give him an opportunity to respond to any reasons.

32. Upon information and belief, at no time was a reason given for ICE to revoke the decision that it made only two months before, with absolutely no changed circumstances.

LEGAL FRAMEWORK

I. Due Process Governs Decisions to Revoke an Order of Supervision

33. "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."

Zadvydas v. Davis, 533 U.S. 678, 693 (2001) (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690.

34. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

35. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen's order of supervision. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id*. at 333.

II. Statute and Regulation Govern Procedures for Revoking an Order of Supervision

36. A non-citizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period").

37. A non-citizen may only be detained past 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. Id. § 1231(a)(6).

38. But even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable

and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Zadvydas v. Davis*, 533 U.S. at 699-700.

39. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any 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); *see also id*. § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot circumvent the plain text of the statute [,]" courts question 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 person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

40. The regulations permit only certain officials to revoke an order of supervision, specifically the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate

[Director].” 8 C.F.R. § 241.4(l)(2). For a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d at 161 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not include the power to revoke release” insufficient to grant authority to revoke an order of supervision).

41. Upon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1). *see also Mauricio Martinez v. JL Jamison*, 2026 WL 700335, at *8 (E.D. Pa. March 12, 2026) (holding “Respondents violated Petitioner's procedural due process rights by failing to abide by their own regulations and by detaining him without giving him an opportunity to be heard.”).

42. Courts across the country have held that Respondents’ violations of 8 C.F.R. § 241.4(1)(1) when revoking petitioners’ orders of supervision warrants immediate release. *See Mauricio Martinez v. JL Jamison*, 2026 WL 700335, at *8 (citing *Zhang* v. *Genalo*, 2025 WL 3733542, at *16 (E.D.N.Y. Dec. 28, 2025) (collecting cases), *Funes v. Francis*, 2025 WL 3263896, at *25 (S.D.N.Y. Nov. 24, 2025) (ordering release after finding a procedural due process violation), *Zhu v. Genalo*, 798 F. Supp. 3d 400, 415 (S.D.N.Y 2025), *Dudamel v. Jamison*, 2026 WL 498612, at *9 (E.D. Pa Feb. 23, 2026), *Zhang v. Bondi*, 2026 WL 42778, at *5 (S.D.N.Y. Jan. 7, 2026), *Roman-Cruz v. Lyons*, No. 25-cv-10522, 2026 WL 114936, at *3 (S.D.N.Y. Jan. 15, 2026)).

III. The INA Requires Substantial Likelihood that Removal is Reasonably Foreseeable

43. The Immigration and Nationality Act (INA) requires detention for individuals subject to final orders of removal. 8 U.S.C. § 1231(a)(2).

44. In *Zadvydas,* the Supreme Court decided that under § 1231(a)(6), past the 90-day mandatory detention period, the INA does not permit indefinite detention. *See Zadvydas v. Davis*, 533 U.S. at 689. The Court held, rather, that the Government may only detain an individual past the 90-day mandatory detention period for a period "reasonably necessary to bring about the alien's removal from the United States." *See id.*

45. The Court commanded habeas courts to, "measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the *moment of removal*." *See id.* at 699-700 (emphasis added). The Court concluded that, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *See id.*

46. In recognition of the Executive Branch's responsibility to execute the immigration laws, the Court established a period of six months, under the INA, in which post-order detention is presumptively reasonable. *See id.* at 700-01. While the Court did not require release upon expiration of the six-month period, it limited post-order detention to a time, "it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *See id.* at 701. The petitioner has the initial burden to show, "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and that, once provided, the burden shifts to the Government to rebut. *See id*; *see also Cruz-Medina v. Noem*, 794 F. Supp. 3d 365, 379 (D. Md. 2025) (describing petitioner's burden to articulate good reason to believe, "this is a burden of production, not persuasion").

47. The Court specifically addressed a situation where petitioners were continuously detained since the issuance of the removal order, while removal execution efforts were delayed. *See Zadvydas,* 533 U.S. at 683-86. The Court did not address the issue of whether an individual,

ordered removed but then released under an order of supervision pursuant to 8 C.F.R. § 241.4 for a lengthy period, must be physically confined to fall outside the presumptively reasonable period of post-order detention. *See Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025); *Tadros v. Noem*, No. 25cv4108, 2025 WL 1678501, at *3 (D. N.J. June 13, 2025).

IV. The APA Sets Minimum Standards for Final Agency Action

48. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704.

49. Final agency actions are those (1) that "mark the consummation of the agency's decision making process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

50. ICE's revocation of an order of supervision is a final agency action subject to this Court's review.

51. The revocation here marked the consummation of ICE's decision-making process regarding Petitioner's custody.

52. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Petitioner in violation of his rights under the Constitution, statute, and regulation.

CLAIMS FOR RELIEF

<u>COUNT I</u>
Violation of the Fifth Amendment of the U.S. Constitution Substantive Due Process

53. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

54. When ICE issued Petitioner's order of supervision, it found that he is neither a danger to the community nor a flight risk.

55. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order. No change in circumstances warranted the order's revocation.

56. Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

57. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's order of supervision, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

COUNT II
Violation of the Fifth Amendment of the U.S. Constitution Procedural Due Process

58. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

59. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

60. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas* v. Davis, 533 U.S. at 690.

61. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

62. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

63. For these reasons, revoking Petitioner's order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

COUNT III
Violation of Immigration and Nationality Act, 8 U.S.C. § 1236(a)

64. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

65. Under the INA, post-order detention is required for a statutory period of 90 days, but only presumptively reasonable for a period of six months. *See Zadvydas*, 533 U.S. at 701. After this period, the noncitizen must show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *See id.* After such showing, the Government has the burden to show that there is a significant likelihood of removal in the reasonably foreseeable future. *See id.*

66. Having been ordered removed in 2009, and the Board of Immigration Appeals having denied his motion to reopen in 2019, Petitioner's statutory removal period has long since expired. *See* 8 U.S.C. § 1231(a)(1)(B).

67. Likewise, the six-month period in which detention under § 1231(a) is presumptively reasonable under *Zadvydas* has also long expired, notwithstanding Petitioner's freedom from physical confinement during that time. *See Zavvar*, 2025 WL 2592543, at *4 (reasoning presumptive period runs continuously from end of statutory period, regardless of continued detention or release); *Tadros*, 2025 WL 1678501, at *3 (finding 90-day removal period under § 1231(a)(1)(B) triggered by BIA affirmance of removal order).

68. Past the statutory period, the purpose of the presumptively reasonable period of detention in *Zadvydas* has been served when, in recognition of the Executive's interest in facilitating the means to execute removal, a lengthy period has elapsed since the removal period began in which those means could have been established. *See Zavvar*, 2025 WL 2592543, at *4 (finding significant, when noncitizen released following removal order, substantial time elapsed

since beginning of removal period significant in light of rationale behind *Zadvydas* presumption).

69. The Petitioner here was detained on March 18, 2026. His removal period, however, began when his removal order became final in 2009. In the context of a noncitizen, like Petitioner, who is ordered removed, released with order of supervision requirements, and detained years later under § 1231(a)(6), the rationale of applying the presumptively reasonable period collapses; or, at a minimum, this *Zadvydas* period runs continuously after the initial 90-day mandatory detention period. *See Zavvar*, 2025 WL 2592543, at *4 (emphasizing importance of lapse of time in *Zadvydas* analysis); *see also Nguyen v. Hyde*, 788 F. Supp. 3d 144, 149 (D. Mass. 2025) (finding *Zadvydas* inapplicable for noncitizen ordered removed and later re-detained following period of release on an order of supervison).

70. Given that it has been about 16 years since his removal period began and that Petitioner reported consistently to all order of supervision appointments in the interim, the Government's interest in having additional time to facilitate the execution of his removal order has been more than satisfied. Accordingly, Petitioner need only "show good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

71. Petitioner has good reason to believe that there lacks any significant likelihood of removal in the reasonably foreseeable future. First, on information and belief, Respondents have yet to provide Petitioner with any proof that they have obtained a travel document that would facilitate Petitioner's removal. *See Tadros*, 2025 WL 1678501, at *3 (concluding lack of travel documents sufficient to order show cause). Second, on information and belief, Respondents have yet to furnish any details related to the existence of arrangements to ensure his safe return

to Ghana; namely, no details on next available flights to Ghana have been disclosed. Third, on information and belief, Petitioner has been made aware of no circumstances that have changed, in the 17 years since he was ordered removed, that diplomatic negotiations regarding his return to Ghana have been renewed, let alone occurred at all. *See Cruz-Medina v. Noem*, 794 F. Supp. 3d 365, 379 (D. Md. 2025) (finding, "of particular relevance under *Zadvydas*, [petitioner] has pointed to the noncommittal nature of the representations that the government has made regarding the possibility of removal to El Salvador"); *Tadros*, 2025 WL 1678501, at *2-*3 (finding petitioner met burden on no substantial likelihood given 15-year lapse in execution of removal order). Finally, on information and belief, Petitioner will soon be moved to Moshannon Valley Processing Center in Philipsburg, PA, which is not a typical transferee facility for individuals to be moved prior to execution of their removal. *See* Gabrielle LaMarr LeMee, *How ICE detainees are moved miles away from families and attorneys*, LOS ANGELES TIMES, (Sept. 26, 2025), available at: https://www.latimes.com/politics/story/2025-09-26/faster-more-frequent-transfers-of-immigrant-ice-detainees-sow-fear-and-cut-off-resources (identifying facilities in Texas and Louisiana executing most removal orders).

72. Critically, as part of the overall holding that detention past the removal period must be "reasonably necessary," the Court in *Zadvydas* instructed habeas courts to, "measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the *moment of removal*." *See* 533 U.S. at 699-700 (emphasis added). Here, well over a decade past the lapse of the statutory removal period, the apparent necessity of Petitioner's current detention under § 1231(a) to assure his presence upon execution of the order does not come at a time where such execution is reasonably foreseeable, let alone momentary.

73. Accordingly, for the reasons stated herein, even if Petitioner were to be within the presumptively reasonable period for detention, the current detention is not reasonably necessary to assure his presence for the speculative and unlikely prospect that Respondents will execute his 17-year-old removal order. *See Lam v. Noem*, No. 3:25-cv-00397, 2026 WL 492383, at *5 (W.D. Pa. Feb. 23, 2026) (Brown, M.J.) (agreeing presumption rebuttable and collecting cases); *Pan v. Oddo*, No. 3:25-cv-265, 2025 WL 3701296, at * (W.D. Pa. Dec. 21, 2025) (granting habeas and ordering immediate release when presumption rebutted); *Douglas v. Baker*, No. 25-cv-2243-ABA, 2025 WL 2997585, at *3-*5 (D. Md. Oct. 24, 2025) (noting petitioner rebutted presumption even if applicable).

74. Petitioner's detention under § 1231(a) should be deemed unlawful under *Zadvydas* because, whether or not the presumption applies, it is not reasonably necessary to assure Petitioner's presence for a moment that has not yet arrived, nor appears likely to arrive in the reasonably foreseeable future.

COUNT IV
Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B) Contrary to Law and Constitutional Right

75. Petitioner re-alleges and incorporates by reference the above paragraphs.

76. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

77. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

78. Respondents' revocation of Petitioner's order of supervision was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

79. The revocation was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances, as cited and discussed above.

80. Petitioner's order of supervision was not revoked by the ICE Executive Associate Director. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director.

81. Before revoking the order, Respondents did not make findings that Petitioner is dangerous or unlikely to comply with a removal order, as required by statute.

82. Even assuming that regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, respondents did not comply with them. Respondents could not make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release because he had not. Nor could Respondents make findings that the purposes of release had been served or that it was appropriate to enforce a removal order, because it had yet to make final arrangements for Petitioner's removal.

83. Nor did the Respondents give Petitioner notice of the reasons for revocation and the opportunity to be heard.

84. The revocation should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

<u>COUNT V</u>
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) Arbitrary and Capricious

85. Petitioner re-alleges and incorporates by reference the above paragraphs.

86. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

87. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

88. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

89. Respondents' decision to revoke Petitioner's order of supervision ran counter to the evidence before the agency that Petitioner would comply with a demand to appear for removal without detention. Petitioner has never violated a condition of his order of supervision and no new facts or changed circumstances suggest he would.

90. The revocation also "failed to consider important aspects of the problem" before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

91. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner's order of supervision without notice and opportunity to respond.

92. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor a danger to the community.

93. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner's order of supervision that were before the agency, like simply continuing release under the order of supervision and scheduling a future time and date to appear for removal. This alternative would vindicate the government's interests in effectuating a removal order and save it the expense of detention not needed to guarantee Petitioner's appearance.

94. Fourth, Respondents failed to consider Petitioner's substantial reliance interest, created by its instruction on Petitioner's release notification, the agency would give an opportunity to arrange for an orderly departure once it obtained travel documents.

95. For these and other reasons, Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious and should be held unlawful and set aside.

COUNT VI
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C) In Excess of Statutory Authority

96. Petitioner re-alleges and incorporates by reference the above paragraphs.

97. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

98. "An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

99. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

100. Regulations that purport to give Respondents authority to revoke an order of supervision on grounds other than those listed § 1231(a)(6) are ultra vires and in excess of statutory authority because "[r]egulations cannot circumvent the plain text of the statute." *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018)

101. Respondents' revocation of Petitioner's order of supervision was based on ultra vires regulations. As such, it was in excess of statutory authority and should be held unlawful and set aside.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Eastern District of Pennsylvania while this habeas petition is pending;

c. Order that Petitioner shall not be ordered removed from United States during the pendency of these proceedings;

d. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

e. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations and the Administrative Procedure;

f. Order Petitioner's immediate release from detention;

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;

h. Issue an Order that Respondents, upon Petitioner's release, are required to return Petitioner's identity documents, including his Employment Authorization Document (EAD), Delaware ID, Social Security Card, and any other document that he had on his possession when detained;

i. Grant any other and further relief that this Court deems just and proper.

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this 19th of March 2026.

/s/ Natalie M. Richman
Natalie M. Richman, Esq. (PA 321567)
Global Immigration Legal Team
150 Strafford Avenue, Suite 115
Wayne, PA 19087
Telephone: 610-975-4599
Fax: 610-687-2100
E-mail: natalie@giltlaw.com

Attorney for Petitioner

Natalie M. Richman, Esq.
Global Immigration Legal Team, LLC
150 Strafford Avenue, Suite 115
Wayne, PA 19087
p. 610-975-4599
f. 610-687-2100
natalie@giltlaw.com

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

HUMPHREY	
v.	Case No. 26-1822
RIFE, ET AL.	**PETITION FOR WRIT OF HABEAS CORPUS**

EXHIBIT LIST

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
KWADWO HUMPHREY

DEFENDANTS John RIFE, Acting Field Office Director ICE/ ERO Philadelphia; Kristi NOEM, Sec. of DHS; DHS; Pam Bondi, Atty Gen; EOIR; Jamal LAWRENCE, Warden of Federal Detention center

(b) County of Residence of First Listed Plaintiff Philadelphia, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Philadelphia, PA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Global Immigration Legal Team
150 Strafford Ave, Suite 115, Wayne PA 19087
610-975-4599

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- [ ] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question *(U.S. Government Not a Party)*
- [X] 2 U.S. Government Defendant
- [ ] 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	[ ] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury
- [ ] 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- [ ] 365 Personal Injury - Product Liability
- [ ] 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 440 Other Civil Rights
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 445 Amer. w/Disabilities - Employment
- [ ] 446 Amer. w/Disabilities - Other
- [ ] 448 Education

PRISONER PETITIONS

Habeas Corpus:
- [X] 463 Alien Detainee
- [ ] 510 Motions to Vacate Sentence
- [ ] 530 General
- [ ] 535 Death Penalty

Other:
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition
- [ ] 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Management Relations
- [ ] 740 Railway Labor Act
- [ ] 751 Family and Medical Leave Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Employee Retirement Income Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [ ] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 835 Patent - Abbreviated New Drug Application
- [ ] 840 Trademark
- [ ] 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- [ ] 375 False Claims Act
- [ ] 376 Qui Tam (31 USC 3729(a))
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 480 Consumer Credit (15 USC 1681 or 1692)
- [ ] 485 Telephone Consumer Protection Act
- [ ] 490 Cable/Sat TV
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 893 Environmental Matters
- [ ] 895 Freedom of Information Act
- [ ] 896 Arbitration
- [ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- [ ] 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- [X] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from Another District *(specify)*
- [ ] 6 Multidistrict Litigation - Transfer
- [ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*: 28 U.S.C. 2241

Brief description of cause: Habeas Corpus challenging detention of noncitizen

VII. REQUESTED IN COMPLAINT:

- [ ] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: [ ] Yes [X] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ____ DOCKET NUMBER ____

DATE 3/19/2026 SIGNATURE OF ATTORNEY OF RECORD Natalie M. Richman

FOR OFFICE USE ONLY

RECEIPT # ____ AMOUNT ____ APPLYING IFP ____ JUDGE ____ MAG. JUDGE ____

10/2024

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

Place of Accident, Incident, or Transaction: Philadelphia, PA

RELATED CASE IF ANY: Case Number: ______________ Judge: ______________

1. Does this case involve property included in an earlier numbered suit? Yes ☐
2. Does this case involve a transaction or occurrence which was the subject of an earlier numbered suit? Yes ☐
3. Does this case involve the validity or infringement of a patent which was the subject of an earlier numbered suit? Yes ☐
4. Is this case a second or successive habeas corpus petition, social security appeal, or pro se case filed by the same individual? Yes ☐
5. Is this case related to an earlier numbered suit even though none of the above categories apply? If yes, attach an explanation. Yes ☐

I certify that, to the best of my knowledge and belief, the within case ☐ **is** / ☑ **is not** related to any pending or previously terminated action in this court.

Civil Litigation Categories

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts)
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Wage and Hour Class Action/Collective Action
- ☐ 6. Patent
- ☐ 7. Copyright/Trademark
- ☐ 8. Employment
- ☐ 9. Labor-Management Relations
- ☐ 10. Civil Rights
- ☒ 11. Habeas Corpus
- ☐ 12. Securities Cases
- ☐ 13. Social Security Review Cases
- ☐ 14. Qui Tam Cases
- ☐ 15. Cases Seeking Systemic Relief ***see certification below***
- ☐ 16. All Other Federal Question Cases. *(Please specify)*: ______________

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (*Please specify*): ______________
- ☐ 7. Products Liability
- ☐ 8. All Other Diversity Cases: *(Please specify)* ______________

I certify that, to the best of my knowledge and belief, that the remedy sought in this case ☐ **does** / ☑ **does not** have implications beyond the parties before the court and ☐ **does** / ☑ **does not** seek to bar or mandate statewide or nationwide enforcement of a state or federal law including a rule, regulation, policy, or order of the executive branch or a state or federal agency, whether by declaratory judgment and/or any form of injunctive relief.

ARBITRATION CERTIFICATION (CHECK ONLY ONE BOX BELOW)

I certify that, to the best of my knowledge and belief:

[X] Pursuant to Local Civil Rule 53.2(3), this case is not eligible for arbitration either because (1) it seeks relief other than money damages; (2) the money damages sought are in excess of $150,000 exclusive of interest and costs; (3) it is a social security case, includes a prisoner as a party, or alleges a violation of a right secured by the U.S. Constitution, or (4) jurisdiction is based in whole or in part on 28 U.S.C. § 1343.

[ ] None of the restrictions in Local Civil Rule 53.2 apply and this case is eligible for arbitration.

NOTE: A trial de novo will be by jury only if there has been compliance with F.R.C.P. 38

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Order of Supervision

File No: [redacted]
Date: February 25, 2010

Name: HUMPHREY, Kwadwo

on November 12, 2009 ,you were ordered:
(Date of final order)

[ ] Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
[X] Removed pursuant to proceedings commenced on or after April 1, 1997.
[ ] Granted Deferral of Removal Under CAT by the Immigration Judge.
[ ] Granted Withholding of removal by Immigration Judge.

Because ICE has not effected your deportation or removal during the period prescribed by law or due to special circumstances, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

[X] That you appear in person at the time and place specified, upon each and every request of ICE, for identification and for deportation or removal.

[X] That upon request of ICE, you appear for medical or psychiatric examination at the expense of the United States Government.

[X] That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as ICE considers appropriate.

[X] That you do not travel outside the State of **Georgia** (Specify geographic limits, if any) for more than 48 hours without first having notified this ICE office of the dates and places of such proposed travel. **Office Phone: 404-893-1310**

[X] That you furnish written notice to this ICE office of any change of residence or employment within 48 hours of such change.

[X] That you report **in person** on **18-Mar-2010** at **08:00 A.M.** to the ICE office at:

180 Spring St, SW, Atlanta, GA 30303 unless you are granted written permission to report on another date.

[X] That you assist Immigration and Customs Enforcement (ICE) in obtaining any necessary travel documents.

[X] Other: That you abide by all Local, State, and Federal Laws.

[X] See attached Sheet Containing Other Specified Conditions (Continue on separate sheet if required)

(Signature of ICE official)

Felicia S Skinner, Field Office Director
(Print name and title of ICE official)

Alien's Acknowledgment of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in theSpanish and English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

John Ferek
(Signature of INS official serving order)

(Signature of alien) [redacted]

February 25, 2010
Date

Form I-220B(Rev. 4/1/97)N

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Order of Supervision-Addendum

File No: [redacted]
Date: February 25, 2010

Name: HUMPHREY, Kwadwo

[X] That you do not associate with known gang members, criminal associates, or be associated with any such activity.

[ ] That you register in a substance abuse program within 14 days and provide ICE with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.

[ ] That you register in a sexual deviancy counseling program within 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, the address of the program, duration and objectives of the program as well as the name of a counselor.

[ ] That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide ICE with written proof of such within 10 days.

[X] That you do not commit any crimes while on this Order of Supervision.

[X] That you report to any parole or probation officer as required within 5 business days and provide ICE with written verification of the officers name, address, telephone number, and reporting requirements.

[X] That you continue to follow any prescribed doctors orders whether medical or psychological including taking prescribed medications.

[X] That you provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.

[X] That you provide ICE with written responses from the Embassy or Consulate regarding your request.

[X] Any violation of the above conditions may result in revocation of your employment authorization document

[X] Any violation of these conditions may result in you being taken into ICE custody and you being criminally prosecuted.

[XX] Other: Other conditions and requirements to be added by reporting office - Atlanta, Georgia

Alien's Signature: [redacted]

PROOF OF SERVICE

(1) Personal Service (Officer to complete both (a) and (b) below.)

(a) I John Ferek, Deportation officer,
Name of ICE Officer Title
certify that I served HUMPHREY, Kwadwo with a copy of
Name of detainee
this document at FCI ATLanTa on 2/25/2026, at 1100 hrs.
Institution Date Time

(b) I certify that I served the custodian ______________________,
Name of Official
______________________, at ______________________, on
Title Institution
______________ with a copy of this document.
Date

OR

(2) Service by certified mail, return receipt. (Attach copy of receipt)

I ______________________, ______________________, certify
Name of ICE Officer Title
that I served ______________________ and the custodian ______________________,
Name of detainee Name of Official
with a copy of this document by certified mail at ______________________ on ________.
Institution Date

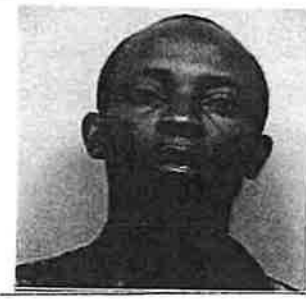
X [redacted]

( ) cc: Attorney of Record or Designated Representative
( ) cc: A-File

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Continuation Page for Form: **I-220B**

Alien's Name	File Number	Date
HUMPHREY, Kwadwo	[redacted]	**February 25, 2010**



Alien's Signature

Alien's Address

[redacted]

Alien's Telephone Number (if any)

RIGHT INDEX PRINT

[redacted]

Subject's DOB: May 29, 1969
FINS: **1091697610**

PERSONAL REPORT RECORD

DATE	NEXT REPORT DATE	COMMENT/CHANGES
	March 18, 2010	**First Report Date**
3/18/2010	Next Report Date 4/13/2010 @ 8:00 AM	
04-13-10 -	NXT RPT DATE 06-11-10 @ 8:00 A.M.	
06-11-10 -	NXT RPT 09-03-10 @ 8 A.M.	
09-03-10	NXT RPT 11-09-10 - RPT @ 8 A.M.	
11-09-10 -	NXT REPT will BE 01-27-11. RD	
	Report to 1305 McD DRIVE, DOVER, DELAWARE	
	Within 10 DAYS - P.H. ~~302~~ 304-218-3768	
11/23/10		Appeared for OSUP
3/2/11	2:00PM	Showed for OSUP
7/16/11	2:00pm	
1/17/12	11:30AM	Appeared for OSUP
~~5/30/12~~	9:30	
7/16/12	9:30	" "
10/23/12	10:30	" "
[illegible]		
10/22/13	9:30 Am	"
11/4/14	9:00 Am	Appeared in person
08/19/15	10:00AM (TR)	Appeared in person
03/28/16	10:30 AM	Appeared in Person
11/28/16	09:30am Rivera	Reported
05-8-2017	10 AM	" " "
11/7/17	9:30AM	Appeared in person
3/29/18	9:00AM	Appeared in Person
9/25/18	9:00AM	Appeared in person

Signature
John Ferek

Title
Deportation Officer

10/31/2018 9:00AM

May 22, 2019 [signature] Appeared in Person
Dec 16, 2019 9:30 AM [signature] Appeared in Person
June 17, 2020 9:00 AM

BI

Individual Service Plan

Report Date: 03/22/2022
Created By: Jenny Ibelise Victoria
ISAP Office: BI ISAP Dover
Enrollment Date: 9/25/2014
Participant Name: Kwadwo Humphrey
Alien #:[redacted]
Assigned Case Specialist: Jenny Ibelise Victoria

Personal Information

Primary Address[redacted]
Home Phone: +1[redacted]
Mobile Phone:

Supervision Plan

Legal Stage: Pre-Order
Service Plan: Office Visits Every Eight Weeks, ISAP Case Management, ISAP Court Tracking, ISAP Home Visits Every 8 Weeks
Technology: SmartLINK for ISAP Weekly
Frequency of Reporting: Face to Face 03/22/2022 - no end; Occurs every 8 Weeks on Tuesday at 00:00

You are required to report to the ISAP office according to the schedule listed above unless you obtain the consent of your ISAP Case Specialist. If you are enrolled on Electronic Monitoring, you will comply with the rules and expectations of Electronic Monitoring. If you are enrolled on GPS, you will not attempt to tamper with or remove the GPS unit for any reason. If you are enrolled on Telephonic Reporting or SmartLINK, you will complete the phone calls or check-ins as required and immediately report any changes related to the telephone number that you provided for these calls or check-ins. You will abide by a weekly schedule, and will notify your Case Specialist of any changes a minimum of 24 hours in advance. You understand that Home Visits may be completed within times that your schedule indicates you are home. You must also comply with all program rules as well as any additional requirements listed in your ERO Order of Recognizance or Order of Supervision.

Translation Plan

Languages Spoken: English
English Spoken Proficiency: Fluent

Transportation Plan

Type: Taxi

Comment:

Type: Personal Contact

Comment: P will rely on family/friends for transportation

Type: Personal Vehicle

[redacted]

Comment: Wife and Participant owns together.

Employment

Employed: Yes

EAD Expiration: 12/20/2021

Employer Name: Uber

Employer Address:

Employer Phone:

Job Title:

Supervisor:

Start Date:

Schedule:

Notes: The P is self-employed, he works as an Uber driver

Personal Contacts

Name: Caroline Mbugua
Relationship: Spouse
Address: [redacted]
Phone: [redacted]
Lives with Participant: True
Last Verified On: 03/22/2022

Name: David Unknown
Relationship: Attorney
Address:
Phone: [redacted]
Lives with Participant: False
Last Verified On:

Legal Plan

Plan: -You are currently in the Pre-Order legal stage -You will attend your court hearing as scheduled and report the results of that hearing to ISAP immediately afterward. -You will inform ISAP if there are any changes in your legal representation or status. -If you are ever in need of legal referrals you may obtain a list from the ISAP office. -You will notify ISAP immediately or as soon as possible should you have contact with law enforcement for any reason. -You will check the automated court system together with your Case Specialist at every office visit to verify future court hearings

Attorney Name: David Unknown
Attorney Address:
Attorney Phone: [redacted]

Criminal Activity

No known criminal activity

Departure Plan

Departure Date:
Additional Travelers: 0
Additional Travelers Comment:

Travel Method:

Travel Document

Document Status: Instructed to Visit Consulate
Issuing Country: Ghana
Document Type:
Document Number:
Submitted By:
Submitted On:
Expiration Date:
Plan: -You will visit consulate to obtain passport -The consulate is located at: 3512 International Dr NW, Washington, DC 20008 -You will need to bring birth certificate with you. -You will use your own transportation to get to the consulate.

Community Referrals

Cannot sign due to COVID 19

Participant

03/22/2022

Date

Jenny Victoria

Case Specialist

03/22/2022

Date

Individual Service Plan

Report Date: 05/17/2022

Created By: Jenny Ibelise Victoria

ISAP Office: BI ISAP Dover

Enrollment Date: 9/25/2014

Participant Name: Kwadwo Humphrey

Alien #[redacted]

Assigned Case Specialist: Jenny Ibelise Victoria

Personal Information

Primary Address[redacted]

Home Phone: +[redacted]

Mobile Phone: [redacted]

Supervision Plan

Legal Stage: Pre-Order

Service Plan: Office Visits Every Eight Weeks, ISAP Case Management, ISAP Court Tracking, ISAP Home Visits Every 8 Weeks

Technology: SmartLINK for ISAP Weekly

Frequency of Reporting:

You are required to report to the ISAP office according to the schedule listed above unless you obtain the consent of your ISAP Case Specialist. If you are enrolled on Electronic Monitoring, you will comply with the rules and expectations of Electronic Monitoring. If you are enrolled on GPS, you will not attempt to tamper with or remove the GPS unit for any reason. If you are enrolled on Telephonic Reporting or SmartLINK, you will complete the phone calls or check-ins as required and immediately report any changes related to the telephone number that you provided for these calls or check-ins. You will abide by a weekly schedule, and will notify your Case Specialist of any changes a minimum of 24 hours in advance. You understand that Home Visits may be completed within times that your schedule indicates you are home. You must also comply with all program rules as well as any additional requirements listed in your ERO Order of Recognizance or Order of Supervision.

Translation Plan

Languages Spoken: English

English Spoken Proficiency: Fluent

Transportation Plan

Type: Taxi

Comment:

Type: Personal Contact

Comment: P will rely on family/friends for transportation

Type: Personal Vehicle

[redacted]

Comment: Wife and Participant owns together.

Employment

Employed: Yes

EAD Expiration: 12/20/2021

Employer Name: Uber

Employer Address:

Employer Phone:

Job Title:

Supervisor:

Start Date:

Schedule:

Notes: The P is self-employed, he works as an Uber driver

Personal Contacts

Name: Caroline Mbugua
Relationship: Spouse
Address [redacted]
Phone: [redacted]
Lives with Participant: True
Last Verified On: 05/17/2022

Name: David Unknown
Relationship: Attorney
Address:
Phone: [redacted]
Lives with Participant: False
Last Verified On:

Legal Plan

Plan: -You are currently in the Pre-Order legal stage -You will attend your court hearing as scheduled and report the results of that hearing to ISAP immediately afterward. -You will inform ISAP if there are any changes in your legal representation or status. -If you are ever in need of legal referrals you may obtain a list from the ISAP office. -You will notify ISAP immediately or as soon as possible should you have contact with law enforcement for any reason. -You will check the automated court system together with your Case Specialist at every office visit to verify future court hearings

Attorney Name: David Unknown
Attorney Address:
Attorney Phone: [redacted]

Criminal Activity

No known criminal activity

Departure Plan

Departure Date:
Additional Travelers: 0
Additional Travelers Comment:

Travel Method:

Travel Document

Document Status: Instructed to Visit Consulate
Issuing Country: Ghana
Document Type:
Document Number:
Submitted By:
Submitted On:
Expiration Date:
Plan: -You will visit consulate to obtain passport -The consulate is located at: 3512 International Dr NW, Washington, DC 20008 -You will need to bring birth certificate with you. -You will use your own transportation to get to the consulate.

Community Referrals

Not signed due to Virtual Office Visit

Participant

05/17/2022

Date

Jenny Victoria

Case Specialist

05/17/2022

Date

Intensive Supervision Appearance Program

Intake Recap Form

RECAP INFORMATION
Participant Name: Kwadwo Humphrey
Alien Number: [redacted]
Enrollment Date: 9/25/2014
Next Office Visit: 01/23/2024
Home Visit Day: Thursday
VoiceID Calls:
ERO Check-Ins:
Next Court Hearing:

Participant has been enrolled in ISAP as part of the ERO ATD as of 01/13/2020. Participant is required to comply with home visits every eight (8) weeks and office visits every eight (8) weeks. In addition, Participant is to complete a biometric check in every week on Thursdays between the hours of 0900 to 1100.

Participant is not in full compliance by violation history, see attached for reference.

Any questions, please contact our office at 302-485-0662.

Angelica Jimenez
Senior Case Specialist, Dover ISAP

Philadelphia Field Office

U.S. Department of Homeland Security
210 Beiser Blvd
Dover, DE 19904

U.S. Immigration
and Customs
Enforcement

October 8, 2024

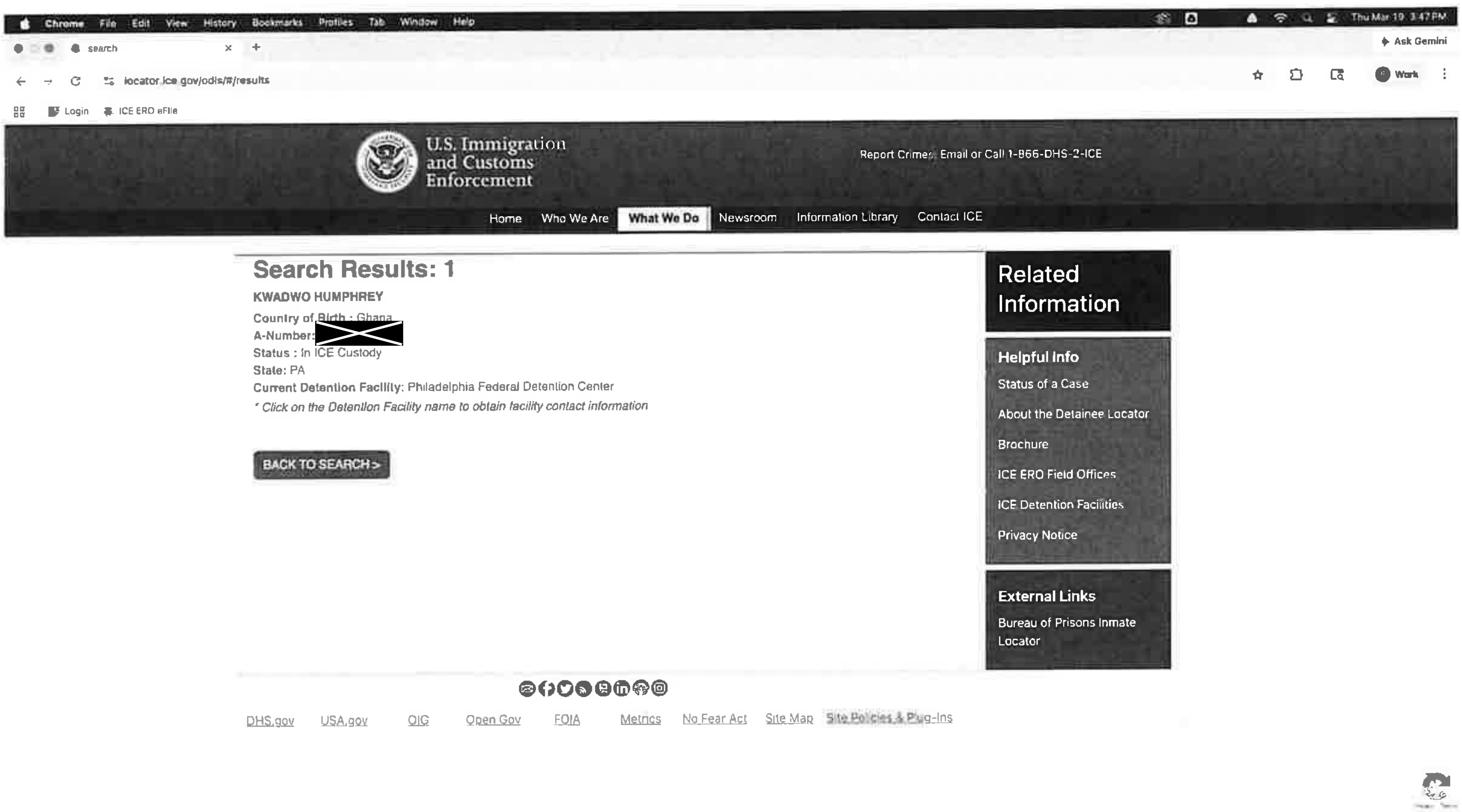
To whom it may concern:

This letter is written in reference to Mr. Kwadwo Humphrey [redacted] Mr. Humphrey was placed on an Order of Supervision on February 25, 2010. He has been reporting on a timely manner to the Dover, Delaware ICE office. Mr. Humphrey was enrolled onto the ISAP program on July 27, 2011, and he has been reporting to this office when requested. In addition, he is currently complying with his Alternative to Detention (ATD) requirements. He has minimal issues regarding this.

If you should require additional information, feel free to contact Officer Hector F. Grisales at 302-734-6811.

Sincerely,

Hector F. Grisales
Deportation Officer
Dover, DE ICE office



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U.S. Immigration and Customs Enforcement

Report Crimes: Email or Call 1-866-DHS-2-ICE

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KWADWO HUMPHREY

Country of Birth : Ghana
A-Number: [redacted]
Status : In ICE Custody
State: PA
Current Detention Facility: Philadelphia Federal Detention Center
** Click on the Detention Facility name to obtain facility contact information*

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U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : 280468045 FIN [redacted] File No: [redacted]

DOB: [redacted] Event [redacted]

In the Matter of:

Respondent: Kwadwo HUMPHREY currently residing at:

180 SPRING STREET SW , ATLANTA GEORGIA 30303 ( ) -

(Number, street, city and ZIP code) (Area code and phone number)

RECEIVED DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW OFFICE OF THE IMMIGRATION JUDGE ATLANTA, GEORGIA 2009 JUL 15 PM 3: 26

- [ ] 1. You are an arriving alien.
- [x] 2. You are an alien present in the United States who has not been admitted or paroled.
- [ ] 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of GHANA and a citizen of GHANA; May 19, 2003
3. You arrived in the United States at or near unknown place, on or about unknown date;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

alleges B-2 visa

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

S 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- [ ] This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- [ ] Section 235(b)(1) order was vacated pursuant to: [ ] 8CFR 208.30(f)(2) [ ] 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
180 Spring Street, SW, Suite 241 Atlanta GEORGIA US 30303 Ex, 1

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set (Date) at a time to be set (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

ADONNIS T. SMITH SDDO

(Signature and Title of Issuing Officer)

Date: 6/29/09

ATLANTA FIELD OFFICE, ATLANTA, GA

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this preceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: ______________________ *(Signature of Respondent)*

Date: ______________

______________________ *(Signature and Title of Immigration Officer)*

Certificate of Service

This Notice To Appear was served on the respondent by me on 7/6/09, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, returned receipt requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the ENGLISH / SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Refused to Sign
(Signature of Respondent if Personally Served)

Cooper Deportation Officer
(Signature and Title of officer)

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
180 SPRING STREET, SW SUITE 241
ATLANTA, GA 30303

In the Matter of:
HUMPHREY, KWADWO
Respondent

Case No.: [redacted]

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on November 12, 2009.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[X] The respondent was ordered removed from the United States to Ghana or in the alternative to ______.
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to ______ or in the alternative to ______.
[ ] Respondent's application for voluntary departure was granted until ______ upon posting a bond in the amount of $______ with an alternative order of removal to ______.

Respondent's application for:
[ ] Asylum was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Withholding of removal was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for [ ] withholding of removal [ ] deferral of removal under Article III of the Convention Against Torture was ( )granted ( ) denied ( ) withdrawn ( ) other.
[ ] A Waiver under section ______ was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Cancellation of removal under section 240A(a)was ( ) granted ( ) denied ( ) withdrawn ( ) other.

Respondent's application for:
[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Cancellation under section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Adjustment of Status under section ______ was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Respondent's status was rescinded under section 246.
[ ] Respondent is admitted to the United States as a ______ until ______.
[ ] As a condition of admission, respondent is to post a $______ bond.
[ ] Respondent knowingly filed a frivolous asylum application after proper notice.
[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
[ ] Proceedings were terminated.
[ ] Other: ______

Date: November 12, 2009

Jonathan D. Pelletier
JONATHAN D. PELLETIER
Immigration Judge

Appeal: WAIVED / RESERVED (A / I / B)
Appeal due by: 12-14-09

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP P DHS
DATE: 11/12/09 BY: COURT STAFF ______
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other Q6

5

000001

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Atlanta, Georgia

IN THE MATTER OF:	)	**IN REMOVAL PROCEEDINGS**
	)	
HUMPHREY, Kwadwo	)	**File No. A**[redacted]
	)	
Respondent	)	
	)	

CHARGE: Section 212(a)(6)(A)(i) of the Act, as amended, in that, Respondent is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

MOTION: Respondent's Motion to Reopen

APPEARANCES

ON BEHALF OF RESPONDENT:

Renee Hykle Cuddy, Esq.
HYKEL LAW
2 Penn Center Plaza
1500 John F. Kennedy Blvd.
Suite 1430
Philadelphia, PA 19102

ON BEHALF OF THE GOVERNMENT:

Assistant Chief Counsel
Department of Homeland Security
180 Ted Turner Drive SW, Suite 332
Atlanta, Georgia 30303

DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

Kwadwo Humphrey ("Respondent") is an adult male native and citizen of Ghana. Respondent entered the United States at or near an unknown place, on or about an unknown date, without being admitted or paroled after inspection by an immigration officer. See NTA.

On July 6, 2009, the Department of Homeland Security ("DHS") personally served Respondent a Notice to Appear ("NTA"), charging him as removable under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("Act"), as amended, in that, Respondent is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

On September 3, 2009, Respondent appeared *pro se* at a Master Calendar Hearing. While he admitted that he was a native and citizen of Ghana, he denied the charge of inadmissibility contained in the NTA. His case was continued to allow him to present proof of admission to the United States.

On October 8, 2009, Respondent appeared *pro se* at a Master Calendar Hearing. He requested more time to submit either his passport or I-94 form to establish his admission to the United States.

On November 12, 2009, Respondent appeared *pro se* at as third Master Calendar Hearing. Because Respondent failed to submit any evidence of a lawful admission to the United States, the Court found him removable as charged. Respondent did not seek any relief from removal, and was ordered removed to Ghana.

On October 9, 2018, Respondent filed a *Sua Sponte* Motion to Reopen Removal Proceedings and to Transfer Venue to Philadelphia, Pennsylvania ("Motion to Reopen") with the Court.

The Court has carefully reviewed the entire record before it. All evidence has been considered, even if not specifically discussed further in this decision. For the reasons set forth below, the Court will deny Respondent's Motion to Reopen.

II. Statement of Law & Discussion

The Code of Federal Regulations also grants Immigration Judges *sua sponte* authority to reopen, at any time, in any case where they have made a decision. See 8 C.F.R. § 1003.23(b)(1). The Board has explained that exercising *sua sponte* authority is an "extraordinary remedy reserved for truly exceptional situations" and not for filing defects or circumventing the regulations. Matter of G-D-, 22 I&N Dec. 1132, 1134 (BIA 1999); Matter of J-J-, 21 I&N Dec. 976, 984 (BIA 1997).

Respondents have the burden of proving exceptional situations. Matter of Beckford, 22 I&N Dec. 1216, 1218 (BIA 2000). Exceptional situations include situations beyond Respondents' control, such as a serious illness, serious illness or death of an immediate relative, or a change in the law that now entitles them to relief. See INA § 240(e)(1); Matter of X-G-W-, 22 I&N Dec. 71, 73–74 (BIA 1998) (exercising *sua sponte* authority to reopen because change in refugee law meant to provide relief for victims of coerced population control policies constituted truly exceptional situation).

Finally, the Supreme Court has held that "motions to reopen are disfavored" and that "[t]here is a strong public interest in bringing litigation to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases." See INS v. Abudu, 485 U.S. 94, 107 (1988). "This is especially true in a deportation proceeding, where, as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States." INS v. Doherty, 502 U.S. 314, 323 (1992) (internal citations omitted).

Here, Respondent concedes that his motion is untimely and asks the Court to reopen his case *sua sponte*. Respondent's *Sua Sponte* Mot. to Reopen at 3. Respondent does not allege any other legal justification to reopen his case. The Court may reopen Respondent's case *sua sponte* if Respondent demonstrates an exceptional situation. This he has not done. Respondent does not allege that either he or an immediate relative was seriously ill. Respondent does not assert that an immediate relative died. Respondent does not argue that there is a change in the law that now entitles him to relief. The only reason that Respondent gives for requesting that his case be re-opened *sua sponte* is that he now has an approved I-130, a form of relief not available to him when he was ordered removed on November 12, 2009. Mot. to Reopen at 3. However, having an approved I-130 is not an exceptional situation that merits re-opening.

Accordingly, the Court finds that Respondent has failed to meet his burden to prove that an exceptional situation exists. Therefore, the Court denies Respondent's motion to reopen his case *sua sponte*.

In light of the foregoing, the Court will enter the following order:

ORDER

It is ordered that: Respondent's Motion to Reopen is hereby **DENIED**.

10-24-2016
Date

J. Dan Pelletier
United States Immigration Judge
Atlanta, Georgia

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Hykel Cuddy, Renee
Hykel Law
1500 John F. Kennedy Blvd.
Suite 1430
Philadelphia, PA 19102

DHS/ICE Office of Chief Counsel - ATL
180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303

Name: HUMPHREY, KWADWO

A [redacted]

Date of this notice: 4/26/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Malphrus, Garry D.
Creppy, Michael J.
Noferi, Mark

Humadyl
Userteam: Docket

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: [redacted] – Atlanta, GA

Date: APR 26 2019

In re: Kwadwo HUMPHREY

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Renee Hykel-Cuddy, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of Ghana, has appealed from the Immigration Judge's October 24, 2018, decision denying the respondent's October 4, 2018, motion to reopen removal proceedings sua sponte. In his decision, the Immigration Judge noted the respondent conceded his motion to reopen was untimely and further determined the respondent did not demonstrate an exceptional situation to warrant the exercise of his limited sua sponte authority. The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent contends the Immigration Judge erred in denying his motion to reopen sua sponte. The respondent argues that the Immigration Judge did not consider his evidence of exceptional circumstances (Respondent's Br. at 6-8). He further argues that he deserves a favorable exercise of discretion because he was not removable as charged when he was previously ordered removed on November 12, 2009, never absconded, is a person of good moral character, and acted with due diligence in filing his motion to reopen sua sponte (Respondent's Br. at 8-9).

With certain exceptions, an alien is entitled to file one motion to reopen that must be filed within 90 days of the date of entry of a final administrative order of removal. 8 C.F.R. § 1003.23(b)(1). The respondent's motion was filed more than 8 years after the 90-day filing period expired, and he conceded in his motion to reopen before the Immigration Judge that it was untimely (Respondent's Motion at 3).

Additionally, the respondent's appellate argument that he "acted with due diligence in filing his motion for reopening sua sponte" is vague and does not adequately explain why he waited more than 5 years after his eldest daughter's birth[1], and 5 months after his wife's Petition for Alien Relative (Form I-130) on behalf of respondent was approved, to file his motion or demonstrate that he pursued his rights diligently (Respondent's Br. at 8). *See Holland v. Florida*, 560 U.S. 631, 649 (2010) (holding that the applicant is "entitled to equitable tolling" only if he shows "(1) that

[1] The respondent claims his daughters are at risk of female genital mutilation, sexual violence, and discrimination against women if forced to accompany him to Ghana (Respondent's Br. at 5).

A[redacted]

he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way" and prevented timely filing); *Avila-Santoyo v. U.S. Att'y Gen.*, 713 F.3d 1357, 1363 (11th Cir. 2013) (Equitable tolling generally requires litigant to show (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way). Thus, since the respondent did not provide a persuasive explanation for the lengthy delay in filing his motion to reopen, we conclude he did not exercise due diligence in pursuing his rights for purposes of establishing that equitable tolling is warranted in his case.

Finally, we uphold the Immigration Judge's determination that the respondent did not warrant sua sponte reopening. To that extent, we note that an Immigration Judge's sua sponte power to reopen may only be used in exceptional circumstances and is not meant to cure filing defects or circumvent the regulations. *See Matter of Beckford*, 22 I&N Dec. 1216 (BIA 2000); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). We agree with the Immigration Judge that none of the factors alleged by the respondent, including his wife's approved Form I-130, on his behalf, warrant sua sponte reopening. As to the harm the respondent's wife and children would face if they return to Ghana with him, they are not required to return to Ghana because they are United States citizens. Moreover, although the respondent now claims he was previously admitted and not out of status at the time of his prior removal proceedings, he did not contest removability in his prior proceedings when he had the opportunity to do so and waited more than 8 years to raise the issue in his present motion to reopen. Thus, for the foregoing reasons, we conclude that the Immigration Judge properly denied the respondent's motion to reopen removal proceedings sua sponte.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD