

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Sarail A.,¹

Case No. 25-CV-2144 (ECT/JFD)

Petitioner,

v.

**REPORT AND
RECOMMENDATION**

Pam Bondi, Lisa Monaco,² Kristi Noem,
Peter Berg, and Warden of Freeborn
County Detention Center,

Respondents.

This matter is before the Court on Sarail A.’s petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241. Petitioner is subject to a final order of removal issued on August 18, 2017. He was placed in immigration detention but was later released during the COVID-19 pandemic under an order of supervision. On May 6, 2025, U.S. Immigration and Customs Enforcement (“ICE”) revoked the order of supervision and re-detained Petitioner. Petitioner argues that his detention is unlawful because ICE did not comply with

¹ This District has adopted a policy of using only the first name and last initial of any nongovernmental parties in immigration cases.

² Lisa Monaco was sued as “the Attorney General of the United States.” (Pet. at 3, Dkt. No. 1.) Lisa Monaco was never the U.S. Attorney General; she was the Deputy Attorney General. The current Attorney General is Pam Bondi, and she is already a named respondent in this case. Therefore, the Court will recommend that Lisa Monaco be terminated as a respondent and removed from the caption of this case. The Court will not recommend that the current Deputy Attorney General, Todd Blanche, be substituted in Ms. Monaco’s place, because it is apparent from the petition that Petitioner meant to sue the Attorney General, not the Deputy Attorney General.

8 C.F.R. § 241.13(i) in revoking his release. As set forth below, the Court agrees and recommends that the petition be granted.

I. Background

Petitioner was ordered removed from the United States on August 18, 2017. (Repp Decl. Ex. B at 1, Dkt. No. 6-2.) He was believed to be a citizen of Canada and was ordered to be removed to Canada or to any other country permitted by section 241 of the Immigration and Nationality Act. (*Id.*) Petitioner was held in immigration detention while ICE attempted to obtain travel documents from Canada and Jamaica. (*See* Ligon Decl. ¶¶ 10–14, Dkt. No. 5.) On November 23, 2020, Petitioner was released from custody under an order of supervision, pursuant to *Fraihat v. U.S. Immigration & Customs Enforcement*, 445 F. Supp. 3d 709 (C.D. Cal. 2020), *vacated*, 2022 WL 20212706 (C.D. Cal. Sept. 16, 2022). (Ligon Decl. ¶ 14; Repp Decl. Ex. C at 1, Dkt. No. 6-3.)

On May 6, 2025, ICE issued a Notice of Revocation of Release (“Notice”), notifying Petitioner that his release had been revoked and that he would be re-detained in ICE custody. (Repp Decl. Ex. C at 1.) Deputy Field Office Director David B. Easterwood wrote in the Notice, “Due to changes in the circumstances of your case, there is now a significant likelihood of removal within the foreseeable future.” (*Id.*) The Notice did not say what circumstances had changed. The Notice advised Petitioner that he would be given an informal interview at which he could respond to the reasons for revocation and provide relevant evidence. (*Id.*)

ICE Deportation Officer M. Munoz served the Notice on Petitioner on May 6, 2025. (Repp Decl. Ex. C at 2, Dkt. No. 6-3.) Officer Munoz also conducted an informal interview

“in order to afford [Mr. Martin] an opportunity to respond to the reasons for revocation of his order of supervision stated in the notification letter.” (Repp Decl. Ex. D at 1, Dkt. No. 6-4.) The interview summary does not describe the reasons for revocation or changed circumstances. Petitioner did not provide a written statement or documents. (*Id.*) He was not released after the interview, and he remains in immigration detention at the Freeborn County Adult Detention Center in Albert Lea, Minnesota.

In an undated Custody Review Questionnaire, Petitioner states that his deceased mother was from Jamaica and that he was born in Ontario, Canada. (Repp Decl. Ex. E at 1–2, Dkt. No. 6-5.) There is no record of Petitioner’s birth in Ontario, Canada, however. (Ligon Decl. ¶ 12.) In 2018, the United States requested a travel document from the Consulate of Jamaica but received no response. (*Id.* ¶ 13.)

On May 29, 2025, according to ICE Deportation Officer John Ligon, ICE “received guidance” that Electronic Nationality Verification would be available for Jamaica and that “Jamaica is now cooperating with ICE to issue travel documents.” (*Id.* ¶ 22.) Officer Ligon’s declaration does not state whether the “travel documents” were for Petitioner or for Jamaican citizens subject to removal orders in general. According to Officer Ligon, ICE also “made a request . . . for a query to be conducted for a Jamaican birth certificate” for Petitioner. (*Id.* ¶ 23.) The result of the query is not included in Officer Ligon’s declaration, nor is there any other evidence in the record that a Jamaican birth certificate for Petitioner exists.

In his habeas petition, Petitioner challenges the legality of his immigration detention. He does not challenge the final order of removal. Petitioner argues that he was

not notified why his release was revoked or given an informal interview, in violation of 8 C.F.R. § 241.13(i). Petitioner also argues that his detention violates due process, as contemplated by *Zadvydas v. Davis*, 533 U.S. 678 (2001). He asks for immediate release and an order enjoining Respondents from re-detaining him. Respondents respond that ICE complied with § 241.13(i) by serving Petitioner with a Notice of Revocation of Release on May 6, 2025, and conducting an informal interview later that day. Respondents also oppose Petitioner's *Zadvydas* claim and requests for injunctive relief.

II. Discussion

Pursuant to 28 U.S.C. § 2241, federal courts have jurisdiction to order the release of any person held in the custody of the United States in violation of the “Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). This authority includes the release of detained noncitizens when ICE fails to follow its own regulations. *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *17–21 (W.D.N.Y. May 2, 2025) (finding that ICE failed to comply with 8 C.F.R. § 241.4 and granting the detainee's § 2241 habeas petition); see *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (finding that ICE failed to comply with 8 C.F.R. §§ 241.13 and 241.4 and ordering the detainee's release). “An agency must . . . follow its own regulations.” *Mohammed H. v. Trump*, No. 25-CV-1576 (JWB/DTS), 2025 WL 1334847, at *6 (D. Minn. May 5, 2025) (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954); *Webster v. Doe*, 486 U.S. 592, 602 n.7 (1988)).

Title 8 C.F.R. § 241.13 governs ICE's determination of whether there is a significant likelihood of removing an individual from the United States in the reasonably foreseeable

future. The regulation includes procedures for releasing an individual under an order of supervision and also procedures for revoking that release. 8 C.F.R. § 241.13(d)–(i). Subsection (i) authorizes revocations of release in two circumstances: (1) if the individual violates his release conditions or (2) “if, on account of changed circumstances, the Service 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)(1), (2). The procedures applicable to the two types of revocation are the same. Of particular relevance here, the individual “will be notified of the reasons for revocation”; ICE must promptly conduct an initial informal interview to allow the individual “to respond to the reasons for revocation stated in the notification”; the individual may submit supporting evidence and information to rebut the reasons for revocation; and ICE must evaluate contested facts and determine whether the facts warrant revocation of release. 8 C.F.R. § 241.13(i)(3).

In this case, the Notice informed Petitioner that “changed circumstances” created “a significant likelihood of removal in the reasonably foreseeable future”—but the Notice did not inform Petitioner what the changed circumstances were. The Notice simply mirrored the language of § 241.13(i)(2). Simply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough. Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3). Thus, while an informal interview apparently occurred, Petitioner could not have responded to the reasons for revocation, because they were not given. In sum, Petitioner was not notified of the reasons for revocation; because he was not

given the reasons for revocation, Petitioner did not have a meaningful opportunity to respond to the reasons and to submit evidence in opposition; and he was not afforded an evaluation and determination of contested facts. *See* 8 C.F.R. § 241.13(i)(3).

Officer Ligon has averred that—several weeks *after* Petitioner’s release was revoked—ICE learned that Jamaica was cooperating with ICE to issue travel documents, though the declaration does not say whether “travel documents” were requested or approved for Petitioner or for Jamaican citizens in general. Officer Ligon also averred that ICE asked for a query to be conducted for a Jamaican birth certificate for Petitioner, but the results of the query are unknown. These averments are not sufficient to establish a significant likelihood that Petitioner may be removed in the reasonably foreseeable future. The first averment, which does no more than describe a general change in the attitude of the Jamaican government towards the issuance of travel documents—whether generally or for Petitioner specifically—is undercut by the second averment, that the Jamaican government has been asked for a birth certificate, but without giving the results of that request. This calls into question whether Petitioner is even eligible for Jamaican travel documents. Moreover, even if these averments were sufficient to establish a significant likelihood of Petitioner’s removal in the reasonably foreseeable future, neither of these events occurred before the Notice was issued. Thus, they could not have constituted the supposedly changed circumstances underlying the Notice. Respondents’ post-hoc explanation is too little, and too late.

Respondents have also failed to show that ICE properly determined—either before the Notice was issued or more recently—that Petitioner’s removal is significantly likely in

the reasonably foreseeable future. In *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023), the court considered, in the context of a Massachusetts Civil Rights Act claim, whether ICE violated § 241.13(i)(2). The court summarized the regulation as “requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.” *Kong*, 62 F.4th at 619–20. According to the First Circuit Court of Appeals, ICE’s foreseeability determination under subsection (i) must comport with subsection (f) of § 241.13, which lists the factors ICE must consider in determining whether there exists a significant likelihood of removing a detained individual in the reasonably foreseeable future.

Subsection (f) directs ICE to

consider all the facts of the case including, but not limited to, the history of the alien’s efforts to comply with the order of removal, the history of the Service’s efforts to remove aliens to the country in question or to third countries, including the ongoing nature of the Service’s efforts to remove this alien and the alien’s assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question.

8 C.F.R. § 241.13(f). In Petitioner’s case, there is no evidence that ICE considered any of these factors *before* the Notice was issued. Weeks *after* the Notice’s issuance and Petitioner’s detention, ICE provided some indication of one factor: recent efforts to remove Petitioner. There is no evidence, however, that ICE considered the other foreseeability factors in revoking Petitioner’s release, that is: Petitioner’s efforts to comply with the order of removal, the history of ICE’s efforts to remove individuals to Jamaica, the results of those efforts, or the Department of State’s views regarding the prospects for removal of aliens to Jamaica.

In light of the foregoing, the Court recommends that the petition for writ of habeas corpus be granted and that Petitioner be released subject to the conditions in his previous order of supervision. The Court need not and does not address Petitioner's *Zadvydas* argument.

Finally, the Court does not recommend granting Petitioner's request to enjoin Respondents from re-detaining him without court approval, because it is conceivable that Respondents could comply with 8 C.F.R. § 241.13(i). They just have not done so.

Accordingly, **IT IS HEREBY RECOMMENDED** that:

1. Petitioner Sarail A.'s petition for a writ of habeas corpus (Dkt. No. 1) be **GRANTED** in that Petitioner be released from custody, subject to the conditions in the prior order of supervision;
2. Petitioner's requests for injunctive relief be **DENIED**; and
3. Lisa Monaco be terminated as a respondent in this case.

Dated: June 17, 2025

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days

after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* D. Minn. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).