

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-02144-ECT-JFD

SARAIL ARCHILLA,

Petitioner,

v.

**FEDERAL RESPONDENTS'
OBJECTIONS TO REPORT
AND RECOMMENDATION**

PAM BONDI, *U.S. Attorney General*; LISA MONACO, KRISTI NOEM, *Secretary of Department of Homeland Security*; PETER BERG, *Field Office Director for the Minneapolis Field Office*; WARDEN, *of Freeborn County Detention Center*,

Respondents.

Federal Respondents¹ respectfully submit the following objections to the Magistrate Judge's June 17, 2025, Report and Recommendation, which endorsed Petitioner's assertion "that his detention is unlawful because," according to him, "ICE did not comply with 8 C.F.R. § 241.13(i) in revoking his release." ECF No. 9 ("R&R") at 1-2.

Federal Respondents respectfully object to the R&R's overarching conclusion that Immigration and Customs Enforcement ("ICE") did not comply with 8 C.F.R. § 241.13(i). *See id.* For the reasons discussed below, and as detailed in Federal Respondents' Response to the Petition, *see* Dkt. No. 4, ICE fully complied with § 241.13(i), including applicable revocation procedures. Since the R&R's contrary finding was the sole basis relied on for its recommendation to grant Petitioner release from custody subject to the conditions in his

¹ Federal Respondents are Pam Bondi, Lisa Monaco, Kristi Noem, and Peter Berg.

prior order of supervision, *see* R&R at 1-2, 8, Respondents respectfully submit that if the Court declines to adopt that recommendation, the Petition should be denied in full.²

Federal Respondents object to the R&R's conclusion that the agency's Notice of Revocation of Release, *see* Dkt. No. 6-3 at 1 ("Notice"), was insufficient under 8 C.F.R. § 241.14(i). *See* R&R at 1-2 (reflecting agreement with Petitioner's assertion that ICE "did not comply with 8 C.F.R. § 241.13(i)" when revoking his release). Noting that the Notice "simply mirrored the language of § 241.13(i)(2)," the R&R found without citation to the regulation or other authority that this was "not enough," finding the "Petitioner must be told of *what* circumstances had changed or *why* there was not a significant likelihood of removal" R&R at 5 (emphasis in original) (noting "the Notice did not inform Petitioner what the changed circumstances were").

Respondents object to this finding, as it expands the notice requirements beyond those set forth in § 241.13(i)(2)-(3). Though the R&R is correct that parts of the Notice "mirrored the language of § 241.13(i)(2)," applicable "Revocation Procedures" are set forth in 8 C.F.R. § 241.14(i)(3), which states in relevant portion that, "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release." Here, it is

² In accordance with District of Minnesota Local Rule 72.2(b)(1), Federal Respondents limit their objections to "specific written objections to a magistrate judge's proposed findings and recommendations," while noting that the R&R does not address the Petitioner's arguments under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), *see* R&R at 8 (noting the same), or Administrative Procedure Act arguments. To the extent the Court opts to reach any of those arguments, Respondents respectfully reiterate the positions articulated in their Response. *See* Dkt. No. 4. Additionally, Federal Respondents do not object to the R&R's recommendation that the Petitioner's requests for injunctive relief be denied or that Federal Respondent Monaco be terminated as a respondent in this case.

undisputed that the Notice did inform the Petitioner that, “ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in [his] case.” Notice (also stating “[d]ue to changes in the circumstances of [the] case, there is now a significant likelihood of removal within the reasonably foreseeable future.”). As the Notice reflects, ICE’s determination regarding a significant likelihood of removal in the reasonably foreseeable future (“SLRFF”) is its reason for revocation—indeed it is one of the two potential reasons articulated in 8 C.F.R. § 241.14(i)(1)-(2)—and Petitioner was informed of that reason. *See* Notice. 8 C.F.R. § 241.14(i)(3) adds no requirement that ICE also notify Petitioner, “*what* circumstances had changed or *why*” ICE made its determination regarding SLRFF. R&R at 5 (emphasis in original). Were those additional details required, they would have been included among the regulation’s notice requirements. *Cf. Watt v. GMAC Mortg. Corp.*, 457 F.3d 781, 783 (8th Cir. 2006) (“a standard axiom of statutory interpretation is *expressio unius est exclusio alterius*, or the expression of one thing excludes others not expressed.”) (citation omitted). By its plain terms, the regulation did not do so here. *See* 8 C.F.R. § 241.14(i)(3).

By the same token, Federal Respondents also object to the R&R’s conclusion that additional information was required “in order [for Petitioner] to meaningfully respond to the reasons and submit evidence in opposition as allowed under § 241.13(i)(3),” or that absent such information, “Petitioner did not have a meaningful opportunity to respond” at his informal interview. R&R at 5. The R&R does not state a basis for that conclusion, but the regulation makes clear that at the initial informal interview, “[t]he alien may submit *any evidence or information that he or she believes* shows there is no significant likelihood

he or she be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.14(i)(3) (emphasis added). Here, Petitioner had the opportunity to submit such information, which is not contingent on ICE’s own SLRFF analysis, but did not do so. *See* Dkt. No. 6-4.

In the same sentence, the R&R also refers to a failure to afford Petitioner an “evaluation and determination of contested facts,” citing § 241.14(i)(3). R&R at 6. While the regulation does refer to “evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release” that provision concerns a “revocation custody review”—not the initial informal interview. It is an apparent reference to custody review procedures set forth in in Section 241.4, which are incorporated into § 241.13(i)(2). *See* 8 C.F.R. § 241.13(i)(2) (“If the alien is not released from custody following the informal interview . . .,³ the provisions of § 241.4 shall govern the alien's continued detention pending removal.”). Section 241.4(b)(4) confirms the applicability of its custody review procedures stating, “if the Service subsequently determines, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future to the country to which the alien was ordered removed or to a third country, the alien shall again be subject to the *custody review procedures under this section.*” 8 C. F. R. § 241.4(b)(4) (emphasis added). Federal Respondents therefore respectfully object to the

³ Note the regulatory text appears to mistakenly refer to 8 C.F.R. § 241.13(h)(3) (which does not provide for informal interview at all but rather concerns discretionary grants of employment authorization in conditions of release), rather than of § 241(i)(3), which discusses the informal interview.

conclusion that Petitioner was not but should have been afforded an evaluation and determination of contested facts during his informal interview. *See* R&R at 6.

Federal Respondents also object to the R&R’s conclusion that Respondents “have . . . 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.” R&R at 6-7. As Federal Respondents noted in their Response, *see* Dkt. No. 4 at 4, the Petition lacked any argument that Petitioner’s removal was not significantly likely in the reasonably foreseeable future. Indeed, the merits of ICE’s SLRFF determination was not raised by the Petition at all. *See generally* Dkt. No. 1. Federal Respondents thus respectfully submit that the ICE’s determination as to SLRFF is not presently before the Court. In that way, this case is readily distinguishable from *Kong v. United States*, cited in the R&R as a basis for interpreting Section 241.13(i)(2), including by reading requirements from 241.13(f) into the agency’s SLRFF determination under Section 241.13(i). *See* R&R at 7 (citing 62 F.4th 608, 619-20 (1st Cir. 2023)). *Kong* did not concern a habeas petition but rather review of Federal Tort Claims Act and Massachusetts Civil Rights act claims that had been dismissed by a district court for lack of subject matter jurisdiction, *see* 62 F.4th at 611, and unlike here, the plaintiff there had explicitly asserted that the government “failed to determine that his removal was significantly likely in the reasonably foreseeable future, as required by a federal regulation, 8 C.F.R. § 241.13(i)(2) . . .” 62 F.4th at 610. Moreover, *Kong*’s discussion of Section 241.13(i)(2)’s requirements arose in dicta, as the court of appeals determined that the district court had improperly made its own determination on SLRFF “without assessing whether ICE had made the

required finding” *Id.* 620. The Eight Circuit does not appear to have adopted *Kong’s* interpretation adding Section 241.13(f)’s factors onto 241.13(i)(2), nor should it, as 8 C.F.R. § 241.13(f) involves concerns factors for consideration by the Headquarters Post-order Detention Unit culminating from a process undertaken in response to a written request by the alien and potential submission of written documentation, following the alien’s compliance and cooperation with removal efforts, among other things. *See* 8 C.F.R. § 241.13(c)-(g). Moreover, As Federal Respondents observed in the Response, under *Zadvydas* Petitioner bears the initial burden to show there is no SLRFF, only after which the government would need to rebut that showing. Response at 14-17 (citing *Zadvydas*, 533 U.S. 678 at 701. Federal respondents thus object, as the R&R’s analysis appears to invert that burden.

CONCLUSION

For the foregoing reasons and those set forth in the Response, Federal Respondents submit that the Court should deny the habeas petition and decline to adopt the R&R’s recommendation that the Petition be granted in that Petitioner be released from custody subject to the conditions in the prior order of supervision.

Signature Page to Follow

Dated: July 1, 2025

JOSHEPH H. THOMPSON
Acting United States Attorney

s/ Liles H. Repp

By: LILES H. REPP
Assistant U.S. Attorney
Attorney ID Number 0400692
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
Liles.Repp@usdoj.gov

Attorneys for Federal Respondents