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10 UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA
12 PHOENIX DIVISION

13 Lissa Mel Hatanaka a/k/a Lissa Melissa Mel-
14 Turdiev,

15 Petitioner,

16 v.

17 Fred Figueroa, et al.;

18 Respondents.

Case No. 25-CV-02448-PHX-SMB (ESW)

**PETITIONER'S REPLY TO
RESPONDENTS' NOTICE OF
SUPPLEMENT TO THE RECORD
(DOC. 22)**

Assigned to Honorable Susan M. Brnovich

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I. INTRODUCTION

On October 2, 2025, this Court issued an Order instructing Respondents to file a copy of the alleged Final Administrative Removal Order as well as demonstrate that the Department of Homeland Security complied with 8 C.F.R. § 241.4(1)(2) when it revoked Petitioner’s Order of Supervision. *See* Docket 21 at 1-2.

Respondents responded to the Order on October 10, 2025. *See* Docket 22 (Notice of Supplement to the Record). Petitioner hereby files this reply to the Respondents’ Notice, demonstrating that Respondents clearly failed to comply with the applicable regulations. Specifically, Respondents did not issue a Notice of Revocation until Petitioner had already been detained for 69 days and, even then, Petitioner was not provided with a meaningful opportunity to respond. For these reasons, her detention is unlawful, and this Court should grant her release forthright.¹

II. SUMMARY OF THE SUPPLEMENTAL RECORDS

Prior to addressing the merits of Respondents’ position, Petitioner notes the following discrepancies and concerns with the government’s evidence.

In their Notice, Respondents provided the following documents.

- Exh. A. Declaration of Deportation Officer Sergio Cabrera
- Exh. B. Final Administrative Removal Order, dated 5/17/2021
- Exh. C. Notice of Revocation of Release, dated 7/23/2025

¹ Petitioner maintains that she was not arrested pursuant to ICE’s authority under 8 C.F.R. § 241.4, but rather so that she could be placed into removal proceedings under 8 U.S.C. § 1229a. This reply assumes, however, that she is detained pursuant to 8 U.S.C. § 1231(a)(6).

1 First, Officer Cabrera's declaration (Doc. 22-1) corrects some, but not all, of the
2 inconsistencies previously identified by Petitioner. *See* Doc. 20 at 2-4. The declaration
3 misstates the date of Petitioner's appeal to the Board of Immigration Appeals (¶16)² and
4 incorrectly states that a fear interview has been scheduled (¶16): it has not. *See* Doc.20 at
5 4; *id.* at Exh. A (Doc. 20-1) at Attachment I. The declaration appears to confirm, however,
6 that Petitioner was arrested on May 15, 2025, not for purposes of executing a removal
7 order, but rather to initiate removal proceedings under 8 U.S.C. § 1229a. *See* Doc. 22-1,
8 ¶13. The declaration further confirms that ICE did not provide notice to Respondent until
9 July 23, 2025. *Id.* ¶17.

12 Second, the Final Administrative Removal Order (Doc. 22-2), issued on May 17,
13 2021, includes two pages, the second of which is Page 2 of a different form. Doc. 22-2 at
14 2 (Form I-851, whereas the first page is from Form I-851A). Additionally, it is unclear
15 why these documents provide that Petitioner refused to sign, as multiple other documents
16 from that day *were* signed. *See* Doc 1-2 at 31-32. Moreover, neither the names nor the
17 signatures on the new evidence match the names or signatures on the documents provided
18 at Doc. 1-2 (p. 31-32), which were also issued on May 17, 2021.³

22 Third, the Notice of Revocation of Release makes clear—as discussed below—
23 that Petitioner was detained for over 65 days before she was provided any explanation as
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26 ² Due to what appears to be a scrivener's error, there are two paragraphs marked as
27 paragraph 16.

28 ³ Petitioner concedes it is possible that ICE had one officer issue the Notice of
Intent, another officer issue the Final Administrative Removal Order, and a third officer
issue the Order of Supervision.

1 to her re-detention. *See* Doc. 22-3.

2 **III. ARGUMENT**

3 **1. Respondents Did Not Comply With the Regulations Governing the Release**
4 **and Revocation of Release of Noncitizens Ordered Removed.**

5 The detention and release of noncitizens who are subject to a final order of
6 removal are governed by 8 U.S.C. § 1231, under which the Attorney General “shall”
7 remove a noncitizen from the United States within a period of 90 days. 8 U.S.C. §
8 1231(a)(1)(A). “If the [noncitizen] does not leave or is not removed within the removal
9 period, the [noncitizen], pending removal, shall be subject to supervision under
10 regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3).
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13 The regulations governing the release and revocation of release of noncitizens
14 subject to a final order of removal are 8 C.F.R. §§ 241.4 and 241.13. “Both § 241.4 and
15 § 241.13 were intended ‘to provide due process protections to [noncitizens] following the
16 removal period as they are considered for continued detention, release, and then possible
17 revocation of release.’” *Phan v. Noem*, No. 3:25-CV-02422-RBM-MSB, 2025 WL
18 2898977, at *3 (S.D. Cal. Oct. 10, 2025), quoting *Santamaria Orellana v. Baker*, Civil
19 Action No. 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025).
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21 **A. 8 C.F.R. § 241.4**

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23 Under 8 C.F.R. § 241.4, a noncitizen’s release may be revoked when the Executive
24 Associate Commissioner or a district director believes revocation “is appropriate to
25 enforce a removal order or to commence removal proceedings[.]” 8 C.F.R. §
26 241.4(1)(2)(iii). “Upon revocation,” the noncitizen “will be notified of the reasons for
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1 revocation of his or her release or parole” and “will be afforded an initial informal
2 interview promptly after his or her return” to be given “an opportunity to respond to the
3 reasons for revocation stated in the notification.” § 241.4(l)(1).

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5 Courts across the country have interpreted the notice and interview requirements
6 found in § 241.2(l)(1) to apply equally to revocations under 8 C.F.R. § 241.4(l)(2). *See,*
7 *e.g., Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *6 (S.D. Fla.
8 Sept. 9, 2025) (collecting cases). Thus, under either provision, the government must
9 provide an informal interview *upon the revocation of release*. *See Noem v. Abrego Garcia*,
10 604 U.S. —, 145 S. Ct. 1017, 1019 (2025) (Sotomayor, J., statement respecting the
11 Court's disposition of the application) (stating that under 8 C.F.R. § 241.4(l), “in order to
12 revoke conditional release the Government must provide adequate notice and ‘promptly’
13 arrange an ‘initial informal interview...to afford the alien an opportunity to respond to the
14 reasons for the revocation stated in the notification’ ”). To conclude otherwise would be
15 “nonsensical.” *Grigorian*, 2025 WL 260453, at *6 (“Indeed, it would be nonsensical if
16 an alien detained for violation of conditions of release would receive notice and an
17 interview under § 241.4(l)(1) but not § 241.4(l)(2) given that both provisions specify that
18 a violation of conditions of release is a basis for revoking an OSUP.”).

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23 Under the regulations, the informal interview must occur “after [the noncitizen’s]
24 return to [ICE] custody” and “afford the [noncitizen] an opportunity to respond to the
25 reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1). Further, the
26 regulations require that any notice or decision be served upon the noncitizen’s attorney
27 or representative. *See* 8 C.F.R. § 241.4(d)(3).

1 **i. The Notice of Revocation was Not Served on Counsel and Was**
2 **Not Signed by a Person Authorized to Revoke Release.**

3 Only two officials have the authority to revoke an Order of Supervision: the
4 Executive Associate Director of ICE or a district director of ICE if the “circumstances do
5 not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R.
6 § 241.4(1)(2). In this case, however, the Notice provided to Petitioner on July 23, 2025,
7 was issued by Brian Ortega, Assistant Field Office Director. *See* Doc. 22-3. Mr. Ortega
8 does not appear to be one of the two individuals authorized to issue the Notice of
9 Revocation of Release.
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11 Moreover, despite having provided a properly executed Form G-28 to ICE on June
12 12, 2025, undersigned counsel was not notified of any decision or interview regarding
13 Petitioner, and indeed was unaware that a formal Notice had been issued until
14 Respondents filed a copy of that document on October 10, 2025. *See* Doc. 10-2 at
15 Attachment D (email correspondence to ICE including copy of Form G-28).
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17 **ii. The Notice of Revocation was Not Prompt and Petitioner Was**
18 **Not Provided with a Meaningful Opportunity to Respond.**

19 The regulations provide that a noncitizen will be notified of the reasons for
20 revocation of his or her release “upon revocation.” 8 C.F.R. § 241.4(1)(2)(iii). Here, by
21 Respondent’s own admission, Petitioner was taken into custody on May 15, 2025, but did
22 not receive the Notice of Revocation of Release until July 23, 2025—a period of 69 days.
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24 The essential requirements of due process include notice and an opportunity to be
25 heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S.
26 319, 333 (1976). A delay of 69 days “cannot reasonably be construed as . . . prompt.”
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1 See *M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or.
2 Aug. 21, 2025) (finding an informal interview given 27 days after petitioner was taken
3 into ICE custody “cannot reasonably be construed as ... prompt” and granting habeas
4 petition); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D.
5 Cal. July 16, 2025) (finding petitioner likely to succeed on his claim that his detention
6 was unlawful “[b]ecause there is no indication that an informal interview was
7 provided”); *Liu v. Carter*, Case No. 25-03036-JWL, 2025 WL 1696526, at *2 (D. Kan.
8 June 17, 2025) (finding “that officials did not properly revoke petitioner's release”
9 because “most obviously ... petitioner was not granted the required interview upon the
10 revocation of his release”).
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14 In addition, the record demonstrates that ICE “made the decision to revoke
15 [Petitioner’s] prior order of supervision” on July 23, 2025, and that on that *same day* ICE
16 “completed the informal interview pursuant to 8 C.F.R. § 241.4(1)(2). Doc. 22-1 at ¶ 17.
17 Stated otherwise, Respondents provided “notice” and “promptly” conducted an informal
18 interview, but could not possibly have complied with the regulation’s twin requirement
19 of ensuring an opportunity to respond at a “meaningful time and in a meaningful
20 manner.” *Mathews*, 424 U.S. at 333. Due process requires more.
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23 “Because ICE failed to comply with 8 C.F.R. § 241.4(1), Petitioner's detention is
24 unlawful.” *Phan v. Noem*, 2025 WL 2898977, at *4. See also *Diaz v. Wofford*, No. 1:25-
25 CV-01079 JLT EPG, 2025 WL 2581575, at *3–4 (E.D. Cal. Sept. 5, 2025) (granting relief
26 and holding that the government’s failure to comply with notice and interview
27 requirements violated Mr. Diaz’s due process rights).
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1 **B. 8 C.F.R. § 241.13**

2 To the extent that Petitioner’s detention may be covered by 8 C.F.R. § 241.13,
3 Respondents failed to comply with the regulations for the same reasons stated above.

4 **2. Respondents Did Not Comply With the Regulations Governing Final**
5 **Administrative Removal Orders.**

6 Under 8 C.F.R. § 1238.1(g) (Proceedings Under Section 238(b) of the Act),

7 At the time of issuance of a Notice of Intent or at any time thereafter and up
8 to the time the alien becomes the subject of a Warrant of Removal, the alien
9 may be arrested and taken into custody **under the authority of a Warrant**
10 **of Arrest** issued by an officer listed in § 287.5(e)(2) of 8 CFR chapter I. The
11 decision of the Service concerning custody or bond shall not be
12 administratively appealable during proceedings initiated under section 238
13 of the Act and this part.

14 (Emphasis added). Here, Petitioner was not arrested under the authority of a Warrant of
15 Arrest, which further supports her argument that she was not detained on May 15, 2025,
16 so that ICE could execute a removal order. Additionally, 8 C.F.R. § 1238.1(b)(2)(i), (c),
17 provide that a noncitizen may rebut the charges in a Notice of Intent (Form I-851) within
18 10 days of its issuance. However, the evidence submitted by Respondents show that
19 Forms I-851 and I-851A were issued on the same day. Doc. 22-2.⁴

20 **IV. CONCLUSION**

21 As of October 20, 2025, Petitioner has been detained by ICE for 158 days. Her
22 appeal of the Immigration Judge’s decision to terminate her removal proceedings remains
23 pending with the Board of Immigration Appeals, and she cannot lawfully be removed
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27 ⁴ It is possible that, pursuant to 8 C.F.R. § 1238.1(d), Petitioner conceded
28 deportability. However, this appears unlikely given that Respondents’ evidence indicates
that Petitioner “refused to acknowledge receipt of [Form I-851].” Doc. 22-2, p.2.

1 during the pendency of that appeal. *See* 8 C.F.R. § 1003.6; Doc. 20 at 8-9. Further, as
2 demonstrated herein, ICE did not comply with any of the applicable regulations, and
3 Petitioner is entitled to release from custody.
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6 Dated: October 20, 2025

Respectfully submitted,

7 s/ Ami Hutchinson

8 Ami Hutchinson
9 Attorney for Petitioner
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