

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ARISH RUSTAMI,)	
)	
Petitioner,)	
)	
vs.)	Case No. 5:25-cv-03160-JWL
)	
KRISTI NOEM, Secretary of Homeland)	
Security, TODD M. LYONS, Acting)	
Director, U.S. Immigration and Customs)	
Enforcement, SAM OLSON, ICE Chicago)	
Field Office Director, PAMELA BONDI,)	
Attorney General,)	
)	
Respondents.)	
)	

SUPPLEMENTAL RESPONSE TO § 2241 HABEAS PETITION

This matter is before the Court on the petition of Arish Rustami (“Petitioner”) for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained in FCI Leavenworth in Leavenworth, Kansas, pending removal from the United States. Doc. 1. Petitioner initially alleged that (1) his detention violates 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas v. Davis*, and the Due Process Clause; and (2) that his order of supervision was improperly revoked—contentions which Respondents addressed in their Response to the Habeas Petition and Order to Show Cause. *Id.*; Doc. 4. He also requested that the Court enjoin his removal to Iran and to enjoin his removal to any third country without first providing him notice and opportunity to apply for withholding of removal—requests not appropriately brought in a habeas petition. *Id.*

In his traverse, Petitioner added claims that (3) Respondents violated 8 C.F.R. § 241.4(l)(1) by failing to provide him notice and an interview *before* he was detained; and (4) Respondents violated the Due Process Clause by failing to provide adequate assurance that his Due Process

rights will not be violated in the future. Petitioner also adds a request that the Court direct ICE and DHS to produce certain materials within seven days. Doc. 7. For the reasons explained below, Petitioner's requested relief should be denied in its entirety.

STATEMENT OF FACTS

The following facts are part of the Declaration of Eric K. Swanson, a Deportation Officer for Enforcement and Removal Operations ("ERO") at United States Immigration and Customs Enforcement ("ICE"). Exhibit 1, Eric K. Swanson Decl., ¶¶ 1-3. On or about September 12, 2025, Petitioner was interviewed regarding his custody status. *Id.* ¶ 6. On or about October 17, 2025, Petitioner was served with a Decision to Continue Detention notice, informing him that he would not be released from custody at this time. *Id.* ¶ 7. On or about October 28, 2025, a travel document request was sent to the Pakistan Consulate General in Chicago, Illinois. *Id.* ¶ 8. On or about November 10, 2025, ERO received correspondence from the Pakistan Consulate General providing notice that Pakistan was denying the travel document request. *Id.* ¶ 9. ICE will continue its efforts to effectuate Petitioner's removal and will update the Court on any further developments in this matter. *Id.* ¶ 10.

ARGUMENT

I. Petitioner has not been prejudiced by the alleged failure to promptly conduct an initial interview.

In the Petition, Petitioner argued in his "third claim for relief" that "[t]he only lawful basis for revoking an order of supervision is when the noncitizen 'violates the conditions of release.'" Doc. 1, ¶ 56. Because Petitioner alleged that he was not provided notice of a violation of his conditions of release, Petitioner asserted that "Respondents had no legal basis to re-arrest Petitioner." *Id.* ¶ 60. In their Response to the Habeas Petition and Order to Show Cause, Respondents provided evidence that Petitioner's supervision was revoked based on changed

circumstances—a proper basis for revocation under 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. Saenz Decl., Doc. 4-1, ¶ 17; *see also* Notice of Revocation of Release, Doc. 4-1.

Now, in “Count I” of Petitioner’s traverse, Petitioner argues that ICE violated 8 C.F.R. § 241.4(l)(1) by revoking Mr. Rustami’s supervision before providing notice or opportunity to be heard. Doc. 7, p. 7. But, Petitioner’s new theory relies on a misreading of section 241.4. Subsection section (l)(i) does not require that the notice or interview take place *before* the revocation but, rather, that “the alien *will be notified* of the reasons for revocation of his or her release” and that “[t]he alien *will be afforded* an initial informal interview promptly *after* his or her return to Service custody.” 8 C.F.R. § 241.4(l)(1) (emphasis added).

As recognized in Petitioner’s traverse, Petitioner was served with a copy of his Notice of Revocation on or about June 27, 2025, which notified him that his supervision was being revoked due to changed circumstances. Saenz Decl., Doc. 4-1, ¶ 18; Notice of Revocation, Doc. 4-2. Although it is not known whether an initial informal interview was promptly conducted upon Petitioner’s return to custody, any non-compliance was harmless or otherwise insufficient to justify release.

Here, Petitioner argues that he was not given the opportunity to “challeng[e] the government’s claim of ‘changed circumstances’ and from presenting evidence of his long-term compliance with supervision.” Doc. 7, p. 8. But, Petitioner was interviewed regarding his custody status on or about September 12, 2025. Swanson Decl. ¶ 6. Thus, Petitioner was given the opportunity to challenge the government’s claim of changed circumstances and to present evidence of long-term compliance with supervision at that time. And, after the interview was conducted, a decision was made to continue Petitioner’s detention. *Id.* ¶ 7.

Petitioner therefore cannot show prejudice as a result of Respondents' alleged failure to promptly conduct his initial interview because his detention continued after he was given the opportunity to present the arguments he alleges he was not allowed to initially present. *See Olmedo v. United States Immigr. & Customs Enf't*, No. 25-3159-JWL, 2025 WL 2821860, at *3 (D. Kan. Oct. 3, 2025) (noting that the respondents had not argued that the requested review would result in a determination of continued detention). Moreover, release is not an appropriate remedy for an alleged failure to conduct an initial interview. *See* Respondents' Resp., Doc. 4, pp. 7-8. Rather, "the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation." *Olmedo*, 2025 WL 2821860, at *3 (citing *Virani v. Huron*, 2020 WL 1333172, at *12 (W.D. Tex. Mar. 23, 2020)).

Although Petitioner cites *Cifuentes Rivera v. Arnott* for the proposition that he should be released due to the lack of initial interview, in *Cifuentes*, the government did not "provide any argument addressing the merits of Petitioner's procedural due process claim, instead choosing to rely on a jurisdictional argument." *Cifuentes Rivera v. Arnott*, No. 25-cv-570, slip op. at 12 (W.D. Mo. Oct. 14, 2025) (attached to traverse as Doc. 7-1). Because Petitioner has failed to show prejudice as a result of the alleged non-compliance or demonstrate why substitute process would be an insufficient remedy, the Court should deny his habeas petition.

II. Petitioner's allegation that he *may* be denied due process in the future is not ripe.

In "Count II" of Petitioner's traverse, Petitioner adds an entirely new claim that his right to due process will be violated if he is removed to Pakistan or Afghanistan without an opportunity to present a reasonable fear of persecution. Doc. 7, pp. 9-10. First, Petitioner has not sought leave to amend his petition and the Court "does not ordinarily address arguments or issues raised for the

first time in a reply brief.” *Vargas v. Noem*, No. 25-3155-JWL, 2025 WL 2770679, at *1 (D. Kan. Sept. 29, 2025).

Second, the Court lacks jurisdiction over Petitioner’s claim because it is not ripe. *Noe v. True*, No. 21-1373, 2022 WL 5080196, at *4 (10th Cir. Oct. 5, 2022) (unpublished) (“In order for a claim to be justiciable under Article III, it must be shown to be a ripe controversy.”) (quoting *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995)). Petitioner asserts that because Deportation Officer Saenz’s declaration did not contain a “plan to provide reasonable-fear procedures DHS has not provided the process due before advancing third-country removal.” Doc. 7, pp. 9-10. But, Petitioner provides no support for his assertion that he may assert a due process claim based on speculation that he will not be given due process in the future.

Rather, in the case cited by Petitioner, the court concluded that the petitioner was entitled to additional process *after* the petitioner had received a Notice of Removal notifying the petitioner that he would be removed to Mexico, had been interviewed by an asylum officer, and had been denied review by an immigration judge. *Cruz-Medina v. Noem*, No. 25-cv-1768, slip op. at 2-3 (D. Md. Oct. 7, 2025) (attached to traverse at Doc. 7-2). Here, Petitioner has not yet been issued a Notice of Removal to a third country. Although Respondents disagree with the court’s conclusion in *Cruz-Medina* that 8 U.S.C. § 1252 did not strip the Court of jurisdiction to hear the case, *Cruz-Medina* highlights the abstract nature of Petitioner’s unripe claim compared to the concrete claim raised in *Cruz-Medina*. Because Petitioner’s due process claim is not ripe, the Court lacks jurisdiction over it.¹

¹ The Court also lacks jurisdiction over Petitioner’s requested injunctive relief related to his removal for the reasons raised in Respondents’ Response to the Habeas Petition and Order to Show Cause. *See Doc. 4, pp. 8-12*.

III. Petitioner not been detained beyond the presumptively reasonable six-month period.

In “Count III” of Petitioner’s traverse, Petitioner argues that the Court should reconsider its conclusion in *Liu v. Carter* that “the removal-period clock restarts when an alien subject to a removal order is again detained by ICE.” See Doc. 7, pp. 10-12; *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1207089, at *2 (D. Kan. Apr. 25, 2025) (citing *Leybinski v. United States Immigr. and Customs Enft.*, 2013 WL 132544, at *9 (S.D.N.Y. Jan. 8, 2013), *vacated as moot*, 553 F. App’x 108 (2d Cir. 2014)). The Court should reject this invitation.

As noted by the District Court for the Southern District of Florida: “if the Court counted detentions in the aggregate, any subsequent period of detention, even one day, would raise constitutional concerns. And adjudicating the constitutionality of every re-detention would obstruct an area that is in the discretion of the Attorney General—effectuating removals.” *Barrios v. Ripa*, No. 1:25-cv-22644, 2025 U.S. Dist. LEXIS 153228, at *21 (S.D. Fla. Aug. 8, 2025) (citing *Meskini v. Att’y Gen. of United States*, No. 4:14-CV-42-CDL, 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018), for the finding that *Zadvydas* is not a “Get Out of Jail Free Card that may be redeemed at any time just because an alien was detained too long in the past”). Because Petitioner’s order of supervision was revoked on June 23, 2025, his detention does not violate 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, and the Court should deny his habeas petition. Saenz Decl., Doc. 4-1, ¶ 17.

IV. Petitioner has not established that discovery would be appropriate in this case.

Finally, the Court should deny Petitioner’s new requests that the Court (1) “direct[] ICE, within seven days, to . . . produce[] the associated custody-review record,” (2) “[r]equire[] DHS to produce within seven days (a) all post-revocation custody-review materials, including any § 241.4 or § 241.13 analyses; (b) any requests to or responses from Pakistan or Afghanistan

regarding travel documents; and (c) any notices to petitioner concerning third country removal.” Doc. 7, pp. 15-16, ¶¶ 2, 4.

The Supreme Court has made clear that “[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course.” *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Rather, “[t]he Court, in its discretion, may apply Rule 6 of the Rules Governing Habeas Corpus Cases, foll. 28 U.S.C. § 2254, to habeas petitions filed under § 2241.” *Lee v. English*, No. 19-3029-JWL, 2019 WL 3891147, at *5 (D. Kan. Aug. 19, 2019), *aff’d sub nom. Jones v. English*, 817 F. App’x 580 (10th Cir. 2020) (citing Rule 1(b), Rules Governing Habeas Corpus Cases). Thus, “[t]he Court may permit discovery under Habeas Rule 6 if the Petitioner provides ‘reasons’ for the request and the Court finds ‘good cause’ to allow discovery.” *Id.* (citing Rules 6(a) and 6(b)).

In assessing whether discovery would be appropriate in *Bracy*, the Supreme Court explained that “where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.” *Bracy*, 520 U.S. at 908-09 (alteration and citation omitted). Here, Petitioner does not give any reasons at all for his request that Respondents produce the post-revocation custody-review materials, correspondence with Pakistan and Afghanistan, and notices to Petitioner concerning third country removal. And, other courts have rejected habeas petitioners’ requests for discovery where the facts were not in dispute or where an immigration-related petitioner “failed to demonstrate that discovery is necessary to the determination of the claims” in his petition. *Khalil v. Joyce*, 2025 WL 849803, at *11 n.6 (S.D.N.Y. March 19, 2025); *Alexis v. Holmes*, 2004 WL 2202646, at *3 (W.D.N.Y. Sept. 29, 2004).

Because it is entirely unclear why Petitioner seeks the requested documents, Petitioner has failed to meet the standard under Rule 6 or demonstrate why production of such documents would be a proper form of a relief in a habeas case. The Court should therefore deny Petitioner's request for production of documents.

If Petitioner provides reasoning for the requests for the first time in his reply, the Court should not consider those arguments or, alternatively, should allow Respondents the opportunity to submit briefing responsive to any newly raised arguments.

CONCLUSION

Petitioner initially alleged (1) that he was detained in violation of 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas v. Davis*, and the Due Process Clause; and (2) that the revocation of his order of supervision violated 8 C.F.R. § 241.4(l)(1) because he had not violated the terms of his supervision. Petitioner's traverse purports to add claims that (3) Respondents violated 8 C.F.R. § 241.4(l)(1) by failing to provide him notice and an interview *before* he was detained; and (4) Respondents violated the Due Process Clause by failing to provide adequate assurance that his Due Process rights will not be violated in the future.

As addressed above and in Respondents' Response to the Habeas Petition and the Court's Order to Show Cause: (1) Petitioner's prolonged detention claim is premature as he is within the presumptively reasonable six-month removal period; (2) Petitioner's order of supervision was properly revoked on the basis of changed circumstances; (3) Respondents were not required to provide Petitioner with notice and an interview before he was detained, and a subsequent interview has been conducted; and (4) the Court lacks subject-matter jurisdiction over Petitioner's claim that he has not been given adequate assurance that his Due Process rights will not be violated in the future.

Because none of Petitioner's claims provide a basis for relief, the Court should deny all requested injunctive relief and enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2025, the foregoing document was electronically filed by using the CM/ECF System, which will send notification of such filing to the following ECF registrants:

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