

**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.)	
)	

**PARTIAL WITHDRAWAL OF 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.

On November 13, 2025, Respondents filed their Supplemental Response to Petitioner’s habeas petition. In that response, Respondents cited to the Declaration of Eric K. Swanson, a Deportation Officer (“DO”) for Enforcement and Removal Operations (“ERO”) at United States Immigration and Customs Enforcement (“ICE”). There, DO Swanson stated in paragraph 6 that “Petitioner was interviewed regarding his custody status” on or about September 12, 2025. Doc. 9-1, Swanson Decl. ¶ 6.

After receipt of Petitioner’s Second Traverse, the undersigned counsel notified ICE on December 5, 2025, of Petitioner’s allegation that an interview did not occur on September 12,

2025. Near the end of the day on December 17, 2025, the undersigned counsel was informed that DO Bradley W. McNary, not DO Swanson, met with Petitioner on September 12, 2025, and that the interview was limited to questions regarding Petitioner's willingness to be removed to Afghanistan. *See* Exhibit 1, Declaration of Eric K. Swanson; Exhibit 2, Declaration of Bradley W. McNary.

Because Respondents argued in their Supplemental Response that Petitioner was given the opportunity to provide evidence in support of his release on September 12, 2025—an argument that the undersigned now understands to be factually inaccurate—Respondents withdraw their argument that Petitioner cannot show prejudice as a result of Respondents' alleged failure to conduct Petitioner's initial interview. Respondents reaffirm their argument that the appropriate remedy for failure to conduct the initial interview is substitute process, however.

The undersigned counsel apologizes for the inconvenience this error has caused.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 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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