

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Helen Sarahi Funes GAMEZ,

Petitioner,

v.

LaDeon FRANCIS, in his official capacity as
Acting Field Office Director of New York,
Immigration and Customs Enforcement; Kristi
NOEM in her official capacity as Secretary of
Homeland Security; Pam BONDI, in her
official capacity as Attorney General of the
United States

Respondents

Case No. 1:25-cv-07429-PAE

**PETITIONER'S REPLY IN SUPPORT OF TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, AND PETITION FOR HABEAS
CORPUS**

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In the return, Respondents advance a flawed reading of 8 C.F.R. § 241.4 to argue that the constitution permits revocation of orders of supervision like Petitioner's at any time, with no notice or opportunity to contest the revocation. That reading has been rejected time and again by courts in this district and others.

Respondents also assert that Petitioner received notice and an interview before she was detained. That is false. As shown in her declaration, and even in the documents provided with the return, she was detained, handcuffed, and separated from her family and counsel, long before any notice was received—and she has yet to receive the notice and interview process required by the regulations. Respondents' declaration testimony to the contrary is entitled to no weight.

Petitioner and her family are being harmed daily by the conditions of her continued, unjustified detention. For the reasons below and in her previous papers, Petitioner respectfully asks the Court to order her release from detention and return her to her previous Order of Supervision for such time as she may properly respond to any revocation and adjudicate the right to remain in this country and with her family.

I. PETITIONER DID NOT RECEIVE THE PROCESS REQUIRED BY 8 C.F.R. §§ 241.4(L)(1)

A. Petitioner Has a Due Process Right to the Notice and Interview Procedures at 8 C.F.R. § 241.4(l)(1), even if the Basis for Revocation is Found at § 241.4(l)(2)

Respondents do not allege that Petitioner has violated any condition of her Order of Supervision that would warrant revocation thereof under 8 C.F.R. § 241.4(l)(1). Rather, Respondents assert in the return that Petitioner was redetained in order for ICE to “enforce a removal order,” a basis for revocation in 8 C.F.R. § 241.4(l)(2). (Dkt. 18 at 17.)¹ Respondents

¹ As below, this is a *post hoc* assertion—nobody stated to Petitioner that her order was being revoked, let alone that this was the reason for revocation, until long after she was forced to surrender her liberty.

concede that a noncitizen whose release is revoked “due to violations of the terms of the conditions of release under section 241.4(l)(1)” is entitled to “advance notice” of the reasons for revocation, followed by an interview “to respond to the reasons stated in the notification.” (D.I. 18 at 9 and n.2.) But Respondents argue that no such advance notice is required “prior to revoking an alien’s release pursuant to section 241.4(l)(2).” (*Id.* at 9.) That interpretation makes little sense, as it gives process to noncitizens who violate conditions of their orders section 241.4(l)(1), but none to those who comply therewith. For that reason among others, the government’s interpretation has been rejected by district courts many times over.

The government’s distinction here was carefully considered and rejected by the Court in *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025)—a case ignored by Respondents in their brief. As the *Zhu* court noted, any attempted distinction between the process required for revocations under sections (l)(1) and (l)(2) “is in significant tension with the fact that paragraph (l)(2) also covers circumstances where a violation of a condition of supervised release is the basis for revoking a noncitizen’s release,” suggesting that “paragraph (l) sets forth a unified set of procedures for the revocation of removal” under both subsections. *Id.* at *6. The *Zhu* court agreed with the court in *Ceesay v. Kurzdorfer* that “consistent with the weight of authority, the procedures of notice and an interview [a]re required ‘regardless of the reason for the revocation,’” whether that reason is listed under section (l)(1) or (l)(2). *Id.* (quoting *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025)). The *Zhu* court also agreed that respondents’ interpretation here would “result in imbalanced procedural safeguards” for noncitizens redetained for violating their terms of supervision, who would get “more process than a noncitizen — like [Petitioner] — who has met his obligations to report.” *Id.* at *7 (citing *Ceesay*, 781 F. Supp. 3d at 164).

The *Zhu* court found many decisions supporting the “conclusion that redetention under section 241.4 requires notice and an informal interview, even when a noncitizen is detained because it is ‘appropriate to enforce a removal order’ under paragraph (l)(2)(iii).” *Id.* at *7 (citing *Perez-Escobar v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2084102 (D. Mass. July 24, 2025); *Zhen Yi Mei v. Doe*, No. 25-cv-01507, 2025 WL 2258586, at *10 n.19 (N.D. Ohio Aug. 7, 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *M.Q. v. United States*, 776 F. Supp. 3d 180, 187, 190, 190 n.1 (S.D.N.Y. 2025)). And Petitioner’s brief in support of the Order to Show Cause identified more. (Dkt. 8 at 10 (citing *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898 (S.D.N.Y. Oct. 29, 2023)).²

Instead of addressing any of these decisions, Respondents’ brief relies on inapposite authorities. Respondents cite a variety of circuit court decisions³ finding no cognizable federal court challenge to discretionary denials of various forms of relief from removal. (Dkt. 18 at 12-13.) But even where the merits of a denial of discretionary relief may not be subject to review, failure to provide due process and follow the procedural requirements for adjudicating those claims results in remand. *See Zheng v. B.I.A.*, 154 F. App’x 265, 266 (2d Cir. 2005); *see, e.g., Liem v. Att’y Gen.*, 921 F.3d 388, 395 (3d Cir. 2019); *Zhao v. U.S. Dep’t of Just.*, 265 F.3d 83, 93 (2d Cir.

² Even during the time of this briefing, at least one court has again rejected the assertion that no notice or interview are required to revoke an Order of Supervision on a basis set forth in 8 C.F.R. § 241.4(l)(2). *See Chan v. Almodovar*, 25-cv-5095 (E.D.N.Y.) (Transcript of September 17, 2025 hearing before the Hon. Joanna Seybert), at 76-79 (“Mr. Chan was detained well before the notice of revocation of release was even signed, let alone given to Mr. Chan. This does not comport with the regulations.”) (provided herewith excerpted as Exhibit 1 to the September 22, 2025 Declaration of Matthew Moffa).

³ *Yuen Jin v. Mukasey*, 538 F.3d 143 (2d Cir. 2008); *Rojas-Reyes v. INS*, 235 F.3d 115 (2d Cir. 2000); *Matias v. Sessions*, 871 F.3d 65 (1st Cir. 2017); *Assaad v. Ashcroft*, 378 F.3d 471 (5th Cir. 2004); *Smith v. Ashcroft*, 295 F.3d 425 (4th Cir. 2002); *Oguejiofor v. Attorney General of the United States*, 277 F.3d 1305 (11th Cir. 2002); *Ashki v. INS*, 233 F.3d 913 (6th Cir. 2000) and *Appiah v. INS*, 202 F.3d 704 (4th Cir. 2000).

2001); *Anderson v. McElroy*, 953 F.2d 803, 807 (2d Cir. 1992). Respondents then argue that determinations regarding Orders of Supervision are “wholly discretionary” and not subject to review. (Dkt. 18 at 13.) But their cited authority, *Jianmei Lin v. Borgen*, said no such thing; rather, the *Jianmei Lin* court said only that “the issuance” of an order of supervision is discretionary, not that the government had unbound discretion to revoke duly issued orders without following procedural regulations. No. 25-CV-05618 (MMG), 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025). Nor is Petitioner’s claim like that resolved by this Court in *Portillo v. Decker*, in which no Order of Supervision was involved, and in which it was “undisputed that ICE ha[d] conducted the necessary periodic reviews” and “served its final decisions.” No. 21 Civ. 9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022). Here the process required to revoke Petitioner’s order of supervision and redetain her were not followed, so relief is justified.

Even when redetention is based on a reason in 8 C.F.R. § 241.4(l)(2), Petitioner has the right to the advance notice and initial interview set forth at 8 C.F.R. § 241.4(l)(1). To hold otherwise—or even to allow *nunc pro tunc* notice, as Respondents advocate for here—gives the government the unbridled ability to revoke a noncitizen’s Order of Supervision under 8 C.F.R. § 241.4(l)(2) for any reason at any time, and place the noncitizen into detention with no mechanism to challenge the revocation. That interpretation of 8 C.F.R. § 241.4(l)(2) would be unconstitutional, as would Respondents’ proposed solution, (Dkt. 18 at 22 (citing *U.S. ex rel. Ling Yee Suey v. Spar*, 149 F.2d 881, 883 (2d Cir. 1945) and *Rasel v. Barr*, 455 F. Supp. 3d 38, 52 (W.D.N.Y. 2020)). See *Torres-Jurado* 2023 WL 7130898, at *4 (“Defendants cannot decide to revoke the ICE Stay without affording Plaintiff an opportunity to be heard in a meaningful time and in a meaningful manner. This includes, at minimum, the opportunity for Plaintiff to submit evidence relevant to whether Defendants should revoke the ICE Stay before they make a revocation decision.”

(emphasis added) (citing *Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549, 564 (W.D.N.Y. 2020); *Mathews v. Eldridge*, 424 U.S. 319, 346 (1976))).

“A person's liberty cannot be abridged without ‘adequate procedural protections.’” *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *9 (S.D.N.Y. Aug. 13, 2025) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). While Petitioner agrees that the government “has significant discretion to enforce the immigration laws and, indeed, to revoke Petitioner's Order of Supervision,” “it must do so consistent with the requirements of its own regulations and the Due Process Clause.” *Zhu*, 2025 WL 2452352, at *9. And, where process was not provided before detention, the proper remedy is release. *E.g. id.*; *Rombot*, 296 F. Supp. 3d at 388; *Ceesay*, 2025 WL 1284720, at *20-21.

B. The “Notice” Petitioner Received Did Not Comply With § 241

Despite asserting that no notice was required to redetain Petitioner, Respondents argue that, upon reporting to 26 Federal Plaza on September 8, 2025, Petitioner was “served with a Notice of Revocation of Release . . . and advised that her OSUP was revoked.” (D.I. 18 at 5 (citing D.I. 19 ¶18.) A copy of that “Notice” was provided as Exhibit K to the return. (D.I. 17-11.) But this document cannot serve as the required notice “upon revocation,” 8 C.F.R. § 241.4(l)(1), at least because it was not served on Petitioner until long after she was redetained.

Petitioner and her counsel set forth a correct and consistent timeline of the events surrounding her redetention. (See September 22, 2025 Declaration of Helen Sarahi Funes Gamez ¶¶2-20.) Specifically, Petitioner arrived at 26 Federal Plaza, with her US citizen son and her lawyer, for a check-in under her Order of Supervision on September 8, 2025 at about 7:00AM. (*Id.* ¶2.) There, an ICE agent immediately told her she would be detained. (*Id.* ¶3.) Petitioner was told that her son would be detained with her unless she arranged for her husband to retrieve him, so she did. (*Id.* ¶¶5-7.) Her husband arrived around 10:00AM, and left with her son and lawyer around

11:00AM, from which time she was taken to the 10th floor and held in detention. (*Id.* ¶¶8-11.) At about 6:41PM, Petitioner was briefly permitted to use her phone to leave a voice message for her lawyer. (*Id.* ¶¶12.) Petitioner testifies that she did not receive the document entitled “Notice of Revocation of Relief” until later that evening, *after* her call with her lawyer, and many hours after she had surrendered her liberty. (*Id.* ¶¶14-17.)

Exhibit K, page 1 bears a time-stamped electronic signature of the type generated by the Adobe Acrobat program.⁴ That time stamp reads “2025-09-08T19:50:13-0400,” indicating that the document was not signed until 7:50PM that evening.⁵ That timing is entirely consistent with Petitioner’s declaration testimony that she did not receive notice until hours after her detention, and *after* her 6:41 message to her lawyer. Inconsistently, Exhibit K, page 2 purports to be a certificate of service indicating that the notice was served on Petitioner “on 09/08/2025 at 1600.” The court should not rely on the date on this certificate, as it asserts service of the document hours before it was signed, and is undermined by Petitioner’s testimony that she had received no such document before her message to her lawyer. (*Id.* ¶¶16-17.) Still, whether the Court relies on the signature date or purported service date, the fact remains that the notice was neither signed nor served until hours after Petitioner was handcuffed and detained.

Respondents wrongly assert that Exhibit K was served on Petitioner *before* she was taken into custody. *See* Dkt. 18 at 18 (“After ICE provided Petitioner with the Notice, Petitioner was promptly provided with an informal interview consistent with 8 C.F.R. § 241.4(l)(1) at which she noted she would leave her children in the care of her husband and requested a reasonable fear

⁴ Respondents rely on the same electronic signature format for their supporting declaration. Dkt. 19 at 8.

⁵ Specifically, “2025-09-08” refers to the date September 8, 2025; “T19:50:13” refers to 7:50PM in military time, and “-0400” specifies that time zone, i.e. Eastern Daylight Time.

interview. Petitioner was advised that she would be taken into ICE custody, pending her reasonable fear interview.” (emphasis added)). That assertion contradicts the documents themselves, as well as the declaration testimony of Petitioner and her lawyer.

Respondents rely on a single paragraph in the Allport declaration for their incorrect timeline.⁶ but the court should give that statement no weight. The declarant—a field officer in New Orleans—does not claim to personally know the events of September 8, 2025 in New York. Rather, he purports to base his declaration on “consultation with my colleagues,” “ICE electronic records and databases,” and a review of a “temporary administrative file based on the information contained within ICE’s databases” (Dkt. 19 ¶2 and n.2.) But the declaration does not identify which “colleagues” he consulted with or reproduce any of the “electronic records” or “databases” on which it is based, so the statements cannot undermine the evidence set forth in Exhibit K and Petitioner’s own statements.

To be clear, the “Notice” at Exhibit K is itself infirm for multiple reasons beyond the timing of its service on Petitioner. The document is internally inconsistent, as the certificate of service is dated *before* the primary document was even signed. (*Compare* Dkt. 17-11 at 2 with *id.* at 1.) The document also incorrectly asserts that Petitioner was ordered removed to Honduras on “November 4, 2024.” (*Id.* at 1.) The document is signed by an Acting Field Office Director, an official whom at least one district court has found lacks the authority to revoke an order of supervision even under

⁶ That paragraph states “After ICE provided Petitioner with the Notice, Petitioner was promptly provided with an informal interview consistent with 8 C.F.R. § 241.4(l)(1) at which she noted she would leave her children in the care of her husband and requested a reasonable fear interview. Petitioner was advised that she would be taken into ICE custody, pending her reasonable fear interview. Petitioner acknowledged her understanding that she would remain detained pending the reasonable fear interview. Prior to being taken into ICE custody, Petitioner contacted her husband... . After her husband arrived to care for their child, Petitioner was taken into ICE custody.” (Dkt. 19 ¶20 (emphasis added).)

the 2019 referral document produced by Respondents at Exhibit M. *See, e.g., Ceesay*, 781 F. Supp. 3d at 161–62. And, even if *arguendo* the referral document at Exhibit M applies to revocation decisions under § 241.4(l), it is unclear from that document whether the delegated authority is that given in § 241 to the “Executive Associate Commissioner” or merely the “district director;” if the latter, the notice makes no finding that revocation is “in the public interest” and that circumstances do not “reasonably permit referral of the case,” *see id.*, a “threshold determination” that must be made before revoking an order of supervision. *See Rombot*, 296 F. Supp. 3d at 387. Yet the Court need not reach any of these infirmities, because no notice of revocation at all was given before Petitioner was returned to custody, and *post-hoc* process will not suffice. *See Torres-Jurado 2023 WL 7130898*, at *4.

C. Petitioner Has Yet to Receive an Interview in Compliance with § 241

Respondents also hedge their interpretation that no “interview” is required for redetention under § 241(l)(2), asserting still that “[a]fter ICE provided Petitioner with the Notice, Petitioner was promptly provided with an informal interview consistent with 8 C.F.R. § 241.4(l)(1) at which she noted she would leave her children in the care of her husband and requested a reasonable fear interview.” (Dkt. 18 at 18 (citing Dkt 19 ¶ 20).) Respondents also include as Exhibit L an untimestamped file memo (“for internal use only”) purporting to memorialize this conversation. (Dkt. 17-12.)

Here, again, Respondents present a factually inaccurate timeline. The document Respondents refer to as “the Notice” was not given to Petitioner until well after she surrendered her children and her liberty, and after she was separated from her counsel. The statements attributed to Petitioner in Exhibit L—“I would like to leave my kids with my husband,” “I understand I will be detained,” “my husband will pick my US citizen child up—are future-looking, and thus consistent with the assertion that this discussion took place in the morning of September

8, well before “the Notice” was given. This therefore cannot be the interview required by Section 241.4(l)(1), which is “to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” Nor do the statements attributed to Petitioner reflect any “oral response regarding the reason for revocation,” notwithstanding their characterization as such in Exhibit L.⁷

To be clear, Petitioner still has not received the opportunity contemplated by Section 241.4(l) to respond to the reason for the apparent revocation of her Order of Supervision and rebut whatever basis is formally offered to revoke her Order. Even if that basis were the two allegedly “changed circumstances” reflected in Exhibit K—that “ICE has procured a travel document on your behalf” and “your removal is now imminent”—Petitioner has the right and basis to contest both points. As to the first point, Petitioner has the right to argue that no new “document” has appeared since her release in 2023 such that circumstances have changed; Respondents point only to a passport provided by Petitioner herself. As to the second point, Petitioner has the right to demonstrate: that her fear of persecution in Honduras supports entitlement to withholding of removal (*see* Sept. 22, 2025 Funes Gamez Decl. ¶¶27-31); that she is likely to succeed on her still-pending circuit court challenge to reinstatement of a removal order issued in absentia when she was 10; and that her husband’s asylum claim renders her eligible as a derivative to his claim. The return addresses only the last of these, arguing “Petitioner is barred by statute from eligibility for such relief.” (Dkt. 18 at 14 (citing 8 U.S.C. § 1231(a)(5).) That argument is wrong as a matter of law, as section 1231(a)(5) only bars Petitioner, not her husband, from “apply[ing] for relief,” and derivative asylum has been granted to noncitizens with final removal orders. Regardless, the proper forum for Petitioner to contest whether circumstances have changed or removal is imminent is not

⁷ As with Return Exhibit K, the document provided as Exhibit L is also internally inconsistent, stating “the detainee did not provide a written statement or oral statement” while also purporting to memorialize the above “oral response.”

this Court but before ICE, at the interview yet to be provided.

II. Petitioner's Detention Continues To Work Irreparable Harm

Petitioner's unauthorized redetention, now two weeks long, has uncontestedly harmed her and her family. The forced separation from her children and husband continues to work an irreparable loss. (Sept. 22, 2025 Funes Gamez Decl. ¶¶24-25.) Her husband testifies how her children are being scarred emotionally, and how he is struggling emotionally and financially without her. (September 21, 2025 Declaration of Erick Yariel Cruz Villanueva ¶¶2-7.) Petitioner's detention is a constant reminder that, with one mistake by the government, she could be separated from her children and sent to a country where (as an immigration court has concluded) it would be immeasurably dangerous for her husband and daughter to ever go again.

Petitioner has been given only limited ability to hold privileged discussions with her counsel, which impairs her ability to pursue her reasonable fear claim and other various mechanisms to remain in this country. (Sept. 22, 2025 Funes Gamez Decl. ¶26.) Petitioner asked for a reasonable fear interview when she arrived in 2023, and there is no justification in 2025 for ICE separating her from her counsel before USCIS adjudicates the claim. Respondents say that this claim is moot, as Respondent's declarant misleadingly asserts that Petitioner "has 24-hour access to a telephone to contact anyone, including her attorney." (Dkt. 19 ¶24.) To the contrary: requests for legal calls at Richwood must be submitted 24 hours in advance and no same day calls are allowed; all legal calls must be confirmed before 3:00 p.m., CST; telephonic visits can be scheduled only between 08:30 am CST and 2:30 pm CST with an end time at 3:00 pm CST, Monday through Friday, and not on Holidays; and legal calls cannot be initiated from the facility. While the declarant may be referring to general population calls, those calls are monitored and recorded by the facility—and thus inappropriate for privileged discussion, and further cost \$3.00 for 15 minutes. (Sept. 22, 2025 Funes Gamez Decl. ¶25.) And while Respondent asserted at the

time the return was filed that “USCIS rescheduled the reasonable fear interview for Monday, September 22, 2025, when Petitioner’s counsel is expected to be present,” no mechanism was provided to Petitioner’s counsel to join the interview, which has been rescheduled again; Petitioner continues to fear she will be forced into an interview without her counsel. (*See, e.g., id.* ¶¶32-33.)⁸

Whatever interest the government may believe it has in detaining Petitioner, it cannot excuse the harm worked by failing to follow the regulations and provide constitutional process.

III. Petitioner Complied with Her Order and Will Do So

Petitioner asserts that she has never violated her Order of Release, (*see* Sept. 22, 2025 Funes Gamez Decl. ¶34), a point Respondent does not seem to contest. But should Respondent yet do so, or otherwise argue that detention is necessary to keep Petitioner available to ICE, Petitioner offers with this response evidence she has every reason to remain close and accessible to her family, church, and friends for the duration of her proceedings. (*See id.* ¶¶35-39; Sept. 22, 2025 Moffa Dec. Exs. 2-3.)

IV. The Court Should Not Rely On The Allport Declaration

The Allport declaration contains materially incorrect statements about when Petitioner received certain materials (*e.g.* Dkt. 19 ¶¶18-20), from which Respondents allege Petitioner received process *before* she was detained. It also has materially incorrect statements about the conditions of her present confinement (*e.g. id.* ¶24, 27), from which Respondents allege Petitioner has received sufficient access to counsel while detained.

While the Court has the discretion to rely on affidavits in adjudicating a habeas petition, the Court respectfully should give no weight to these statements in the Allport declaration. The declarant does not assert personal knowledge supporting any of his representations, instead relying

⁸ Even with the resources of the undersigned’s firm, it remains challenging to get legal documents from New York reviewed and signed in Monroe, Louisiana in a timely manner.

on an unproduced “temporary file,” unidentified “ICE electronic records and databases,” and “consultation” with unnamed “colleagues.” (*Id.* ¶2.) Even the declarant’s digital signature does not seem to constitute an “actual signature” as required by this Court’s ECF Rule 8.3.⁹ Petitioner has not been offered an opportunity to cross-examine these statements, and Mr. Allport appears to be outside the distance of a trial subpoena. The Court should rely on the sworn answering affidavit of Petitioner, properly presented and subject to cross-examination.

V. CONCLUSION

Petitioner respectfully asks the Court to order her release from detention and return her to her previous Order of Supervision for such time as she may properly respond to any revocation and adjudicate the right to remain in this country and with her family.

⁹ Available at https://nysd.uscourts.gov/sites/default/files/pdf/ecf_rules/ECF Rules 20230724 TH FINAL 3.pdf

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Respectfully submitted,

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