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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Kauser Mohamoud Yusuf,

CV-25-03409-PHX-JJT (ASB)

Petitioner,

v.

Kristi Noem, Secretary, U.S. Department of
Homeland Security; Department of
Homeland Security; Todd M. Lyons, Acting
Director of Immigration and Customs
Enforcement; Immigration and Customs
Enforcement; John E. Cantú, Director,
Phoenix Field Office Immigration and
Customs Enforcement & Fred Figueroa,
Warden of Eloy Federal Detention Center.

**PETITIONER'S TRAVERSE
MEMORANDUM IN
SUPPORT OF HER WRIT OF
HABEAS CORPUS**

Respondents.

INTRODUCTION

Petitioner's requested writ must be issued, her release affirmed, and her detention declared unlawful. "Respondents do not oppose entry of judgment on Petitioner's detention-related claims." ECF No. 21, at 8. Therefore, relief must be granted in relation to Petitioner's detention related requests for release and declaratory relief. *See* ECF No. 1, at 20. As for the matter of third country removal protections, Respondents are correct that

Petitioner “did not assert a claim for relief in her habeas petition seeking to enjoin her [] potential removal to a third county” in her Petition. ECF No. 21, at 8. She is not seeking such relief in this habeas action now, so there is no need to rule on that matter. As the Court previously noted, the issue of third country removal protections may be litigated in “another appropriate forum, i.e., the matter of *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676 (D. Mass.),” ECF no. 18, at 2. Given that “ICE is not currently seeking to remove Petitioner to a third country,” ECF No. 21, at 3, there is no need to presently litigate that matter here.

ARGUMENT

For the reasons articulated in Respondent’s memorandum in support of injunctive relief, ECF No. 8, at 4-15, Respondent’s requested writ must be issued, her release affirmed, and her detention declared unlawful. In short, Petitioner’s detention violated the regulatory requirements governing the re-detention of noncitizens previously ordered removed but released on orders of supervision at 8 C.F.R. § 241.13. These regulations are designed to provide due process to noncitizens re-detained after a previous release, and by short circuiting them, Respondents also violated Respondent’s due process rights in violation of the Fifth Amendment.

I. REGULATORY VIOLATION

Respondent’s failure to provide notice or justification prior to her detention, paired with the failure to point to any changed circumstances violated the regulatory provisions set forth at 8 C.F.R. § 241.13(i)(3).

It is well established that agencies like ICE must follow their own regulations. *See Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Respondents violated several regulations governing the re-detention of noncitizens released on orders of supervision.

First, Respondents failed to provide adequate notice of the reasons for revocation. “Upon revocation, the alien will be notified of the reasons for revocation of [their] release.” 8 C.F.R. § 241.13(i)(3). Typically, this occurs through the contemporaneous service of a Notice of Revocation of Release. The need for this notice is underscored by the requirement that agency provide the noncitizen with “an initial informal interview ... to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3). Clearly, there must be a notification with reasoning to be discussed in that interview. This means Respondents must provide “required written notice upon revocation.” *Liu v. Carter*, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025).

No Notice of Revocation of Release was provided in this case. *See* ECF No. 1 ¶¶ 46-47. Respondents have not provided such a document in response to the Order to Show Cause either and this is the first dispositive regulatory violation.

Second, even if the notice of custody redetermination provided on September 3, 2025, could have sufficed, it was provided too late to serve as adequate notice. Once again, notice “of the reasons for revocation” must be provided “upon revocation.” 8 C.F.R. § 241.13(i)(3). Justice Sotomayor recently noted that “in order to revoke conditional release, the Government must provide adequate notice and ‘promptly’ arrange an ‘initial informal interview.’” *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (J. Sotomayor, concurring).

The notice of custody redetermination was provided on September 3, 2025, six days after Petitioner's re-detention. *See* ECF No. 2, Ex. A. This was notice provided not "upon revocation," and it constitutes the second dispositive regulatory violation.

Third, neither the conversations with Petitioner, nor the documents provided, identify any reason for Petitioner's re-detention that might satisfy the government's burden to justify re-detention. "The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future" or if she "violates any of the conditions of release." 8 C.F.R. §§ 241.13(i)(1)–(2). "Petitioner may only be re-detained if he violates a condition of release, or 'changed circumstances' demonstrate a 'significant likelihood that [he] may be removed in the reasonably foreseeable future.'" *Ashqar v. LaRose*, 2019 WL 1793000, at *11 (N.D. Ohio Mar. 26, 2019). Notably, "it is the Service's burden to show a significant likelihood that the alien may be removed." *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025). *See also Roble v. Bondi*, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025).

Respondents have pointed to nothing justifying Petitioner's re-detention save for the fact that she has a prior removal order. *See* ECF No. 2, Ex. A; ECF No. 1 ¶ 45. This is not an adequate reason because the regulation "still requires a showing of *different* circumstances than existed at the time of [her] release." *Ashqar*, 2019 WL 1793000, at *11. It cannot justify a change in custody status now as it is not a "changed circumstance." That order existed at the time she was released back in 2019. Nor have any other

circumstances changed such that Respondents could illustrate “a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(3). “ICE is not currently seeking to remove Petitioner to a third country,” ECF No. 21, at 3, and Petitioner cannot be removed to Somalia because of her DCAT grant. *See* ECF No. 7, Ex. A. This is the third dispositive regulatory violation.

II. DUE PROCESS VIOLATION

The absence of any notice or reason justifying Petitioner’s re-detention violated the Fifth Amendment’s Due Process Clause. “The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348–49 (1976). In considering the adequacy of administrative action, courts consider “(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards; and (3) the Government’s interest ... that the additional or substitute procedures would entail.” *Id.* at 321.

The *Mathews* test illustrates a due process violation where, as here, no notice, justification, or evidence supports Respondents’ actions. Petitioner’s private interest is substantial as “[f]reedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001). The risk of erroneous deprivation is particularly high where, as here, the government detained Petitioner, who was previously thought to be unremovable in the absence of any notice, justification, or newly acquired proof that she might now be removed. Indeed, “ICE is not

currently seeking to remove Petitioner to a third country,” ECF No. 21, at 3, so there is no justification for re-detention whatsoever. Finally, Petitioner’s liberty interests and the risk of erroneous deprivation far outweigh the government’s interest in executing a five-year-old removal order relating to an individual who was previously determined to not constitute a flight risk or ongoing danger to the community. *See* 8 C.F.R. § 241.4(e)(2)-(6). This is particularly salient given that Respondents have failed to comply with the procedural protections that they themselves promulgated. Petitioner is not requesting additional protections. She seeks only those that the law already affords her. This is a due process violation.

Finally, if “ICE is not currently seeking to remove Petitioner to a third country” and her removal to Somalia is strictly prohibited, ECF No. 21, at 3; 8 C.F.R. § 1208.17(a), then her detention cannot have served a lawful purpose. Instead, the evidence shows an improperly punitive purpose predicated on Respondent’s stated goal of “punish[ing] bad guys.” ECF No. 7, Ex. B. The publication of Petitioner’s photo for public consumption with the label “convicted felon” and “illegal alien” underscores this point. ECF No. 2, Ex. This also illustrates a due process violation.

III. APPLICABLE PRECEDENT

On nearly identical facts, courts in California, Texas, Minnesota, Massachusetts, and Kansas ordered similarly situated petitioners released. *See Hoac v. Becerra*, 2025 WL 1993771 (E.D. Cal. July 16, 2025); *Escalante v. Noem*, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025); *Roble v. Bondi*, 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, 2025 WL 2533673 (D. Minn. Sept. 3, 2025); *Nguyen v. Hyde*, 2025 WL 1725791

(D. Mass. June 20, 2025); *Liu v. Carter*, 2025 WL 1696526 (D. Kan. June 17, 2025).

CONCLUSION

The regulations and the Constitution prohibit detention without notice, reason, or evidence. The Court must grant Petitioner's writ of habeas corpus, affirm her release, and declare her detention unlawful. Petitioner did not seek relief related to third country removal protections in her petition and she is not seeking such relief at this time.

DATED: November 1, 2025

Respectfully submitted,

/s/ Cameron Giebink

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