

NOW COME Respondents Attorney General Pamela Bondi; Secretary of Homeland Security Kristi Noem; U.S. Department of Homeland Security (DHS); U.S. Immigration and Customs Enforcement (ICE); Todd M. Lyons, Acting Director of ICE; Marcos Charles, Acting Executive Associate Director, Enforcement and Removal Operations (ERO); and Mark Siegel, Director, Oklahoma City Field Office, ICE (collectively the “Federal Respondents”), who, as directed by the Court’s Order [Doc. 17], present the following matters in surrepley:

1. The Federal Respondents substantially complied with 8 C.F.R. § 241.13(i)(2)-(3).

As observed by the Court, “Petitioner alleges in his Reply (Dkt. 16) that ‘[t]here was zero compliance with 8 C.F.R. § 241.13(i)(2)-(3), and that is enough to render the detention unlawful.’” Order [Doc. 17] at 1 (quoting Reply at 7). Petitioner is wrong on both counts.

The regulation provides that the Service (*i.e.*, ICE) may revoke an alien’s release under an order of supervision “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.” 8 C.F.R. § 241.13(i)(2). Upon such revocation, the alien will be notified of the reasons for revocation of his release. “The Service will conduct an initial informal interview promptly...to afford the alien an opportunity to respond to the reasons for revocation stated in the notification,” and the alien will be afforded the opportunity to submit any evidence or information that he believes shows no significant likelihood of removal in the reasonably foreseeable future or that he has not violated the order of supervision. *Id.*, § 241.13(i)(3).

Petitioner alleges that on June 11, 2025, he was picked up and redetained by ICE. Petition [Doc. 1] at 2, ¶ 6; *id.* at 10, ¶ 44. “Bahadorani does not recall ever having been served with a Notice of Revocation of Release (‘Notice’) purporting to revoke his OOS, nor does he recall having been given any sort of informal interview to challenge the Notice.” *Id.* at 11, ¶ 46.

The Federal Respondents are unable to verify that upon his redetention Mr. Bahadorani received a formal Notice of Revocation of Release. However, on June 11, 2025, at the Tulsa ERO Office where Mr. Bahadorani was detained, Deportation Officer Alexander Brown met with Mr. Bahadorani. Deportation Officer Brown explained that Mr. Bahadorani’s order of supervision was being revoked “because he is a sex offender with an aggravated felony conviction, and because ERO now has the possibility of removing him to a third country if Iran does not accept him.” Surreply Att. 1 at 1-2, ¶ 3.

On July 30, 2025, Mr. Bahadorani received a Notice to Alien of File Custody Review, and he participated in an informal interview for custody review. Surreply Att. 2. The interview covered topics such as whether Mr. Bahadorani maintained a residence in the United States, his family ties within the United States, his employment and employment history, his levels of education and vocational training, medical/psychological concerns, and ability to post bond. *Id.* at 3-4. He was afforded the opportunity to submit any information that he believed might be helpful in conducting the custody review, and his responses were recorded as follows:

Other factors to consider:

In there any other information you would like to provide to me that you believe would help make a decision in your custody review .

No, I don't think so.

Other factors to consider:

In there any other information you would like to provide to me that you believe would help make a decision in your custody review ?

No.

Id. at 4-5.

Mr. Bahadorani was granted the opportunity to present other evidence and argument addressing his custody and possible removal. If he believed there were “particular barriers to his removal,” *Head v. Keisler*, No. CIV-07-402-F, 2007 WL 4208709, at *3 (W.D. Okla. Nov. 26, 2007), or “barriers peculiar to the individual in question such that there [was] no significant likelihood of removal in the reasonably foreseeable future,” *Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, at *5 (W.D. Okla. Dec. 18, 2007), he declined to express them.

He was informed of the matters likely to be considered when determining whether to keep him in custody, including criminal convictions and criminal conduct, the sentence(s) imposed and time served, and equities in the United States. He was notified that his custody status would be reviewed on or about September 9, 2025, and was further advised, “You may submit any documentation you wish to be reviewed in support of your release, prior to the date listed above, to the attention of the Officer and address listed below.” Surreply Att. 2 at 1.

On October 16, 2025, a written Decision to Continue Detention was issued,

notifying Mr. Bahadorani that his custody status had been reviewed and that ICE had determined to keep him in custody. That decision was made based on matters in Mr. Bahadorani's file, any information he submitted to ICE's reviewing officials, and the factors for consideration set forth at 8 C.F.R. § 241.4(e), (f), and (g). Surreply Att. 3 at 1. The decision was served personally on Mr. Bahadorani on October 21, 2025. *Id.* at 2.

Mr. Bahadorani has received notice of the reasons for the revocation of his supervised release and return to custody. He has had an informal interview and other opportunities to respond to the reasons for the revocation of supervised release. If he has not been released or removed from the United States at the expiration of the three-month period after his 90-day review, administrative jurisdiction will transfer to ICE Headquarters (ERO Removal Division), which will thereafter conduct another custody review and determine whether to continue the detention pending removal. *Id.* at 1. The Federal Respondents have substantially complied with the procedures set out in 8 C.F.R. § 241.13(i)(2)-(3).

2. Even if the Federal Respondents did not comply with the procedural requirements of 8 C.F.R. § 241.13(i)(2)-(3), the appropriate remedy would be an order directing them to comply, not an order releasing Petitioner from custody.

A petition for a writ of habeas corpus is available to challenge the fact or duration of confinement, not the conditions of confinement. "The writ, while essential to our political system, is a drastic remedy. Permitting conditions-of-confinement claims to be asserted in petitions for writs of habeas corpus would greatly enlarge the writ and fundamentally change its purpose." *Basri v. Barr*, 469 F. Supp. 3d 1063, 1066 (D. Colo.

2020).¹ The writ provides recourse against arbitrary arrest and detention by providing a detainee the right to immediate release from illegal custody. *Id.* The *sine qua non* of a habeas corpus case is an allegation that the petitioner cannot be legally confined under any circumstances. *Id.* at 1071. Assuming *arguendo* that the Federal Respondents have not satisfied all the procedural requirements of 8 C.F.R. § 241.13(i)(2)-(3), the drastic remedy of immediate habeas corpus release would be inappropriate and grossly disproportional to the alleged harm.

Petitioner's claim is in the nature of a condition-of-confinement claim: Mr. Bahadorani effectively argues that, as a condition of his confinement, he should have received a Notice of Revocation of Release and a prompt interview. He "does not recall ever having been served with a Notice of Revocation of Release," nor does he recall having been given an interview to challenge such Notice. Petition [Doc. 1] at 11, ¶ 46.

That alleged harm does not warrant immediate release. On the day that Mr. Bahadorani was re-detained, an ICE officer met with him, explained that his order of supervision was being revoked, and explained the reason for the revocation. Surreply Att. 1 at 1-2, ¶ 3. Although Mr. Bahadorani certainly disputes that his removal from the United States is reasonably foreseeable, he does not dispute that while in the United States he committed the crimes of second-degree rape, sexually abusing a minor, indecent proposal

¹ See also *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) ("The writ of habeas corpus is an extraordinary remedy that guards only against extreme malfunctions in the state criminal justice systems.") (internal quotation marks and citation omitted); *Gomez-Arias v. U.S. Immigr. & Customs Enf't*, No. 20-CV-00857-MV-KK, 2020 WL 6384209, at *2 (D.N.M. Oct. 30, 2020) ("As release from custody is an extreme remedy, Congress has circumscribed its use by the courts.").

to a child, lewd molestation, and possession of child pornography. *See* Response Att. 1 [Doc. 15-1], *State of Okla. v. Bahadorani*, Case No. CF-2006-3373, District Court of Tulsa County, State of Oklahoma, Felony Information, Amended Felony Information, etc. Mr. Bahadorani himself describes his criminal history as “significant.” *See* Reply [Doc. 16] at 4 (“Respondents emphasize Petitioner’s significant criminal history...”). He is a removable alien. Mr. Bahadorani has been interviewed by ICE officials regarding his detention, and he has been afforded the opportunity to advocate and present evidence in support of his release.

If, as Petitioner argues, “[t]here was zero compliance with 8 C.F.R. § 241.13(i)(2)-(3),” Reply [Doc. 16] at 7, that does not mean that he cannot be confined under any circumstances or that he should not be confined at all. The appropriate remedy for regulatory noncompliance would be to order the Federal Respondents to comply by issuing a Notice of Revocation of Release and conducting an interview.

At that interview, if so directed by the Court, Mr. Bahadorani should be afforded an opportunity to respond to the reasons for revocation stated in the notice and an opportunity once again to submit any evidence or information that he believes shows there is no significant likelihood that he should be removed in the reasonably foreseeable future, or that he has not violated the order of supervision. The custody review should include an evaluation of any contested facts relevant to the revocation and a determination whether the facts warrant revocation and further denial of release. 8 C.F.R. § 241.13(i)(3).

Respectfully submitted this 27th day of October, 2025.

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Index of Attachments in Surreply

<u>No.</u>	<u>Description</u>
1	Declaration of Deportation Officer Alexander Brown (October 24, 2025)
2	Notice to Alien of File Custody Review, Informal Interview for Custody Review, and Warning for Failure to Depart by Deportation Officer R. Fuentes (July 30, 2025) (redacted)
3	Decision to Continue Detention by Deputy Field Office Director Brandon Smith (October 16, 2025)